

The Sex Business: Me and My Sex Doll **The Sex Business: OAPs on the Game** **The Sex Business: Teens Selling Sex**

Type of case	Broadcast Standards
Outcome	In Breach
Service	Channel 5
Date & time	17 June 2019, 22:00, 18 June 2019, 22:00 and 19 June 2019, 22:00
Category	Protection of under eighteens; Generally accepted standards
Summary	The broadcast of strong sexually explicit images and language was not appropriately scheduled so as to ensure protection of children, and was potentially offensive but not justified by the context. In breach of Rules 1.19 and 2.3 of the Broadcasting Code.

Warning: this Decision includes graphic descriptions of extreme sexual activity

Introduction

The Sex Business is an observational documentary series on Channel 5 investigating people's sexual choices. The licence for Channel 5 is held by Channel 5 Broadcasting Limited ("Channel 5" or "the Licensee").

Ofcom received 44 complaints about the third series¹ of *The Sex Business* which comprised three episodes titled: *Me and My Sex Doll* ("Episode 1") 23 complaints; *OAPs on the Game* ("Episode 2") 10 complaints; and *Teens Selling Sex* ("Episode 3") 11 complaints.

¹ Ofcom found the second series of *The Sex Business*, broadcast in December 2018, breached Rules 1.19 and 2.3 of the Broadcasting Code. The decision was published in [Issue 381 of Ofcom's Broadcast and On Demand Bulletin](#)

The programmes included interviews with: (i) sex workers and images of real sexual activity between the sex workers and their clients; (ii) adults who participate in pornographic films and images of real sex acts; and (iii) people working in the sex doll industry and images of real sexual activity between adults and sex dolls. In summary, the complainants considered that the sexual activity shown in these episodes was unsuitable for broadcast on Channel 5 at 22:00.

Episode 1: Me and My Sex Doll

The following warning was broadcast (narrated and shown in text):

“Be prepared for sexual activity right from the start, offensive language, masturbation, full frontal nudity, graphic discussion and footage of interaction with sex dolls, which may disturb some viewers”.

When the programme resumed after advertising breaks the same warning was broadcast each time².

The episode included the following sexual content:

- a man having sex with a sex doll, filmed mid-shot to the side and front, and filmed from his point of view, close-up so his erect penis was shown entering the sex doll’s “vaginal” opening;
- a close-up shot of a naked female adult sex performer, with her legs wide open to camera, while her partially masked vulva was photographed so it could be replicated on a sex doll;
- a close-up partially masked shot of a woman bending over on all fours with her buttocks towards the camera as her anal and vaginal areas are photographed so they could be replicated on a sex doll;
- a close-up shot of a man having sex with a sex doll, filmed from a camera on the body of the man, showing extreme close-up images of the man’s erect penis entering the sex dolls “vaginal” opening. Two separate close-up images of the man’s ejaculate in the vaginal opening were then shown;
- a mid-range shot of a man masturbating to erection to prepare for sex with a sex doll, mid-range side shots of him having sex with the sex doll and a close-up shot showing his penis entering the “vaginal” opening; and
- a technologically advanced sex doll interacting with a man and saying: *“I want you to fuck me in the ass this time”, “oh please, please, please I want to feel your cock stretching my asshole”* and *“you can fuck my ass all night. I love it when you go deep on me”.*

Episode 2: OAPS on the Game

The following warning was broadcast (narrated and shown in text):

on 24 June 2019 and the three episodes of this third series were broadcast a week before that publication, on 17, 18 and 19 June 2019.

² All of the episodes included a stylised version of a real image from the programme as an ident for the programme (a ‘part break bumper’) with the text The Sex Business and the title of the episode (for example: *“The Sex Business: Me and My Sex Doll”*) These idents appeared immediately before the start of the advertising break and again at the end of the advertising break before the programme resumed. In Episode 1, the ident was an image of the heads of three sex dolls. A description of the idents for the other episodes is detailed in the body of this Decision because they were of a strong sexual nature.

“Be prepared for full frontal nudity from the very start, frank discussion of sex work by the older generation and graphic scenes of sexual activity and masturbation which may offend some viewers”.

Before the advertising break a stylised version of a real image of two men engaged in a mutual oral sex act was shown as an ident for the programme (a ‘part break bumper’). When the programme resumed after advertising breaks, the same image of the two men and onscreen text was shown, and then followed by a very similar warning. These idents appeared onscreen for 3 seconds at: 22:08 and 22:12; 22:26 and 22:30; and 22:46 and 22:48.

Episode 2 included the following sexual content:

- mid-range partially masked shots of a naked female sex worker performing sex acts, with a prosthetic penis, for a webcam. The sex acts included: the simulation of oral sex and sexual intercourse; and, opening her legs to camera and positioning the prosthetic penis around her vulva;
- a mid-range shot of a male pornographic film actor masturbating to camera;
- a second male pornographic film actor explaining to the director the image he wishes to portray on film: *“...there are two more essential things to be conveyed and one of them is mutual ass eating with cocks on top of hearts. It’s called the hearts 69 position so we will be eating ass at the same time that our cocks are sliding around on our chests...which is an essential whole body ecstatic position that doesn’t involve fucking or sucking...”* followed by a mid-range side shot of the two actors performing the same sex act;
- mid-range and close-up partially masked shots of the same female naked sex worker and her client performing oral sex and sexual intercourse in a variety of positions; and
- close-up shots of a transgender sex worker demonstrating how she dilates her neovagina following transition surgery. The images included the woman placing her finger into her neovagina³ followed by a lubricant tube and a range of different sized prosthetic dilators.

