

Recent Ofcom decisions on the protection of children

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's decisions may therefore cause offence.

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In Breach

X-Men Origins: Wolverine

Channel 4, 26 August 2012, 18:55

Introduction

X-Men Origins: Wolverine is the fourth feature film in the X-Men comic book fantasy series. The film focuses on the background of Wolverine, a vigilante who produces metal talons from his knuckles and can recover from any wound. Wolverine becomes part of an experimental army unit with his brother but he leaves the unit after disagreeing about their motives and aims.

A complainant alerted Ofcom to violent scenes in the broadcast of this film before the 21:00 watershed on Channel 4. After viewing the material, Ofcom noted various examples of violence:

- 1) Wolverine as a young boy discovers bony talons emerging from his knuckles and then stabs and kills a man who is revealed subsequently to be his father;
- 2) a fantasy gun battle in which a swordsman kills two men by leaping and stabbing them in the chest (not shown in vision);
- 3) an intense sequence of surgery in which Wolverine's head and body are drilled with holes and liquid metal is injected into him;
- 4) Wolverine has two violent fights his brother; various stab wounds are shown;
- 5) Wolverine fights a mutant (who has had his mouth sewn shut and has a long sword coming out of each hand); various stab wounds are featured before the mutant is decapitated off screen; and
- 6) Wolverine is shot in the head at close range, although this does not kill him.

Ofcom considered the material raised issues warranting investigation under Rule 1.3 of the Code, which states:

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

We therefore wrote to Channel 4 (or "the Licensee") for its formal comments on how the broadcast complied with this rule.

Response

The Licensee said that the Code had dispensed with regulating the scheduling of films on television by reference to their ratings from the British Board of Film Classification ("BBFC"), as had happened previously under the Independent Television Commission ("ITC") Programme Code. Channel 4 commented that "it is noteworthy that the film complained of would, under the ITC Programme Code, on the face of it been transmittable uncut at 8pm", given its 12A BBFC rating.

The Licensee added that in accordance with Ofcom's Guidance, as with any other content broadcast by Channel 4, "films, including 12A films, are scheduled appropriately in compliance with the provisions of the Code, in particular with a view to the "context" of the relevant content under Section Two [of the Code]".

Channel 4 said *X-Men Origins: Wolverine* had been "carefully edited" by a senior editor at the Licensee to reduce the level of violence in the film to make it suitable for the transmission time. Channel 4 listed 27 edits made to the film to reduce or remove the film's impact overall, including edits for language and violence. The Licensee said the film was "scheduled with care to avoid programmes specifically made for children" and was preceded in the schedule by 4thought.tv and Channel 4 News.

Channel 4's view was that the edits made demonstrated the "great care which was taken by the Channel to ensure the film was suitable for its time of transmission". The Licensee also pointed out that the film had been shown twice before on Channel 4.

Channel 4 responded to each of the specific examples of violence identified by Ofcom in the Introduction to this finding:

- 1) The Licensee said that, given the previous three films in the X-Men series, viewers would to a large extent have been aware of the "particular superhuman attributes of Wolverine and...not be surprised at his partial metamorphosis in this scene". Channel 4 added that "the stabbing itself is largely implicit and there is little or no blood" and that it had: edited out close-up shots of the claws emerging from Wolverine's knuckles; and dipped the sound to minimise the impact of the stabbing to death of a man who is subsequently revealed to be Wolverine's father.
- 2) Channel 4 pointed out that this scene is "clearly a fantasy battle" and the stabbing is not seen in vision and therefore only implied.
- 3) The Licensee disputed Ofcom's description of this scene, maintaining that the scene was "highly stylised" and "drill bits are not seen being drilled into Wolverine's body". It said that Wolverine had volunteered to undergo the operation to become a superhero and knew in advance it would involve pain: "There is no duress and no deliberate infliction of pain for pain's sake."
- 4) Channel 4 said it was important to bear in mind that the fights were "clearly stylised, fantasy fights" with little blood or graphic wounding and in which the wounds immediately healed up "while the participants fly and leap across rooms and through buildings". Although edits were made to these scenes to reduce their impact, the Licensee was of the view that they would not have been perceived as "real scenes of violence".
- 5) The Licensee argued that: this scene occurred from around 20:44 "shortly before the 9pm watershed"; the violence was highly stylised "with the protagonists repeatedly recovering from their wounds"; and, by this point in the film, viewers would have become familiar with the unrealistic nature of the violence in this "fantasy franchise". Channel 4 said it "is not clear" whether or not the mutant's mouth was "sewn shut" as indicated by Ofcom: the Licensee said it was "just clear that he [the mutant] has no mouth". It also pointed out that the decapitation of the mutant is not shown on screen and this only becomes apparent as his body falls from the building.

- 6) Channel 4 again highlighted the elements of fantasy violence in this sequence and viewer awareness that the main character would not be killed by bullets. The Licensee said “there is little or no blood or gore or, indeed, much suffering” and that it had edited the sequence to reduce the level of violence, including the removal of “a close-up shot of a point blank shot into Wolverine’s head”.

In conclusion, the Licensee reiterated that the X-Men film franchise is “well-known for its fantasy, comic book style” and that the violence within *X-Men Origins: Wolverine* reflects that style and is “consequently not realistic in the context of normal everyday life”. Channel 4 added that its view of the audience’s likely expectations could reasonably have been informed by the fact that this edited version of the film had been broadcast “a little earlier” on Sunday 25 September 2011 and had not attracted any complaints.

Channel 4 was therefore of the view that the film was appropriately scheduled given the careful edits it had made to the original version.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected”. This is reflected in Section One of the Code.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them.

In applying Rule 1.3, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”. The Code is drafted in accordance with Article 10 of the European Convention on Human Rights, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority. In accordance with the fundamental right to freedom of expression, the Code does not prohibit the broadcast of material unsuitable for children. However, broadcasters are required to ensure that children are protected from unsuitable material by appropriate scheduling.

Ofcom first assessed whether *X-Men Origins: Wolverine* contained material unsuitable for children.

The film contained dark fantasy and violent themes throughout and a number of scenes of violence, aggression and menace. By way of example, in one scene (example 3 above), to enable Wolverine to kill his brother (who had apparently killed his girlfriend), Wolverine voluntarily submitted to a surgical procedure to change his body skeleton – and talons – from bone to metal. To achieve this, the character was placed in an aquatic container and two rows of hot needles were drilled into Wolverine’s body and head. The character clearly experienced excruciating pain, and a number of close-up shots were shown of the needles being drilled into Wolverine’s cheeks and forehead.

In another scene (example 5), the climatic fight sequence showed Wolverine fight with another ‘mutant’ (the name the film series gives to those who have special abilities), a former soldier colleague of Wolverine who had been the subject of various experiments. The result of these experiments (not seen in the film) was that

this 'mutant' had a gruesome appearance: he was heavily scarred around the eyes and mouth and appeared to Ofcom to have had his mouth sewn shut so he could not speak. The mutant also had long swords extending from the knuckles of both hands. The fight involved various martial arts elements of jumping, punching and kicking but also, given the two characters had blades built in to their bodies, both characters stabbing each other a number of times (although both automatically healed themselves). The sequence concluded when Wolverine leapt towards the new mutant and slashed him aggressively across the neck. In the subsequent shot, it was clear that the mutant had been decapitated because his head was shown coming away from his body.

We took account of the intensity of the surgery sequence, and the repeated sequences of violence and stabbing (despite a number of the characters healing automatically from wounds) spread throughout the film. This material conveyed a continuing theme of dark fantasy violence which, in Ofcom's view, made the content unsuitable for children to view, particularly younger children.

We then assessed whether the content was appropriately scheduled. Appropriate scheduling is judged against a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

We noted Channel 4's reference to *X-Men Origins: Wolverine* being "on the face of it" acceptable to show uncut at 20:00 on Channel 4 under the ITC Programme Code, given its 12A BBFC certification. The ITC Programme Code was one of the set of regulations in place at the Independent Television Commission, one of the regulators responsible for broadcasting before Ofcom was created. The ITC Programme Code was in use until July 2005, when the Ofcom Broadcasting Code was first published. The broadcast of *X-Men Origins: Wolverine* on Channel 4 in 2012 can only be assessed against the Code.

Ofcom recognised that this is the fourth film in the X-Men series and that as a result the likely expectations of the audiences may have been established to some extent. We also acknowledged that *X-Men Origins: Wolverine* is a film based on a comic book series and that, as such, the violence in this film was not grounded in the real world. However, it was a concern to Ofcom that Channel 4's defence of the violence in this film appeared to rely significantly on viewers' recognition of the fantasy nature of the violence. While there were clear elements of fantasy to the scenes of violence in this film, in Ofcom's view these elements did not mean that the effect of the violence on child viewers was necessarily minimised to an acceptable level. Violence – whether in a real or fantasy context – must be appropriately limited when included in programmes broadcast before the watershed. We also noted that this film had, according to the Licensee, been shown twice before on Channel 4 before the watershed (once at a similar time) with either no, or very few, complaints to Channel 4. At the times of those previous broadcasts, however, Ofcom did not receive any complaints about the scenes of violence in this film and so was unable to assess them against the Code.

Ofcom noted that the storyline of *X-Men Origins: Wolverine* was darker than that of the previous three films, dealing with issues of betrayal and violent revenge. The previous X-Men films looked collectively at a group of 'mutants' who had a range of special abilities which were not all connected with the ability to fight at close range. *X-Men Origins: Wolverine* focused almost entirely on its central character whose actions were very much prompted by anger and involved direct and personal violence against others using his metal talons to stab and slash opponents.

We took into account that Channel 4 had clearly taken measures to ensure the fantasy violence was toned down in the film by making a considerable number of edits. A number of graphic incidents of violence (such as decapitation or a point blank shot to the head) were edited out so that the violence was implied and not shown in vision. However, in Ofcom's view, these edits were insufficient to address the ongoing violent themes throughout the film, and in particular in some of the key scenes which were especially violent and are summarised above. For example, the surgery sequence (example 3) occurred at about 19:40 and lasted for approximately 180 seconds. This was an intense scene, with Wolverine apparently in great pain as hot needles drilled into his body and face. Although Wolverine may have volunteered to undergo this procedure, it appeared in Ofcom's view akin to a torture sequence.

The final fight sequence (example 5) was intercut with another storyline of teenage mutants being helped to escape their confinement. This fight began at about 20:40 and lasted for approximately five minutes. Again, there were multiple images of stabbing and Wolverine's final slash to decapitate the mutant was clearly shown (though as Channel 4 pointed out to Ofcom that the viewer did "not see the head being sliced from the body").

We took into consideration that the film was broadcast from 18:55 on a Sunday evening when there were likely to be children, and particularly younger children, in the audience, some of them potentially watching television unaccompanied by an adult. Audience figures indicated that out of a total of 969,000 viewers, 115,000 were children aged between four and fifteen (equating to almost 12% of the audience). 46,000 of the 115,000 children watching were aged between four and nine.

We noted that the film was preceded by a presentation announcement which stated: "*Film fantasy action now on 4. Hugh Jackman seeks revenge as the troubled superhero Wolverine. X-Men Origins.*" In Ofcom's opinion, this announcement did not make sufficiently clear that the film would have a dark and violent theme and scenes of violence, aggression and menace throughout. We also noted that Channel 4 has recently shown films which have a wide family appeal such as *Inkheart*, *Ice Age: the Meltdown*, *Hairspray* and *The Golden Compass* in similar timeslots (although scheduled up to an hour earlier than 18:55).

Ofcom did not consider that viewers, and in particular parents, would have expected this level of intensity and violence to be shown on Channel 4 from 18:55 on a Sunday evening.

Ofcom therefore concluded that children were not in this case protected from unsuitable material by appropriate scheduling, and there was a breach of Rule 1.3.

Breach of Rule 1.3

In Breach

Rock All Stars

Scuzz TV, 19 August 2012, 20:40

Introduction

Scuzz TV is a UK digital satellite television channel that broadcasts rock and 'pop-punk' music videos and music related entertainment programming at channel number 374 on the Sky Electronic Programme Guide and channel number 503 on the Freesat platform. The licence for this channel is held by CSC Media Group Limited ("CSC Media" or the "Licensee").

During a block of music video programming called *Rock All Stars*, Scuzz TV broadcast a music video by the American 'rap-rock' band Hollywood Undead performing a track called "Undead" ("the video") at 20:40. The video, which was set in a motel room, intercut footage of the band performing the track to camera with footage of the male band members 'partying' with female performers and fans in various locations including a motel bedroom, a bathroom and by a swimming pool.

The video, which lasted for just over three minutes and 30 seconds, included over 25 uses of language such as "fuck", "motherfuckers", "fucking" and "faggots", for example:

"You know I don't give a fuck what you think or say."

"Now, I see that motherfuckin' writin' on the wall."

"Fuck all haters I see 'cause I hate that you breathe I see you duck, you little punk, you little fuckin' disease."

"Motherfuckers, don't know but you better watch what you say. From these industry fucks to these faggot ass punks. You don't know what it takes to get this motherfuckin' trunk."

"Johnny's taking heads off of all the faggots who hate. 'Cause I am good motherfucker, there's a price to pay. Get out my gun motherfucker and it's judgment day."

"Undead, motherfuckin' time to ride, ride. Undead, watch you fuckers just die, die."

Ofcom was also concerned by the imagery included in this video. We noted in particular: over 35 brief but close-up shots of naked or near naked breasts; around 20 close-up shots of women's buttocks in bikinis or underwear; frequent close-up shots of women climbing onto or simulating sexual actions with men and other women; scenes in which male band members fondled the breasts of female performers; footage in which two semi-naked female performers simulated sex acts together in a shower cubicle while a male band member vomited into a toilet; shots of illegal drug paraphernalia; and a sequence in which a female performer appeared to take illegal drugs and then perform sex acts on herself and with others. The video

concluded with shots of the band members violently smashing up the contents of the motel room, and then throwing the broken items into the swimming pool. Ofcom received two complaints from viewers about the broadcast of this video on Scuzz TV. One complained that a music video containing “unedited female nudity” and “obscene language throughout the video” had been broadcast before the watershed. The other complained that the video was “degrading to women” and “was the closest thing to rape” he had seen in a music video.

Ofcom considered that the material raised issues warranting investigation under the following rules of the Code:

- Rule 1.3: “Children must...be protected by appropriate scheduling from material that is unsuitable for them.”
- Rule 1.10: “The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:...
- must generally be avoided and in any case must not be condoned, encouraged or glamorised in...programmes broadcast before the watershed (in the case of television)...unless there is editorial justification[.]”
- Rule 1.14: “The most offensive language must not be broadcast before the watershed (in the case of television)[.]”
- Rule 1.16: “Offensive language must not be broadcast before the watershed (in the case of television)...unless it is justified by the context.”
- Rule 1.21: “Nudity before the watershed must be justified by the context.”
- Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, [and] violation of human dignity[.]”

Ofcom therefore asked the Licensee for its formal comments on how the music video complied with the above rules.

Response

In its initial representations the Licensee described the broadcast of this video before the watershed as a “frustrating lapse in our usually robust compliance procedures”. It explained that, although the video had been checked for compliance by the Licensee and designated as “Post Watershed”, it was “possible in some unusual circumstances for the scheduling software’s automatic safety check to pass [some post-watershed videos] by.”

CSC Media explained that viewers were able to submit requests to the channel by email for particular music videos to be broadcast on Scuzz TV, and that the video had been scheduled to be broadcast twice on 19 August 2012 in response to such a request. With regard to the first and earlier scheduled broadcast, the Licensee stated, the scheduling error was spotted by the Channel Manager, and the video had been removed from the schedule before broadcast. However, the second scheduled

broadcast was not identified by the Licensee's software or staff and consequently the video was broadcast in error at 20:40.

The Licensee stated that as a result of this incident it: had removed the video from its catalogue, "so that it will never be played again across our channels"; was implementing changes to its software having "identified the failure in the scheduling system"; and was checking the way in which all of its 24,000 plus music videos were marked up for compliance purposes. The Licensee apologised for any offence caused and gave assurances to Ofcom that it was confident it had rectified the "loophole" in its scheduling system. It pointed out that the current incident was only the "third breach of our compliance process" across its 16 television channels in over four years. It also said that it was "of some comfort" that according to BARB viewing figures the video had a "zero rating" for children, and the number of people viewing the video would have been very small.

CSC Media also made detailed representations in response to Ofcom's Preliminary View that it had breached Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3, and that these contraventions were so serious that they should be considered for a statutory sanction.

In summary, the Licensee fully accepted that the broadcast of the video was a breach of the Code resulting from "an unfortunate collision of technical and human error", and therefore considered it was "unnecessary and overtly damaging to our brand [for Ofcom] to examine each breach of each rule when we have already acknowledged [the] breach".

CSC Media also challenged Ofcom's Preliminary View that the Licensee should be considered for a statutory sanction, arguing that this was disproportionate. It put forward the following main arguments in support of this view.

First, CSC Media suggested that Ofcom should place greater weight: on the hitherto good compliance record of the Scuzz channel when viewed in isolation (this was the first ever breach of the Code recorded against Scuzz); and on what the Licensee viewed as CSC Media's good compliance record overall over the previous four years (it holds the licences for 16 television services, and during the previous four years had broadcast over 3.6 million pieces of programming, excluding advertisements, but had only been found by Ofcom to have breached the Code twice as regards unsuitable content).

Second, and linked to these points, the Licensee argued that the Preliminary View presented the Licensee's compliance record in an unfair light. (In its initial response to Ofcom, CSC Media had stated that the current complaint was only the "third breach of our compliance process" across its 16 television channels in over four years. In response, in its Preliminary View Ofcom had noted that it had in fact recorded eight Code breaches against the Licensee during that period.) The Licensee argued that, of the eight breaches referred to by Ofcom in its Preliminary View, only two were breaches of the Code as regards showing unsuitable content, while four related to breaches of the COSTA advertising code, and one was for failing to properly warn the audience that a video contained flashing images. The Licensee contended that the four breaches of the COSTA code should not be given disproportionate weight compared to the two breaches concerning unsuitable content – each of these having been "caused by human error, after over 3.6 million content broadcasts across 16 broadcast streams".

Third, the Licensee argued that Ofcom had failed to give proper weight to the fact that the BARB audience figures indicated that no children were watching the channel at the time the video was broadcast. It cited Ofcom’s “Music Video: Flo Rida – *“Turn Around (5,4,3,2,1)”*” breach finding in Broadcast Bulletin 180¹ as an example of an Ofcom decision in which a licensee, 4Music, had been found in breach of the Code, but not sanctioned, even though Ofcom found that up to 12,000 children between the ages of four and 15 had been watching.

Fourth, CSC Media argued that it was being treated inconsistently compared to other licensees who had previously been found by Ofcom to have breached the Code. By way of example the Licensee cited a previous Ofcom finding about the music video *“Blinded by the Lights”* by The Streets (Broadcast Bulletin 24²), in which a licensee had been found to be in breach of the Code because it had broadcast a music video four times across two channels which contained “strong language (“fuck”, “cunt”), excessive violence, graphic depictions of drug taking and sexual imagery”, but was not considered for a sanction.

Fifth, the Licensee argued that Ofcom’s Preliminary View had failed to give due weight to other factors: for example, the speed with which the Licensee had acted to remove the offending video from its playlist and tighten its compliance procedures in response to being put on notice that Ofcom was investigating the broadcast; or to the fact that the video had been broadcast as a result of human error. CSC Media believed all these circumstances, together with the facts that the Licensee admitted its error and did not attempt to justify the breach, should be taken by Ofcom as evidence that the Licensee is a responsible broadcaster that exercises sound editorial judgement. Instead, the Licensee argued, it appeared from Ofcom’s Preliminary View that Ofcom (incorrectly) regarded the fact that the Licensee had not attempted to justify the broadcast of the video as evidence that it did not take its responsibilities seriously enough.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it to be best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected” and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

These duties are reflected in Sections One and Two of the Code respectively. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected. Ofcom considers the standards it has set for the protection of children to be among the most important. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

¹ Broadcast Bulletin 180, 20 April 2011, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb180/obb180.pdf>.

² Broadcast Bulletin 24, 13 December 2004, http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb_24/bull.pdf.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”³. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which includes the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference from a public authority.

In reaching a decision in this case, Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements of the Act.

Ofcom also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. As part of our consideration we took into account that music videos from the rock, ‘thrash metal’ and ‘rap-rock’ genres are known to include visual and verbal references to sex, the ‘hard living’ lifestyles of rock band members and their followers, and the larger than life, and often shocking, onstage and public personas of the band members. However, while music videos must have room for innovation and creativity, Ofcom has a statutory duty with regard to all programmes – including music videos (whatever genre) – to ensure that under-eighteens are protected and to enforce generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and/or harmful material.

Rule 1.3

Rule 1.3 requires that: “Children must be protected by appropriate scheduling from material that is unsuitable for them.” This watershed of 21:00 is widely identified by viewers as the time after which they may progressively expect to find material which is aimed at an adult audience. Before 21:00 material unsuitable for children should not, in general, be shown.

Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the time of the broadcast; and likely audience expectations.

In this case, Ofcom had to consider first whether the material broadcast was unsuitable for children. Ofcom noted that the lyrics contained the frequently repeated use of the words “*fuck*”, “*motherfucker*”, “*fucking*” and “*faggots*”. Further, as set out in the Introduction, we also noted that that the video included a significant quantity of close-up images of naked or near-naked breasts, women’s buttocks in bikinis or underwear, and semi-naked female performers dancing provocatively, while simulating sex acts by themselves, with each other and with members of the band. We also took into account the depiction of what appeared to be illegal drug paraphernalia in the video, along with scenes of what appeared to be illegal drug taking. Finally, Ofcom noted the violent delivery of the lyrics and the band’s performance, the offensive hand gestures made by band members to camera, the acts of violent destruction of property, and the rough manner in which the male performers were seen to treat the female performers in some scenes (for example

³ Section 3(4)(g) of the Act.

one scene in which a woman appeared to be being choked by a man in a sexual context).

It was Ofcom's view that the content of this music video was extremely unsuitable for children. Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this unsuitable material.

We took into consideration the genre of music featured on Scuzz TV, and the 'hard living' image that is commonly projected by artists performing within this genre. Ofcom considered that the channel was not likely to appeal to children. Ofcom also took into account the Licensee's comments that BARB viewing figures indicated that no children were watching the broadcast of this video. However, given that the video was broadcast before the watershed during the school summer holidays, Ofcom was of the view that there was nevertheless a likelihood of children being available to view this material at this time.

We noted that the Licensee had admitted that the broadcast had been a "lapse" and a "breach", and had occurred in error.

Given the particularly unsuitable nature of this content for children and the availability of children to view it before the watershed during the school summer holidays, Ofcom found that the Licensee had not taken adequate steps to protect children from this unsuitable material by appropriate scheduling. The material was therefore in breach of Rule 1.3.

Rule 1.10

Rule 1.10 requires that: "The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol...must generally be avoided and in any case must not be condoned, encouraged or glamorised in...programmes broadcast before the watershed (in the case of television)...unless there is editorial justification[.]"

This video contained close-up shots of illegal drug paraphernalia, and a particularly prominent sequence in which a female performer inhaled what appeared to be an illegal drug, appeared to become sexually aroused, and then performed sex acts on herself, and with other male and female performers, in the context of several 'partying' scenes featuring the band members.

It was a concern to Ofcom that the use of illegal drugs depicted in this video was presented in the context of the potentially aspirational 'partying' lifestyle of the band's members. Ofcom considered that, within the context of this particular music genre, this depiction had the potential to glamorise the use of illegal drugs. We therefore considered whether the use of illegal drugs in this video shown before the watershed was editorially justified.

Ofcom acknowledges that the video depicted the 'hard living' lifestyle of the band's members which viewers may associate with the 'rap-rock' genre of music featured on Scuzz TV, and therefore to that limited extent the material was shown within a relevant niche cultural context. However, given the availability of children to view this material before the watershed and during the school summer holidays, Ofcom did not consider that this amounted to sufficient editorial justification for the inclusion of these images in this video.

In view of the above and taking into account the Licensee's admission that the video had been broadcast in error, Ofcom found the material to be in breach of Rule 1.10.

Rule 1.14

Rule 1.14 requires that: "The most offensive language must not be broadcast before the watershed (in the case of television)[.]"

As referred to above (and set out in the Introduction), Ofcom found that the video contained the frequent and repeated use of the words "fuck", "motherfucker" and "fucking".

Ofcom research on offensive language clearly notes that the word "fuck" and its derivatives are considered by audiences to be amongst the most offensive language⁴.

The broadcast of this video containing multiple instances of the most offensive language before the watershed was therefore a clear breach of Rule 1.14.

Rule 1.16

Rule 1.16 of the Code requires that: "Offensive language must not be broadcast before the watershed (in the case of television)...unless it is justified by the context."

The video included a number of uses of the word "faggots" and its derivative "fag". Ofcom's research indicates that the word "faggot" is considered to be a derogatory and offensive word, particularly when used to insult gay and bisexual men⁵.

Ofcom therefore considered whether the use of this offensive language in the video was justified by the context. We took into account that the words "faggots" and "fag" were used in the lyrics in an aggressive and derogatory manner. Further, as noted above, Ofcom considered that it was likely that children were available to view this video given that it was broadcast before the watershed during the school summer holidays. We also noted that the Licensee had admitted the video was broadcast in error and did not offer any editorial justification for the broadcast of this offensive language at this time. Therefore, we considered that the broadcast of the offensive language described above was not justified by the context, in breach of Rule 1.16 of the Code.

Rule 1.21

Rule 1.21 requires that: "Nudity before the watershed must be justified by the context."

As set out in the Introduction, the broadcast of this video before the watershed included a considerable amount of nudity: over 35 brief but close-up shots of naked or near naked breasts and around 20 close-up shots of women's buttocks in bikinis or underwear. Ofcom noted that the images of nudity were all presented in a highly sexualised context.

