



Primal Fear

Type of case	Broadcast Standards
Outcome	In Breach
Service	Channel 5 +1
Date & time	27 January 2024, 04:05
Category	Scheduling Offensive language Generally accepted standards
Summary	A film containing unsuitable material for children was not appropriately scheduled, and the most offensive language was broadcast before the watershed. The content was potentially offensive and not justified by the context. In breach of Rules 1.3, 1.14, and 2.3 of the Broadcasting Code.

Introduction

Channel 5 +1 is a free-to-air broadcast television channel and rebroadcasts Channel 5’s programming output on a one-hour time delay. The licence for Channel 5 +1 is held by Channel 5 Broadcasting Limited (“Channel 5” or the “Licensee”).

Ofcom received a complaint about the broadcast of the above film – a legal mystery crime thriller – which has a BBFC rating of “18”. The complainant raised concern that the film was originally scheduled between 03:05 and 05:15 on Channel 5, but that the one-hour time-shift on Channel 5 +1 meant the film was also broadcast between 04:05 and 06:15, which meant that part of the film was shown outside the watershed hours of 21:00 – 05:30.

At the start of the film, at 04:05 on Channel 5 +1, the following warning was read out:

“Now, with strong violence, highly offensive language, and sexual scenes from the start and throughout, Richard Gere and Edward Norton star in the courtroom thriller ‘Primal Fear’”.

Between 04:05 and 05:30, the film included:

- a scene that showed a violent attack and included a graphic shot of a knife cutting off someone's fingers and blood spurting across their face;
- a scene that showed a bloody crime scene. It included five shots of a dead person covered in blood and stab wounds, and a graphic shot that showed the person's eyes had been cut out;
- a scene where a video of sexual abuse was shown, including nudity and teenage characters being directed to perform sexual acts; and
- multiple instances of offensive language being used, including 38 instances of the word "fuck" and its variations.

Between 05:30 and 06:15, multiple instances of the most offensive language were broadcast, including:

- one instance of the word "cunt";
- one instance of the word "motherfucking"; and
- 14 instances of the word "fuck" and its variations "fucked" and "fucking".

Additionally, scenes containing other material potentially unsuitable for children were broadcast. At 05:44 a courtroom scene featured a lawyer "Venable", cross-examining a witness, "Goodman", asking him to reveal details of sexual abuse. The following was said:

Venable: *"Can you describe for me what's on this tape?"*

Goodman: *"There was a sermon by Archbishop Rushman on it. A rehearsal of the sermon, I should say. Followed by, um, a kind of home movie".*

Venable: *"A home movie? Of what?"*

Goodman: *"Some altar boys".*

Venable: *"And?"*

Goodman: *"A girl..."*

Venable: *"Doing what? An altar boy lesson of some kind?"*

Goodman: *"Having sex".*

Venable: *"A 'porno' movie?"*

Goodman: *"Yes".*

Venable: *"Yes. Now, how is it, do you think, that this tape, this porno tape, was in the archbishop's closet, in order for Mr Vail to find it there?"*

Goodman: *"He was the, um, the director".*

Venable: *"Who was?"*

Goodman: *"Archbishop Rushman".*

Venable: *"And was the defendant one of the altar boys performing in the Archbishop's home movie?"*

Goodman: *"Yes, he was".*

Venable: *"Was his girlfriend? I believe her name is Linda Forbes".*

Goodman: *"Yes, she was".*

Venable: *"And did it appear to you that the defendant was enjoying performing in this film with his girlfriend?"*

Goodman: *"No, he does not".*

Finally, at 05:46, a scene showed graphic footage of a dead body being pulled from a river by police. The scene included multiple shots of the body, as well as two close-ups of the dead person's face where a bullet wound to the jaw was clearly visible.