Episode 3: Teens Selling Sex

The following warning was broadcast (narrated and shown in text):

“Be prepared right from the very start and throughout for full frontal nudity, frank discussion and graphic scenes of actual sexual activity and highly offensive language, which may disturb some viewers”.

When the programme resumed after advertising breaks a stylised version of a partially obscured real image of the buttocks of a sex worker with oil being applied by a client with an erect penis was shown, as a part break bumper for the programme, followed by a very similarly worded warning. These idents appeared for three seconds at: 22:08 and 22:12; 22:26 and 22:30; and 22:46 and 22:48.

Episode 3 included the following sexual content:

- a close-up shot of a female sex worker masturbating a male client and putting his penis in her mouth. She said: *“...me sucking cock – a lot of people come to me for”*;
- a close-up image of the same sex worker’s bare buttocks twerking to camera;

³ A neovagina is a vagina created through surgery called a vaginoplasty.

- a close-up shot of a naked female sex worker positioning herself on all fours thrusting and slapping her buttocks for a webcam client and showing her anal area which was partially obscured;
- close-up shots of the same naked female sex worker masturbating her clitoris for the webcam client (no genital detail was shown);
- a side on mid-range shot of a sex worker having sex with a client (no genital detail was shown);
- a mid-range shot of a sex worker massaging her breasts for a webcam client. She said: *“if we were together you wouldn’t have to wank, it would be me doing it for you”*. The client replied: *“oh fuck I’m going to come”*;
- partially obscured close-up shots of a female sex worker on all fours with her buttocks to the camera while a naked client with an erect penis pours oil on her buttocks and has anal sex with her (the female sex worker’s genitals were visible); and
- a repeated close-up shot of the same sex worker orally masturbating a male client.

Ofcom considered that the sexual material in the above episodes raised issues under the following rules of the Code:

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

Rule 1.19: “Broadcasters must ensure that material broadcast after the watershed, ... which contains images and/or language of a strong or explicit sexual nature, but is not ‘adult sex material’ [as defined in Rule 1.18⁴...], is justified by the context”.

We therefore asked the Licensee for its comments on how the programmes complied with these rules.

Response

Channel 5 said that this was the third series of *The Sex Business* and it had “listened to and sought to reflect Ofcom’s previous guidance in this area”⁵. Mindful that the content of the series was of “potential sensitivity to some viewers”, Channel 5 said it sought to justify and contextualise the material in the series “in a serious and journalistic way”. It added that as the number of complaints was “relatively limited” this indicated that the material was in line with audience expectation. Channel 5 added that this third series had been broadcast before Ofcom had published its decision on the second series of *The Sex Business*⁶ and the broadcaster reassured Ofcom that it had “carefully and closely reviewed that decision” and would apply the principles in its programming.

⁴ Rule 1.18 defines ‘Adult sex material’ as material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation.

⁵ See: footnote 1.

⁶ See: [Issue 381 of Ofcom’s Broadcast and On Demand Bulletin](#), published on 24 June 2019.

Like the previous two series, the third series was broadcast at 22:00 when, the Licensee said, audiences expected stronger material to be scheduled. This was an observational documentary series “investigating the lives of sex workers in the modern world, how they live their lives, what they are requested to do by their clients and how they justify and cope with the profession they have chosen”. The Licensee continued that the series “was not sensational or titillating, but serious, considered and journalistic”.

Channel 5 explained that the editorial aim of the series was to hear the stories of sex workers in their own words and not to judge or characterise them but to “foster understanding of, and inform viewers about, aspects of modern British life rarely considered in public service broadcasting”. In the Licensee’s view, the series depicted the “harsh and sometimes grim reality” of clients’ expectations, how the sex workers justified the services provided and how they felt about themselves and their clients.

Channel 5 also said the editorial aim was to ensure that the series was “an honest, rarely seen account of what it is like to be a sex worker, warts and all”. The approach and tone were that of a serious documentary that sought to strike the right balance between hearing “revealing testimony” with material from their working lives “told by themselves and occasionally their clients”.

The Licensee added that very careful consideration was given to the footage to be included and the way in which it would be included. It accepted that some of the footage in the episodes was potentially offensive and “steps were taken to ensure that each piece of footage used was relevant in the context of each programme and that blurring and other devices, such as footage shot from a distance, were used to reduce any potential offence while still achieving the ambition for the series”.

In addition, to ensure viewers would understand from the outset the nature of these programmes, Channel 5 said that all episodes carried “very clear and explicit warnings” (as set out in the Introduction above). Given this, Channel 5 said viewers would have been left in no doubt about the nature of the content in the programmes.

Episode 1: Me and My Sex Doll

Channel 5 explained that this programme examined the hidden world of people who use and supply sex dolls exploring the variety, the sexual experiences and motivations for their use.