⁴ *Audience attitudes towards offensive language on television and radio* (2010): <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>.

⁵ *Audience attitudes towards offensive language on television and radio* (2010): <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>.

We therefore went on to consider whether this nudity was justified by the context.

We took into account that the video was broadcast on a channel that specialised in a genre of rock that is understood by viewers to be more extreme in nature than the type of music played on more mainstream music video channels. We also considered that the channel was not therefore likely to appeal to children, as evidenced by the BARB viewing data which indicated that no children were watching this particular broadcast (although 1,000 adults were watching). Nevertheless we concluded that the audience for this channel was unlikely to expect the broadcast of such frequent images of nudity in a highly sexualised context throughout this video at this time before the watershed.

We noted that the Licensee had admitted that the video had been broadcast in error and did not offer any justification for the broadcast of this content at this time.

Ofcom concluded that the context was insufficient to justify the broadcast of the nudity in this case, in breach of Rule 1.21.

Rule 2.3

Rule 2.3 requires that: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, [and] violation of human dignity[.]”

Ofcom considered first whether the content was potentially offensive; and, if so, whether the offence was justified by the context. Context includes, for example: the editorial content of the programme; the service on which it is broadcast; the time of broadcast; the likely size and composition of the potential audience; and the likely expectation of the audience.

We considered that the music video in this case contained various instances of images and language which had the potential to be highly offensive to the audience. For example, as mentioned above, Ofcom’s research on offensive language clearly notes that the word “fuck” and its derivatives are considered by audiences to be amongst the most offensive language; and that the word “faggot” is considered by audiences to be offensive and derogatory when directed at particular groups of people, in particular gay and bisexual men⁶. In addition, we considered the highly sexualised images, as described above, the images of violence and illegal drug taking, and the way in which the male band members were depicted treating the female performers, had the potential to be highly offensive.

We therefore went on to consider whether this offensive material was justified by the context.

We took into account that the video was broadcast on a channel that specialised in a genre of rock that is understood by viewers to be more extreme in nature than the type of music played on more mainstream music video channels. We also considered that the channel was not therefore likely to appeal to children, as evidenced by the BARB viewing data which indicated that no children were watching this particular broadcast (although 1,000 adults were watching). We also considered that the video portrayed the type of ‘hard living’ and ‘partying’ lifestyle that is commonly associated with this kind of band, and that the audience of Scuzz TV might expect to be

⁶ See footnote 5.

portrayed at some points in the schedule. Nevertheless, given the potentially highly offensive nature of the content in this case, we concluded that the audience for this channel was unlikely to expect the broadcast of numerous examples of highly sexualised imagery and instances of the most offensive language at this time before the watershed.

We noted that the Licensee had admitted that the video had been broadcast in error and did not offer any justification for the broadcast of this content at this time.

Ofcom concluded that the context was insufficient to justify the broadcast of the offensive content in this case, and that the Licensee did not apply generally accepted standards, in breach of Rule 2.3.

Conclusion

This case involved the broadcast of material that was extremely unsuitable for children and had the potential to be highly offensive to the audience. Ofcom therefore considers the breaches of Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3 in this case to be serious. Ofcom was particularly concerned that the Licensee described the broadcast of this video before the watershed and during the school summer holidays as having occurred as a result of a 'loophole' and staff error.

Before reaching a final decision on this case, Ofcom took careful account of CSC Media's representations on its Preliminary View.

Ofcom noted and acknowledged that the Licensee accepted straightaway that it had breached the Code in this case. The broadcast material however was highly unsuitable for children and had the potential to cause considerable offence to members of the public for a variety of reasons (but principally the very frequent use of offensive and the most offensive language, numerous shots of sexualised imagery and nudity and the depiction of illegal drug taking). This variety of reasons underlined why Ofcom believed it was necessary and appropriate to assess this content and record breaches of the Code, against several rules of the Code.

CSC Media also put forward various arguments challenging Ofcom's Preliminary View that it was appropriate for these breaches to be considered for a statutory sanction.

First, CSC Media suggested that Ofcom should place greater weight on the good compliance record of the Scuzz TV channel when viewed in isolation and on what the Licensee viewed as CSC Media's good compliance record overall over the previous four years. Second, and linked to these points, the Licensee argued that the Preliminary View presented the Licensee's compliance record in an unfair light. In response, Ofcom's view is that it has placed appropriate weight on the compliance record of both the Scuzz TV channel by itself, and of CSC Media overall. In considering sanctions, Ofcom has over recent years consistently maintained a policy of having regard to all the breaches of its codes recorded against particular licencees where they are ultimately held by the same person, who also controls a centralised team responsible for compliance at all these same services⁷. This is the case here, with CSC Media controlling 16 channels with a centralised compliance department for all 16 services. Ofcom notes that it has recorded eight breaches of its codes

⁷ See for example the sanction imposed against MTV Europe on 4 June 2008: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/mtv.pdf>.

against CSC Media over the past four years, two of which have involved the broadcast of unsuitable material before the watershed. Ofcom considers this compliance record is not especially weak but nor is it exemplary.

Third, the Licensee argued that Ofcom had failed to give proper weight to BARB audience figures indicating that no children watched the video when broadcast, and contrasted Ofcom's treatment of CSC Media in the Preliminary View (a recommended sanction) with that of other licensees: 4Music, for broadcasting the Flo Rida music video "*Turn Around (5,4,3,2,1)*" (video broadcast three times, no sanction even though up to 12,000 children between the ages of four and 15 were watching); and MTV (video broadcast three times, no sanction even though up to 1,000 children between the ages of four and 15 were watching).

The data provided by BARB only give an indication of the number of people watching a particular channel at a particular time, which is why Ofcom in the Code and in its Guidance⁸ advises broadcasters to have regard to the "*likely* [emphasis added] number and age range of children in the audience, taking into account school time, weekends and holidays". With particular reference to sexual images, Ofcom's Guidance states: "[T]he cumulative effect of certain images or combination of images can result in material of a sexualised nature in music videos which is unsuitable for child viewers and could cause offence." Further, Ofcom's view is that the unsuitable and offensive content shown pre-watershed in the "Undead" music video and fully detailed above was of a wholly different order to that in the Flo Rida video. The breaches of the Code in this present case are much more serious as a result. Even though there is no evidence from BARB that any children watched the "Undead" video when it was broadcast, in Ofcom's opinion it is likely that some children could have been watching, some unaccompanied.

CSC Media also argued that it was being treated inconsistently compared to other licensees, and by way of example cited a 2004 Ofcom breach decision about the music video "*Blinded by the Lights*" by The Streets (Broadcast Bulletin 24⁹) where the licensee was not considered for sanction. In response Ofcom notes that this decision was made eight years ago under the relevant ITC Programme Code not under the Broadcasting Code, and under procedures for standards investigations and sanctions which were superseded several years ago. In Ofcom's view, there are no comparable precedents with the present case referred to by the Licensee which suggested that a decision to consider the current Code breaches for sanction would be inconsistent, unfair or unreasonable.

Fifth, the Licensee argued that Ofcom's Preliminary View did not give due weight to other factors, such as: the speed of its response to this compliance failure; and the seriousness overall with which the Licensee approaches its compliance responsibilities. In response, Ofcom confirms that it has taken account of the facts that: the Licensee immediately admitted that the broadcast of the video breached the Code; it was broadcast in error; the Licensee has taken steps to rectify the problem that permitted the broadcast to take place; and that overall the Licensee has appeared to Ofcom hitherto to take its compliance responsibilities seriously.

Nonetheless, Ofcom also notes that CSC Media has not put forward any reasons to demonstrate that the very high levels of unsuitability of the video for pre-watershed

⁸ "Protecting the Under-Eighteens: Observing the watershed on television and music videos", <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>.

⁹ See footnote 2.

broadcast and of offensiveness were less than those set out in Ofcom's Preliminary View. This music video may only have been broadcast once pre-watershed, but these breaches of Code are in Ofcom's view sufficiently serious as to warrant consideration of a sanction.

Ofcom therefore puts the Licensee on notice that it is considering these breaches for the imposition of a statutory sanction.

Breaches of Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3

In Breach

The Only Way is Essex

ITV2, 12 August 2012, 13:30

Introduction

The Only Way Is Essex is a popular 'constructed reality' programme broadcast on ITV2. It features scenes from the daily lives of a group of young people in Essex. The structure of each scene is predetermined but the dialogue between participants, who appear as themselves, is unscripted.

Each episode is originally broadcast at 22:00 on ITV2 and repeated several times during the following week on the same channel at various times of the day in an edited pre-watershed version.

Ofcom was alerted by a complainant to this particular episode broadcast at lunchtime on a Sunday. It included content with adult themes and sexual references. Ofcom viewed the material and noted, for example:

Example 1

Characters Diags and Tom talked about their sex life:

Diags: *"I've got my exercise bike, but you get all exercise from LG [Tom's girlfriend, Lauren] though."*

Tom: *"What do you mean?"*

Diags: *"From [bleep to obscure offensive language]..."*

Tom: *"She's ain't like the sort of girl that would just sleep with you on the first date. Enough about me, mate, what sort of girls have you been [bleep to obscure offensive language]? You need to go and get tested."*

Tom explained the procedure of a sexual health test by saying:

"[T]hey stick a cotton bud up your (whistles)"

Example 2

A scene featured a group of young male characters organising a night out where a male character said he wanted to get drunk.

Charlie: *"I just wanna good lad's night out. I wanna get smashed. Plenty of birds."*

Charlie also says: *"[He's] never really got 'totally smashed'."*

Mario replies: *"Have you ever even had a hangover before?"*

Charlie: *"No [the group laugh]. Maybe a bit of a headache but I've never had that proper thing when you know like when you have an urge for greasy food or whatever it is people say? I've never had that."*

Another friend responds with: *"You need it mate."*

Example 3

A discussion took place between couple Tom and Lauren and their friends about their sex life:

Diags: *"Is Tom good in bed?"*

Lauren: *"Shut up, Diags."*

Another character, Joey, asks: *"Have you two gone with each other in bed?"*

Lauren: *"No."*

Joey: *"What, you telling me he has gave you a little..."*

Diags whistled and made a gesture with his hands representing sex.

Example 4

A conversation occurred between two male friends (Charlie and Chris) in a nightclub about their preference in a sexual partner:

Charlie: *"I like the curvaceous type, a little bit of junk in that trunk."*

Chris: *"Sounds like every man likes a bit of boobage, bit of bum."*

Charlie: *"It's all about the eyes."*

Chris: *"You see, I never talk to a girl with the eyes. I'm looking down, seeing what they've got to offer... You need to show the king, you need to be the king of the jungle. You need to just pounce on your prey and just penetrate."*

Charlie: *"Okay."*

Chris: *"Penetrate."*

In addition, Ofcom noted several other examples of bleeped or partially bleeped language throughout the programme.

Ofcom considered this material raised potential issues under the Code because it was broadcast on a Sunday lunchtime during the summer school holidays when children were available to view. It therefore warranted investigation under Rule 1.3 of the Code, which states:

“Children must ... be protected by appropriate scheduling from material that is unsuitable for them.”

Ofcom sought comments from ITV2 Limited (“ITV” or “the Licensee”) as to how the content complied with this rule.

Response

ITV said that this episode was part of the sixth series of *The Only Way is Essex* and viewers would therefore be familiar with the nature of the characters and their preoccupations. It added that much of the content centres on conversations about their relationships and sex lives and that since they are real people, their dialogue containing a “good deal of strong language” reflects how they speak in everyday life.

The Licensee explained that care is taken to obscure all of the strongest and most offensive language for the pre-watershed version of the series and that content deemed unsuitable for pre-watershed scheduling, due to its theme or explicitness, is also edited.

The Licensee pointed out that the Code does not prohibit discussions on sexual matters before the watershed and argued that the sexual discussions in Examples 1 and 3 were suitably inexplicit. It submitted that younger viewers would not understand the references to the sexual health test in Example 1 and that the phrase “good in bed” used in Example 3 was “commonplace and one that few viewers would find offensive”.

ITV said the scene featuring Charlie planning a night out (Example 2) identified the negative consequences of excessive alcohol consumption (e.g. headache, lethargy, the need for greasy food) and therefore would not have encouraged viewers to drink heavily. It added that the potential negative effects of drinking are regularly played out in the wider series through emotional fallouts and arguments.

ITV said that to avoid any suggestion that the programme encouraged the misuse of alcohol it omitted a longer sequence, showing characters drinking, for the pre-watershed version. The Licensee pointed out that Charlie himself was only seen to “sip two beers and does not appear to be drunk”. It therefore did not consider the programme encouraged excessive consumption of alcohol.

The Licensee said that although the conversation between Charlie and Chris in Example 4 had a sexual undercurrent, the expressions were not in its view explicit or particularly lewd, and therefore would have exceeded audience expectations of a typical discussion involving such characters. ITV stated that words and phrases such as “boobage” and “junk in that trunk” would not have been generally considered inappropriate for a pre-watershed audience.

ITV added that (although offensive language is a normal element of everyday conversation of characters in the series) all of the strongest language is carefully edited for the pre-watershed version, often with visual obscuring of mouths as well as sound editing. It argued that the 20 instances of language edits in this programme were not excessive in the context of a programme reflecting the actual lifestyle of this community and did not consider it would have caused widespread offence to viewers.

However, ITV said it carefully considers the overall tone of the content and the potential for offence caused by excessive bleeped language in pre-watershed programming. Although it did not believe the programme was unsuitable for children,

the Licensee said it had it had asked the producers to edit offensive language entirely rather than use bleeping for future pre-watershed broadcasts, where appropriate and practical to do so. Furthermore, it had decided to no longer schedule *The Only Way Is Essex* in weekend daytime or school holiday daytime slots, in view of Ofcom's concerns about children being more likely to view unaccompanied at such times.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected". This objective is reflected in Section One of the Code.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

In September 2011 Ofcom gave guidance¹ to all television broadcasters that they should "take care to ensure that adult themes of a more sexualised nature are suitable for broadcast pre-watershed".

Ofcom noted that *The Only Way Is Essex* is first broadcast at 22:00 on ITV2 and that a pre-watershed edited version is later aired several times on the same channel including, as was the case here, on a Sunday afternoon when children are available to view. We therefore considered first whether the material broadcast was suitable for children.

Language editing

Ofcom recognised the various language edits (by means of bleeps) that ITV had made for the pre-watershed version. As set out in Ofcom's guidance on the watershed, masking offensive language is one way in which broadcasters may edit post-watershed material to make it suitable for broadcast pre-watershed.

In Ofcom's view, in this case, the bleeping of the words was not always sufficient to mask the language or its impact. In many cases, the meaning of the bleeped words was likely to have been clear to the audience from the context and tone of the discussion: for example, the bleeping out of words during a discussion of a clearly sexual nature in Example 1.

Ofcom was also concerned about the frequency of bleeping in this programme. We noted there were 20 instances in this half hour programme. As also set out in Ofcom's guidance, if the use of masked offensive language in a programme is frequent, such that the programme requires multiple instances of bleeping, there can be a cumulative effect on viewers. In programmes where there is frequent use of offensive language, broadcasters may need either to edit the programmes more rigorously for pre-watershed transmission to take account of this cumulative effect, or consider whether the programme is in fact appropriate for pre-watershed broadcast at all.

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

Adult themes

Ofcom noted that this programme contained a number of adult themes, including references to the consumption of alcohol and, in particular, references to characters' sex lives and their interest in each other's sexual activity (as set out in the examples above).

Ofcom noted ITV's argument that the Code does not prohibit sexual discussion in pre-watershed programmes. However, we took account of the prominence of these adult themes throughout the programme, and the impact and frequency of the masked language. We concluded that the programme was therefore unsuitable for children.

Ofcom then went on to consider whether the material was appropriately scheduled.

Ofcom noted that ITV2's target audience is 16 to 34 year olds. Ofcom therefore understands that the channel's programming is not aimed at children. BARB viewing data indicated that only 4,000 out of 118,000 viewers were below the age of 15 (3.39% of the total audience).

We note that this programme was broadcast on a Sunday lunchtime during the extended summer school holidays. Further it was broadcast on a mainstream general entertainment channel which is likely to attract a broad audience. Both these factors, in Ofcom's opinion, made it more likely that children – some of them unaccompanied – would view this material.

Each decision under Rule 1.3 depends on the individual circumstances and whether the context in each case is sufficient to justify the inclusion of more adult content at a time when children are available to view unaccompanied. In this case, Ofcom considered the content, featuring continuing adult themes and frequent masked language, was not suitable for broadcast at 13:30, on a Sunday during the school holidays.

We noted ITV's decision to edit offensive language entirely rather than use bleeping for future pre-watershed broadcasts, where appropriate and practical to do so. We also welcomed its decision to avoid scheduling future episodes of *The Only Way Is Essex* in weekend daytime or school holiday daytime slots, when children are more likely to be available to view unaccompanied.

However Ofcom concluded that on this occasion the programme was not appropriately scheduled so as to protect children and therefore breached Rule 1.3.

Breach of Rule 1.3

In Breach

Love Shaft

Channel 4, 2 and 9 June, 10:35 and 23 June, 09:50

Introduction

Love Shaft is a 'speed dating' series which was broadcast as part of T4, the weekend youth-oriented morning segment on Channel 4 aimed at 16-34 year olds. The programme is largely set in a lift where a young male or female contestant seeking a date is presented with a series of potential dating partners as the lift stops at different floors. The contestant can only choose one potential partner to be with them in the lift at any time. The aim of the programme is for the contestant to find a partner to take on a date by the time the lift reaches the penthouse floor. During the course of the programme, the voice of the lift (called "Lift" in the programme and in this Decision) discusses events in the lift with the contestants and their potential dating partners, and makes comments about the participants. Meanwhile from the penthouse the family and friends of the contestants monitor the progress of the contestants in the lift, consult with the contestant in the lift about their potential partners, and discuss the events taking place with the programme presenter in the penthouse bar.

Ofcom was alerted by a complainant to these three episodes of the programme because they included adult themes throughout, sexual references and innuendo. They were broadcast at a time when young children were available to view on a Saturday morning. Ofcom reviewed the material and noted, for example:

2 June 2012

In this episode, contestant Joel was asked about his ideal girl. Joel replied:

"I really love massive tits, a lovely arse..."

The voiceover explained the premise of the programme:

"[W]hen the lift stops he [the contestant] will meet some hot to trot totty all desperate for a date in the lift with him but there is no room for a threesome...he will have a chance of a dream date with whoever is in the lift with him whether they are a stunner or a bummer."

Joel was featured lying back naked on a couch in the lift holding only a pineapple to cover his genitals. His "date" in the lift, Alana, was dressed as an artist and was painting a picture of him on an easel.

Lift asked: *"Is that a big enough pineapple for you?"*

Alana: *"If you keep talking about the pineapple Lift I'll look even more – oops! I've just painted it and it looks really wrong."*

Lift comments: *"It's harder than it looks!"*

Next, contestant Joel was shown holding Alana close and dancing with her in the lift and Lift made a sexual innuendo about the potential for Joel to get an erection:

"Before you [Joel] start, try not to get mahogany...it's wood darling."

Joel was then joined in the lift by his next date, Lolly, in the lift. They were presented with various options of possible items to take with them on holiday and had to choose between them.

Lift asked: *"Condoms or shoes?"*

Lolly: *"Instead of a condom you could use a plastic bag or something?"*

Joel replied: *"That's a bit dangerous, babe, we don't want to have a baby...not yet anyway."*

9 June 2012

In the next episode, the contestant, Chris, was asked by Lift what he "goes for" in a girl.

Chris: *"Varies really. If it's just a Saturday night thing or I'm bringing her home to my mum."*

Lift: *"What you mean – if it's a one night stand?"*

Chris was then joined by his next date, Jess, in the lift. Jess asked Chris what he does for a living. He explained he has a spray tan business and if Jess wanted to give it a go she would have to *"wap her baps out"*. In another 'test' for compatibility, Chris had to guess the dress size of Jess, how many men Jess has kissed in one night and how many serious relationships she has had. After hearing Chris's responses, the presenter summarised:

"[H]e is saying she [Jess] is a larger lady and a part-time slut."

Together with another potential new date, Gemma, Chris was asked to make a small clay sculpture of a male life model in the lift. The genitals of the naked life model were covered with a graphic overlay and Chris commented that he was *"a bit taken aback"* and the Lift asked why:

"[H]e's [the male life model] just whacked his sausage out in front of me...I just want to have a play with it."

The presenter in the penthouse suite asked Chris's friend if he considered this: *"I wish there was a penis I could play with"*, was a strange thing to ask on a date: The life model reviewed the clay sculpture and it was shown on-screen with the caption: *"Morph - the porn years"*.

Chris commented on Destiny, a glamour model, who joined Chris in the lift. He looked down at and stared at Destiny's breasts for an extended time while commenting:

"Look at the size of them – absolute rack."

At the end of the programme Destiny and Chris were shown on a date and filmed separately. Destiny commented:

"If he thinks he is getting lucky tonight in the next hour he better make me feel like the woman of his dreams."

Chris commented:

"Yeah, I'm going to go back in there and see what happens and – fingers crossed – get a feel of that rack."

23 June 2012

In this episode, Lift asked contestant Seb to guess how many body piercings his lift 'date' Leila has. Seb guessed it is higher than three. Leila revealed to Seb she has eight piercings and Lift asked her to identify where they are on her body. Leila pointed to the places on her body which included her nipple and genital area. Seb commented:

"You have one there, one on your [whistles]?"

A graphic accompanied this discussion which pointed out to the audience the location of the piercings with the genital piercing location referred to on the graphic as the "*lady garden*".

Later in this episode, a 12 year old boy, dressed as a headmaster, asked Seb and another female contestant (who are dressed as school children and sitting at desks in the lift) the following question:

"Be honest how old were you when you popped your cherry?"

The contestants both replied the question was "*bad*" and "*quite personal*" but went on to write their ages on chalkboards and show one another.

Ofcom sought information from Channel 4 about the participation of the 12 year old boy in this programme. Having carefully considered this information, Ofcom was satisfied that Channel 4 had taken due care over the physical and emotional welfare and the dignity of the child actor in the programme. Ofcom therefore concluded that the programme did not breach the relevant Code rule¹.

However, Ofcom considered the three episodes summarised above raised potential issues under the Code because it was broadcast before the watershed and on a Saturday morning, when children were available to view. It therefore warranted investigation under Rule 1.3 of the Code, which states:

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

We therefore sought the Licensee's comments as to how the material complied with this rule.

¹ Rule 1.28 of the Ofcom Broadcasting Code: "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."

Response

Channel 4 stated that the tone of this programme was “cheeky, witty and full of *entendre* and *risqué* banter, especially from the voice in the lift” who makes “sassy and humorous remarks and asks probing questions to the contestant and potential date”. The broadcaster considered the programme was appropriate for a pre-watershed transmission and “the content would not have gone beyond the generally accepted standards” of the T4 audience and a T4 show.

The T4 slot runs for the most part of a Saturday morning and is targeted at the 16-34 age group. Channel 4 stated that the series of *Love Shaft* was originally broadcast on E4 in May 2012 at 19:30.

2 June 2012

Channel 4 argued that the language used in this episode was not inherently sexual in nature. Joel’s description of what he looked for in a woman (“massive tits” and “lovely arse”) were descriptions of “physical attributes” and any sexual meaning taken from these words “would be entirely the interpretation of the viewer”. The words were not “overtly offensive” and Ofcom’s research stated that “tits” and “arse” were considered acceptable for broadcast pre-watershed because they are used frequently in everyday language.

Further, Channel 4 said the term “hot to trot totty” was “entirely suitable” and would not have exceeded the generally accepted standards for a T4 audience. The reference to “try not to get mahogany – wood” was not sexually explicit language but an euphemism which would not generally be understood by children and there was no subsequent comment to explain what this reference actually meant.

9 June 2012

Channel 4 stated that the comment “wap your baps out”, while it was “possibly unsophisticated in delivery”, was “not expressly sexual in nature or tone” and “would have similar levels of acceptability of the word ‘tits’ if not higher”.

Channel 4 considered Chris’s comment “whacked his sausage out in front of me” to be “a little crude, but not sexual in nature or tone”, and the word “sausage” to be “a very mild euphemism for penis, neither of which are prohibited from broadcast pre-watershed”. With regard to the comment that Chris makes, “I want to have a play with it”, Channel 4 interpreted this comment to be made in the spirit of the task “rather than anything more salacious”.

Channel 4 considered that the presenter referring to Jess as “a larger lady and part-time slut” was not directed towards someone but was an interpretation of Chris’s comments. Further, Channel 4 stated: “[T]he inclusion of the word ‘slut’, while not seriously offensive language, was perhaps not the most ideal for the broadcast at 10.35, generally it would not go beyond generally accepted standards for a T4 audience when used in this context.”

Finally, with regard to the comment “look at the size of them - absolute rack”, Channel 4 did not consider this line to be sexual in tone or nature rather “a comment of Destiny’s physical attributes”. The broadcaster stated that any sexual interpretation of this line was in the mind of the viewer. The comments, while crude, were not the sort of language that are precluded from pre-watershed transmission and nor “do they go beyond the generally accepted standards for a T4 audience”.

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Channel 4 did not consider that the discussion on body piercings or the term “lady garden” was sexual in tone or nature and nor was it a subject precluded from pre-watershed. The term “lady garden” is “highly euphemistic and not overtly descriptive and Channel 4 believes that children would not generally understand what the phrase meant”.

In conclusion, Channel 4 stated that it did not consider any of the content “in isolation is sexual in tone, or that the language goes beyond what is generally accepted by the T4 audience and on a T4 show” and therefore the episodes were “appropriate for a pre-watershed transmission during the T4 scheduling slot on Channel 4”. The language was “relatively low level” and spread over three separate programmes. In terms of scheduling, Channel 4 stated that “the episodes were preceded by programmes which are not specifically aimed at children and were within the expectations of viewers during this scheduling slot.”