We considered that the content broadcast before 05:30¹ was appropriately scheduled and did not raise issues warranting investigation. However, we considered that the content broadcast after 05:30 raised potential issues under the following rules of the [Ofcom Broadcasting Code](#) ("the Code"):

Rule 1.3: *"Children must... 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)..."*.

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 it is not limited to, offensive language, violence...humiliation, distress, violation of human dignity, discriminatory treatment or language...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".*

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

¹ As set out in the [Section One](#) of the Broadcasting Code the watershed applies from 21:00 to 05:30.

Response

Channel 5 said it looked into the matter as soon as soon as Ofcom requested a recording of the programme. It acknowledged and accepted that the broadcast was not compliant with Rules 1.3, 1.14 and 2.3 of the Code.

Channel 5 explained that the broadcast occurred as a result of human error, and following an internal investigation, new processes had been put in place. It said “senior personnel at the Channel have requested that, in addition to the manual planning process whereby start and finish times are plotted into 24 hour scheduling software, a ‘hard stop’ technical solution be put in place on the C5 scheduling system so that no content that is potentially unsuitable for children (or could otherwise be considered harmful and/or offensive in a pre-watershed time slot) can be scheduled to finish transmission after 4.30am [5.30am on C5+1]”.

The Licensee said that the new approach means “the only content that can be scheduled on C5 to finish transmission after 4.30am (and therefore on C5+1 after 5.30am) is content that has been reviewed by the compliance team and given an internal rating (which is recorded in the 24-hour scheduling software system)”. It went on to say the new process “will provide a robust safeguard to protect all our audiences, particularly children”.

Channel 5 said the new process also removed flexibility within the Channel 5 schedule, and that restricting the channel’s catalogue may have financial impact. It said “despite the adverse financial consequences that are likely to occur...the Channel recognises the importance of its obligations under the Broadcasting Code, and in particular, its duties in relation to the protection of under-18s by implementing a technical solution that provides (so far as possible) a complete and certain outcome”.

The Licensee said it hoped the new processes offered “some reassurance as to the seriousness with which we have treated the breach in question as well as our desire to take timely and effective steps to ensure that no such incident can happen again”.

Decision

Reflecting our duties under the Communications Act 2003, 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 content so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material in programmes.

Ofcom takes account of the audience’s and the broadcaster’s rights to freedom of expression as set out in Article 10 of the European Convention on Human Rights when considering a broadcaster’s compliance with the Code.

Rule 1.3

Under Rule 1.3, broadcasters must ensure that children are protected from unsuitable material through appropriate scheduling. Appropriate scheduling is judged according to factors such as: the nature of the content; the likely number and age range of children in the audience; transmission time; the nature of the channel; and the likely expectations of the audience.

First, we considered whether the broadcast of *Primal Fear* was unsuitable for children.

Ofcom considered the scene, as detailed in the introduction, in which a lawyer cross-examined a witness, and asked him to reveal details of sexual abuse towards an altar boy. While the scene is visually mild, it does contain clear references to an abusive sexual act, and phrases such as “a porno movie”, which younger children may not be ready to understand or process. Ofcom took into account our 2023 research; [Audience attitudes to violence and sexual content on television](#), which indicated that audience concerns about violence and sexual content centred around the need to protect children from content they may not be ready to process in their formative years, or cause them to ask questions that parents were not ready to answer.

Ofcom also took into account the scene where a dead body was pulled from a river. We considered the explicit close-ups of the dead person’s face and the bullet wound to his jaw, and that these images had the potential to be frightening for younger audiences. Our 2023 research showed that a key concern for audiences was the risk that children may be frightened or disturbed by violent or scary content, and that pre-watershed there should be minimal violence or threat or blood and injury.

Given the above, in Ofcom’s view, these scenes were clearly unsuitable for children.

We then considered whether this film had been appropriately scheduled.