Channel 5 accepted that some of the footage in this episode “may have been potentially uncomfortable to view”. However, it considered the content was “editorially important and justified” as viewers would understand and make sense of the nature of, and the fulfilment of, the interaction between users and sex dolls. It also demonstrated that neither the users nor the suppliers of the dolls found the interactions “strange or shocking” and predicted the use of sex dolls would increase enhanced by the advances of new technology.

In response to Ofcom’s request for comments on the stronger sexual images featured in this documentary (see Introduction), Channel 5 said that:

- the images of a male contributor masturbating and then having sex with a sex doll were “necessary to illustrate his insightful comments and experience” and would not have

exceeded audience expectations, particularly given the explicit warnings at the start and throughout the episode;

- the images of the naked female adult performer's genitals, who was shown with her legs open to camera, were obscured by "a significant blur". These images were not included "casually or unnecessarily" but to illustrate the detailed process of ensuring anatomical accuracy for the increasingly sophisticated sex dolls being developed. The Licensee added that the footage was brief and "there was nothing sexualised about it"; and
- the footage of a male contributor filming his sexual interaction with a sex doll, was intercut with his interview during which he explained why he was one of the leading doll testers in the industry. The images of this contributor were "used judiciously", were all brief and "sought to demonstrate in a realistic and non-titillating way how the dolls were used from the perspective of the user". The Licensee said that in all the images where the man's penis was visible it was blurred. The footage of the ejaculate was used to demonstrate "the genuine and very real and fulfilling nature of the sexual interaction that some people can have with dolls". This formed part of the contributor's view that sex dolls were a serious addition to the sex business landscape and sexual interaction in the future. The Licensee also said that the ejaculate in the scene was blurred.

Episode 2: OAPs on the Game

The second episode in the series explored how older people are finding work and a role in the provision of sexual services. The older sex workers explained the nature of their work and their motivations.

In response to Ofcom's request for comments on the stronger sexual images featured in this documentary (see Introduction), Channel 5 said that:

- the female contributor was shown demonstrating a variety of sexual acts which illustrated the variety of work she undertook. The images were blurred so her client's penis was not visible and her genitals were also obscured. The footage showed the female sex worker's interaction with her online paying audience and showed the reality of her daily life as a "porn entrepreneur who sells her wares online" to support herself and her husband. The footage was justified because it gave a clear depiction of what her life was like and what she had to do to provide financial security;
- the older male adult performer was featured in the episode on the location of a "porn shoot". The more overt sexual engagement filmed was not included but it was considered editorially important to include images that illustrated what he was there to do on the film set despite his age. The image of the contributor masturbating was filmed for the purposes of the porn film and was not shot close-up, his penis was not fully erect and it was "all very matter of fact". The footage of the contributor and his co-star in the film in a sexual position and "apparently licking each other's buttocks" was filmed side on "and neither anus nor penis was visible";
- it was considered important that the documentary properly chronicled the reality of the daily post-operative medical procedures undertaken by the newly transitioned contributor featured in the programme. The images of the dilation, which involved inserting different sized dilators into the neovagina, showed a medical procedure and was purely instructional to show how the neovagina must be maintained. The footage,

which was not blurred, was included to “underscore the realities following gender reassignment surgery and a moment in the documentary that responsibly demonstrated the reality of what it is like to transition later in life”.

Referring to the brief image of the two male adult performers engaged in a sex act, described by the adult performer as a “hearts 69” position, which was briefly shown before the on-screen and narrated warning after the advertising breaks, Channel 5 said it did not show any explicit material as it was shot side on. It added: “[N]o penis, tongue, anus or orifice was visible”.

Episode 3: Teens Selling Sex

The third programme explored teenagers working in the sex industry and largely consisted of the teenagers telling their stories to camera. Some footage, which illustrated what they were talking about and the realities of their work, was included to help understand their “unconventional lifestyle and their commercial awareness”.

With specific reference to Ofcom’s request for comments on the stronger sexual images featured in this documentary (see Introduction), Channel 5 responded that:

- the footage of the sex worker providing services to clients via the webcam was included to illustrate what life is like for young women performing sexually on camera. The images broadcast were “relatively brief and inexplicit” and her vagina and anus were blurred;
- the footage of the sex worker having sex with a client was filmed from the side and no penis or vagina were visible. The footage was “entirely in context” as the sex worker was explaining why she chose only to have sex with clients in this position as a means of personal safety and it was “relatively brief and inexplicit”; and
- the footage of the female sex worker having sex with a client was “quite dark and indistinct” and was used to illustrate briefly the nature of the work she described and that an aspect of her business was to sell the clips of her sessions to her clients.

The same image of the female sex worker with a sexually aroused client, pouring oil of her buttocks as he is about to have anal sex with her, was briefly shown before the on-screen and narrated warning after the advertising breaks. Channel 5 said the part break bumper image did not show “explicit sexual activity, was quite indistinct and the penis was blurred”.

Channel 5 said that it appreciated that this series, which started at 22:00, contained “challenging material”. However, there were “clear and detailed warnings on screen at the start of every part, both visually and verbally” and the footage was well-considered as part of the overall storytelling of this series. The Licensee added that it did not consider the inclusion of the footage “to have been prurient or out of context with the clear editorial aims of the series, namely to explore the explosion of the sex business in the 21st century, where attitudes and tolerance to sexual practices of all sorts has changed dramatically over the last decade”.