However, on balance, Channel 4 was mindful “of the cumulative, bawdy and irreverent nature of the series and that this leaned toward a more provocative tone”. The broadcaster accepted that: “[W]ith the benefit of hindsight, and taking into account the complaint made to Ofcom, Channel 4 will be considering whether it would be appropriate to edit some of the material for any future early morning or afternoon broadcast to avoid any cumulatively offensive effect.”

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

In September 2011, Ofcom gave guidance² to all broadcasters that they should “take care to ensure that adult themes of a more sexualised nature are suitable for broadcast pre-watershed”.

Ofcom noted this series was originally broadcast at 19:30 on E4, which is aimed at 16-34 year olds. It was also considered by Channel 4 to be suitable to be shown during the T4 slot, which is targeted at the same demographic, but broadcast on a Saturday morning on Channel 4, the main public service channel.

Ofcom examined whether the episodes shown at 10:35 (2 and 9 June) and 09:50 (23 June) on Saturday mornings contained material that was unsuitable for children; and – if so – whether children were protected from it by appropriate scheduling. We therefore considered first whether the material broadcast was suitable for children.

In Ofcom’s view, overall these episodes clearly included a tone and content aimed at an adult audience, as might be expected for a dating series aimed at 16 to 34 year

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

olds. The editorial premise of the programme was speed dating, in this case meeting potential dating partners after a brief experience of one another in a lift. Given this, the programme included a number of flirtatious sexual references and innuendoes which were not necessarily sexually explicit when considered individually and in isolation. For example, Ofcom did not consider the words “sausage” and “baps” per se to be problematic.

However, in Ofcom’s view, there were references and language used in the programmes, including words such as “massive tits” and “slut” which were plainly sexual even when considered in isolation. Ofcom did not accept that children would not have understood the use of this type of language.

Further, all of the language, including the inexplicit terminology, was presented in a way that conveyed a continuing sexual theme. For example:

“...he’s [the male life model] just whacked his sausage out in front of me...I just want to have a play with it”,

and

“Look at the size of them – absolute rack.”

“Yeah, I’m going to go back in there and see what happens and – fingers crossed – get a feel of that rack.”

In Ofcom’s view, the cumulative effect of all such references (see Introduction above for further examples) throughout the episodes was to heighten the adult nature and sexual theme. As such, Ofcom considered the material was unsuitable for children.

We therefore went on to consider whether this material was appropriately scheduled.

Ofcom considered Channel 4’s view that as this programme was broadcast in the well established T4 slot, which is aimed at 16-34 year olds, the more irreverent nature of the content would not have exceeded the expectations of the target T4 audience. However, we noted the BARB viewing data for these programmes which showed that a significant number of children were viewing. There were 11,000 children aged 4-15 (9.2% of the total audience) watching the episode on 2 June; 14,000 children (11.8% of the total audience) watching the episode on 9 June; and, 6,000 children (8.2% of the total audience) watching the episode on 23 June. Ofcom therefore noted that, while the material was aimed at a more adult audience, it was broadcast on a Saturday morning when children were watching, some possibly unaccompanied.

Each decision under Rule 1.3 depends on the individual circumstances and whether the context in each case is sufficient to justify the inclusion of more adult content at a time when children are available to view unaccompanied. In this case, Ofcom considered the content, featuring a continuing sexualised theme, was not suitable for broadcast at 10:35 and 09:50 respectively, on a Saturday morning. Therefore it was not appropriately scheduled so as to protect children and breached Rule 1.3.

Breach of Rule 1.3

In Breach

Gavin and Stacey

GOLD, 25 February 2012, 10:00

Introduction

Gavin and Stacey is a sitcom which features the long-distance relationship of two characters, Gavin from Essex and Stacey from Wales, and their friends, Smithy and Nessa, and their families. The first series was originally broadcast post-watershed on BBC 3 in 2007.

This particular programme broadcast at 10:00 on a Saturday, on the classic comedy channel GOLD, was a repeat of the first episode of the first series of this long running sitcom. The licensee for the service GOLD is UK Gold Services Limited ("UKTV" or "the Licensee").

Ofcom was alerted by a complainant to this programme because it featured several examples of offensive language and content with adult themes and sexual references throughout the narrative. Ofcom reviewed the material and noted, for example:

- an opening scene outside Stacey's house in Wales where she talks to her elderly neighbour, Doris, about Stacey's forthcoming trip to London for her first date with Gavin. Doris advises Stacey, *"don't go giving him nothing on the first night ... well not nothing ... a kiss, a cuddle, a cheeky finger – just don't go selling him the whole farm"*;
- a scene where Gavin and Smithy discuss going back with Nessa and Stacey to their hotel and Smithy asks Gavin, *"you got any johnnies? I ain't going in there bareback"*; to which Nessa replied: *"don't worry I've got a stash – ribbed"*;
- a scene back at the hotel where Nessa makes clear the reasons for returning there are to have sex and says, *"why don't we cut to the chase and we'll all get some,"* and she reaches her hand towards Smithy's genital area. She then goes on to say, *"I hopes you hungry big boy,"* and slaps his backside;
- a scene the next morning when Smithy wakes up after spending the night with Nessa and tells Gavin, *"I feel like I've been abused. The guilt...She did things. She put things in...did Stacey stick things in?"* He then gets out of bed wearing Nessa's red lacy thong which reveals his buttocks;
- a scene where Nessa responds to a coach driver's offer of a meal by threatening to tell everyone on the coach about her *"trip to the doctors"* following a previous sexual liaison with the driver. She says he is *"riddled"* as she looks down at his genital area. In response the driver asks how everything is *"down there"* as he looks down and nods towards Nessa's genitals; and
- various examples of offensive language, for example: *"bloody"*, *"shit"*, *"takes the piss"*, *"cacking myself"*, *"prick"*, and *"bugger"*.

Ofcom considered the material raised potential issues under the Code because it was broadcast before the watershed and on a Saturday morning, when children were available to view. It therefore warranted investigation under Rule 1.3 of the Code:

“Children must ... be protected by appropriate scheduling from material that is unsuitable for them.”

We therefore sought the Licensee’s comments as to how the material complied with this rule.

Response

UKTV stated that it believed the “subject matter of *Gavin and Stacey* is suitable for broadcast pre watershed as it portrays the relationship and subsequent marriage of two people.” It went on to explain that “GOLD is a channel that is aimed at adults and *Gavin and Stacey* is a series that first transmitted 5 years ago, so there is an audience expectation already established with the programme and characters within.”

With regard to the sexual references, UKTV considered that those remaining in the episode were “oblique enough for children not to fully understand the true meaning”. They referred to their own audience research figures which indicated that the child index was well below the level “where one would expect a programme with a large audience to figure”.

In addition, the broadcaster explained, edits were made to remove: the strongest language; milder language said in an aggressive manner; and, the stronger sexual content. Further, UKTV stated “the audience of *Gavin and Stacey* would expect some milder language from characters such as Smithy and Nessa and the language used in the episodes had been broadcast in other programmes pre-watershed on GOLD. without complaint.” Therefore, in UKTV’s view, the language would not have exceeded the audience’s expectation.

In conclusion, UKTV said it “made a conscious effort to remove offensive language and any of the more explicit sexual scenes/references, leaving only some mild language and light, oblique sexual references.” UKTV said that any sexual references that remained were not explicit.

In response to Ofcom’s view that there was a breach of Rule 1.3 in this case, as set out in the preliminary view, UKTV in summary responded as follows.

In terms of audience expectations, when this episode of *Gavin and Stacy* was first shown on BBC Three in a post-watershed slot (and in its original unedited form), the audience of children aged 10 to 14 was 31,000 and UKTV was unaware of any complaints generated by this episode. Further, when subsequent episodes of *Gavin and Stacey* were originally broadcast on the BBC post-watershed, there was also a significant child audience in the 10 to 14 age group. Therefore children and parents would have been “aware of the themes and language in this series and that their expectations would have been suitably managed for the transmissions on GOLD.”

In terms of the suitability of the content for pre-watershed broadcast, UKTV stated that in this episode there was “no sexual activity beyond kissing. There is no nudity barring a partially clothed bottom. The sounds of sexual intercourse have been edited from this version.” The sequence in the hotel room “is not an aggressive or sexually threatening scene.” UKTV also argued that Nessa’s references to Smithy as “big boy”

referred to his build. In the broadcaster's view, children viewing in the 10 to 14 age group would have understood the sexual references which went beyond innuendo having had access to compulsory sex and relationship education in school, and references to "johnnies" in the episode provided "positive sexual health messages".

In response to the overall concern about the sexual themes in this pre-watershed episode, UKTV disagreed that these raised issues under the Code and "there was not widespread or significant offence caused". The broadcaster referred to other examples of programming scheduled pre-watershed which included similar themes and storylines that were, in some cases, stronger than *Gavin and Stacey*. UKTV added that as *Gavin and Stacey* is a comedy, which does not feature as a genre causing concern in the Ofcom research into pre-watershed content¹, it "disarms and reduces much of the potential offence compared to straightforward, conventional drama".

In conclusion, UKTV stated that it considered Ofcom's decision "harsh" given the content was not sexually explicit, it was broadcast on a channel aimed at adults with a proven low child audience and there is "potentially stronger and more explicit content on other channels at the same time."

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected". This objective is reflected in Section One of the Code.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

Ofcom noted that this programme was originally broadcast post-watershed. The issue in terms of the Code was whether this re-versioned programme shown at 10:00 on a Saturday morning contained material that was unsuitable for children; and – if so – whether children were protected from it by appropriate scheduling.

We therefore considered first whether the material broadcast was suitable for children. In Ofcom's view, overall this episode clearly included themes and content aimed at an adult audience, as might be expected for a series originally produced for post-watershed transmission. These themes and content centred, in the first episode, on a narrative about two groups of friends meeting up for the first time, each couple having sex in a hotel room the first night after meeting, and the consequences for both couples afterwards.

The programme included a number of sexual references which were not necessarily sexually explicit but, in Ofcom's view, clearly exceeded comic innuendo and were aimed at a more adult audience. These references were made throughout this episode and the language used was central to the comedy and the characterisation, particularly of Nessa and Smithy. The sexual references were particularly integral to

¹ Research into parents' and teenagers' opinions and concerns on pre-watershed programming: see <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/ofcom-for-parents/prewatershed-tv-programming.pdf>

the comedy scenes revolving around the couples returning to the hotel to have sex, for example:

- Smithy's comment to Gavin about condoms: *"you got any johnnies? I ain't going in there bareback,"* to which Nessa replied *"don't worry I've got a stash – ribbed"*.
- Nessa's response to Gavin: *"why don't we cut to the chase and we'll all get some,"* as she reaches down towards Smithy's genital area. She then goes on to say, *"I hopes you hungry big boy,"* and slaps his backside as they go into the bathroom together for sex.
- Smithy's comments the following morning when it is made clear he had an unexpected sexual experience with Nessa when he recounts to Gavin in the hotel room what happened the night before and gets out of bed wearing only Nessa's red thong: *"I feel like I've been abused. The guilt... She did things. She put things in... did Stacey stick things in?"*

Ofcom considered UKTV's view that these sexual themes and sexual references in this episode were suitable for broadcast pre-watershed, particularly given the child audience comprised of 10 to 14 year olds who would have been informed enough and old enough to have fully understood the references in the storyline.

In response, Ofcom's considered that it was the overall tone and cumulative impact of the sexual language and references throughout the programme which resulted in this material being of a more adult nature and which made this episode unsuitable for scheduling on a Saturday morning, when it was reasonably likely that children would be in the audience. While Ofcom accepts that some of the audience of 10 to 14 year olds may have fully understood the sexual references and they and their parents may have considered this programme suitable viewing, Ofcom has a duty to protect all children under the age of 15 from potentially unsuitable content. Ofcom believes that a number of children would not have understood the references and nor would a number of parents considered this programme suitable viewing on a Saturday morning. In Ofcom's view, the sexual references in the programme were not "light" and "oblique" as suggested by UKTV but clearly aimed at a more adult audience, and these and the sexual themes were integral to the whole episode, which was not suitable for children.

We therefore went on to consider whether this material was appropriately scheduled.

The original post-watershed version of the programme was edited by the broadcaster in an attempt to make it suitable for pre-watershed broadcast, for example by removing some offensive language and explicit sexual references. Ofcom takes account of the Licensee's point that GOLD is "aimed at adults" and we consider that none or very few of the younger age group of children in the audience aged 4 to 9 years may have understood some of the sexual language and references used by the characters. Indeed, BARB audience data show that no children between the ages of 4 and 9 viewed this programme. BARB figures indicate however that some 13,000 children between the ages of 10 and 14 years old did watch this particular episode. In Ofcom's opinion, a number of older children within this age group viewing the material would have been capable of following the adult themes and content.

The programme included the frequent use of offensive language. This (taken together with the sexual themes and references) underlined that, despite the edits to the original programme, it still contained a considerable amount of content of an adult

nature. In Ofcom's view this programme required careful and cautious scheduling if it was to be shown pre-watershed and comply with the Code.

Ofcom had particular regard to the likely expectations of the audience for programmes broadcast at this time of day on a classic comedy channel like GOLD at 10:00 on Saturday morning when many children are available to view, some unaccompanied by an adult.

Ofcom considered UKTV's view that because a significant audience of 10 to 14 year olds had previously watched this episode and others on the BBC, when it was broadcast unedited and in a post-watershed slot, children and parents would have been aware of the themes and language and their expectations would have been suitably managed. It is Ofcom's opinion, that regardless of the previous post-watershed transmissions of this episode, viewers (and in particular parents) would not have expected such material to be broadcast at 10:00 on a Saturday morning, regardless of the comedy context or the fact there was a low child audience. The audience's expectation of what to expect in a post-watershed slot, when older children may be viewing with parents, differs greatly to the likely audience expectation for content broadcast during a Saturday morning when children may be viewing unaccompanied. At this time content is expected to be appropriate for all children under 15. The nature of the content and its scheduling, in a pre-watershed Saturday morning slot, meant that in Ofcom's view the likely expectations of the audience at this time were exceeded.

Each decision under Rule 1.3 depends on the individual circumstances and whether the context in each case is sufficient to justify the inclusion of more adult content at a time when children are available to view unaccompanied. In this case Ofcom considers the context did not justify the broadcast of this programme at 10:00 on a Saturday morning. Therefore it was not appropriately scheduled so as to protect children and breached Rule 1.3.

Ofcom notes that this programme was originally written and produced for a post-watershed audience. Ofcom has recently given guidance to all broadcasters that they "...should take particular care if they wish to show before the watershed content originally produced for a post-watershed audience. ... Some programmes or content, however, even if rigorously edited or carefully scheduled, may not be suitable for broadcast pre-watershed because of their adult themes or repeated offensive language (even if 'bleeped')." ² In this case it was Ofcom's view that despite considerable editing this material still contained an overall adult sexual tone and was therefore not appropriately scheduled. All broadcasters need to be aware of the need to take great care when considering the scheduling pre-watershed of programmes originally produced for post-watershed transmission.

Breach of Rule 1.3

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

In Breach

The Secrets in the Walls

Channel 5, 20 January 2012, 15:15

Introduction

A complainant alerted Ofcom to the pre-watershed broadcast of the film *The Secrets in the Walls* because of concerns that it contained supernatural and horror themes and images unsuitable for a child audience.

Ofcom noted that this was a made-for-television film about a mother who moves into a new home with her two daughters where, it is later revealed, a young teenage bride had been murdered. Her malevolent spirit now seeks to free itself by possessing the older daughter. The film featured the following scenes:

- the unexpected appearance of the spirit in front of the daughters and at the window of the house, and their reactions of fear and distress;
- 'supernatural' activities such as unexplained music from a jewellery box, slamming doors and flickering lights;
- the older daughter was trapped in the wardrobe screaming and scratching as the light in the wardrobe flickered on and off (it was later revealed that she lost two fingernails from her frantic scratching to get out);
- an attempted "exorcism" to banish the spirit from the house; and
- the "possession" of the older daughter by the spirit.

Ofcom considered the material raised potential issues under the Code because it was broadcast before the watershed and featured content that could be described as typical of a horror genre film. This included scenes of supernatural activity, exorcism and themes of suspense and menace. It therefore warranted investigation under Rule 1.3 of the Code:

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

We therefore sought Channel 5's comments as to how the material complied with this rule.

Response

Channel 5 explained that it reviewed the film in its broadcast version again following receipt of Ofcom's request for comments and was of the view that the material should not have been scheduled for broadcast at 15:15.

Channel 5 explained the reasons why the broadcaster took the original decision to show the film in the afternoon. Following acquisition, Channel 5's Scheduling Department had decided the film should be broadcast at this time and marketed it to advertisers before the film was delivered to the Programme Compliance team for review. The compliance team therefore "used their best endeavours" to edit the programme to make it suitable for broadcasting in the afternoon without adversely affecting the editorial narrative in a manner which might confuse viewers.

Channel 5 said that in total 18 edits were made to the film with the aim of reducing the overall horror/thriller tone of the film and this was the version that was broadcast. However, having reviewed this broadcast version, Channel 5 stated: “we are of the view that further significant edits would have been required to make the programme suitable for a 3.15pm timeslot, or, the programme should have been scheduled at a time when children were not likely to be watching. Re-scheduling this version of the programme would have been the preferable solution as further edits...seem likely to compromise the editorial narrative of the programme, distort its meaning and/or confuse viewers”.

Channel 5 set out the steps it had taken to improve its compliance procedures in light of this case. Newly acquired films will be flagged to the compliance team for a preliminary review prior to scheduling to ensure that they are broadcast at appropriate times. In addition Channel 5's Head of Programme Compliance has provided further guidance to the Programme Compliance team to ensure that sufficient edits are requested for programming scheduled when children are likely to be viewing.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

In considering the material, Ofcom took the view that the subject matter of the film, namely a malevolent spirit residing in a house, did not necessarily exceed the boundaries of acceptability for a pre-watershed film. The issue with content of this nature is whether the treatment of the storyline, within a particular broadcast, complies with the Code and is suitable for a pre-watershed audience.

We first considered whether the material was suitable for children. This film contained themes, sequences and images of menace, threat and suspense as well as specific examples of supernatural activity, exorcism and possession which are typically found in horror films aimed at adult viewers. In one particular example, the mother was asleep in darkness when a shrill scream came from her older daughter's bedroom, piercing the silence. The mother and younger daughter ran to the bedroom and loud scratching and screams for help and “I can't breathe” could be heard. The light in the cupboard flickered on and off as the mother pulled open the doors to release her daughter, whose hands were injured from scratching at the closed doors to escape. These scenes were accompanied throughout by menacing sound effects and music. Further scenes featured the spirit appearing to the daughters unexpectedly in the mirror and at windows; and an attempt to exorcise the spirit that resulted in the woman conducting the exorcism being knocked down violently. In Ofcom's view these themes, sequences and images were unsuitable for child viewers.

We therefore went on to consider whether this material was appropriately scheduled. In Ofcom's view, a number of scenes were seriously disturbing and there was no

contrasting narrative contained within the film to lighten the mood. Further, the end of the film offered no redemptive resolution to the storyline with the spirit appearing in the window as a new family entered the house with a view to purchase. Ofcom noted that there was no warning given before the film began. As the film was broadcast on a weekday from 15:15, at a time when children are likely to be returning from school, Ofcom concluded that it was likely that a number of children would be in the audience, some unaccompanied. Indeed BARB figures indicate that some 35,000 children between the ages of 4 to 14 years old watched this film. The nature of the content and its scheduling in a pre-watershed afternoon slot meant that it was likely that the expectations of the audience were exceeded. The material was therefore not appropriately scheduled and breached of Rule 1.3.

Ofcom was concerned to note that in its response Channel 5 stated that the inappropriate scheduling of this programme occurred because the material was scheduled and marketed “prior to being delivered to Programme Compliance,” and therefore the compliance team had been in effect compelled to edit the material using “their best endeavours” to make the film suitable for broadcast at 15:15. Ofcom acknowledges that, subsequent to this investigation, Channel 5 has taken steps to ensure “that newly acquired films are flagged to Programme Compliance for preliminary review” prior to scheduling. Ofcom, however, expects all broadcasters to ensure that compliance with the Code is fundamental to the process of deciding where material should be scheduled.

Breach of Rule 1.3

In Breach

Girls of the Playboy Mansion

E! Entertainment, 27 December 2011, 10:00 to 13:00 and 16:00 to 21:00

Introduction

Girls of the Playboy Mansion is a reality television series, filmed in the USA home of Hugh Hefner, the American magazine publisher and founder of the adult entertainment company Playboy Enterprises. It features the day to day activities of a group of women who live with Hugh Hefner in his house, known as the Playboy Mansion. The series was broadcast on the cable and satellite television channel E! Entertainment. The licence for this channel is held by E Entertainment UK Limited ("E Entertainment" or "the Licensee"). The content broadcast on E! Entertainment was complied by E Entertainment UK Limited at the time of the broadcast¹.

During routine monitoring, Ofcom noted various episodes (each of about thirty minutes duration) of the *Girls of the Playboy Mansion* broadcast consecutively throughout the day and evening on E! Entertainment on 27 December 2011. The programmes featured:

- at 10:54 a male stripper wearing a pouch thong (his buttocks were blurred and genitals covered) thrusting his buttocks into the face of the mother of one of Hugh Hefner's girlfriends during a lingerie party at the Playboy Mansion with the accompanying comment: "*she needed a good ass in her face*" (this scene and comment were also broadcast as part of a preview at the start of the episode);
- a number of sequences showing women and female glamour models, posing and being photographed during casting sessions for the 55th anniversary Playmate cover (with naked breasts, genitals and buttocks blurred) in consecutive episodes broadcast between 16:00 and 21:00; and
- numerous examples of bleeped and masked offensive and most offensive language.

Ofcom considered the material raised potential issues under the Code because it was broadcast before the watershed and during the school holidays, when children were available to view. It therefore warranted investigation under Rule 1.3 of the Code, which states:

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

We therefore sought the Licensee's comments as to how the material complied with this rule.

¹ In 2011 as a result of an acquisition, E Entertainment UK Group's London based channels were gradually integrated with NBC Universal's London based channels. From February 2012, E Entertainment UK's channels have been complied by NBC Universal.

Response

NBC Universal on behalf of the Licensee apologised for the inappropriate scheduling of this material. It explained that as soon as the Licensee was alerted to Ofcom's concerns about the content, E Entertainment placed a post-22:00 scheduling restriction on the entire series of *Girls of the Playboy Mansion* until it was fully re-complied and re-edited where necessary.

NBC Universal said it had investigated how the material came to be broadcast. This found that a former member of the E Entertainment UK Limited compliance team had not previously recorded adequate edit and scheduling instructions against the content. As a result information about the programmes was inaccurate.

NBC Universal noted that E Entertainment UK Limited had put in place a new compliance procedure in 2011² to ensure that any broadcast content which could raise concerns under the Code would be referred for viewing by a second compliance officer prior to scheduling on E! Entertainment. However this particular series had not been subject to this new procedure. This was because it had been scheduled several weeks ahead of transmission based on the original (and inaccurate) compliance review and prior to the introduction of this new referral process. NBC Universal acknowledged that, despite the advance scheduling of this series ahead of transmission, the subject matter of this series should have warranted its referral by E Entertainment UK for viewing by a second compliance officer.

NBC Universal said that following previous breaches of the Code recorded in issue 195 of the Broadcast Bulletin it had implemented a number of process audits, procedural changes and training initiatives to improve compliance processes, and that the NBC Universal compliance team had assumed control for the compliance function as regards output on E! Entertainment. It said the NBC Universal compliance team was re-complying all material which had previously been complied by E Entertainment UK Limited (totalling more than 1,400 hours) and that no programming will be transmitted on E! Entertainment until it has been re-complied by that team.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected". This objective is reflected in Section One of the Code.

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them.

We first considered whether the material was suitable for children. In Ofcom's opinion these episodes of *Girls in the Playboy Mansion* were clearly unsuitable for children.

² In Broadcast Bulletin 195 (5 December 2011) Ofcom recorded against the Licensee various breaches of Sections One and Two of the Code concerning two programmes broadcast on separate dates in September 2011. In response to these breaches, the Licensee informed Ofcom that it had reviewed and improved its compliance processes. The Licensee said that any content which could raise concerns under the Code "will be subject to viewing by two separate compliance viewers prior to being scheduled". See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb1941/obb195.pdf>

They included prolonged sequences of nudity (albeit with breasts, buttocks and genitals blurred), particularly during the consecutive episodes showing the search for the 55th Playboy glamour model. These sequences featured numerous scenes of the models being filmed as they posed and were photographed during casting sessions for Playboy magazine. In addition, there was a sequence of the lingerie party at the Playboy Mansion which featured numerous scantily clad Playboy glamour models posing for the cameras; and shots of a male stripper wearing a thong thrusting his buttocks in the face of the mother of one of Mr Hefner's girlfriends, with a commentary: "*she needed a good ass in her face*". The episodes also featured repeated bleeped and masked offensive language throughout, which (taken together with the scenes of nudity) demonstrated in Ofcom's opinion that these programmes contained themes of an adult nature and were aimed at an adult audience.

We therefore went on to consider whether this material was appropriately scheduled. Ofcom noted that various episodes were broadcast consecutively at various times during the day on a Bank Holiday during the Christmas period when it was likely that children – some unaccompanied by an adult – might have been watching. Also no announcement whatsoever was made before the start of, or between, any of the programmes to warn viewers in advance about their content. In Ofcom's view this material was clearly not scheduled appropriately.

These broadcasts were therefore in breach of Rule 1.3.

Ofcom recently found that on two separate occasions in September 2011 the Licensee broadcast programmes that breached Section One of the Code³. In the second of the two recorded breaches in Bulletin 195, Ofcom stated that it had put "E Entertainment on notice that it is particularly concerned about the Licensee's compliance procedures and will proceed to consider further regulatory action should any similar incidents occur."