The film was originally scheduled between 03:05 and 05:15 on Channel 5, which we considered appropriate scheduling given the film’s content. However, the one-hour time-shift on Channel 5 +1 meant the film was also broadcast between 04:05 and 06:15. This meant the part of the film which included the material described above was shown outside of the 21:00 – 05:30 watershed hours, and at a time when children would be likely to be watching. Ofcom considered that Channel 5 +1’s viewers, particularly parents and carers, would have an expectation that children would be protected from unsuitable material at these times, and would have been unlikely to have expected this type of content to be scheduled at this time of day on this channel, particularly given its proximity to the scheduling of the Channel’s children’s output *Milkshake!*. In Ofcom’s view, the nature of the content in the film would have exceeded the likely expectations of the audience for early morning, pre-watershed viewing.

We acknowledged the Licensee’s explanation of the circumstances that led to the scheduling error in the broadcast of this film, and the updated processes it had put in place to avoid recurrence. However, Ofcom’s Decision is that the broadcast of this film was not appropriately scheduled so as to protect any children in the audience from this unsuitable material and was therefore in breach of Rule 1.3.

Rule 1.14

Rule 1.14 prohibits the broadcast of the most offensive language on television before the watershed.

When considering this case, Ofcom took into account our 2021 research into [Public attitudes towards offensive language on TV and radio](#). This research found that the words “cunt”, “motherfucking”, and “fuck” and its variations were considered by audiences to be among the most offensive language and required clear and strong contextual justification after the watershed. It also found that audiences consider that, in order to protect children, these words should not be aired outside the hours of the watershed on television.

In this case, the broadcast of the words “cunt”, “motherfucking”, and “fuck” and its variations, between 05:30 and 06:15, was a clear example of the most offensive language being broadcast before the watershed. Ofcom took into account the warning at the start of the broadcast, but

considered this did not provide sufficient mitigation for the most offensive language being used outside of watershed hours.

As explained in our assessment of Rule 1.3, we also took into account the Licensee's explanation of the circumstances that led to the broadcast of this offensive language and the steps it said it had taken to avoid recurrence. However, Ofcom's Decision is that the broadcast of this film, which included the use of the most offensive language before the watershed, was in breach of Rule 1.14.

Rule 2.3

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive content is 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 expectations of the audience.

Ofcom first considered whether the material broadcast had the potential to cause offence.

In Ofcom's view, the broadcast of the most offensive language, specifically the words "cunt", "motherfucking", and fourteen instances of the word "fuck" and its variations, was clearly capable of causing offence to viewers.

We also considered the content broadcast in the courtroom scene – detailed in the introduction – which included clear references to the sexual abuse of an altar boy. In Ofcom's view, this content was also capable of causing offence to viewers.

Ofcom then considered whether the broadcast of this offensive content was justified by the context.

The offensive material was broadcast between 05:30 and 06:15 on a Saturday morning at a time when children would be particularly likely to be viewing, and when adult viewers would be unlikely to expect stronger content to be broadcast. Taking these factors into account, we considered that the majority of viewers would not have expected to hear this level of offensive language, or hear a description of sexual abuse, at this time. Ofcom took into account our 2023 research; [Audience attitudes to violence and sexual content on television](#), which indicated that audience's emotional responses to sexual and violent content tended to be a lot stronger when it was unexpected, and the viewer was taken by surprise. It also indicated that the likely presence of children in the home when watching increased the strength of any parental response. We also took into account the warning at the start of the broadcast, but considered this did not provide sufficient mitigation to viewers tuning in outside of watershed hours.

Ofcom took into account that the Licensee accepted that the broadcast was not compliant with the Code, and said that it had taken steps to prevent recurrence in the future. However, considering all the above, our view is that the broadcast of the most offensive language, and a scene where characters described sexual abuse, had the potential to cause substantial offence to viewers and was not justified by the context in which it was broadcast.

Ofcom's Decision is that the broadcast of this film was also in breach of Rule 2.3.

Breach of Rules 1.3, 1.14 and 2.3