In addition, Channel 5 said that the tone of the series was not sensationalist or titillating, rather it was “flatly observational” allowing the subjects to speak about their lives, actions and clients and the audience to judge for themselves what they thought about all of those matters”.

Channel 5 said the broadcast of this documentary series at 22:00 was a time when stronger material was considered more acceptable by viewers and when viewers expect to see stronger material on Channel 5. The Licensee said that this was a serious observational series and there was no purpose to arouse or titillate viewers and there was “a very strong editorial justification for the content all of which was fully contextualised”.

Channel 5 explained it was directly relevant, in the context of each episode, to include sexual content to support the overall narratives. There was a clear link between the editorial aim and the inclusion of sexual content which allowed viewers to understand the contributors’ work and their rationalisation of it. Channel 5 referred to Ofcom’s research [Attitudes towards sexual material on television](#) and highlighted the finding that survey participants considered that: [F]actual programming, documentaries and educational programmes were seen to present the strongest justification for including sexual content, particularly stronger sexual context...” and that in these circumstances “...sexual material was often seen as necessary to support a point...”. It therefore concluded that Ofcom’s own research suggested that viewers would not be surprised or take exception to the fact that this series contained stronger sexual content and that in the circumstances it would not exceed their expectations.

In addition, the Licensee said that clear and unequivocal warnings were attached to the start of the documentaries and on return from every break part (see Introduction). Channel 5 said that these were among the strongest and most explicit warnings, which were carefully chosen to try and ensure that no viewers would have been left in any doubt about the nature of the content.

Given the editorial context, the observational nature of the series and what Channel 5 considered to be the “appropriate late-night scheduling” of the programmes, it said it did not believe that the content of this second series of *The Sex Business* would have exceeded the expectations of the viewers or generally accepted standards in the circumstances.

Channel 5 said it therefore considered that the series was justified by context for broadcast at 22:00 and it was not in breach of Rule 2.3.

Rule 1.19

Channel 5 said that for the reasons it had given it was satisfied that the material in the series was justified by context. Further, it said that the 22:00 scheduling properly protected the under 18s who represented less than 1% of viewers for two of the documentaries and less than 2% of the audience for the other documentary.

Channel 5’s Representations on Ofcom’s Preliminary View

In response to Ofcom’s Preliminary View that the programmes were in breach of Rules 1.19 and 2.3, Channel 5 provided further representations.

Channel 5 said that it was disappointed to receive Ofcom’s Preliminary View that series three was in breach of Rule 1.19 and 2.3, as it had taken great care to ensure that the content and scheduling of the episodes in this series took account of Ofcom’s breach decision regarding series two and its decision not to investigate series one of *The Sex Business*.

Rule 2.3

Channel 5 accepted that the three episodes “contained strong sexual content and had potential to cause offence” but considered that the content of the three documentaries was justified by context. It identified the relevant contextual factors as:

- the editorial content – Channel 5 referred to Ofcom’s comments in the Preliminary View which said that the programmes were observational documentaries and that it was relevant to the context to include sexual content to support the overall narrative;
- the service on which the material was broadcast – Channel 5 disagreed with Ofcom’s view that the scheduling of the programmes at 22:00 was not appropriate for a freely available public service channel. It said Ofcom had not taken account of its own research Attitudes towards sexual material on television which said that while public service channels were seen viewers as “less likely” to feature stronger sexual material than digital channels, Channels 4 and 5 were perceived as being more likely to show stronger sexual material than the other public service broadcasters (PSBs). Channel 5 said it appreciated that viewers “may not have expected to see the programmes on the BBC” but the material “was more likely to have been within the expectations of viewers on Channel 5”;
- the scheduling – in terms of the numbers of children viewing the content of the three episodes, Channel 5 said that there were more children viewing the programmes both before and after the three programmes in the third series and in the case of the third programme significantly more. The BARB data showed that before the third episode 35,000 children were viewing and after the episode 10,000 children were viewing while the episode itself only attracted a child audience of 1,000 children;
- the degree of harm and offence – while Channel 5 said that it accepted that the episodes contained strong sexual content that had the potential to offend, Ofcom’s research Attitudes towards sexual material on television identified that personal offence caused by such material was “of less concern” than protecting under eighteens because participants were of the view that adults can switch off the television or change channel;
- the size and composition and the expectation of the audience – Channel 5 said that its viewers were “likely to expect stronger sexual material on Channel 5 at 22:00” and these three episodes was “unlikely to have exceeded their expectations”, particularly given the titles and the fact this was the third series. It added that viewers were aware these were serious documentaries and this provided the strongest justification for including the sexual content. In addition, clear and specific warnings were provided prior to and throughout the broadcast;
- the extent to which the nature of content was brought to the attention of the potential audience – the titles of episodes signposted the nature of the content to most viewers. Ofcom has acknowledged that the warnings, at the start of each programme and following each advertising break, were clear and explicit. Even if viewers were not already on notice from the programme titles and the previous two series of *The Sex Business*, the warnings would have left viewers in “no doubt” about the content and they would have been in a position to choose if they wished to view; and
- the effect of the material on viewers and listeners who may come across it unawares – the fact that Ofcom received “just” 44 complaints about this series suggested that the episodes did not cause widespread offence. Channel 5 added that the episode titles, the established nature of the series and the fact that there were “explicit” warnings at the start and during

each programme meant that it was “unlikely that anyone would have come across the content of the programme unawares.”