The contravention of Rule 1.3 is regarded by Ofcom as a serious breach of the Code. Ofcom only recently, on 5 December 2011, recorded Code breaches of a similar nature against E Entertainment and formally put the Licensee on notice that we would take further regulatory action if similar incidents occurred. The Licensee gave assurances to Ofcom that it would improve its compliance arrangements following the September 2011 Code contraventions. Ofcom is concerned that these improvements do not appear to have been quickly and thoroughly implemented. This failure led to the Licensee broadcasting several episodes of *Girls of the Playboy Mansion* on 27 December 2011 which resulted in the present and clear breach of the Code. **Ofcom therefore puts the Licensee on notice that we will consider this breach for the imposition of a statutory sanction.**

Breach of Rule 1.3

³ See footnote 2 above.

In Breach

Vampire Diaries

TV6 Sweden, 18 November 2011, 19:00

Introduction

TV6 is a Swedish language channel licensed by Ofcom that is controlled and complied by Viasat Broadcasting UK Limited ("Viasat" or "the Licensee"). Viasat holds 25 Ofcom licences for separate television channels which broadcast from the United Kingdom to various Scandinavian and Eastern European countries, including Sweden. The Viasat compliance department is based in London and manages compliance for all these licensees centrally. TV6 is not available on any of the United Kingdom's broadcasting platforms and cannot be received in the UK on normal satellite or cable equipment.

The *Vampire Diaries* is a supernatural drama set in a fictional small town in America. It follows the lives of a group of young adults, some of whom are vampires and werewolves. This particular programme was the first episode of the third series.

A complainant alerted Ofcom to the broadcast of violent programme material on 18 November 2011 when children were likely to be watching.

There were two scenes in particular which contained depictions of violence and menace. The first featured two vampires entering the home of two women, who were later shown dead. The second involved a group of men in a bar, one of whom was restrained, while another threw darts at him. The restrained man was later forced to drink the blood dripping from another man's wounded arm and later had his throat cut.

Ofcom considered the material raised issues warranting investigation under Rule 1.11 of the Code, which states:

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

We therefore sought Viasat's comments on how the programme complied with this rule.

Response

The Licensee said the broadcaster had carefully assessed this episode of *Vampire Diaries* and created a version appropriate for pre-watershed broadcast, but that due to human error the original, unedited 21:00 version was broadcast.

Viasat said that it has taken steps to improve its "already stringent compliance procedures" and ensure this type of mistake is not repeated, including retraining of staff.

The Licensee said: "[We] take our responsibility to our viewers and compliance very seriously and regret the error that occurred in this instance.... We conduct training in

broadcasting compliance several times a year for all relevant people and departments and stress the importance of protecting our viewers from harmful material". Viasat added: "we feel that the success of this has been reflected in the fact that we have not had another similar complaint in the last few years".

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected." This is reflected in the rules set out in Section One of the Code.

Rule 1.11 requires violence in pre-watershed programming to be "appropriately limited" and "justified by the context."

The opening scene of this programme began with intruders entering a home of two women and ended with a close up shot of a vampire biting a woman's neck, then pulling back to reveal blood spilling from his mouth, while the other terrified woman witnessed the violence. Approximately 13 minutes into the programme the aftermath of that attack was shown, when the dead bodies of the two women were discovered. This sequence included: images of bloody handprints all over the walls of the house and clear signs of a struggle; an image of the dead women sitting next to each other in the living room, covered in blood; and soon after three brief images of one woman's decapitated head falling away from her neck, the head hitting the floor and a third image (slightly longer in duration) of the head coming to a standstill on the floor.

The scene set in the bar included clear images of a distressed man, who was restrained and had darts embedded in his head and chest. Later an image was shown of another man throwing a dart at the restrained man and then pulling the dart out of his injured neck. A later scene, also set in the bar, included a close up image of a man cutting his wrist with a pocketknife and then forcing the restrained man to drink the blood dripping from the wound. The restrained man later had his throat cut, although this was not shown in detail.

Ofcom did not consider the violence depicted in these two sequences to be appropriately limited for broadcast at 19:00 because of their length, level of detail and menacing nature.

Ofcom next considered whether the violence was justified by the context. *Vampire Diaries* is a well established series aimed at older teenagers. We noted that this programme was broadcast on a general entertainment service. We also noted this programme was broadcast on a Friday evening at 19:00 and was preceded and followed by the *Simpsons*, which although not primarily aimed at children, does attract a reasonable proportion of child viewers. The scenes highlighted above in Ofcom's opinion, however, were not in keeping with audience expectations for broadcast at 19:00 and had the potential to distress younger viewers. In Ofcom's view, there was not sufficient justification for broadcasting these scenes of violence at 19:00 on this channel when children were available to view. The programme was therefore in breach of Rule 1.11.

We noted Viasat's acknowledgement that the programme was broadcast at an inappropriate time and its explanation for this error. However Ofcom is concerned that Viasat's compliance procedures allowed this programme to be shown before the watershed in breach of the Code. While we welcome the actions taken by the

Licensee in response to this complaint, Ofcom does not expect any recurrence of similar compliance failures by Viasat.

In the circumstances, Ofcom takes this opportunity to remind the Licensee and all other television broadcasters that it has recently published guidance on the compliance of material broadcast before the watershed, which is available on the Ofcom website at:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>.

Breach of Rule 1.11

In Breach

The Dukes of Hazzard

Comedy Central, 23 October 2011, 18:00

Introduction

The Dukes of Hazzard is a film based on the popular US television series from the 1980s.

Five complainants alerted Ofcom to this film broadcast in the early evening. It contained multiple uses of the word "fuck" and its derivatives, as well as a scene involving topless college girls.

Ofcom noted that the British Board of Film Classification ("BBFC") certified both a '12' and '15' version of this film.

Ofcom considered the material raised issues warranting investigation under Rules 1.3 and 1.14 of the Code.

Rule 1.3: "Children must also be protected by appropriate scheduling from material that is unsuitable for them."

Rule 1.14: "The most offensive language must not be broadcast before the watershed (in the case of television)...".

Ofcom therefore requested comments from the holder of the licence for Comedy Central, Paramount UK Partnership ("Paramount UK" or "the Licensee"), about how the broadcast of this film complied with these Code rules.

Response

The Licensee said the version of this film that was shown was rated '15' by the BBFC and it apologised for any distress caused to viewers. Paramount UK had created a pre-watershed version of the film to be shown at 18:00. However the post-watershed, unedited version of *The Dukes of Hazard* was broadcast in error.

The Licensee said the post-watershed version of the film was inserted into the Comedy Central schedule so that it could construct the timings around the programme. After the pre-watershed version had been prepared, the normal compliance procedures to replace the post-watershed versions were not followed in full. As a result, the post-watershed broadcast was aired.

Following this incident, the Licensee said it had stopped inserting 'holding' versions of a programme in order to create a schedule and had "instructed that interdepartmental communications be reviewed and improved in order to prevent a recurrence of this problem."

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives,

including that “persons under the age of eighteen are protected”. This duty is reflected in Section One of the Code.

Rule 1.3

Rule 1.3 requires children to be protected by appropriate scheduling from material that is unsuitable for them. This rule states that “children” means “people under the age of fifteen years.”

Ofcom noted that this ‘15’ version of the film *The Dukes of Hazzard* included one sequence where the central characters, Bo and Luke Duke, went to a girl’s dormitory at a college to find a friend. When looking through different rooms, they found some topless women playing a game of ‘hacky sack’¹ and joined in. Ofcom also noted various other examples of adult humour and sexual references in the film, as well as strong language (see Rule 1.14 below). A BBFC ‘15’ rating means that in the opinion of the BBFC a film is “Suitable only for [young people] 15 years and over”. In the UK, no one younger than 15 years old may see a ‘15’ film in a cinema or rent or buy a ‘15’ rated video work. This broadcast version of the film therefore clearly in Ofcom’s opinion contained material that was unsuitable for children who were 14 years old or younger.

Ofcom went on to consider whether child viewers were protected from this unsuitable material by appropriate scheduling. We noted that this film was broadcast at 18:00 on a Sunday evening when it is highly likely that a number of children - some unaccompanied - would be among the audience. The audience (and in particular parents) would not have expected this type of content to be shown on a channel like Comedy Central at this time. Children were therefore not protected by appropriate scheduling, and there was a breach of Rule 1.3.

Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language clearly notes that the word “fuck” and derivatives of this word are considered by audiences to be among the most offensive language.

There were multiple uses of “fuck” and its derivatives, often in a sexual context, in this version of *The Dukes of Hazzard* broadcast in the early evening. There was therefore also a clear breach of Rule 1.14.

Ofcom noted that the Licensee broadcast the ‘15’ version of this film by mistake. Human error however cannot excuse broadcasting material well before the watershed which is so clearly unsuitable for children. We welcome the additional measures put in place by Paramount UK to improve compliance and would not expect a repeat of this incident.

Ofcom takes this opportunity to remind the Licensee and all other television broadcasters that it has recently published guidance on the scheduling of material broadcast before the watershed, which is available on the Ofcom website at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>.

Breaches of Rules 1.3 and 1.14

¹ two or more players must keep a ‘footbag’ off the ground without using their hands.

In Breach

Big Brother

Channel 5, 23 and 30 September 2011, 21:00

Introduction

A complainant alerted Ofcom to the broadcast of the words “fuck” and “fucking” in the opening sequence in an episode of this well-known reality show broadcast on 23 September 2011. Ofcom noted a similar incident in the eviction show broadcast the following week.

Both episodes began at 21:00 with clips of notable events in the Big Brother house from the previous week. Each pre-title sequence contained two instances of the word “fuck” or “fucking”. In the case of the episode transmitted on 23 September 2011, Ofcom noted the word “fucking” was broadcast at eleven seconds and again 16 seconds after the 21:00 watershed. On 30 September, the word “fuck” was broadcast 18 seconds and the word “fucking” 31 seconds after the watershed.

Having viewed the material, we considered it raised issues warranting investigation under the following Code rule:

Rule 1.6 “The transition to more adult material must not be unduly abrupt at the watershed For television the strongest material should appear later in the schedule.”

Ofcom sought comments from Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”) under this rule.

Response

Channel 5 regretted that the viewer was offended by the strong language but stated that it was of the view that “this placement of limited strong language did not make the transition to adult content ‘unduly abrupt’”. The Licensee maintained it “acted reasonably and responsibly and made its decision to include strong language in the pre-titles only after serious consideration and due regard was given (at senior levels) to the relevant Ofcom rules”.

Channel 5 said that Rule 1.6 does not “prohibit an ‘abrupt’ transition to more adult content nor does it specify...that strong language should not be included in programmes until a certain set time - for example, 9.05 or 9.10pm.” The Licensee added that the use of “duly” (in Rule 1.6) in its view incorporated “elements of the transition to adult content being ‘improper, inappropriate and/or without editorial justification’.” Channel 5 said that the use of strong language in these programmes was “completely editorially justified” and therefore the transition to strong language was not unduly abrupt.

The Licensee said the inclusion of the words “fuck” and “fucking” in these programmes’ opening titles was editorially justified owing to several factors. It argued that viewers’ familiarity with the *Big Brother* format, the fact the programmes began transmission at the watershed and the unambiguous warning that accompanied both episodes about “*strong language from the start*” provided a clear context and

sufficiently prepared viewers for the opening sequence. Channel 5 said that in both episodes, the “first instance of the word ‘fuck’ was ... broadcast around 30 seconds after viewers were warned”. It therefore considered that it “included appropriate information to viewers in a timely manner which then assisted them to decide to view ... (and/or prevent their children from doing so)”. It also pointed out that the earliest broadcast of the word “fuck” or “fucking” in these programmes was at 11 seconds after the watershed and therefore it was of the view that “the programmes did not include strong language ‘immediately’ after the watershed.”

Channel 5 explained that the pre-titles sequences were “a fast-paced snapshot of the main events “ in the house which was “essential to remind viewer of the ‘build up’ to the eviction”. It argued that in both programmes, the strong language reflected the “heightened tensions” and “represented the genuine feelings of the Housemates.” Channel 5 added that it was important to broadcast the language unedited in the pre-titles to ensure the pre-titles were not misleading and so ensure “that voting patterns [of viewers] were not influenced”.

Channel 5 pointed to Ofcom’s research¹ which concluded that there are “mixed views on the use of the word ‘fuck’ post-watershed’.” The Licensee argued that “whilst the words ‘fuck’ and ‘fucking’ are considered to be amongst some of the strongest language by some viewers, ‘fuck’, particularly when used post-watershed, is not considered to be ‘the’ most offensive language”, citing “cunt” and “motherfucker” as examples.

The Licensee said the two *Big Brother* programmes were “distinguishable from those programmes which Ofcom previously found to be in breach of rule 1.6” and referred to findings regarding the broadcast of *Amores Perros* on TCM and *Hell’s Kitchen USA* reported in Broadcast Bulletins 102² and 186³ respectively. *Amores Perros* featured “brutal dog fights, graphic violence...and strong language...without a clear warning preceding the programme” and the broadcast of *Hell’s Kitchen USA* contained 18 uses of the word fuck or a derivative in the first 11 minutes of the programme. Channel 5 argued that the episodes of *Big Brother* did not contain “graphic violence” and “the frequency of the strong language was not as high or as concentrated as Hell’s Kitchen [USA]”

Channel 5 also referred to five Ofcom decisions regarding the use of the word “fuck”, or a derivative in live pre-watershed episodes of *Big Brother* from previous series of *Big Brother* broadcast on Channel 4 or E4. Ofcom resolved all these cases and did not record breaches of the Code. Channel 5 said that these earlier findings indicate that Ofcom “has previously distinguished between audience expectations of *Big Brother* pre-watershed and post-watershed, the latter including strong language”. While acknowledging that these five cases concerned live broadcasts, the Licensee did not consider it “logical, reasonable or consistent to conclude that the Channel 4 and E4 programmes had less potential to harm children” particularly since they were shown before the watershed.

¹ Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

² Ofcom Broadcast Bulletin 102 - <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb102>

³ Ofcom Broadcast Bulletin 186 - <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb186>

The Licensee also made reference to the preceding programmes (*The Gadget Show* and *Ultimate Police Inspectors*) which, it said, are not “targeted at under 16 viewers”, or “viewed by a large proportion of under 16s”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This is reflected in the rules set out in Section One of the Code.

Rule 1.6 states that the transition to more adult material must not be unduly abrupt at the watershed and adds that the strongest material should appear later in the schedule.

As Ofcom noted in the recent Guidance on observing the watershed on television⁴, “Content that commences after the watershed should observe a smooth transition to more adult content. It should not commence with the strongest material.”

Recognising that children may not have ceased viewing at exactly 21:00, Rule 1.6 is designed to avoid a sudden change to material that would only be deemed suitable for a post-watershed broadcast.

Rule 1.6 is not prescriptive. It does not stipulate a certain set time after the watershed when broadcasters may start to transmit the most offensive language. What constitutes an “unduly abrupt” transition to more adult material depends on the context: for example, factors such as the editorial content of the programme, the time it is broadcast and the expectations of the audience. Clearly however, bearing in mind that there is an absolute prohibition on the most offensive language immediately before 21:00 (Rule 1.14), a broadcaster would need very strong reasons to justify starting to broadcast the most offensive language in the period immediately *after* the 21:00 watershed.

Ofcom noted that the episode broadcast on 23 September featured housemate Rebeckah saying “*are you fucking crackers?*” 11 seconds after the watershed and less than six seconds into the programme. The second use of “fucking” was 16 seconds after the watershed. The episode on broadcast 30 September featured housemate Harry shouting “*stay the fuck out of other people’s business*” 18 seconds after the watershed, and another housemate used “fucking” 31 seconds after the watershed. We therefore did not accept Channel 5’s argument that “the programmes did not include strong language ‘immediately’ after the watershed”.

Ofcom therefore went on to consider whether there was sufficient editorial justification for broadcasting this strong language repeatedly within the 31 seconds after the watershed.

We acknowledged that the programmes’ pre-title sequences served as reminders about the preceding weeks’ notable events. We also recognised Channel 5’s aim to reflect accurately both the tension between contestants and the different personalities in the house.

Ofcom’s research however confirms that the word “fuck” and its derivatives are regarded as examples of the most offensive language with the capacity to cause a considerable degree of offence. Ofcom’s research does not confirm, as Channel 5

⁴ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

suggests, that this word is widely regarded as less offensive than certain others that the Licensee referred to when used after the watershed. In Ofcom's opinion most viewers of *Big Brother* do not expect examples of the most offensive language in a pre-recorded sequence during the first 31 seconds of the programme after the watershed, particularly when broadcast on a public service channel like Channel 5.

Ofcom noted that viewers of *Big Brother* do expect some degree of offensive language and that there was a warning of strong language immediately before these programmes started. We noted Channel 5's argument that the preceding programmes (*The Gadget Show* on 23 September 2011 and *Ultimate Police Interceptors* on 30 September 2011) were unlikely to attract a high child audience. Audience figures, do bear this out. On 23 September, there were 82,000 4-15 year olds watching *The Gadget Show*. However this figure rose significantly to 155,000 during *Big Brother*. Likewise, on 30 September, 55,000 4-15 years olds watched *Ultimate Police Interceptors*. This figure rose sharply to 168,000 during *Big Brother*. Therefore, Ofcom considered that in cases like this – where a programme broadcast after the watershed attracts *more* child viewers than the preceding programme – it is especially important for a broadcaster to apply Rule 1.6 to ensure people under eighteen are appropriately protected.

Channel 5 also argued that it was necessary to include the strong language unedited in the pre-title sequences to ensure viewers were not misled and voting patterns influenced. Ofcom disagreed. Voting did not close until much later in the programme after the broadcast had featured several other longer clips of events in the house which reflected more accurately the personalities and tensions there. Ofcom did not consider that any examples of the most offensive language needed to be included in the pre-title sequences to ensure viewers were not misled in relation to the voting.

Ofcom also noted the Licensee's references to previous Ofcom findings. Each case decided by Ofcom is determined according to its particular facts. There is therefore often limited value in referring to precedent cases. In Ofcom's view there are important differences between the present case and the previous Ofcom decisions Channel 5 referred to.

- The findings referred to by the Licensee about other broadcasts of *Big Brother* all related to *live* programmes which also in each case included apologies by the presenter or continuity announcer. In the current case, the offensive language was deliberately selected and inserted into two pre-recorded sequences.
- The comparison to the finding regarding *Amores Perros* was not in Ofcom's view, relevant, as the breach of Rule 1.6 in that case related to the broadcast of a film rated '18' by the BBFC, containing both violence and offensive language, on a specialist channel.

Regarding *Hell's Kitchen USA*, Ofcom recorded a breach of Rule 1.6 for both the frequency of the use of word "fuck" or "fucking" in the first eleven minutes of the programme and the fact they were used close to the watershed. Whether there is an "abrupt transition" after the watershed depends on all the facts of a case. The fact that there was clearly a breach of this rule based on the facts of the *Hell's Kitchen USA* case does not mean that Rule 1.6 can only be breached in exactly the same circumstances.

Taking the above factors into account, Ofcom did not consider there was sufficient editorial justification to include repeated use of the most offensive language in these

programmes so soon after the watershed. The two uses of the word “fuck” or “fucking” in each programme in the period directly after the watershed did in Ofcom’s view constitute an “unduly abrupt” transition to more adult material at the watershed. Rule 1.6 was therefore breached.

Breaches of Rule 1.6

In Breach

Torchwood

Watch, 5 and 21 September 2011, 16:00

Introduction

Four complainants alerted Ofcom to offensive language and violent content in episodes of this programme broadcast in the afternoon on the general entertainment channel Watch.

Torchwood is a spin-off drama of the popular science fiction series *Doctor Who*. It is aimed at an adult audience and was first broadcast on BBC television after the 9pm watershed.

An episode broadcast on Watch on 5 September 2011 contained one use of the word "*fucking*" and fifteen examples of milder offensive language including "*shit*", "*bollocks*" and "*pissed*". This episode also featured a scene in which a character's neck was bitten open causing a considerable amount of blood to spray from the wound.

The episode broadcast on 21 September 2011 featured the stabbing of a male character shortly after he answered his front door.

Watch is owned and operated by UKTV ("UKTV" or "the Licensee").

Having viewed the material, we considered it raised issues warranting investigation under the following Code rules:

- Rule 1.11: "Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes before the watershed...and must also be justified by the context."
- Rule 1.14: "The most offensive language must not be broadcast before the watershed..."
- Rule 1.16: "Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed."

We therefore sought comments from the Licensee under these rules.

Response

UKTV apologised for any distress and upset caused to its viewers and did not dispute that the incidents raised compliance issues. The Licensee said that *Torchwood* was complied by a third party supplier. UKTV said it had withdrawn *Torchwood* from its schedules and it would not broadcast further episodes until the entire series had been reviewed. It had also identified other potentially problematic titles from the library of programmes complied by the same supplier and marked them for review. UKTV added that this process would take "a matter of weeks" and while it was prioritising the review, it acknowledged that "during this period there is a risk of a repeated failure".

To avoid another compliance failure of this type, however UKTV said that all its programmes “which are scheduled for pre-watershed transmission, and which have been derived from a post watershed master will be evaluated prior to their being scheduled on any of the UKTV channels.”

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected.” This is reflected in the rules set out in Section One of the Code.

Rule 1.11

Rule 1.11 requires violence in pre-watershed programming to be “appropriately limited” and “justified by the context.”

5 September 2011

Following an extended and menacing build up scene, the episode broadcast on 5 September 2011 depicted a creature with a human body but the head of a monster attacking a man by biting into his neck. The scene in question contained a relatively brief, mid-range shot of the attack, showing blood spurting profusely from the man’s neck

21 September 2011

The attack included in the programme broadcast on 21 September 2011 showed a man being attacked when he opens his front door to another man while his terrified wife and children witness the violence. The sequence began with the attacker’s arm changing suddenly into a sharp weapon which he plunges into the man’s stomach. The first impact was very briefly shown in wide shot before cutting to a shot of the victim’s face, with blood spilling from his mouth. The scene then cut between blood splattered mid-shots and close-ups of the manic attacker as he stabbed the man several times in the stomach (but not showing any shots of the point of impact), the face of the victim as he fell to the ground and the reaction of the victim’s family.

Ofcom did not consider the violence contained in these two sequences to be appropriately limited for broadcast at 16:00 because of their length, level of detail and menacing nature.

Ofcom went on to consider whether the violence shown was justified by the context. *Torchwood* is now a well-established series. It is aimed however at an adult audience and when first shown on BBC television is scheduled at 21:00. We also note that the Watch channel is aimed at an adult audience. These scenes in Ofcom’s opinion however were not in keeping with audience expectations for broadcast at 16:00 and had the potential to distress younger viewers. In Ofcom’s view, there was not sufficient justification for broadcasting these scenes of violence at 16:00 on this channel when children were available to view. Both programmes were therefore in breach of Rule 1.11 of the Code.

Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language¹ clearly notes that the word “fuck”

¹ Audience attitudes towards offensive language on television and radio, August 2010

and its derivatives are considered by audiences to be among the most offensive language. The episode broadcast on 5 September 2011 at 16:00 included the word “fucking” and was therefore in breach of Rule 1.14 of the Code.

Rule 1.16

Rule 1.16 states that offensive language must not be broadcast before the watershed unless justified by the context; but in any event frequent use of such language must be avoided before the watershed. In addition to the word “fucking”, the hour long episode broadcast on 5 September 2011 contained fifteen examples of other offensive language including “shit”, “bollocks” and “pissed”. Ofcom considered these fifteen instances of offensive language in a one hour broadcast to be frequent and as such, this episode breached Rule 1.16 of the Code.

Broadcasters are under a clear duty to ensure that robust procedures are in place to ensure full compliance with the Code. Ofcom noted the Licensee’s review of potentially problematic material but was concerned by its acknowledgement of the possibility of a “repeated failure” before the review was complete.

In Broadcast Bulletin 191², Ofcom recorded a breach of Rule 1.14 of the Code for the pre-watershed broadcast of the most offensive language on another UKTV service: Really.

In the circumstances, Ofcom does not expect a recurrence and takes this opportunity to remind the Licensee and all other television broadcasters that it has recently published guidance on the scheduling of material broadcast before the watershed, which is available on the Ofcom website at:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>.

Torchwood, Watch, 5 September 2011, 16:00
Breaches of Rules 1.11, 1.14, 1.16

Torchwood, Watch, 21 September 2011, 16:00
Breach of Rule 1.11

<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

² Ofcom Broadcast Bulletin 191 - <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb191>

In Breach

Keeping Up with the Kardashians

E!, 24 September 2011, 12:00

Introduction

A complainant alerted Ofcom to several uses of the word “fuck” or a derivative in this programme.

Keeping Up with the Kardashians is an American reality television series chronicling the everyday lives of a celebrity family. This episode featured arguments between several members of the family and their partners. Ofcom noted that on six occasions, the word “fuck” or a derivative was broadcast.

E! is owned and operated by E Entertainment UK Ltd (“E Entertainment” or “the Licensee”).

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states:

“The most offensive language must not be broadcast before the watershed (in the case of television) ...”.

We therefore sought comments from E Entertainment under this rule.

Response

The Licensee did not respond to Ofcom's request for comments regarding this material.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”.

Rule 1.14 states that: “the most offensive language must not be broadcast before the watershed (in the case of television) ...”.

Ofcom research on offensive language¹ clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. This pre-watershed programme featured six instances of the word “fuck” (or a derivative) and was therefore in breach of Rule 1.14 of the Code.

Broadcasters are under a clear duty to ensure that robust procedures are in place to ensure full compliance with the Code. Ofcom noted two past findings relating to the pre-watershed broadcast of the most offensive language on the Licensee's

¹ Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

channels². We also noted the previous finding published in this issue of the Broadcast Bulletin recording breaches of Section One of the Code against the Licensee. In the circumstances, Ofcom is putting E Entertainment on notice that it is particularly concerned about the Licensee's compliance procedures and will proceed to consider further regulatory action should any similar incidents occur.

Breach of Rule 1.14

² Ofcom Broadcast Bulletin 100 (<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb100>)
Ofcom Broadcast Bulletin 112 (<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb112>)

In Breach

50 Super Epic TV Moments

E! Entertainment, 7 September 2011, 11:00

Introduction

A complainant alerted Ofcom to the inclusion of sexual material in this programme. The complainant drew attention to a scene in which a 'reality show' participant apparently masturbated using a wine bottle.

E! Entertainment is a cable and satellite television channel. The licence for this channel is held by E Entertainment UK Limited ("E Entertainment" or "the Licensee"). *50 Super Epic TV Moments* was an American compilation show that assembled various sequences – largely from 'reality', chat and award shows – and linked them with brief comments from comedians. Sardonic advice to the people featured in the clips was also offered from time to time by two presenters, NeNe Leakes and Jerry Springer.

The show contained sequences from the 2005 series of *Big Brother* in the UK in which a housemate apparently penetrated herself with the neck of a wine bottle after declaring that she wished to masturbate. The programme labelled this item 'Penis Grigio'. The item was approximately two minutes long.

Other clips used were selected for their bizarre or sensational nature and included items showing:

- an American TV celebrity undergoing a cervical smear test;
- a reality show participant behaving aggressively, removing his penis from his trousers and smashing a bottle on his head;
- a pubic wax carried out by one member of a celebrity family on her sister;
- a woman on an American talent show smashing soft drink cans with her breasts;
- fights between women on various reality shows;
- a woman capable of achieving orgasm only by stimulating herself with the corner of a laundry basket;
- a woman apparently masturbating a man beneath a dinner table;
- the elders of a family in Madagascar eating the foreskin of a circumcised infant;
- a survival expert performing an enema on himself; and
- an Indonesian toddler who smokes 40 cigarettes a day.

None of the sequences was visually explicit: where sexual or other intimate activity was apparently taking place or was being discussed no detail of body parts or penetration was shown. Some of the sequences contained aggression, including physical threats and fighting, and many included 'bleeped' swearing, including obscured sexual swear words. No announcement about the programme's content was made before the start.

Ofcom considered the material raised issues warranting investigation under Rules 1.3, 1.4, and 2.3 of the Code, which state:

- Rule 1.3: "Children must ... be protected by appropriate scheduling from material that is unsuitable for them."
- Rule 1.4: "Television broadcasters must observe the watershed."
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

Ofcom therefore sought E Entertainment's comments in respect of these Code rules.

Response

The Licensee acknowledged that "the content in this show was wholly inappropriate for the time it was scheduled and the omission of any warning slates for our viewers only made this worse." It apologised unreservedly to viewers. E Entertainment said that its usual compliance procedures were not followed in this case because of "a period of reorganisation within the wider company and within the compliance department". As a result of this compliance lapse, the Licensee had reviewed its processes and had improved training and retrained staff. In future any content which could raise concerns under the Code "will be subject to viewing by two separate compliance viewers prior to being scheduled".

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, two of which are that "persons under the age of eighteen are protected", and that "that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material".

Rule 1.3 requires that children are protected by appropriate scheduling from material that is unsuitable for them; and 1.4 obliges television broadcasters to observe the watershed. The Code makes clear that as regards the watershed, "Material unsuitable for children should not, in general, be shown before 2100 or after 0530."

Scene from *Big Brother*

We first considered whether the material was suitable for children. In Ofcom's opinion the *Big Brother* material was clearly unsuitable for children because a *Big Brother* participant was shown behaving in a highly sexual and potentially dangerous way.

Importantly, Ofcom was concerned that when the *Big Brother* material was shown originally in 2005 on Channel 4 Ofcom investigated whether or not its broadcast breached the Code. Ofcom's decision was reported in Broadcast Bulletin 50 in December 2005. The sequences had originally been broadcast at approximately 22:45. In our report of the matter we said:

"In the event, we consider that, on balance, this episode was not in breach of the Code. However, we should stress that we only decided this 'on balance' and that our concerns were serious. This programme, in our view...operated at the limits of acceptability in terms of potential harm and/or offence for a programme of this nature, broadcast on this channel [Channel 4] and at this time [22:45]."¹

We therefore went on to consider whether it was appropriately scheduled. This content was highly inappropriate for children and likely to cause them upset and a considerable degree of offence to parents. It appeared during daytime at a weekend when it was likely that children – some unaccompanied by an adult – might have been watching. In Ofcom's view, these scenes from *Big Brother* transmitted in these circumstances were clearly not scheduled appropriately. It was therefore a serious breach of Rules 1.3 and 1.4.

We also considered whether the broadcaster applied generally accepted standards. Rule 2.3 requires that potentially offensive material must be justified by context. In our view, this item was of a nature that was potentially offensive to members of the public in general. Ofcom considered whether it was justified by the context and concluded that it clearly was not - principally because of its broadcast in daytime on a general entertainment channel, the absence of any serious purpose and of any warnings to the audience, and because this material was not in keeping with the expectations of the audience. Ofcom therefore considered this item also to be in breach of Rule 2.3.

Other scenes

Many of the other sequences, including those listed in the Introduction section of this finding, were in Ofcom's view unlikely to be suitable for broadcast at a time when children may be available to view. Further, the cumulative effect of the numerous clips made this programme in general unsuitable for transmission before the watershed in Ofcom's view.

Ofcom acknowledges the Licensee's apologies in this case and its intention to improve its compliance arrangements. Nonetheless, these were clear and serious breaches of the Code and Ofcom does not expect any similar compliance failures by E Entertainment in future.

Breaches of Rules 1.3, 1.4, and 2.3

¹ Broadcast Bulletin 50, 19 December 2005:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb45/50.pdf>

In Breach

Being Erica

E4, 11 August 2011, 07:35

Introduction

Being Erica is a Canadian comedy drama series about a woman who begins seeing a therapist to deal with regrets in her life, only to discover the therapist has the ability to send her back in time to re-live and change events in her life.

A complainant alerted Ofcom to a scene in this programme which featured a large sculpture made out of ice clearly shaped as a penis. The programme was broadcast at a time when children were likely to be viewing (during the early morning in the school holidays).

In the scene in question, at the beginning of the programme, two characters discussed a large ice sculpture of an erect penis and scrotum, which had been placed on the counter in a bar, as decoration for a party. There is then the following exchange between Ivan, the bar owner, and his partner, Dave, who had obtained the 'penis' ice sculpture:

Ivan: *"Why is this an ice penis?"*

Dave: *"That's what you told me to order."*

Ivan: *"No, I asked you to order an ice 'Venus'."*

Dave: *"Like the planet?"*

Ivan: *"No, like the Venus de Milo, the Goddess of Love - she without arms - not this phallic monstrosity"*

A few moments later, Ivan addressed Dave and the staff in the bar, as follows:

"Well, I hate to be a drill sergeant, David, but the parade starts in T minus two hours and I'm looking at a pile of decorations and a melting penis."

In the rest of the 50 minute programme, there were four further scenes in which the 'penis' ice sculpture appeared either as background to the dramatic action, or was referred to by characters in the programme.

Ofcom considered the material raised issues warranting investigation under Rule 1.3 of the Code, which states:

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

We therefore asked Channel 4 for its comments as to how this content complied with this Code rule.

Response

Channel 4 assured Ofcom that it takes its obligations in respect of child welfare very seriously. It said that careful consideration is given to scheduling appropriate programmes at times when children are expected to be viewing so as to minimise any potential to offend and to protect children from unsuitable content. In addition, the broadcaster said that it has “stringent processes in place to ensure that all repeat programming intended for daytime and morning scheduling is reviewed and edited appropriately”.

Channel 4 said that during the scene in question and in several subsequent ones, the ‘ice penis’ sculpture is referred to in “a comedic way” and “it is mostly background and incidental”. It added that it considered the ice sculpture to be an “an abstraction of a phallic image that is made of ice, rather than a facsimile of an ‘erect’ penis”.

Channel 4 said that the programme had been “substantially edited” to make it suitable for its scheduled transmission time. However, the broadcaster said that “in retrospect some of the edits didn’t go far enough, particularly in view of the fact that it coincided with school holidays”. Specifically, the broadcaster said that it considered “in retrospect ... that the inclusion of the ice sculpture itself as a narrative element... may not have been appropriate at 07:35 on E4”.

Given these points, Channel 4 said that “this programme has been re-classified and will not be repeated at this or a similar time of day”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”.

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them.

Firstly, we considered that this programme included a number of scenes in which the penis ice sculpture was either the focus of, or background to, the programme’s narrative, with characters using the terms “*penis*” or “*phallic*” in relation to the ice sculpture. Under the Code, there is no prohibition on depictions or descriptions of human genitalia appearing in programming before the watershed. However, in Ofcom’s view, in this case the cumulative effect of the repeated appearance of, and references to, a large erect penis ice sculpture, was to convey a sexualised theme, even though the primary purpose of the programme was not necessarily to convey a sexual theme, but rather to provide a comedic narrative

We noted Channel 4’s submission that it considered the ice sculpture to be an “an abstraction of a phallic image that is made of ice, rather than a facsimile of an ‘erect’ penis”. We disagreed. In our view, the appearance and relative dimensions of the penis and scrotum depicted in the ice sculpture were highly likely to mean the ice sculpture would be perceived by members of the audience as being a depiction of an erect penis.

Given the above, it is Ofcom’s view that this content was not suitable for children. Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this material.

As part of our consideration, we took into account: that this content was broadcast at 07:35 during the school holidays; the sexualised nature of this editorial content; and the material chance that there would have been children in the audience – some unaccompanied – at this time of day. On balance we did not consider this material was appropriately scheduled.

We noted that Channel 4 has: accepted that “in retrospect” that the scheduling of the scenes including the penis ice sculpture may not have been appropriate for the early morning during school holidays; and, reclassified this programme and undertaken not to repeat it at “this or a similar time of day”.

We took into account a recent case¹ involving the broadcast of content on Channel 4 that was unsuitable for children in the morning during school holidays. We were therefore concerned that such a similar issue should arise so soon after this previous compliance failure.

Ofcom concluded that the material was in breach of Rule 1.3.

Broadcasters should be aware that Ofcom has recently published Guidance² on Rule 1.6 and other issues relating to the watershed.

Breach of Rule 1.3

¹ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>

² See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

In Breach

50 Cent Music Videos

Greatest Hits TV, 22 June 2011, 09:00

Introduction

Greatest Hits TV is a music channel that broadcasts music videos and music based programmes. The licence for Greatest Hits TV is held by Mushroom TV Limited ("Mushroom TV" or the "Licensee").

Ofcom received two complaints about a quarter hour segment on this channel broadcast immediately after 09:00 devoted to music videos by the rap singer 50 Cent. One complainant was watching with their daughter. These complaints alerted Ofcom to the issues of offensive language and images of topless female performers included in music videos broadcast at this time.

On assessing this content, Ofcom noted the following:

Music Video: 'P.I.M.P.'

This music video included several images of topless female performers dancing in a sexualised manner. For example, there were repeated images of: 50 Cent, and another artiste, Snoop Dogg, dancing with two topless female performers in a sexualised manner; and 50 Cent in a close embrace with three topless female performers, while he fondled the breast of one of the performers. In addition, there were also images of two scantily-clad female performers being 'walked' like dogs by another scantily-clad female performer, by means of leashes connected to dog collars on their necks.

Music Video: 'I Like the Way She Do It'

This music video contained the following potentially offensive statement:

"It never enough she like it rough. We keep it going and we switch positions, listen".

Music Video: 'Disco Inferno'

This music video contained the potentially offensive word "nigger". In addition, during the three and a half minute music video there were numerous instances of sexualised images and nudity, including topless female performers caressing and kissing each other; and over 45 close up images of female performers in skimpy underwear gyrating their bare buttocks to camera, including two sets of images showing bottles of alcohol being poured over a female performer's crotch and bare buttocks.

Music Video: 'If I Can't'

This music video contained the following potentially offensive language: "pussies", "nigger", "motherfucker", and "fuck". It also contained the following potentially offensive statements:

“Stand alone squeezin’ my pistol”;

“You gon be the next chump to end up in the trunk¹ after being hit by the pump²”; and

“Niggers on my dick more than my bitch”.

Ofcom considered the material raised issues warranting investigation under the following Rules of the Code:

- Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them”;
- Rule 1.14: “The most offensive language must not be broadcast before the watershed”;
- Rule 1.16: “Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed”;
- Rule 1.21: “Nudity before the watershed must be justified by the context”;
- Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context”.

Ofcom asked Mushroom TV for its comments under the above Rules of the Code.

Response

Mushroom TV said that “of course [the content] fell short” of compliance with the rules of the Code “because the material was broadcast inadvertently”. The Licensee stated that the broadcast of this content was: “the result of an error during the reinstallation of the main video library following the replacement of our servers” in the wake of a recent robbery at the Licensee’s premises. Mushroom TV added that: “We would not attempt to justify the content as [it was] clearly inappropriate before the watershed”. The Licensee said that it had broadcast an on-screen apology for seven days from 24 July 2011.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected” and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

In reaching a decision in this case, Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code sets out clear

¹ Trunk’ is the US term for boot of a car.

² Ofcom interprets ‘pump’ in this case to be a reference to a pump-action shotgun.

principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

Ofcom has also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. As part of our consideration we took into account that music videos from the 'urban' and 'R&B' genre are well known for including mild sexual content and innuendo and are not generally aimed at a younger child audience. However, while music videos must have room for innovation and creativity, Ofcom does have a statutory duty with regard to all programmes, including music videos (whatever the genre), to ensure that under eighteens are protected and to enforce generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and/or harmful material.

Rule 1.3

Rule 1.3 of the Code states that "Children must also be protected by appropriate scheduling from material that is unsuitable for them". Therefore, Ofcom considered first whether this broadcast material was unsuitable for children. We had two sets of concerns with the content contained in these music videos.

Firstly, we considered that two of the music videos (*'P.I.M.P.'* and *'Disco Inferno'*) included numerous images of a sexualised nature including: the singer dancing with topless female performers in an erotic manner; and 50 Cent in a close embrace with three topless female performers, while he fondled the breast of one of the performers. In addition, there were also images of two scantily-clad female performers being 'walked' by another scantily-clad female performer, by means of leashes connected to dog collars on their necks; topless female performers caressing and kissing each other; and (in *'Disco Inferno'*) around 45 close up images of female performers in skimpy underwear gyrating their bare buttocks to camera, including two sets of images showing bottles of alcohol being poured over a female performer's crotch and bare buttocks. In Ofcom's view, the cumulative effect of these various images was to convey highly sexualised themes.

Second, we considered that the other two music videos under consideration (*'I Like the Way She Do It'* and *'If I Can't'*) contained a number of statements, which in Ofcom's view, conveyed sexual and violent imagery. For example:

"It never enough she like it rough. We keep it going and we switch positions, listen";

"Stand alone squeezin' my pistol"; and

"You gon be the next chump to end up in the trunk after being hit by the pump".

Given the above, it is Ofcom's view that the content of these particular music videos was not suitable for children. Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this material.

As part of our consideration, we took into account that this content was broadcast at 09:00 during school term-time. In addition, we noted: the nature of this editorial content (and the highly sexualised nature of the content in particular); the material chance that there would have been children in the audience – some unaccompanied – at this time of day; and the fact that the audience to this general music channel at

this time would not have expected material of this nature (we noted that the Licensee acknowledged that this material was clearly not appropriate for scheduling before the watershed). The content was not appropriately scheduled and it therefore breached Rule 1.3 of the Code.

Rule 1.14

Rule 1.14 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed”.

Ofcom research on offensive language³ clearly notes that the word “fuck” and its derivatives are considered by audiences to be amongst the most offensive language. Similarly, the research shows that the word “pussy” is considered by many in the audience to be unacceptable before the watershed. Therefore, this language is clearly inappropriate when children might be in the audience.

In this case, Ofcom noted the words “*motherfucker*”, “*fuck*”, and “*pussies*” broadcast in the music video ‘*If I Can’t*’. Given that this content was broadcast well before the watershed, the broadcast of the most offensive words in this programme was therefore a clear breach of Rule 1.14 of the Code.

Rule 1.16

Rule 1.16 of the Code states that “Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed”.

In the music video ‘*Disco Inferno*’ the potentially offensive word “*nigger*” was broadcast, and in the music video ‘*If I Can’t*’ the words “*nigger*”, and “*Niggers on my dick more than my bitch*” were broadcast.

Ofcom’s research notes that the word “nigger” might be acceptable in some contexts pre-watershed. For example the research says that: “Participants...noted that the word ‘nigger’ is commonly used in rap songs and is not seen as unacceptable in this context”⁴. However, the research also notes that some participants objected to the use of the word ‘nigger’ at all on television. The research also found that the words “dick” and “bitch” might be acceptable for broadcast pre-watershed but that care needed to be taken over their use when children were likely to be watching⁵.

Ofcom considered firstly whether the use of this offensive language in the programmes was justified by the context; and second in any event whether the use of offensive language was too frequent for broadcast before the watershed.

As noted above, Ofcom considered that there was a material chance that children would be in the audience for this programme when broadcast. We also noted that the Licensee did not offer any editorial justification for the broadcast of this offensive language at this time. Therefore, we considered that the broadcast of the offensive language described above was not justified by the context, and it breached Rule 1.16 of the Code.

³ Audience attitudes towards offensive language on television and radio, August 2010, p.92 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

⁴ Ibid, p.106.

⁵ Ibid, p.90.

Rule 1.21

Rule 1.21 of the Code states that “Nudity before the watershed must be justified by the context”.

In this case, we noted that two of the music videos (*‘P.I.M.P.’* and *‘Disco Inferno’*) included numerous images of topless female performers dancing in a sexualised manner. For example: 50 Cent, and another artiste, Snoop Dogg, dancing with two topless female performers in a sexualised manner; and 50 Cent in a close embrace with three topless female performers, whilst he fondled the breast of one of the performers.

We noted that the Licensee did not offer any editorial justification for the broadcast of this content at this time. In addition, given the highly sexualised nature of this content, the time of broadcast, and the material chance of children being in the audience, we considered there was not sufficient context to justify the broadcast of nudity in this case. Therefore, the programme was in breach of Rule 1.21 of the Code.

Rule 2.3

Rule 2.3 of the Code states that “In applying generally accepted standards broadcasters must ensure that material which may cause offense is justified by the context”.

Ofcom considered first whether the content was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size and composition of the potential audience and the likely expectation of the audience.

We considered that the music videos in this case contained various images and language which would have had the potential to be offensive to the audience. For example, as mentioned above, Ofcom’s research on offensive language clearly notes that the word “fuck” and its derivatives, are considered by audiences to be amongst the most offensive language; and that the word “pussy” is considered by audiences to be unacceptable before the watershed. In addition, we considered the highly sexualised images in two of the music videos (*‘P.I.M.P.’* and *‘Disco Inferno’*), as described above, had the potential to be offensive.

We noted that the Licensee did not offer any editorial justification for the broadcast of this content at this time. In addition, given the channel’s likely appeal to a broad range of viewers, we concluded that the audience for this channel was unlikely to expect the broadcast of numerous examples of highly sexualised imagery and instances of offensive language in a fifteen minute period after 09:00. Ofcom concluded that the context was insufficient to justify the broadcast of the offensive content in this case, and that Mushroom TV did not apply generally accepted standards. Consequently, the programme was in breach of Rule 2.3 of the Code.

In light of this case, Ofcom is putting the Licensee on notice that if there is any recurrence of similar compliance issues, we will consider taking further regulatory action.

Breaches of Rules 1.3, 1.14, 1.16, 1.21 and 2.3

In Breach

50 Biggest Selling RnB Hits of the Noughties

Kiss TV, 10 July 2011, 15:44

Introduction

Kiss TV is a music channel that broadcasts music videos and music based programmes. The licence for Kiss TV is held by Box Television Limited ("Box Television" or "the Licensee").

Ofcom received a complaint from a viewer about a music video broadcast in this programme on a Sunday afternoon. The music video was for the song '*I Don't Want You Back*' by the artiste Eamon. The complaint alerted Ofcom to the issue of offensive language included in a music video at this time.

On assessing this programme, Ofcom noted that the music video for the song '*I Don't Want You Back*' was broadcast. The following chorus was broadcast five times:

*"Fuck what I said it don't mean shit now
Fuck the presents might as well throw 'em out
Fuck all those kisses, they didn't mean jack
Fuck you, you hoe¹, I don't want you back".*

In addition, we noted the following lyrics in one of the verses:

*"You thought, you could keep this shit from me, yeah
You burnt bitch, I heard the story you played me, you even gave him head²".*

Ofcom considered the material raised issues warranting investigation under the following rules of the Code:

- Rule 1.14: "The most offensive language must not be broadcast before the watershed";
- Rule 1.16: "Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed"; and
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context".

Ofcom asked Box TV for its comments under the above rules of the Code.

Response

Box TV offered its "unreserved apologies for the inadvertent broadcast of the wrong version of the '*I Don't Want You Back*' video". The Licensee said that in this case the "transmission

¹ 'Hoe' is a diminutive version of 'whore' and is commonly used as a derogatory term for a promiscuous female.

² Slang phrase meaning oral sex.

copy of the video was missing from our play out system, so a version was taken from the 'deep storage' database. Unfortunately, the operator wrongly assumed that, as the video was on that system, it was cleared for transmission".

Box TV said that following this incident it had "reminded all staff that the procedure is that they must ensure any material retrieved from archive systems is re-checked to ensure suitability for transmission". In conclusion, the Licensee stated its belief that "the issue was one of human error, and not a considered editorial or compliance decision, which resulted in a breach of the Ofcom Code by Box TV".

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that "persons under the age of eighteen are protected" and that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

In reaching a decision in this case, Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

Ofcom has also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. As part of our consideration we took into account that music videos from the 'urban' and 'R&B' genre are well known for including mild sexual content and innuendo and are not generally aimed at a younger child audience. However, while music videos must have room for innovation and creativity, Ofcom does have a statutory duty with regard to all programmes, including music videos (whatever the genre), to ensure that under eighteens are protected and to enforce generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and/or harmful material.

Rule 1.14

Rule 1.14 of the Code states unequivocally that "the most offensive language must not be broadcast before the watershed".

Ofcom research on offensive language³ clearly notes that the word "fuck" and its derivatives are considered by audiences to be amongst the most offensive language. Such language is unacceptable when children might be in the audience. In this case, Ofcom noted 20 instances of the word "fuck" broadcast within the music video in question. Given that this content was broadcast on a Sunday afternoon well before the watershed, Ofcom considered that it was likely that children would be in the audience.

The broadcast of the most offensive words in this programme was therefore a clear breach of Rule 1.14 of the Code.

³ Audience attitudes towards offensive language on television and radio, August 2010, p.92 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

Rule 1.16

Rule 1.16 of the Code states that “Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed”.

With regard to Rule 1.16, Ofcom considered firstly whether the use of offensive language in the programmes was justified by the context; and second in any event whether the use of offensive language was too frequent for broadcast before the watershed.

Ofcom’s research on offensive language notes that the words “shit” and “bitch” might be acceptable in some limited contexts pre-watershed⁴. However, the research also found that care needed to be taken over their use when children were likely to be watching. In this case, Ofcom noted six instances of the word “*shit*” within the music video in question and one instance of the word “*bitch*”. Ofcom also considered that the terms “*hoe*” and “*gave him head*”, although they had not been covered in Ofcom’s research, also had the potential to be offensive pre-watershed when children were likely to be watching, due to their sexualised and derogatory connotations. In this case Ofcom noted five instances of the word “*hoe*” and one instance of “*gave him head*” within the music video in question.

As noted above, Ofcom considered that it was likely that children would be in the audience for this programme. Given this, and the fact there were approximately twelve instances of offensive language broadcast within the space of one four minute music video, we considered that the broadcast of the various offensive language described above could not be justified by the context. Therefore, we considered that the programme was in breach of Rule 1.16 of the Code.

Rule 2.3

Rule 2.3 of the Code states that “In applying generally accepted standards broadcasters must ensure that material which may cause offense is justified by the context”.

Ofcom considered first whether the repeated bad language in this song was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size and composition of the potential audience and the likely expectation of the audience.

As stated above, Ofcom’s research on offensive language indicates that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. Therefore, Ofcom considered that the repeated use of this word clearly had a significant potential to cause offence to the audience.

In view of Kiss TV’s likely appeal to a broad range of viewers, we concluded that the audience for this channel was unlikely to expect the broadcast of the most offensive language 20 times in a song lasting under four minutes, transmitted in the mid afternoon. Therefore, Ofcom concluded that the context was insufficient to justify the repeated broadcast of the most offensive language and that Box TV did not apply generally accepted standards. Consequently, the programme was in breach of Rule 2.3 of the Code.

Ofcom does not expect any recurrence of similar compliance failures by Box TV.

Breaches of Rules 1.14, 1.16 and 2.3

⁴ Ibid, p.90.

In Breach

Candy Bar Girls (Trailers)

Channel 5, 5*, 18 to 29 June 2011, various times before 21:00

Introduction

Thirty-four complainants alerted Ofcom to potentially offensive content in trailers for the programme *Candy Bar Girls* which were broadcast at various times before the 21:00 watershed on Channel 5 and 5*. Some complainants also considered the trailers were inappropriate for children when shown at this time.

Candy Bar Girls is a documentary series on Channel 5 that follows regular customers and staff from the Candy Bar, a well-known lesbian night club in London's West End.

Trailer One

In this trailer, music was played over various shots of the lips (including a close up of one woman pursing her lips suggestively), faces and upper bodies of two young women, who were sweating and appeared sexually aroused or engaged in sexual activity. These shots were interspersed with three separate full-screen neon-like signs, which read consecutively:

"Red"
"Hot"
"Lesbians".

The trailer ended by cutting to a wide shot of the two women exercising in a gym (one on a treadmill and one doing sit-ups). The voice over then said:

"Well, what were you expecting? Real lesbians, real lives, no clichés, Candy Bar Girls coming soon to Channel Five".