Channel 5 was of the view that Ofcom considered that the time of broadcast at 22:00, rather than 23:00, was the main reason why these episodes breached of Rule 2.3. Ofcom’s view, it said, “appears to heavily rely on” Ofcom’s research *Attitudes towards sexual material on television*. The Licensee commented that this research was undertaken over 10 years ago, sampled just 169 participants and therefore should be treated as “indicative” only. The broadcaster added that since the research was published much had changed “particularly with the explosion in channels available to viewers, catch up services and the internet” and therefore the findings “should be treated with caution.”

To underline that viewing attitudes towards sexual material have changed over time, Channel 5 referred to [Ofcom’s annual cross-platform media tracker research in 2017](#) which showed that the proportion of viewers who considered sexually explicit programmes should be freely available on any channel after 21:00 had risen year on year from 19% in 2014 to 31% in 2017. This gave “a very clear indication that viewer expectations in relation to sexually explicit content has changed significantly in a four-year period and that attitudes may be very different today to those identified in the 2009 research.”

Channel 5 said Ofcom should take into account the other contextual considerations set out above as well as the research as part of a “broad analysis”. It said that Ofcom had “placed too much reliance upon the 22:00 v 23:00 broadcast time to the exclusion of other contextual factors” and, in its view, the three episodes as broadcast at 22:00 would not have exceeded the expectations of viewers in 2019.

Rule 1.19

Channel 5 said that Ofcom’s view that the three episodes were in breach of Rule 1.19 was based on the scheduling at 22:00 not providing appropriate protection to under eighteens based upon BARB figures during the six weeks prior to broadcast. The figures quoted by Ofcom indicated that on average 19,500 children may have viewed television content at 22:00 on Channel 5.

The broadcaster expressed concern that the BARB data Ofcom was relying upon were consolidated figures not the “live figures” which relates to “people viewing the programme in a 7-day period (excluding +1 services) rather than those actually viewing Channel 5 live at 22:00.” In addition, the six-week period prior to broadcast, which Ofcom selected, included two bank holidays and a school half-term all of which were “likely to increase the number of children viewing at 22:00 on Channel 5.”

Channel 5’s own analysis of the BARB data for the “live” average number of children viewing Channel 5 at 22:00 Monday to Wednesday, for the six weeks prior to broadcast of this series (excluding the two weeks with bank holidays and half-term), was 13,406 children. It added that if Ofcom had chosen a year to date slot average from 1 January to 16 June the live data for children Monday to Wednesday would have been 11,168 “significantly less than the 19,500 relied upon by Ofcom.”

Finally, Channel 5 said the first and third programmes in this series attracted, respectively, 5,000 and 1,000 child viewers. This was “significantly less” than the average of 7,300 children viewing that Ofcom has indicated would have been acceptable if the programmes had been broadcast at 23:00⁷.

Channel 5 added that in these circumstances it was satisfied, given the previous child viewing figures for this series of *The Sex Business*, that scheduling the series at 22:00 provided “appropriate protection” to the under eighteens although it accepted that the second programme in the series attracted more child viewers than it anticipated.

In conclusion Channel 5 said that appropriate steps were taken to ensure that the episodes were made responsibly and in line with audience expectations as well as scheduled in accordance with the Code. The strong sexual content included in the relevant episodes of series three of *The Sex Business* was proportionate to the narrative aims of the programmes and “firmly justified within context.” In all the circumstances Channel 5 therefore invited Ofcom “to reverse its Preliminary View and find Channel 5 not in breach of either Rule 2.3 or 1.19.”

Decision

Reflecting our duties under the Communications Act, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes. Section Two of the Code requires that generally accepted standards are applied to the content of television and radio services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

In this case, Ofcom has had careful regard to the audience’s and broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights. In particular, Ofcom recognises broadcasters’ editorial freedom to make observational documentaries which reflect real life experiences and challenge viewers’ perceptions and attitudes, and for audiences to receive those programmes. In performing our regulatory duties, Ofcom must also have regard to the need to secure the application of standards in television services in the manner that best guarantees an appropriate level of freedom of expression⁸.

Rule 2.3

Rule 2.3 of the Code requires that broadcasters must ensure that material which may cause offence is justified by the context. Context is assessed by reference to a range of factors. These include: the editorial content of the programme, the service in which the material is broadcast, the time of broadcast, the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes and the extent to which the nature of the content has been brought to the attention of the audience in advance.

We first considered whether the sexual content (as set out in the Introduction) which featured in the three episodes of *The Sex Business* had the potential to cause offence.

⁷ According to BARB data the second episode in this series attracted an average child audience (4-15-year olds) of 21,200 children.

⁸ Section 3(4)(g) Communications Act 2003.

Ofcom considered that the content featured in the three episodes and detailed in the Introduction was of a strong and explicit sexual nature. Channel 5 also accepted the programmes contained “challenging material”. The programmes featured real (not simulated) sex acts, including: oral sex, sex with sex dolls and between sex workers and clients, anal sex and masturbation. In addition, the episodes included images of female genitals, erect penises and anal areas as well as sexually explicit language.