The woman doing sit-ups then said: *"I really need a shower,"* and the other woman squirted her with a water bottle.

Trailer Two

In this trailer music was played over a shot of a young woman who was sitting in a high-backed armchair facing away from camera so her face and body were largely hidden. A second young woman then walked in and knelt down in front of the seated woman, gave her a suggestive look and then leant forward so that her face disappeared from view but appeared to go into the crotch of the seated woman, giving the impression that she was performing oral sex on her. These images were interspersed with three separate full-screen neon-like signs, which said:

"Pussy"
"Loving"
"Ladies".

A voice over then said:

"Well, what were you expecting? Candy Bar Girls coming soon to Channel 5".

The kneeling woman then leant back and stated: “Nice pussy”. The seated woman replied: “Thanks, I just got it stuffed.” The seated woman then showed the other woman a stuffed toy on her lap in the shape of a cat.

Ofcom considered the broadcast of these trailers before the watershed raised issues warranting investigation under the following rules of the Code:

Rule 1.3: “Children must ... be protected by appropriate scheduling from material that is unsuitable for them.”

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.”

Ofcom requested formal comments from Channel 5 (or “the Licensee”) on how the trailers described above complied with these rules.

Response

The Licensee explained “both trailers were initially scheduled for transmission at any time, with the restriction [emphasis in original] that when scheduled pre-watershed, they could not be scheduled in or around programming aimed at children or programming which was anticipated to have an under 16 audience of more than 7% under 16s (i.e. they were rated “EX KIDS”)”.

According to Channel 5, the decision was made to schedule the two trailers with this restriction because:

- although both trailers contain suggestions of sexual behaviour neither is explicit and the double entendre in both would be unlikely to be understood by children;
- the double entendre is not revealed to viewers until the end of each trailer. This, Channel 5 said, is a common technique employed by advertisers and therefore one the audience would be familiar with; and
- both trailers contain humorous references to common perceptions of lesbians and seek to inform viewers that Channel 5’s series, *Candy Bar Girls*, is a programme about lesbians but that it will not conform to the usual stereotypes: it is about real-life lesbians and the day to day issues they face.

When scheduling the trailers for this programme pre-watershed, the Licensee said it first considered the nature of the programme being advertised and then the contents of each trailer to ensure they were appropriate for the time scheduled. The trailers were then scheduled taking into account the nature of the content, the likely age range of children in the audience, the times at which Channel 5 was considering broadcasting the trailers, the nature of Channel 5 and 5*, and the likely expectations of the audience.

Rule 1.3

Trailer One

The Licensee was of the view that children were unlikely to come to the conclusion that the women in Trailer One were sexually aroused, particularly as there was no explicit portrayal of sexual behaviour; the shots were limited throughout; and the interspersed wording was simply descriptive. Additionally the Licensee considered children would be unlikely to understand the double entendre “which is no more than a comical, brief and cheeky

reference to sexual behaviour, similar to the references to sex that one would see in a *Carry On* film (many of which are BBFC rated PG).”

Trailer Two

The Licensee explained Trailer Two does not contain any “explicit references to sexual behaviour” and considered children would not have understood the “subtle reference to sexual behaviour” or the references to ‘Pussy Loving Ladies’ or ‘Nice Pussy’.

The Licensee added: “as above, the sexual references in Trailer Two were comical, brief and cheeky, similar to the frequent references Mrs Slocombe’s ‘pussy’ on *Are You Being Served?*, a BBC programme which has been scheduled pre-watershed.”

However, the Licensee stated that in light of the complaints received in respect of the trailers it decided to restrict the scheduling of Trailer Two to post-watershed slots only.

Rule 2.3

With regards to Rule 2.3, the Licensee stated: “Whilst we do of course apologise for any offence caused, we do not consider the Trailers to be offensive. As we have explained above, the sexual references contained in the Trailers were comical, clear double entendres, and appropriately limited to ensure they were suitable for the times they were scheduled.”

The Licensee explained a significant proportion of the complaints it received were in relation to the subject matter of the Trailers (i.e. lesbians), and this subject was not in itself an inappropriate subject for pre watershed broadcast. The Licensee added: “We strongly disagree with the complaints we have received that lesbians are a topic that should be avoided pre-watershed. This attitude is bordering on homophobic and does not reflect modern day society...The Trailers should be considered in exactly the same way they would be if the programme had been about real life straight people and the Trailers had shown a man and a woman working out in a gym, or a man stroking a cat on a woman’s lap.”

Decision

Under the Communications Act 2003, Ofcom has a duty to set such standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected” and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

In reaching its decisions, Ofcom must take into account the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Applied to broadcasting, Article 10 therefore protects the broadcaster’s right to transmit material as well as the audience’s right to receive it as long as the broadcaster ensures compliance with the Rules of the Code and the requirements of statutory and common law.

Rule 1.3

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them.

Ofcom noted that the first part of Trailer One consisted of various images of the faces, upper bodies and lips of two women who were engaged in some form of physical exertion and

sweating. These shots were interspersed with three separate neon-like graphics which read consecutively “Red”, “Hot” and “Lesbians”. The neon-like style of these graphics is commonly associated with the adult entertainment industry. This combination in Ofcom’s view clearly implied that the two women were sexually aroused or engaged in sexual activity. Ofcom noted that it was only at the end of the trailer that there was a wide shot of the two women working out separately in a gym. We noted the Licensee considered children would not have understood the implication of the first part of the trailer that the women were sexually aroused, however, we considered many older children would probably have understood the sexual inference of the trailer.

With regards to Trailer Two, Ofcom considered that the images of the two women in the first part of the trailer combined with the neon-like graphics (consecutively “Pussy”, “Loving”, and “Ladies”) clearly implied that one woman was performing oral sex on the other. The exchange between the two women at the end of the trailer when the stuffed cat toy was revealed (“Nice pussy”. “Thanks, I just got it stuffed”) was based on viewers understanding this sexual implication. As with Trailer One, we considered that older children would have understood this implied message of the trailer.

Ofcom noted that Trailer Two contained two references to “pussy”. Although by the end of the trailer this was revealed to be referring to a stuffed toy cat, it was clearly intended during the first part of the trailer to be understood by the audience as a reference to a woman’s genitalia. Ofcom noted the intended humour behind the double entendre and the manner in which the term was used in this case. Ofcom research on offensive language¹ however clearly notes that the use of the word “pussy” in a sexual context is considered by audiences to be amongst the most offensive language, particularly before the watershed.

The Licensee argued that the material was suitable for children because of its double entendre humour: “comical, brief and cheeky...similar to the references to sex that one would see in a *Carry On* film...humorous to adults but entirely innocent as far as children are concerned.” Ofcom disagrees. In its opinion the humour was clearly aimed at adults and would probably have been understood by older children; but the tone - because of the neon-like graphics commonly associated with the adult entertainment industry and the images used - was clearly more adult rather than “cheeky” and innocent.

Channel 5 suggested that some might be less concerned whether these trailers were suitable for children if they “had not been about a programme featuring lesbians but instead heterosexual people.” All programmes – whatever their subject – can be trailed before the watershed provided the trailer complies with the Code.

In Ofcom’s view both trailers contained material whose sexual tone and implied sexual content made them potentially unsuitable for children. Ofcom is clear that the unsuitability of these trailers for children was not based on their subject matter (a programme about a lesbian night club) but the manner in which that subject was treated.

Ofcom went on to consider whether these trailers were appropriately scheduled so as to protect child viewers. Appropriate scheduling is judged according to various factors such as the nature of the content, the likely number and age range of children in the audience, and the likely expectations of the audience.

Ofcom noted that the content in issue was trailers for reality programmes about a lesbian night club scheduled for broadcast after the watershed. Viewers are not able to select the trailers that they see and no prior information is provided and therefore broadcasters must

¹ Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

take particular care about their content and scheduling. In this case, the clear implication of the images combined with the neon-like graphics commonly associated with the adult entertainment industry was that the women shown were sexually aroused or engaged in sexual activity. The nature of this content (trailers, which contained images designed clearly to suggest sexual activity, for a post-watershed programme) required very careful scheduling if children were to be protected and the trailers were to be broadcast before 21:00. Ofcom notes that following complaints Channel 5 did in fact later confine Trailer Two to post-watershed broadcast.

We noted that the Licensee took measures to ensure the trailers were not scheduled in or around programming aimed at children or programming which was anticipated to have an audience of more than seven percent of viewers under 16. However, we considered that both trailers were likely to exceed audience expectations when shown before the watershed on services like Channel 5 and 5*. In Ofcom's view, many in the audience – and especially parents – would not have expected trailers with this sexual tone and implied sexual content to be shown around and in programmes broadcast pre-watershed – a period of time when there is always a likelihood that children, some unaccompanied, will be in the audience. We noted that in some instances the trailers were broadcast during the weekend pre-watershed, when there was likely to be a greater chance of children being in the audience. The fact that Trailer Two in particular was likely to exceed audience expectations was acknowledged by the Licensee when, following complaints, Channel 5 scheduled it to be broadcast only after 21:00.

Overall therefore Ofcom concluded that these trailers contained material that was unsuitable for child viewers, and children were not protected from it by appropriate scheduling. Both trailers when shown pre-watershed were therefore in breach of Rule 1.3.

Rule 2.3

Broadcasters are required to ensure that material which may cause offence is justified by context. Context takes into account factors such as the editorial content of the material, the time of broadcast, the degree of offence likely to be caused and audience expectations.

As mentioned above, all programmes – whatever their subject – can be trailed before the watershed provided the trailer complies with the Code. A reference to “lesbians” or broadcasting a trailer for a programme about lesbians before the 21:00 watershed would not simply by virtue of the subject matter be problematic under the Code. What concerned Ofcom here was the sexual tone and implied sexual content of these two trailers, which it considered was potentially offensive. Trailers presented in a similar way for programmes about a club for heterosexuals or a club for male homosexuals would have a similar potential to offend.

Ofcom went on to assess whether the potential offence was justified by the context.

With reference to the editorial content of the trailers Ofcom noted both trailers implied the women were sexually aroused or engaged in sexual activity. Trailer One suggested the women were sexually aroused and included several, suggestive close-up images of their faces and lips. Trailer Two included images of both women on screen at the same time, the implication being that one woman was performing oral sex on the other. The images of the women included one kneeling between the other's legs, then bending her head towards the other's crotch and a close up of the woman in the chair biting her lip suggestively. These images were interspersed with the neon-like graphics commonly associated with the adult entertainment industry: “Pussy” “Loving” “Ladies”.

As already pointed out, these were trailers, not scheduled programmes with editorial content of substance. Viewers are not able to select trailers to view, and no prior information about them is given to audiences. Therefore the audience cannot make an informed choice as to whether they watch them. Ofcom's published guidance² advises broadcasters to bear this in mind when scheduling trailers. In this case, the clear implication of the images combined with the neon-like graphics was that the women shown were sexually aroused or engaged in sexual activity. The nature of this content (trailers, which contained images designed clearly to suggest sexual activity, for a post-watershed programme) required careful treatment if the potentially offensive content in them was to be justified by the context.

These trailers were shown at a variety of times pre-watershed on two general entertainment channels, Channel 5 and 5* (although 5* is aimed more at a young adults). Both are likely to attract a fairly broad range of viewers, and we further noted that both trailers were shown in and around a variety of popular programmes on these channels such as the *England vs. Sri Lanka cricket test match*, *Emergency Bikers*, *Home and Away*, *Neighbours* and *Five News*. Ofcom noted the Licensee rescheduled Trailer Two for broadcast after the watershed following a number of complaints from viewers. However, before this change of policy, both trailers had been broadcast throughout the day between Saturday 18 June and Sunday 19 June and Trailer One continued to be broadcast pre-watershed until Wednesday 29 June 2011.

In Ofcom's opinion, the sexual tone and implied sexual content of both trailers were likely to cause offence to viewers when broadcast pre-watershed. Trailer Two in particular had the potential to cause a considerable degree of offence. This was mainly because at the start of this trailer the two women were shown together and there was clearly a deliberate intention to suggest to viewers that one woman was performing oral sex on the other. Also as pointed out above, Ofcom research on offensive language³ clearly notes that the use of the word "pussy" in a sexual context is considered by audiences to be amongst the most offensive language, particularly before the watershed.

Regarding the level of offence, Ofcom noted the Licensee's arguments that the sexual references could partly be justified by them being "comical, brief and cheeky". Channel 5 referred to the popular pre-watershed comedy *Are you Being Served?*, which regularly included references to Mrs Slocombe's "pussy", as an example of how this kind of double entendre humour had been acceptable pre-watershed in the past. In Ofcom's view, given the limited contextual factors to justify the broadcast of this material in the form of trailers before the watershed, and their obvious sexual tone and content, we considered this to be a flawed comparison.

For these reasons Ofcom concluded that these two trailers – and in particular Trailer Two – would have exceeded the likely expectation of the audience watching these trailers when shown before the 21:00 watershed. The broadcaster therefore did not apply generally accepted standards and breached Rule 2.3.

Breaches of Rule 1.3 and Rule 2.3

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

³ Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

In Breach

Hell's Kitchen USA

ITV2, 18 April 2011, 21:00

Introduction

Hell's Kitchen USA is the American version of the UK reality-style cooking contest which features members of the public working in a highly pressurised restaurant environment under the guidance of Gordon Ramsay. Each programme has a duration of 60 minutes. The eventual winner of the series is given the opportunity to run their own kitchen in a top restaurant.

Ofcom received one complaint about the frequency of the word "fuck" (or a derivative) in the programme. The complainant considered this to be inappropriate for a programme broadcast directly after the watershed. Ofcom noted that there were 47 instances of the use of this expletive in the programme. Eighteen of these were within in the first programme segment after the 21:00 watershed which lasted 11 minutes.

Ofcom considered this material raised issues that warranted investigation under the following Code rules:

- Rule 1.6: "The transition to more adult material must not be unduly abrupt at the watershed....For television, the strongest material should appear later in the schedule."
- Rule 2.3 "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."

We therefore sought comments under these rules from ITV Broadcasting Limited ("ITV"), who compiled the programme on behalf of the ITV Network for ITV1.

Response

ITV said that "the essence of the show is to place them in a deliberately high-pressured environment, where conflict with each other and Chef Ramsey is commonplace" and that "the word "fuck" and its derivatives are used regularly not only by Gordon but also by many of the contestants, as a standard part of their vocabulary and mode of expression."

The broadcaster argued that "viewers are very well accustomed to high levels of strong language being a universal feature of programmes featuring Gordon Ramsey" and that this "is a character trait for which he is particularly well known". ITV said it had received very few complaints about strong language in this programme since its inception in 2005 (this episode being the climax of the eighth series) and that its experience is that repeated strong language in these programmes does not cause widespread complaint as it might do in other programmes, and ITV2 viewers were particularly accustomed to the levels of strong language in this programme.

It therefore took the view that "viewers come to a Gordon Ramsey programme with a particular and unusually high expectation and greater than usual acceptance of repeated and very strong language." ITV also made reference to ITV2's audience demographic which

it said “was skewed towards younger adults” who “generally tend to find the strongest language less offensive (according to Ofcom’s own research¹).”

The broadcaster said the programme was preceded by *Kerry Katona: The Next Chapter* which is “not aimed at or of particular interest to children”, and an “explicit warning announcement that there was very strong language from the start”. This, in its view, “gave clear and sufficient information...that this programme was suitable only for adults.”

ITV said that the “opening sequence of the programme is always an extended montage of moments of high drama, and comment from competitors to introduce the characters to viewers” and that it “carefully considered the use of strong language in the first part of the programme after 21.00.” It concluded that the language reflected the characters and relationships within the teams and with Chef Ramsey, and was neither unusual for the programme format nor excessive or gratuitous” and that “editing the strongest language in the first part of the programme would potentially blunt the editorial force of the opening of the programme to the detriment of regular viewers who enjoy it”. ITV took the view that viewers are less likely to be offended when the language reflected heartfelt emotion rather than deliberate attempts to be offensive, and that after several series, there would be few viewers who would come to the programme unaware of its typical content, or would wish to watch if they were offended by strong language.

While ITV acknowledged that “18 instances of “fuck” in the opening segment of 11 minutes is a relatively high number in relation to most programmes,” it did not think it was “lacking in editorial justification in the very specific context of this programme”. However, it said that “on reflection that it was probably on the borderline of acceptability” and it “will consider this issue of strong language close to the watershed further, should we broadcast a further series of the programme.”

Decision

Under the Communications Act 2003, Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that that “persons under the age of eighteen are protected” and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

Rule 2.3

As regards Rule 2.3 of the Code, Ofcom considered first whether the repeated swearing in this programme was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast, and the extent to which the nature of the content can brought to the attention of the potential audience.

Ofcom’s research on offensive language¹ indicates that the word “fuck” and its derivatives are examples of the most offensive language. The content of the programme therefore clearly had the potential to offend viewers.

Regarding context, Ofcom considered first the editorial content of the programme and the likely size, composition and expectations of the audience. Ofcom acknowledged that ITV2 is aimed at young adults who (ITV’s research suggests) are less likely to be offended by the most offensive language than other age groups. We also noted that Gordon Ramsay has a

¹ Audience attitudes towards offensive language on television and radio
<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

well established reputation in broadcasts such as *Hell's Kitchen USA* for using the most offensive language and that, as a result, the audience might expect some examples of the most offensive language in his programmes. We noted the continuity announcement before the programme advising viewers of “very strong language from the start” and that the programme started at 21:00. Ofcom took into account these factors and ITV’s explanation that the purpose of the “extended montage [of challenging scenes with very strong language]” at the start of the programme was to reflect the various characters participating.

However, this context was not, in Ofcom’s view, sufficient to justify the potential offence caused. There were 18 instances of the most offensive language included in the first 11 minutes of the programme broadcast immediately after the 21:00 watershed. This was a significant concentration of the most offensive language and had the potential to cause considerable offence to viewers, especially those who may come across it unawares. Further, this amount of very strong swearing concentrated immediately after the 21:00 watershed in Ofcom’s opinion would not have been in keeping with viewers’ expectations – partly because the warning given to viewers before the programme began was inadequate to prepare them for this amount of very strong language at this time.

We noted ITV’s acknowledgement that 18 instances of the most offensive language in the first 11 minutes of the programme was “relatively high” and its decision to consider the issue further concerning any future broadcasts of the series. Nonetheless, we concluded that the broadcaster did not apply generally accepted and therefore breached Rule 2.3 of the Code.

Rule 1.6

Ofcom was concerned that a very significant portion of instances of the strongest language (18 out of the total of 47) happened between 21:00 and 21:11. Irrespective of the target audience of the preceding programme or of ITV2 in general, Ofcom considered it was likely that children would still have been watching this programme segment given its close proximity to the watershed. Audience figures in fact show that 38,000 children under the age of fifteen did in fact watch this programme (6.6 per cent of the audience). Therefore, Ofcom concluded that this amounted to an unduly abrupt transition to more adult, post-watershed material and Rule 1.6 of the Code was breached.

Breaches of Rules 1.6 and 2.3

In Breach

Music Video: Rihanna - "S&M"

WTF TV, 10 March 2011, 11:25

Introduction

WTF TV is a music channel that primarily broadcasts music videos of mainstream chart music, including pop and R&B/Urban, and classic music videos from the last 30 years. The channel also broadcasts music based programmes and countdown shows. The channel uses a video jukebox format, whereby viewers can select videos by texting the video selection number to a number displayed on screen. The channel is owned and operated by TV Two Limited ("the Licensee" or "TV Two").

WTF TV broadcast a music video by the R&B/pop singer Rihanna for the song "S&M", at 11:25 on 10 March. The video contained themes of sexual bondage, dominance and sadomasochism, including images of Rihanna: being dragged into a room of press journalists and cameras; her body and face being restrained behind cellophane; walking a man – who is the well known gossip blogger Perez Hilton - on a leash like a dog and whipping him; whipping a man dressed as a journalist with his hands and feet tied up with gaffer tape; in sexualised positions with blow-up dolls; lying on the floor on her chest with her hands and feet tied up with rope behind her back in positions of sexualised restraint; dressed up in various rubber and latex fetish outfits; and eating a banana and licking an ice cream encrusted with jewels in a sexually suggestive manner. The video also included images of people dressed as press journalists with bondage-style 'ball gags' in, or gaffer tape across, their mouths. There were very brief images of the word "slut" written on Rihanna's dress and a press journalist's notepad.

The song in the music video included the following lyrics:

*"Feels so good being bad (Oh oh oh oh oh)
There's no way I'm turning back (Oh oh oh oh oh)
Now the pain is for pleasure cause nothing could measure (Oh oh oh oh oh)..."*

*Cause I may be bad, but I'm perfectly good at it
Sex in the air, I don't care, I love the smell of it
Sticks and stones may break my bones
But chains and whips excite me...*

*Oh, I love the feeling you bring to me, oh, you turn me on
It's exactly what I've been yearning for, give it to me strong
And meet me in my boudoir, make my body say ah ah ah
I like it-like it"*

Ofcom received a complaint that the music video was "completely unsuitable for daytime" broadcast.

Ofcom considered whether this music video raised issues under Rule 1.3 of the Code. This states that:

"Children must also be protected by appropriate scheduling from material that is unsuitable for them."

We asked TV Two to comment on how this music video complied with this rule.

Response

TV Two stated that “the song of the music video in question has currently sold more than 12 million copies worldwide and recently remained in top position for 2 weeks in the UK Top 40 Chart”.

It added that “the broadcasting of pop music videos is a well established genre... [and] the nature of the genre is that from time to time certain performers artistically like to shock and challenge existing standards”. It stated that “the reality is that such challenges are likely to shock unknowing parents rather than the younger, street-wise consumer of the material”.

TV Two stated that “regular devotees of this specialist music channel would be well aware of the irony involved in this video. The artist is acting out a fantasy version of – and reaction to - recent events in her life as reported in the tabloid press”. It added that “WTF fans, along with fans of this music generally, have been eagerly awaiting this video, which has had very wide exposure across the media. The cartoon-like, over-the-top sequences contained no element of encouragement to copy, and the tongue-in-cheek artistic approach would not be unexpected by the audience”.

With particular regard to Rule 1.3, the Licensee said that “Rihanna is a popular artist and... the video S&M does not contain images of dominant/submissive practices in a pornographic style. It reflects an artistic and soft interpretation of a reversal of roles in which Rihanna overpowers men. It is artistic and not dark or seedy”.

TV Two added that the “video reflects the real life drama of the artist who recently experienced well documented domestic violence from a partner. It is well within the expectations of a viewer watching a pop music video channel. Any representation of humiliation or distress is acceptable within the context of the video being a pastiche of violence against women in which women actually come off best”. It continued, however, that “in hindsight we perhaps should have considered the implication of the title since this is clearly the point of much concern and is likely to be an issue with those not conversant with the channel, who may be prompted to react over the title and its press coverage rather than having first viewed the video itself”.

With regard to the image of Rihanna held behind a sheet of cellophane-like material, the Licensee said that “children are aware of fantasy and are exposed to many such images during daytime television. For example regular daytime repeats of James Bond containing fantasy violence torture and murder... Within the challenging pop music genre they do not send out messages for mimicry or influence”. TV Two added that audience data suggests that no children were watching the channel at that time.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”¹. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

In reaching a decision in this case, Ofcom acknowledged the paramount importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

Ofcom has also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. However, while music videos must have room for innovation and creativity, Ofcom does have a statutory duty with regard to all programmes, including music videos (whatever the genre), to ensure that under eighteens are protected.

Suitability for children

Ofcom had to consider first whether this broadcast material was unsuitable for children. We took into consideration that while the video included themes of bondage, sexual dominance and sadomasochism, as described above, such themes and corresponding images were presented in a surreal, colourful and sometimes humorous manner, rather than representing strong fetish material or depicting real or realistic sadomasochistic practices. We also noted that TV Two argued that the “video reflects the real life drama of the artist who recently experienced well documented domestic violence from a partner”, and that the broadcaster considered these images to be “cartoon-like, over-the-top sequences” which were “artistic and not dark or seedy”.

However, Ofcom considered that some of the images included in the video had a significant sexual fetish, bondage and sadomasochistic nature. The video included images of Rihanna: with her body and face being restrained behind cellophane; walking a man on a leash like a dog and whipping him; whipping a man dressed as a journalist with his hands and feet tied up with gaffer tape; adopting sexualised positions with blow-up dolls; lying on the floor on her chest with her hands and feet tied up with rope behind her backs in positions of sexualised restraint; dressed up in various rubber and latex fetish outfits; and eating a banana and licking an ice cream encrusted with jewels in a sexually suggestive manner. The video also included images of people dressed as press journalists with bondage-style ‘ball gags’ in, or gaffer tape across, their mouths.

In addition, Ofcom considered that in tandem with the images in this video, the lyrics of the song clearly and repeatedly focused on sex, bondage and sadomasochistic sexual practices as a theme. For example:

¹ Section 3(4)(g) of the Act

“Cause I may be bad, but I’m perfectly good at it, Sex in the air, I don’t care, I love the smell of it, Sticks and stones may break my bones, But chains and whips excite me”²;

and

*“Oh, I love the feeling you bring to me, oh, you turn me on,
It’s exactly what I’ve been yearning for, give it to me strong”.*

In Ofcom’s view, the cumulative effect of the images described above and the sexual lyrics of the song resulted in the video conveying a powerful, sexualised fetish theme. Further, in Ofcom’s view, some of the behaviour in the video (such as images of Rihanna – and in particular her body and face – being restrained by a large cellophane sheet, and shots of people with their mouths gagged with gaffer tape or ‘ball gags’) could have potentially dangerous consequences if imitated by children.

Given the above, it is Ofcom’s view that the content of this particular music video was not suitable for children. Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this unsuitable material.

Appropriate scheduling

While it is Ofcom’s view that the material did not contain any sexually explicit images, the theme and images were nevertheless highly sexualised for the reasons set out above. Further, it is our view that this particular video contained more sexualised images and lyrics, in particular shots of people wearing ‘ball gags’ and images of people being whipped and tied up, than would normally be expected in a pop/R&B music video broadcast before the watershed.

Ofcom was conscious that WTF TV does not appear to attract a large child audience. This was indicated by audience figures obtained by Ofcom which found that for the month of March 2011 audience share for WTF TV was zero. Therefore there is no indication that significant numbers of viewers, including children, were watching at the time in question. However, we also took into account that Rihanna is a very well known and popular singer who has a widespread appeal to children, including younger children, and this particular music video received a large amount of press attention and interest before being broadcast. Further, we noted that WTF TV did not place a time restriction on this particular music video. Therefore it would have been broadcast at various times throughout the day (not just at 11:25) when children, especially younger children, are available to watch television, some unaccompanied by an adult. Ofcom noted the fact that, during daytime and before the watershed, other music channels only broadcast an edited version of this video.

In light of the above factors, it is Ofcom’s view that given the sexualised nature of the content and theme, and the at times inappropriate and potentially dangerous and imitable behaviour shown in this video, this material exceeded the likely expectations of the audience for this channel during daytime. For all these reasons, the Licensee did not apply appropriate scheduling restrictions to this video so as to provide adequate protection to prevent children from viewing this material.

We therefore concluded that the material breached Rule 1.3.

Ofcom will shortly be issuing new guidance about the acceptability of material in music videos broadcast before the watershed. We will also be requesting that broadcasters who

² This chorus was repeated five times during the video.

transmit such programming attend a meeting at Ofcom to discuss the compliance of such material.

In view of our concerns about the material under consideration in this case, Ofcom is requiring the compliance licensee to attend a meeting to discuss the approach taken to ensuring that the programme complied with the requirements of the Code.

Breach of Rule 1.3

In Breach

Music Video: Flo Rida - "Turn Around (5, 4, 3, 2, 1)"

4Music, UK Hot 40, 15 December 2010, 14:00

4Music, UK Hot 40, 18 December 2010, 18:00

4Music, Today's 4Music Top 10, 5 January 2011, 18:00

Introduction

4Music is a music and general entertainment channel that broadcasts music and entertainment news, the latest playlists, music based programmes and various countdown shows. The channel broadcasts mainly chart music, including pop and R&B/Urban. The channel is owned and operated by Box Television Limited ("the Licensee" or "Box Television").

4Music broadcast a music video by the artist Flo Rida for the song "Turn Around (5, 4, 3, 2, 1)". This video was broadcast at various times before the watershed, including at 14:00 and 18:00. The video was set in Rio de Janeiro in Brazil and included images of female dancers wearing both carnival dress and revealing thong bikinis. The dancers were shown dancing in a carnival style in the streets and dancing on the beach in their swimwear. While doing so they were shown bending over with their buttocks to camera, and repeatedly shaking and playfully slapping their buttocks. Ofcom noted that throughout the four minute video there were almost 20 very close up shots of the dancers' buttocks (both while they were wearing carnival dress and while dancing in their bikinis on the beach). During the video a female dancer, who was wearing a thong bikini (and not carnival dress), was shown dancing very closely up against Flo Rida and touching his naked upper body. While she danced in this manner, Flo Rida was shown miming repeatedly slapping the female dancer on her buttocks in a playful manner. The song in the music video included the following lyrics:

"All types of magic lose the clothes, gotta party like this yo girl, make yo booty go stupid girl, so hot that I love them curves, off top shawty¹ mark my words.

*Oh-oh baby, you want some more baby?
I love the way you do it cos you do it so crazy,
I'm counting down, so turn around, 5,4,3,2,1, gotta make that booty go."*

Ofcom received three complaints from viewers who were concerned about the broadcast of this music video. One of the complainants described the video as "extreme crudeness and filth" and another said "I was shocked to see women in thongs and bras gyrating and basically dry humping men in this video". Another complainant said that the video was a "sexist and offensive video which mostly comprises women in thong bikini bottoms acting in a pornographic manner". All of the complainants were concerned that the video was broadcast before the watershed and "at the time when children are most likely to watch TV". One complainant said "...this objectification of women at such an early time and on a channel that appeals to young people really concerns me."

¹ A colloquial term for an attractive woman (source: Urban dictionary)

In light of the complaints made about this music video, Ofcom asked Box Television to provide comments on how this broadcast complied with Rule 1.3 of the Code:

Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them.”

Response

Box Television apologised for any offence that was caused to particular viewers. It stated, however, that the music video did comply with Rule 1.3 of the Code.

The Licensee said that Flo Rida is a popular R&B artist who has achieved chart success in the UK in the last two years. It said that the video starts with Flo Rida boarding a plane on his way to Rio de Janeiro. It continued that “as the music starts there are many shots of Rio, establishing that the video is set in the ‘Carnival City’, placing the dancing and attire featured in the video in that specific context”.

Box Television added that “as with many RnB and pop videos, this video could be said to contain a sexual tone and innuendo. However, whilst the video features female dancers wearing thong bikinis and Carnival attire, synonymous with Brazilian Carnival, there is no nudity, inappropriate touching of the dancers or explicit sexual display”.

The Licensee stated that “whilst we believe that the video is suitable for pre-watershed transmission in the UK Hot40 on 4Music, we placed a scheduling restriction so that it would not play in the pre-school (0700 – 1000) Breakfast Fix”.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”². The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

In reaching a decision in this case, Ofcom acknowledged the paramount importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code

² Section 3(4)(g) of the Act

sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

Ofcom has also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. As part of our consideration we took into account that music videos from the Urban and R&B genre are well known for including mild sexual content and innuendo and are not generally aimed at a younger child audience. However, while music videos must have room for innovation and creativity, Ofcom does have a statutory duty with regard to all programmes, including music videos (whatever the genre), to ensure that under eighteens are protected and to enforce generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and/or harmful material.

Suitability for children

With regards to Rule 1.3, Ofcom had to consider first whether this broadcast material was unsuitable for children. We took into consideration that although the video was set in Rio de Janeiro and aimed to express the spirit of a Brazilian carnival, the majority of shots were of female dancers in revealing thong bikinis, rather than carnival dress. The video included images of the dancers dancing in a very provocative manner, such as repeatedly shaking their bare buttocks to camera, bending over to camera and playfully slapping their bare buttocks. In addition the dancers were shown dancing closely up against the rapper Flo Rida and touching his naked chest while he repeatedly mimed slapping one dancer on the buttocks. The video also included around 20 close up and intrusive shots of the female dancers' buttocks, some of which were when they were bent over or had their legs apart as part of their dancing. Therefore for much of the video the dancers' faces could not be seen. Ofcom also considered that some of the lyrics of the song "*Turn Around (5, 4, 3, 2, 1)*" contained some sexual innuendo (for example, "*Oh-oh baby, you want some more baby? I love the way you do it cos you do it so crazy...*").

In Ofcom's view, the cumulative effect of the repeated close up images of the female dancers' buttocks, together with some of the provocative dancing and actions in the video, resulted in the video's imagery conveying a highly sexualised theme.

The fact that these images were mainly shown while the dancers were wearing bikinis on the beach, rather than in traditional carnival dress, increased the sexualised nature of the imagery and detracted from the editorial justification put forward by the broadcaster for the inclusion of these images.

Given the above, it is Ofcom's view that the content of this particular music video was not suitable for children. Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this unsuitable material.

Scheduling

As part of our consideration, we took into account Box Television's comments that the video was set in Rio de Janeiro and the various shots of the city would have established that the video was set in the 'Carnival City'. We noted that Box Television also considered that these images would have placed "the dancing and attire featured in the video in that specific context". In particular, Box Television argued that "whilst the video features female dancers wearing thong bikinis and Carnival attire, synonymous with Brazilian Carnival, there is no nudity, inappropriate touching of the dancers or explicit sexual display".

In Ofcom's view, while the material did not contain any explicit sexual images, it nevertheless conveyed a highly sexualised theme for the reasons set out above. Further, it is our view that this particular video contained more sexualised images, and in particular close up and intrusive shots of the dancers' bare buttocks, than would normally be expected in a music video of this genre, broadcast at a time when children were likely to be watching.

Ofcom noted Box Television did place a scheduling restriction on this particular music video so that it would not be broadcast in the pre-school slot between 07:00 and 10:00. We therefore took into account that this video would not have been shown at a time when younger children were likely to have been in the audience. We also took into account that very few children were actually watching at the times complained about. This was indicated by audience figures obtained by Ofcom which found that during the broadcast dated 15 December 2010, approximately 12,000 children between the ages of 4 and 15 years old were watching the programme that featured the video, 2,000 of which were between the ages of 4 and 9 years old. The 18 December 2010 broadcast had approximately 2,000 children watching and the 5 January 2011 broadcast had a child audience of approximately 6,000 viewers (none of which were between the ages of 4 and 9 years old).

However, Ofcom noted that this particular music video was broadcast at various times throughout the day, including at times when children would have returned home from school. In particular, for the broadcast dated 15 December 2010 almost a quarter of the total audience was made up of children.

In light of the above factors, it is Ofcom's view that given the sexualised nature of the content, as set out above, and that the video was broadcast at times when children would have returned home from school and therefore were likely to have been watching television, we considered that the editorial nature of the video and the time restriction set by the broadcaster were not sufficient factors to provide adequate protection to prevent children from viewing this material. We therefore concluded that the material breached Rule 1.3.

Breach of Rule 1.3

In Breach

Music Video: Flo Rida - "Turn Around (5, 4, 3, 2, 1)"

MTV Base, *Future Hits*, 7 December 2010, 17:50

MTV Base, *The Official Urban Top 20*, 17 January 2011, 19:00

MTV Dance, *Big Dance*, 7 January 2011, 14:50

Introduction

MTV Base and MTV Dance are both music and general entertainment channels. MTV Base primarily broadcasts music videos and lifestyle programmes from the urban music scene, including hip hop, rap and contemporary R&B. MTV Dance broadcasts music videos and lifestyle shows from the dance scene, including current and classic dance anthems. The two services are owned and operated by MTV Networks Europe ("the Licensee" or "MTV Networks").

Both MTV Base and MTV Dance broadcast a music video by the rapper and singer Flo Rida for the song "*Turn Around (5, 4, 3, 2, 1)*". This video was broadcast at various times before the watershed on both channels, including at 17:50 and 19:00. The video was set in Rio de Janeiro in Brazil and included images of female dancers wearing both carnival dress and revealing thong bikinis. The dancers were shown dancing in a carnival style in the streets and dancing on the beach in their swimwear. While doing so they were shown bending over with their buttocks to camera, and repeatedly shaking and playfully slapping their buttocks. Ofcom noted that throughout the four minute video there were almost 20 very close up shots of the dancers' buttocks (both while they were wearing carnival dress and while dancing in their bikinis on the beach). During the video a female dancer, who was wearing a thong bikini (and not carnival dress), was shown dancing very closely up against Flo Rida and touching his naked upper body. While she danced in this manner, Flo Rida was shown miming repeatedly slapping the female dancer on her buttocks in a playful manner. The song in the music video included the following lyrics:

"All types of magic lose the clothes, gotta party like this yo girl, make yo booty go stupid girl, so hot that I love them curves, off top shawty¹ mark my words.

*Oh-oh baby, you want some more baby?
I love the way you do it cos you do it so crazy,
I'm counting down, so turn around, 5,4,3,2,1, gotta make that booty go."*

MTV Base

Ofcom received two complaints from viewers about the broadcast of this music video on MTV Base. The complainants said that the content of the music video "was effectively soft porn" and was broadcast "far too early". Both complainants were concerned about young children viewing this content.

MTV Dance

Ofcom received a complaint from a viewer about the broadcast of this music video on MTV Dance. The complainant was concerned that the music video was broadcast before the watershed. The complainant said that the video was "rude and ladies shaking their rear-end

¹ A colloquial term for an attractive woman (source: Urban dictionary)

provocatively should not be promoted by MTV". The complainant also described the material as "filthy" and "too explicit for daytime TV".

In light of the complaints made about this music video, Ofcom asked MTV Networks to provide comments on how this broadcast complied with Rule 1.3 of the Code:

Rule 1.3: "Children must also be protected by appropriate scheduling from material that is unsuitable for them."

Response

MTV Base

MTV said that it did not consider that the music video breached Rule 1.3. It stated that "MTV Base is a niche channel with the main audience being 16 – 34 year olds and its mission statement is to successfully recreate the music and lifestyle of the urban music scene, traversing hip hop, rap, contemporary RnB and big beats".

The Licensee stated that "the setting for the video is a beach in Rio de Janeiro and features the artist dancing with a group of women in bikinis and carnival attire. The central premise of the material is that the artist travels to Brazil in order to inspire the local performers to dance in an exuberant manner expressing the spirit of carnival". It added that "the nature of carnival dancing could in itself be perceived as provocative, but is in essence theatre inspired... [and] the dances have strong historical roots in African dance and the more modern Caribbean influence". MTV continued that "in contemporary dance these African/Latin American traditions have blended and have filtered down into popular culture with particular influence on the Urban, RnB and Dancehall scenes featured on MTV Base, whose audience is comprised of a more culturally diverse viewership than other mainstream channels".

With regard to Rule 1.3, MTV said that "we do not perceive that the dancing portrayed within it [the video] was an expression of sex" but rather the dancers were "portrayed as Copa Cabana girls, happy to dance, to be confident in their bodies and to celebrate the Brazilian party lifestyle". It added that "it is common to see these dance styles in today's realm of entertainment shows like *Strictly Come Dancing*", and given the "niche nature of MTV Base" it did not consider that this material required a post watershed slot.

The Licensee added that the "dancers are at all times clothed and although the clothing may be scant – it is not inappropriate dress for beach attire or carnival". The Licensee stated that the dancing did not "go as far as to be a portrayal of explicit sexual behaviour", "the lyrics are not overtly sexual and mainly pertain to dancing", and there is "no explicit sexual content and there is no inappropriate contact between the male and female subjects".

MTV provided Ofcom with some child audience figures for the programmes complained about which indicated that approximately 1,000 children between the ages of 4 and 15 years old were watching on those occasions. It also stated that the MTV Base audience is "generally not of a young age".

MTV added that "this particular genre of music and the provocative style of dancing is evident in most of the creative output of this genre and in all popular music". It referred to previous Ofcom decisions in relation to videos which contained some sexual overtones, such as 'Ayo Technology' by 50 Cent and 'Not Myself Tonight' by Christina Aguilera, which were both not upheld by Ofcom.

MTV said that "in all of our decision making processes we consider previous judgements made by Ofcom through the Bulletins as well as any investigations MTV has been involved

in". MTV also said that it "is mindful of the present debate on this topic [sexualisation of children] and pays particular attention to its role in this discussion and continues to pay due care to its responsibilities whilst trying not to censor creative expression".

MTV Dance

In addition to the points above, MTV said that it did not consider that the music video breached Rule 1.3. It stated that "MTV Dance is a niche channel and its main audience being 16 – 34 year olds". It stated that the "channel's aim is to capture the music and lifestyle of the Dance and Clubbing scene and it covers current and classic dance anthems". It informed Ofcom that the video was last played on 7 January 2011, after which it came off the MTV Dance playlist.

MTV's response also provided Ofcom with some child audience figures for the programme complained about which indicated that approximately 1,000 children between the ages of 4 and 15 years old were watching at that time. It also stated that "the MTV Dance audience (similar to MTV Base) is generally not of a young age".

Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected".

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

In performing its duties, Ofcom must have regard to the need for standards to be applied "in the manner that best guarantees an appropriate level of freedom of expression"². The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

In reaching a decision in this case, Ofcom acknowledged the paramount importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

Ofcom has also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. As part of our consideration we took into account that music videos from the Urban and RnB genre are well known for including mild sexual content and innuendo and are not generally aimed at a younger child audience. However, while music videos must have room for

² Section 3(4)(g) of the Act

innovation and creativity, Ofcom does have a statutory duty with regard to all programmes, including music videos (whatever the genre), to ensure that under eighteens are protected and to enforce generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and/or harmful material.

Suitability for children

With regards to Rule 1.3, Ofcom had to consider first whether this broadcast material was unsuitable for children. We took into consideration that although the video was set in Rio de Janeiro and aimed to express the spirit of a Brazilian carnival, the majority of shots were of female dancers in revealing thong bikinis, rather than carnival dress. The video included images of the dancers dancing in a very provocative manner, such as repeatedly shaking their bare buttocks to camera, bending over to camera and playfully slapping their bare buttocks. In addition the dancers were shown dancing closely up against the rapper Flo Rida and touching his naked chest while he repeatedly mimed slapping one dancer on the buttocks. The video also included around 20 close up and intrusive shots of the female dancers' buttocks, some of which were when they were bent over or had their legs apart as part of their dancing. Therefore for much of the video the dancers' faces could not be seen. Ofcom also considered that some of the lyrics of the song "*Turn Around (5, 4, 3, 2, 1)*" contained some sexual innuendo (for example, "*Oh-oh baby, you want some more baby? I love the way you do it cos you do it so crazy...*").

In Ofcom's view, the cumulative effect of the repeated close up images of the female dancers' buttocks, together with some of the provocative dancing and actions in the video, resulted in the video's imagery conveying a highly sexualised theme.

The fact that these images were mainly shown while the dancers were wearing bikinis on the beach, rather than in traditional carnival dress, increased the sexualised nature of the imagery and detracted from the editorial justification put forward by the broadcaster for the inclusion of these images.

Given the above, it is Ofcom's view that the content of this particular music video was not suitable for children. Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this unsuitable material.

Scheduling

As part of our consideration, we took into account MTV's comments that the editorial premise of the video was that Flo Rida travels to Brazil in order to inspire the local performers to dance and express the spirit of carnival. As part of this, Ofcom recognises that carnival dancing is theatre inspired and has historical and cultural roots. Ofcom also took into account that the video did not contain explicit sexual content. In particular MTV argued that the video did not contain any images of "inappropriate contact between the male and female subjects".

In Ofcom's view, while the material did not contain any explicit sexual images, it nevertheless conveyed a highly sexualised theme for the reasons set out above. Further, it is our view that this particular video contained more sexualised images, and in particular close up and intrusive shots of the dancers' bare buttocks, than would normally be expected in a music video of this genre, broadcast at a time when children were likely to be watching.

Ofcom noted that both MTV Base and MTV Dance are dedicated music channels specialising in urban and dance music, and that neither channel is aimed at children. We also took into account that the channels do not attract a large child audience and that very few children were actually watching at the times complained about. This was indicated by audience figures obtained by Ofcom which found that 1,000 or fewer children between the

ages of 4 and 15 years old were watching at the times in question. However, Ofcom noted that this particular music video was not given a time restriction on either channel and therefore it would have been broadcast at various times throughout the day.

In light of the above factors, it is Ofcom's view that given the sexualised nature of the content, as set out above, and that the video was broadcast at times when children would have returned home from school and therefore were likely to have been watching television, the broadcast of this video on these two services was not sufficient to provide adequate protection to prevent children from viewing this material. We therefore concluded that the material breached Rule 1.3.

Breach of Rule 1.3

In Breach

Play

*Five*¹, 22 January 2011, 08:30

Introduction

Play is part of Channel 5's *Milkshake* strand of programmes aimed at young children. The programme comprises clips of children having fun in a range of environments.

The episode broadcast on 22 January 2011 contained a three minute sequence showing several young children playing near a campsite in a large pond and stream near a weir. The water was of varying depths but on several occasions came up to the children's waists. There was no evidence at all on screen of the children being supervised by adults while they played in the water. The narrator's introduction included an explanation of the clip:

"It's raining. What can you do in the rain? Ethan is going to see how wet he can get. Liam is too. And so is Daniel. Jay and Luke can't wait to join the fun."

Ofcom received two complaints from viewers who were concerned that the item could encourage children watching the programme to copy this activity in potentially dangerous bodies of water.

We therefore considered whether this programme raised issues against Rule 1.13 of the Code. This states that:

"Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful...must not be featured in programmes primarily for children unless there is strong editorial justification."

We asked Channel 5 Broadcasting Limited ("Channel 5") how the programme complied with this Rule.

Response

Channel 5 said it "one of the main objectives of this series of *Play* was to show outdoor activity in a variety of locations and to encourage children to play outside" and confirmed that it "carefully considered the footage prior to broadcast". It added that there had been "numerous communications praising the series".

The broadcaster did, however, "fully understand that children may sometimes copy behaviour they see on television" and took particular care when deciding to include the footage. It took into account that "*Play* is a programme aimed at pre-school children who it is believed would normally have a carer with them when they were outdoors, particularly when they were away from their homes and likely to encounter a pond."

Channel 5 assured Ofcom that it never would want to encourage activities that place children in danger and on this occasion, did not believe it had done so. However, in the light of the complaints received by Ofcom, it said that any future broadcasts of the programme would contain the following continuity announcement before transmission:

¹ The name of the Five service was changed to Channel 5 on 14 February 2011

“In this episode of Play, the children are playing in the campsite pond. Remember to always take care near water and make sure you have a grownup nearby”.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

Rule 1.13 of the Code states that:

“Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful...must not be featured in programmes primarily for children unless there is strong editorial justification.”

It is widely accepted that young children playing without appropriate supervision in or near bodies of water is behaviour that can be dangerous.

Ofcom considered that this behaviour, taking into account the way it was presented in the programme, was likely to be easily imitable by children in a manner that is harmful.

Ofcom noted that this programme is made for, and aimed at, pre-school children, some of whom may be watching unaccompanied by an adult.

No warning about the dangers of playing unsupervised in or near water was provided before this item began or during the item itself. The way the activity was portrayed and the commentary implicitly endorsed the behaviour. At one point the narrator said: “*Jake and Luke can’t wait to join in the fun*”.

There was no sign on screen of adult supervision in the vicinity of the water. The body of water the children were playing in was of considerable size. While it only appeared to reach the waist of the children, there was no indication of its maximum depth or reference to the dangers involved. Further, the item showed real children engaged in this potentially dangerous behaviour, rather than cartoon characters.

These factors taken together led Ofcom to take the view that the item as broadcast risked encouraging young children in the audience to play unsupervised in a similar environment (which might consist of significantly deeper water) with harmful consequences. This concern was highlighted by one of the complainants who had young children and lived near a canal.

As regards editorial justification for showing this potentially dangerous behaviour, Ofcom notes Channel 5’s explanation that the aim of this item was to encourage outdoor and social activity by children. Ofcom acknowledges of course that broadcasters have the editorial freedom to show material featuring young children playing in or near water.

However, broadcasters, must take care to ensure that sufficient context is provided to ensure that any potentially dangerous behaviour that is shown is not likely to be imitable in a

manner that is harmful. In Ofcom's view the editorial reason for featuring this potentially dangerous behaviour was not strong enough to justify this item as broadcast: the risks of imitation were not sufficiently mitigated by, for example, showing adults supervising the children playing or any warnings about the potential dangers during the item.

The programme was therefore in breach of Rule 1.13 of the Code.

Ofcom noted the broadcaster's intention to introduce a continuity announcement before any future broadcasts of the programme, advising viewers to take care and of the need for adult supervision. However, given the programme content and target audience, such information alone may not, in Ofcom's view, be sufficient to ensure compliance with Rule 1.13 of the Code.

Breach of Rule 1.13

In Breach

Emmerdale

ITV1, 16 December 2008, 19:00

Introduction

Emmerdale is a weekly peak-time drama serial generically referred to as a 'soap'. The King family, including brothers Jimmy, Mathew and Carl, arrived in [Emmerdale](#) in 2004. Since arriving they have been portrayed as ruthless and successful businessmen involved in numerous scandals in the village. In this one-hour special Mathew King was to marry local business woman, Anna. However his brother Carl had other ideas, informing the bride that Mathew had been responsible for her father's recent death (which was partly true). Anna cancelled the wedding and a fist fight developed between Mathew and Carl as a number of wedding guests and their brother Jimmy tried to intervene.

17 viewers complained to Ofcom that the fight that developed between the King brothers was too graphic and violent for the time of transmission in the early evening at 19:00. Ofcom asked the broadcaster to comment with regard to Rule 1.11 which states that "Violence, its after effects and descriptions of violence...must be appropriately limited in programmes broadcast before the watershed..."

Response

ITV1 said that this episode was very carefully considered in relation to Rules 1.11 and 2.3 (generally accepted standards). It said that like other TV 'soaps' *Emmerdale* regularly includes family conflicts. It continued that the scenes in question were a dramatic and emotionally charged climax to a long-running storyline of deceit and betrayal between family members and, given the nature of the established characters, regular viewers would have expected a confrontation between them to be explosive and potentially physical.

The broadcaster said that it was not its intention to cause viewers concern or distress, and it was aware that emotional and confrontational scenes are not to the taste of all its viewers. As a result it preceded the programme with information that the episode included a "*violent encounter for the King brothers*". It also edited the scenes in an attempt to moderate the explicit violence of the confrontation to a level that it judged would be acceptable for the editorial context in which it was portrayed and that the scene in question consisted primarily of pushing, shoving and raised voices interspersed by dialogue. It said that it was filmed carefully to minimise detailed shots of violent blows seen by the viewer and, whilst a lampstand was picked up and used in a threatening manner, care was taken to ensure that the subsequent blow from the lamp-stand was not explicitly shown.

ITV1 continued that in considering the script and during editing of the sequence in question it took into account previous adjudications by Ofcom in relation to violence in 'soap' dramas, for example in Bulletin 103¹. It concluded that the degree of threat and of actual violence was appropriately limited and, whilst it regretted that some viewers were concerned by the scenes, it considered most viewers' expectations of programming of this nature, for this time in the evening, were met.

Decision

¹ http://www.ofcom.org.uk/tv/obb/prog_cb/obb103/bb103.pdf

Ofcom noted that the fight between Carl and Mathew King was sustained and at times vicious. Where ITV1 had described the action as “potentially physical”, the programme did in fact feature blows and kicks (delivered and sustained by both men to the body and head) and the use of a large metal lamp-stand as a weapon (which was pushed into Mathew’s face with corresponding sound effect). The level of violence was further heightened by blood flowing from wounds, the smashing of household objects and a number of people shouting and screaming. This tense and violent scene lasted for 2 minutes. The next and final part of the programme featured a sequence showing a bloodied Mathew King behind the wheel of a van, crashing into a wall at speed. He flew through the windscreen landing with a loud thud on the floor. He died in close-up with his face covered in blood.