Ofcom considered that this was strong sexual content that had the clear potential to cause offence. We therefore went on to consider whether the broadcast of this content was justified by the context.

Ofcom recognised *The Sex Business* was an observational documentary series and that it was directly relevant in the context of each programme to include sexual content to support the overall narratives. The episodes established a clear link between the editorial aim of presenting the lives and the experiences of sex workers⁹, adult pornography actors and men who use sex dolls in their own words and the inclusion of sexual content which allowed viewers to understand their sexual activities and their rationalisation of them. Within the context of an observational documentary series about sexual choices and sex work, Ofcom considered the editorial context of these episodes clearly supported the inclusion of sexual content.

However, Ofcom is also required to take other contextual factors into account, in particular, the degree of harm or offence likely to be caused by the inclusion of material in programmes, the time of the broadcast, and the likely expectation of the audience.

We considered first the degree of offence which was likely to have been caused. Sexual content in programmes is, by its nature, sensitive and carries a greater risk of offence. In this case, the sexual content and sexual language featured as set out in the Introduction were strong as they were both graphic and explicit.

Ofcom considered Channel 5’s representations, that “very careful consideration was given to the footage to be included in the series and the way in which it should be included”. The Licensee said that the more extreme footage obtained was not included in the episodes. In addition, it said that blurring and other devices, such as footage shot at a distance, had been used to minimise offence. However, in Ofcom’s view, none of the images were shot at a sufficient distance or angle so as to limit their graphic nature. In addition, the images were not adequately masked with blurring and genital and anal areas and ejaculate were clearly visible. In some cases, no masking was applied at all, resulting in close-up images of female genital areas and erect penises. Furthermore, some of the footage included was filmed by the sex workers or contributors as they were engaged in sexual acts. In Ofcom’s view this resulted in clear close-up ‘point of view’ images showing the actual penetration of the male genitals into the sex dolls and a sex worker performing oral sex on a client’s erect penis.

Channel 5 also suggested that as some of the images were filmed to the side, no genital or anal areas were visible. For example, Channel 5 specifically referred to the image in episode 2 of the two adult performers engaged in a mutual oral sex act. Channel 5 suggested that, in that particular sexual position, the two men were “apparently licking each other buttocks”. In this example however, the

⁹ Channel 5 said that the programmes featured sex workers but not all the contributors in these three episodes were sex workers. For example, the men featured in Episode 1 who hired sex dolls or engaged with sex dolls for sexual and/or companionship purposes.

image was immediately preceded by a sexually explicit explanation of the position by one of the adult performers: “...there are two more essential things to be conveyed and one of them is mutual ass eating with cocks on top of hearts. It’s called the ‘hearts 69 position’ so we will be eating ass at the same time that our cocks are sliding around on our chests...which is an essential whole body ecstatic position that doesn’t involve fucking or sucking...”. In Ofcom’s view the strong sexual language describing the sex act made it clear to viewers what the act entailed. Even if it was the case that the visual images did not show the actual detail of the sex act, the explicit description made clear what was taking place and, in itself, had the potential to cause offence.

Ofcom next considered the time of the broadcast and likely audience expectation. We took into account Channel 5’s representations that, while the series contained “challenging material”, the scheduling at 22:00 was when audiences expected “stronger material” to be scheduled on Channel 5.

Given the strength of the graphic sexual content broadcast in this series, Ofcom disagreed that scheduling at 22:00 was necessarily appropriate for the broadcast of such strong sexual material, particularly on a freely available public service channel. Ofcom’s research [Attitudes towards sexual material on television](#) showed that stronger sexual material became more acceptable after 22:00 but *especially* after 23:00. This indicates that the more explicit the sexual material is, the greater requirement there is for careful contextualisation, which may include later scheduling.

Ofcom recognised that this was an observational documentary series and strong sexual images could be justified if there was sufficiently strong context for their inclusion for broadcast at 22:00 on a public service channel.

In Ofcom’s view the sexual images and language in this documentary were of a very strong sexual nature. The insufficient masking of the images and the inclusion of close-up and mid-range shots resulted in this sexual content being of a graphic and explicit nature. Some of the more graphic images, such as the ejaculate and oral masturbation of an erect penis, were also shown twice within the episode. Although the documentary genre provided editorial justification for the broadcast of sexual material, this was strong and explicit sexual material, broadcast on a public service channel without mandatory restricted access. Ofcom therefore concluded that these episodes were likely to have exceeded the expectations of the audience at this time, even for an observational documentary dealing with sexual themes with a serious and observational editorial purpose. Therefore, viewers were likely to have considered that this stronger sexual material required the strongest contextual justification and broadcasting the series later in the schedule after 23:00 could have helped to provide such justification.

We next considered the extent to which Channel 5 brought the nature of the content to the attention of the potential audience. We took into account that Channel 5 provided clearly narrated and on-screen warnings at the start of the programme and between the advertising breaks (as set out in the Introduction) to inform viewers of the strong sexual nature of the content in these episodes. The warnings advised that the episodes contained “sexual activity from the start”, “full frontal nudity” and “graphic scenes of actual sexual activity” which “may disturb viewers” or “may offend some viewers”.

In its representations, Channel 5 said the warnings were “very clear and explicit” to ensure that from the outset viewers would not be “left in any doubt about the nature of the content”.

Ofcom does not dispute that the warnings were detailed, clear and broadcast frequently during the programmes and that the programme titles were explanatory. However, the insufficiently masked and close-up graphic content and the sexual language were, in Ofcom's view, stronger and more explicit than viewers were likely to have expected in a programme broadcast from 22:00. We therefore considered the strong warnings may not have sufficiently prepared some viewers for the actual graphic and explicit sexual content broadcast.

In addition, the warnings broadcast after the advertising breaks in Episodes 2 and 3 were preceded by two stylised but real explicit images which had also appeared during the episodes. These were shown on-screen immediately after the end of the adverts as part break bumpers. In Ofcom's view, the decision by Channel 5 to broadcast these images *before* the on-screen and narrated warnings, would have, to some extent, undermined the value of the warning which followed. This was because viewers would not have been made sufficiently aware in advance of seeing these strong sexual images before the programme resumed.

Ofcom has had careful regard to Channel 5's right to freedom of expression which includes the audience's right to receive information without unnecessary interference. Ofcom acknowledges that it is important that broadcasters have the editorial freedom in observational documentaries to reflect real life experiences and challenge viewers' perceptions and attitudes.

However, we considered that the sexual content in this series was graphic and explicit and therefore could be defined as strong sexual material. The descriptions of the sex acts and sexual language taken together with the images, which were close-up and/or inadequately masked, allowed the audience to view genital and anal images, penetration, ejaculate and sex acts. Such content can be broadcast on Ofcom licensed television services, provided there is sufficiently strong context, with the time of broadcast being a crucial contextual factor. Even taking account of the editorial context of the programmes, which we recognise was an observational documentary series, and the clear warnings to viewers, it is Ofcom's view that the strong sexual content in this series exceeded the level of explicitness that viewers were likely to have expected to see in a programme broadcast from 22:00 on a freely available public service channel.

In its response to the Preliminary View, Channel 5 said that Ofcom had placed "too much relevance to the 2200 v 2300 broadcast time" to the exclusion of other contextual factors in coming to its decision in this case. Channel 5 added that Ofcom appeared to "heavily rely upon" the 2009 research, [Attitudes towards sexual material on television](#), which indicated that audiences consider that the later scheduling of strong sexual content can provide an additional level of contextualisation. In Channel 5's view this research was based on a small sample, indicative and outdated with respect to current viewing trends.

As set out above, Ofcom has reviewed all of the relevant contextual factors in this case – including: the nature of the content; the service on which it was broadcast; the degree of offence; the expectations of the audience; and the warnings that were given. Even taking into consideration the editorial context and the use of clear warnings in these episodes, it is Ofcom's view that the content was far stronger and more explicit than viewers were likely to have expected in a programme broadcast on a public service channel from 22:00. In Ofcom's view therefore greater contextualisation, such as later scheduling, was required to provide justification for its broadcast at 22:00.

Given this clear review of all of the relevant contextual factors, Ofcom therefore does not agree with Channel 5's assertion that it has "heavily relied upon" the 2009 research [Attitudes towards sexual material on television](#) in coming to its decision in this case. Ofcom cited this research because it also indicates that audiences consider that the later scheduling of strong sexual content can provide an additional level of contextualisation.

Channel 5 also referred to Ofcom's more recent [cross-platform tracker research](#) which found that the proportion of viewers who considered that sexually explicit programmes should be available on *any* channel after 21:00 had risen from 19% in 2014 to 31% in 2017¹⁰. Channel 5 concluded that this research gave "a very clear indication that viewer expectation in relation to sexually explicit content had changed significantly in a four-year period" and that "attitudes may be very different today to those identified in the 2009 research."

In Ofcom's view, the conclusions that Channel 5 has drawn from this 2017 research are misleading. When asked to choose which one of a series of statements best represented their opinion regarding the availability of sexually explicit adult on any TV channels, 31% of respondents indicated that TV programmes dedicated to sexually explicit material should be freely available after 21:00 on any television channel (including PSB services). However, the same research also found however that 43% of respondents considered that there *should* be restrictions on the free availability of sexually explicit channels to ensure under eighteens could not view adult sexual content¹¹. This research concerned sexually explicit adult programmes, which are currently only available to view with restricted access (behind PIN encryption) being freely available on all channels after 21:00. The research was not seeking a view from the respondents on whether strong sexual images were acceptable within a documentary format where the purpose was not intended to be sexual arousal¹².

Our Decision is therefore that the offensive content in these programmes exceeded generally accepted standards and was not justified by the context, in breach of Rule 2.3.

Rule 1.19

Rule 1.19 requires that images/and or language of a strong sexual nature broadcast after the watershed are justified by the context. The rule reflects that there may be circumstances where strong sexual material can be broadcast on freely available channels without mandatory PIN encryption. However, it does not provide broadcasters with unlimited licence in terms of broadcasting strong sexual material. The rule recognises that:

¹⁰ Ofcom's [latest research for 2018](#) found the figure had risen further to 34%.

¹¹ The most recent 2018 cross-platform research (see footnote 14 found that one in ten (11%) said that sexually explicit programmes should never be shown on television; 21% said sexually explicit programmes should be allowed on free-to-air/TV, but only accessible in the adult section of the TV planner (EPG) after 10 pm; and 18%, say sexually programmes should be allowed but only on paid-for/subscription channels with access restricted to those aged over 18 (e.g. via a PIN).