Emmerdale starts at 19:00, some two hours before the 21:00 watershed. It is firmly positioned and established in peak family viewing time as a ‘soap’. It is therefore always likely that some children will be in the audience watching with adults in the home. Audience figures for this episode indicate that 482,000 children between the ages of 4 and 15, representing an 18.8% share of all children viewing the television at the time, were watching the programme. This figure is not insignificant and brings with it a responsibility on the part of the broadcaster to ensure that any violence it portrays as part of the storyline is appropriately limited for the time of transmission. The broadcaster must therefore strike a balance between providing quality and engaging drama in a peak-time slot and complying with the requirements of the Code as regards protecting members of the public in general and in particular children.

Ofcom noted the broadcaster regretted that some of its viewers were concerned by the scenes of violence in this episode although it considered that overall audience expectations were met. In addition, Ofcom noted that the broadcaster referred to Broadcast Bulletin 103 to which it looked for guidance regarding this particular episode (see footnote 1 above). However, Ofcom considered that the In Breach Finding published against ITV1 (for another episode of *Emmerdale*) in Broadcast Bulletin 83² and a corresponding Note to Broadcasters in the same publication was more pertinent in this case. In the Note to Broadcasters Ofcom stated that “Ofcom has considered that a number of cases it has dealt with recently have contained violence that goes to the limits of what is acceptable in terms of the Broadcasting Code. Therefore, it would like to remind broadcasters to take particular notice of Rule 1.11 of the Code...when portraying violence in pre-watershed programmes”.

In Ofcom’s view this programme contained an unacceptable level of violence for broadcast in a programme which began at 19:00 when children were likely to be watching, and indeed were viewing, in considerable numbers. Ofcom therefore judged that the fight scene between Mathew and Karl King was in breach of Rule 1.11 of the Code.

Breach of Rule 1.11

² http://www.ofcom.org.uk/tv/obb/prog_cb/obb83/issue83.pdf

Not In Breach

EastEnders

BBC One, 12 September 2008 to December 2008, 19:30 and 20:00

Introduction

EastEnders is a long-running and well established drama with a record for tackling hard hitting and, at times, controversial social issues. A storyline about a paedophile sexually abusing the 15 year old character Whitney, (the stepdaughter of the character Bianca), was introduced to the programme. The story started on 12 September 2008 and came to a conclusion in early December 2008.

During this time Ofcom received 90 complaints from viewers. The majority expressed concern that paedophilia was not an appropriate storyline for a pre-watershed programme. Some complainants had watched episodes with their children present and believed it was particularly unsuitable given the significant child audience the programme attracted. Viewing figures for the first episode featuring this storyline showed that the programme attracted an average of 821,000 young people under 15 – some 10% of the total audience profile.

The storyline began following the release of Bianca's partner Tony from prison, when he rejoined Bianca and her family who were now living in Albert Square. In the first episode featuring the storyline, broadcast on 12 September 2008, it was revealed to viewers that Tony had met Bianca when her stepdaughter Whitney was 12 and that he had begun sexually abusing Whitney at that time.

The closing scenes of the first episode showed Tony and the fifteen year old Whitney kissing in her bedroom and then lying back on her bed together. Some viewers expressed concern that the way in which the "relationship" between Tony and Whitney was presented in these initial episodes was inappropriate because it implied that such child abuse is acceptable and even consensual.

Ofcom continued to receive complaints as the paedophile storyline developed. Ofcom viewed the material as it was broadcast with reference to the requirements of the Code. Ofcom also considered the treatment of the issue as the storyline over the series. We reviewed the material with reference to Rule 1.3 (children must be protected by appropriate scheduling from material that is unsuitable for them) and Rule 2.3 (material which may cause offence must be justified by the context).

Decision

The handling of such sensitive and challenging issues as paedophilia has to done with extreme care, especially in pre-watershed drama. It is understandable that some viewers were concerned when such a storyline was included in a programme which attracts a small but significant child audience.

The Code, itself, does not limit the subject matter that broadcasters may include in programmes. Compliance with the Code depends on how such matters are dealt with and the context in which they are broadcast. In addition Ofcom must exercise its duties in a way which is compatible with Article 10 of the European Convention on Human Rights, which provides for the broadcaster's and the audience's right to freedom of expression and the right to impart information and ideas without undue interference. Ofcom must seek an

appropriate balance between protecting young people from material that may be unsuitable for them on the one hand, and, on the other, the broadcaster's right to freedom of expression and to raise public awareness of an issue which may well affect children who watch the programme.

To comply with the Code, broadcasters must apply generally accepted standards to content to ensure that there is adequate protection from offensive or harmful material. Therefore, broadcasters must ensure that any offensive material is justified by the context. Further, broadcasters must protect children by appropriately scheduling programmes.

It has always been the focus of *EastEnders* to tackle challenging social issues which reflect contemporary life and storylines featuring the sexual abuse of children have featured in the programme previously. Over the last few years, for example, these have included the rape of the character Kat Slater by an uncle at 13, and the character Bianca previously having an under age sexual relationship with her mother's partner, Dan. What distinguished this child sex abuse storyline to those featured before however was that the abuse of Whitney, as depicted after Tony's release from jail, was played out to some degree on screen (rather than off screen). Further, it presented the process of "grooming" where the paedophile gains the trust of the young person and of those around them for the purpose of sexual contact.

Rule 1.3 requires the broadcaster to ensure that children are protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

Ofcom took the view that, in principle, the subject matter did not necessarily exceed the boundaries of acceptability for a pre-watershed drama such as *EastEnders*. Such dramas frequently deal with sensitive and uncomfortable subjects and child abuse has featured in pre-watershed soaps previously. The issue for Ofcom to consider was whether the broadcaster provided adequate protection to viewers and young people, who made up some 10% of the viewing audience on 12 September 2008, from the inclusion of material which may cause offence.

In terms of the likely expectations of the audience, Ofcom noted that the storyline was brought to the attention of the audience before it commenced on 12 September 2008. An announcement was made by the BBC, in early July 2008 for example, highlighting the forthcoming paedophile storyline and it was extensively covered in the national press and TV listings magazines ahead of the start of the storyline. There was also an information announcement before the start of the second episode broadcast on 15 September 2008 which stated: "...with sinister intent Tony continues to abuse his position of trust". All of the episodes featuring the paedophile storyline were followed by an announcement and caption for a BBC Action Line for those affected by the issues raised.

Although *EastEnders* is not made specifically for children, it does attract a significant but small child audience and therefore any portrayal of sexual issues needs to be carefully considered with this in mind. In terms of the nature of the editorial content, Ofcom assessed whether the overall tone and treatment of the subject matter ensured a sufficient level of protection for children.

Ofcom noted that the complainants expressed concern that the storyline initially commenced with what briefly appeared on screen to be a consensual sexual relationship between Tony and the 15 year old Whitney. Ofcom took the view that given the type of sexual abuse presented in this storyline was "grooming", and that guidance was provided by the children's charity NSPCC on the storyline, this first intimate scene was appropriate as it revealed the insidious nature of the abuse. Grooming is often conducted over a period of time with the

perpetrator gaining trust with family and friends and building up a long term, albeit secretive, relationship with the victim in which they encourage them to believe it is loving and acceptable.

As the storyline quickly unfolded, and even as early as the second episode after this initial scene, the true nature of the “relationship” between Tony and Whitney was explicitly revealed to the viewer. He was shown to be a manipulative, sinister and controlling character who had groomed not just Whitney but Bianca too, by preying on and gaining the confidence of a vulnerable single mother to gain access to her troubled young stepdaughter solely for the purpose of sexual abuse.

In addition, a sub-plot was established that Tony was disenchanted with Whitney as she was growing older and looking more mature. He then began to divert his attention to grooming the younger character Lauren. In this way the broadcaster ensured that the focus of the storyline remained on the concept of grooming and did not disproportionately dwell upon the physical nature of the sexual abuse of Whitney.

In terms of the treatment of the storyline, scenes featuring Tony and Whitney in the bedroom were also appropriately limited for a pre-watershed programme. They were never shown in bed, unclothed or engaged in anything more intimate than brief kissing.

Ofcom also noted that the culmination of the storyline in December, which featured Whitney revealing Tony’s crime to Bianca, provided the appropriate conclusion. Tony was arrested and Whitney was clearly presented as a victim of paedophilia.

Ofcom noted that the production team approached the storyline with the close guidance of the NSPCC who advised on both the story development and the script. The BBC also sought advice from The Rape and Sexual Abuse Support Centre, social workers and the Metropolitan Police to ensure it was a true reflection of the way such child abuse takes place.

This storyline explored a social taboo that is not necessarily comfortable family viewing. However, it did so within a programme that has a well established reputation for handling such issues and was appropriately scheduled. Ofcom considers that the broadcaster treated the subject matter appropriately and sensitively. Such storylines which reach a large audience can actually have a positive impact. It is noted, for instance, that the programme prompted a significant number of viewers, who had experienced sexual abuse, to respond to the Action Line telephone number and to write to the programme makers outlining their similar experiences.

Not in Breach

Not In Breach

EastEnders

BBC One, 21 and 24 March 2008, 20:00

Introduction

Two episodes of *EastEnders*, broadcast over the Easter weekend on Good Friday and Easter Monday, featured the drugging and the live burial of the character Max Branning by his wife, Tanya, and her accomplice, Sean. In the first episode, the lead up to the burial was broadcast, with Tanya drugging Max and then burying him alive. In the final scenes of this episode Max lies in the coffin under sedation and pleads with Tanya as the coffin lid is placed on top of him and he is left in darkness. The next part of the storyline was broadcast three days later. Max is in the coffin underground breathing heavily and sobbing before Tanya returns to the burial site and releases Max from the grave, alive.

Ofcom received 116 complaints from viewers who believed the scenes and storyline were unsuitable for the time of broadcast, particularly given the high proportion of children watching. A number of these complaints were from parents who expressed concern that their children were distressed by the content, some of whom had difficulty sleeping after viewing the scenes.

Ofcom asked the BBC for comments in relation to Rules 1.3 (children must be protected by appropriate scheduling), 1.11 (violence must be appropriately limited in programmes broadcast before the watershed), and 2.3 (broadcasters must ensure that material which may cause offence is justified by the context).

Response

The BBC stated the storyline had been crafted in a responsible manner with recognition of its potential sensitivity for a pre-watershed audience, which could be expected to include a proportion of children. It believed sufficient steps had been taken to alert viewers to the storyline in advance and keep it within the expectations of the audience. The storyline had not been arbitrarily chosen but reflected a previous occasion some months earlier when Max had confided to his wife Tanya that his "worst nightmare" related to an occasion in his childhood when his father had put him in a coffin overnight.

Over the following months, the storyline of Max's apparently successful machinations over custody of their children unfolded. The live burial storyline was therefore considered by the BBC to be an appropriate act of revenge by a wife driven to the extremity of desperation. Furthermore, the broadcaster said, the scheduling of the episodes over the Easter Bank Holiday provided additional context, given that there is an established expectation that soaps such as *EastEnders* bring the most intense storylines to a climax over public holidays.

In terms of the presentation of the storyline, the BBC noted that it involved no explicit violence and that the lead up to the burial scenes broadcast on 21 March 2008 was "...carefully paced with several indications of the direction of the storyline offered". To further minimise offence the BBC had alerted viewers to the content with a pre-transmission announcements stating: "*First a cruel and chilling revenge, it's Max's worst nightmare as Tanya prepares his last supper...*" (21 March) and "*EastEnders now on BBC1...and more powerful scenes as Max's worst nightmare continues...*" (24 March).

However, the BBC admitted that the 600 plus complaints it had received suggested that the emotional impact had been greater than anticipated. This, the BBC considered, suggested the handling of the storyline went beyond the expectations of some of the audience and was not justified by the context. For these reasons the BBC accepted the two programmes were in breach of Rules 1.3, 1.11 and 2.3 and said that the response from viewers would help to guide programme makers on how to handle such exceptional storylines in the future.

The BBC's Editorial Complaints Unit separately reported its decision regarding the complaints it had received on 9 May 2008. The complaints were upheld on the grounds that the emotional impact of the storyline was stronger than had been considered likely and had caused upset with a segment of the audience that was neither anticipated nor intended.

Decision

Ofcom noted the BBC's response that the scenes went beyond the expectations of viewers and therefore were a breach of Rules 1.3, 1.11 and 2.3 of the Code.

In considering the material, Ofcom took the view that the subject matter itself did not exceed the boundaries of acceptability for a pre-watershed drama such as *EastEnders*. The issue here was whether the treatment of the storyline meant it was suitable for a pre-watershed audience that regularly included a significant number of children.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

In the first episode the scenes involving the burial alive of Max were harrowing and dark in nature. Sean and Tanya drag Max's sedated body through a dark wood, throw it into the shallow grave and, as the effect of the sedative decreases, Max is clearly aware of the coffin lid coming down on top of him as he shouts out and bangs on the lid desperately. In this episode there were no lighter storylines to balance this disturbing central plot and there was no resolution to the storyline in that episode.

The opening scenes of the second episode were in complete darkness, to portray Max inside the coffin, the only sound being his laboured breathing and his sobbing. Max is alert to his environment as the effect of the sedative has worn off. As the sound of the earth is being shovelled on top of the coffin lid, he frantically tries to telephone home on his mobile for help, managing to make contact only for the signal to then fail as the burial is completed. In Ofcom's view, taken as a whole, the scenes of the burial alive shown in both episodes had a seriously disturbing element to them. Overall, the storyline and its treatment had more in common with a dark psychological thriller than a pre-watershed drama.

Further, in our view, the information supplied at the start of the programmes did not adequately prepare viewers for the extent of the distressing scenes that followed. Some regular viewers may have been aware of what "Max's worst nightmare" was and how the storyline might unfold, but the subsequent scenes were not appropriate for a pre-watershed audience and therefore the expectations of the audience for this series were not sufficiently respected. The programmes were therefore in breach of Rule 1.3.

Rule 1.11 requires that violence, its after-effects and descriptions of violence, must be appropriately limited before the watershed and must be justified by context. Given that the nature of the burial scenes in both episodes produced an overall atmosphere of threat and menace at a level and to an extent not suitable before the watershed they were not

appropriately limited, and nor were they justified by the context. There was also therefore a breach of Rule 1.11.

The level of distress generated by the treatment of the storyline and the lack of contextual justification, which resulted in the scenes exceeding audience expectations, also resulted in a breach of generally accepted standards for a popular pre-watershed soap opera shown on the flagship BBC television channel. Many viewers regard *EastEnders* as suitable for family viewing with children. For the reasons already stated the scenes of Max being buried alive were offensive and not justified by the context. Rule 2.3 was also contravened as a result.

Breaches of Rules 1.3, 1.11 and 2.3

In Breach

EastEnders

BBC1, 13 November 2007, 19:30

Introduction

In this episode, a gang attack the 'Queen Vic' pub. They are looking for their ex-member, Jase, who has settled in Albert Square with his son. Jase appears in the pub to stop the violence. He is taken down to the cellar where Billy Mitchell's wife Honey, who is heavily pregnant, steps in to prevent Jase being beaten up. During the fracas, Honey is knocked over and goes into premature labour. Honey is rushed to hospital, where she gives birth, but it is unclear at the end of the episode if the baby has survived.

Ofcom received 78 complaints about the portrayal of violence in this episode. Viewers were particularly concerned about the gang attack in the Queen Vic, the attack on Honey and the birth of her baby, and the general level of violence in the episode as a whole.

Ofcom asked the BBC for comments in relation to Rule 1.3 (children must be protected by appropriate scheduling) and Rule 1.11 (violence must be appropriately limited in programmes broadcast before the watershed).

Response

The BBC said that there had been a gradual build-up to this menacing storyline over several episodes. Jase had been released on licence from a three-year prison sentence for football-related violence. On release, he felt his responsibility to his son was incompatible with his involvement in a violent gang. Jase approached the gang leader to tell him of his decision to leave the gang. The BBC believed these episodes alerted the audience to the sinister nature of the gang and the potential for violence. In the previous episode on 12 November 2007, the gang were seen gathering outside the Queen Vic.

At the start of the episode complained of, the broadcaster alerted viewers to its content with an announcement stating "*And first a powerful EastEnders as a peaceful night is shattered. Things are about to turn very ugly at the Vic.*" A reprise of the closing scenes of the previous episode was included to ensure that viewers were fully alerted to the impending violence. Although the BBC acknowledged that the violent scenes were relatively prolonged and depicted harrowing experiences for many familiar characters, the main focus was on smashing glasses and furniture. There was little explicit or graphic violence involving people. The BBC believed the individual incidents were within the limits of this drama. At no time was the violence condoned, with a number of characters expressing condemnation of it.

The BBC said that only one in twenty episodes broadcast feature a single storyline, including the episode complained of, whereas a more usual one cuts between about five. Given this feature and the uncertainty about the fate of Honey's baby, the BBC believed this may have added to its intensity and the impact on viewers. In contrast, it said it only received 11 complaints about the Sunday omnibus edition. Although there was some editing of the violent scenes from that edition, viewers were immediately reassured that Honey had not lost her baby. The BBC said that the high level of complaint for the Tuesday episode was attributable to the viewers' suppositions about the possible outcome of the violence rather than to the violence itself.

While the BBC acknowledged that some parents and carers regard *EastEnders* as appropriate family viewing, those who hold a different view would have been sufficiently aware of the nature of the drama to make an informed judgement based on content advice in listings magazines, which was reinforced by an appropriate on-air announcement and a carefully-calculated opening scene.

For these reasons, the BBC considered that this episode was compliant with the requirements of Rules 1.3 and 1.11 in relation to the scheduling of material inappropriate for children and depiction of violence.

Decision

Ofcom notes that the BBC had edited out around 20 seconds from the gang attack on the Queen Vic in the Sunday omnibus edition when viewers knew in this programme that Honey's baby had survived. The BBC believe this may have had a bearing on the amount of complaints it received. However, the vast majority of complaints received by Ofcom concerned the gang attack and the general level of violence in the Tuesday episode. Out of 78 complaints received for the Tuesday episode, only 13 viewers specifically mentioned the apparent 'death' of Honey's baby as being a contributory factor to their concern at the amount of violence in this episode.

Rule 1.11 requires that violence must be appropriately limited before the watershed and must be justified by context. In April 2007 (Broadcast Bulletin 83), in light of its concerns about the apparent increase in the use of violence in soaps, Ofcom reminded broadcasters of the need to ensure that violent content in soaps was treated with particular and due care, especially in relation to Rule 1.11.

Although *EastEnders* is not made specifically for children, it does attract a significant child audience and any portrayal of violence needs to be carefully considered with this in mind. The programme started with the gang attack on the Queen Vic. This involved a sustained, intense and high level of violence, destroying parts of the pub with hammers and bottles and glasses smashing into the furniture, to intimidate the locals, some of whom were injured. This was a persistent attack on both people and property. The gang then threatened the locals resulting in one of them being beaten up. Although the actual assault was only partly seen in long shot, it was clear the person had sustained some injuries. The culmination of this sequence was the confrontation between Jase and the gang in the pub cellar when Honey walked into a highly volatile situation as it was clear one of the criminals was high on drugs. She was then knocked down during a fight and went into labour. These scenes dominated the first 10 minutes of the episode.

Regular viewers would have been aware of the circumstances surrounding this storyline and, given this context including the build-up, an attack on the Queen Vic was not entirely unexpected. Individually many of the scenes were carefully shot to avoid showing graphic violence; however, the initial scenes of the gang running amok in the pub was a sequence of sustained violence. When viewed in conjunction with the assault and scenes in the cellar, this contributed to the overall effect of an extended sequence dominated by violence. Rule 1.11 requires that broadcasters appropriately limit violence, whether verbal or physical, before the watershed. In Ofcom's view the violence was not appropriately limited for this time of the evening when many children are available to view television. Given the portrayal of the extended sequence in the pub and the sustained tone of intimidation and menace, which dominated a substantial part of this episode, we concluded that this episode was in breach of Rule 1.11.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling should be judged according to a variety of factors including:

- the nature of the content;
- the likely number and age range of children in the audience;
- the start time and finish time of the programme;
- the nature of the channel and the particular programme; and
- the likely expectations of the audience for a particular channel.

Regular viewers of *EastEnders* are aware that this soap deals, on occasions, with tough, social issues. This is balanced, however, with the expectation that it will be suitable for children to view, who form a significant minority of the audience. Content advice may be useful in providing viewers with information about stronger storylines and we note some was given at the start of the episode. However, in Ofcom's view, the information supplied did not help to prepare viewers adequately for the violent and intense scenes which followed. Also providing this information does not, in itself, relieve broadcasters of a duty to ensure that material is appropriately scheduled. Therefore we considered, on balance, that the violent content and its duration exceeded many viewers' expectations for a drama which is transmitted an hour and a half before the watershed at 19:30 on BBC1 when children are likely to be viewing. Ofcom, therefore, concluded that the episode was also in breach of Rule 1.3.

Breach of Rules 1.3 and 1.11

Not in Breach

Coronation Street

ITV1, 30 October 2006, 19:30

Introduction

One of the characters in this series, Charlie Stubbs, was having an affair with the hairdresser Maria. The teenager, David Platt, had spent a number of weeks taunting Charlie Stubbs that he knew about the affair. Charlie, known to viewers as a womanising bully, confronts David by luring him to Maria's flat. Although the exact details are not made clear to the viewer, David's hands are tied behind his back and he is made to kneel next to a bath full of water. Charlie then forces David's head under the water several times and holds it there for a few seconds. Charlie stops when Maria returns unexpectedly to the flat.

31 viewers complained that some scenes in this episode of *Coronation Street* were unacceptable, because they featured bullying and torture. They said the scenes were inappropriately scheduled before the watershed; and that the behaviour shown might be imitated.

ITV1 was asked to comment in the light of Rules 1.3, 1.11, 1.12 and 2.3 of the Broadcasting Code ("the Code").

Response

ITV1 defended the scene in question, saying that the relationship between Charlie Stubbs and David Platt had developed over a number of episodes so that it was well known and understood by viewers. Charlie had increasingly become known for being a womanising bully and David for being a vindictive teenager, both of whom were vying for Maria's affections. ITV1 considered the background to the scene had been set and that the majority of viewers were prepared for the inevitable confrontation between them.

ITV1 pointed out that it gave information before the programme in the form of the words "*Charlie has a nasty surprise for David*". They said they had sought to minimise the impact of the bathroom scenes by inter-cutting other scenes of ordinary street life at various points throughout the 'dunkings'. On the 'dunkings' themselves, ITV1 said that the scenes featured only brief shots of the submersion, focussing more on the dialogue between David and Charlie, which had a comic element. The 'dunkings' were Charlie's way of frightening David Platt without causing him any serious harm. ITV1 considered that the potential for emulation of this type of behaviour, by those with no previous disposition towards anti-social conduct, was very limited and pointed out that there is nothing novel in the concept of 'dunking' as a punishment.

ITV1 concluded by saying that the provision of exciting, stimulating and realistic drama in a steadily developed story with clear character definition is within the editorial context of the series and fell within the expectations of the majority of *Coronation Street's* viewers.

Decision

Rule 1.3 of the Code requires that children must be protected by appropriate scheduling, for example, by giving consideration to the nature of the programme's content, the likely number of children in the audience and the likely expectations of the audience at the time. Ofcom has considered appropriate scheduling against these criteria. As regards the nature of the content, although the scenes complained of were violent we concluded that overall viewers would have been sufficiently alerted to the tense relationship developing between the two characters over a number of weeks so that they were not unexpected, and they were edited in such a way that the violence was not dwelt on unduly or was inappropriate. Further, when judging compliance with this Rule, Ofcom took into account that *Coronation Street* is not aimed at children and BARB data for this episode indicates that children aged 4 to 15 comprised 9% of the viewing audience. Given these factors, Ofcom therefore considered overall that the dunking scenes were scheduled appropriately.

Viewers were also concerned that the level of violence shown in the 'dunking' scenes was inappropriate for the time of transmission. Rule 1.11 of the Code states that: "Violence... must be appropriately limited in programmes broadcast before the watershed, ... and must also be justified by the context". Ofcom noted that whilst 'dunking' is not frequently dramatised on television, it may be appropriate for a broadcaster to incorporate it into a storyline if the context justifies it. On this particular occasion the violent impact of the 'dunking' was tempered by: cross-cutting with scenes of commonplace Street activity; using scripted humour; and showing that David Platt suffered no serious harm as a result. Ofcom judged the scenes, in the context in which they were presented, to be acceptable under Rule 1.11 of the Code.

Rule 1.12 of the Code requires that: "Violence...that is easily imitable by children in a manner that is harmful or dangerous must not be broadcast before the watershed...unless there is editorial justification". The more easily imitable the violence the greater the degree of editorial justification required. Ofcom considers that the violence featured is not easily imitable by children in a manner which is harmful or dangerous. To imitate the 'dunking' shown would require considerable force, and for the victim to be tall enough to kneel beside a bath but simultaneously be capable of submerging his head in water contained in it. Even if there were some risk of imitation, we believe that the scenes were editorially justified by the plot development, the characters involved, and the manner in which it was edited.

Rule 2.3 of the Code requires that material which may cause offence is justified by context. For all the reasons already set out in this finding, Ofcom considers that the scenes were justified by the context. The same rule however also states that: "appropriate information should ... be broadcast where it would assist in avoiding or minimising offence". Ofcom considered that the pre-transmission information ("*Charlie has a nasty surprise for David*") could have been more detailed in order adequately to inform viewers in advance of this episode's violent content. Ofcom has therefore advised ITV1 that the pre-transmission information on this occasion could have been clearer.

Not in Breach