¹² Rule 1.18 of the Code requires that adult sex material – material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access. The respondents to the research were referring to this category of content.

- while the watershed at 21:00 is widely understood as the time when broadcasters can transition to more adult material, under-eighteens may still be viewing; and
- strong sexual material requires careful contextualisation to ensure that appropriate protection is provided to under-eighteens by reducing the likelihood of them viewing content which is unsuitable for them.

The [Guidance to Rule 1.19](#) sets out specific contextual factors that licensees should take into account when broadcasting strong sexual material after the watershed to ensure the material complies with the Code. These include (but are not limited to): the amount of sexual material; the explicitness of the material (the nature of the sexual activity and sexual language used and how graphic, prolonged or prominent it is); the purpose of the sexual scenes within the programme (whether this is to support an editorial purpose); and whether there is an educational or other purpose to justify the inclusion of material of a strong sexual nature.

In this case, as set out above, Ofcom considered this was an observational documentary series and that the inclusion of sexual content supported the editorial purpose. However, the strong sexual content included in the three episodes of *The Sex Business* was explicit and Ofcom also considered whether the scheduling of these episodes at 22:00 provided appropriate protection to under-eighteens to reduce the likelihood of them viewing. In particular, we assessed whether fewer children were likely to be viewing Channel 5 at 23:00 than 22:00.

Channel 5 highlighted that the three individual episodes had “only” attracted a child audience (4 to 15-year olds) of 1%, 1% and 2% respectively¹³. In response to the child audience viewing data, it is Ofcom’s view that these percentages still represented significant numbers of children viewing extreme sexual material at 22:00 across the three episodes. As Ofcom has identified through reviewing the audience data over a longer more reliable six-week time frame, 19,500 children between the ages of 4 and 15 may have viewed television content on Channel 5 at 22:00 while the average child audience between the ages of 4 and 15 significantly decreased to 7,300 at 23:00.

In its representations Channel 5 said that according to the live BARB viewing data the first and third programmes in this series attracted, respectively, 5,000 and 1,000 child viewers. Channel 5 therefore interpreted that this was “significantly less” than the average of 7,300 children viewing that Ofcom has indicated “could have been acceptable” if the programmes had been broadcast at 23:00. At no point has Ofcom indicated that any particular child audience could have been acceptable to view this series. Ofcom used the figure of 7,300, which was the average child audience over a six-week period, as a comparator to show that there was a lower child audience available to view Channel 5 at 23:00 than at 22:00 which had an average child audience of 19,500.

Channel 5 also provided its own analysis of the BARB data for the same period (which removed figures during the Bank Holiday and half term) in its representations. Channel 5’s analysis found the average numbers of children viewing Channel 5 at 22.00 was 13,406 children (compared to Ofcom’s figure of 19,500 children).

¹³ According to the BARB data cited by Channel 5 in its response, the actual number of children (aged 4-15 years) watching the three episodes were: 5,000 (episode 1), 21,200 (episode 2) and 1,000 (episode 3).

While Channel 5's own average six-week children's viewing data is lower than Ofcom's analysis, their data still indicates that:

- (i) significant numbers of children (13,406 4 to 15-year olds) may have been within the audience at 22:00 and therefore available to view strong sexually explicit material scheduled at this time; and
- (ii) the average number of children viewing at 22:00 (13,406 children according to Channel 5's analysis) was still materially higher than the average numbers of children viewing at 23.00 (which Ofcom's analysis found to be 7,300).¹⁴

It was therefore incumbent on Channel 5 to ensure that there were appropriate scheduling protections in place to protect under-eighteens, given the explicit and graphic sexual content and language broadcast. By scheduling the content from 23:00, Channel 5 was likely to have been better able to ensure that the series was sufficiently contextually justified.

For these reasons, it was Ofcom's view that by scheduling strong sexual material at 22:00, Channel 5 had not ensured appropriate protection was provided to under-eighteens and had not reduced the likelihood of children viewing content that was unsuitable for them.

For the reasons above, it is therefore Ofcom's Decision that the content also breached Rule 1.19.

As set out above, Ofcom previously recorded breaches of Rules 1.19 and 2.3 in respect of the second series of *The Sex Business* which had also been broadcast from 22:00. We took into account that our decision in that case was published shortly after this third series of *The Sex Business* was broadcast by Channel 5. Ofcom disagreed with Channel 5's view that the content and scheduling of the episodes in this series adequately took account of Ofcom's breach decision regarding series two and its decision not to investigate series one of *The Sex Business*. In Ofcom's view, the Licensee did not sufficiently address the same concerns Ofcom had set out in its published Decision on the second series

In light of the previous breaches relating to the second series, and our Decision in this case of breaches of Rules 1.19 and 2.3 in this third series, Ofcom intends to request that Channel 5 attends a meeting to discuss its compliance approach to the scheduling of sexually explicit content.

Breaches of Rules 1.19 and 2.3

¹⁴ Channel 5 did not provide its own average six-week BARB data analysis for children viewing at 23:00 but by comparison Ofcom's analysis indicated 7,300 children were viewing at 23:00