

## 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

### 50 Cent Music Videos

*Greatest Hits TV, 22 June 2011, 09:00*

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#### 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 trunk<sup>1</sup> after being hit by the pump<sup>2</sup>”; 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”; 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 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

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<sup>1</sup> Trunk’ is the US term for boot of a car.

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

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 1.3

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 language<sup>3</sup> 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”<sup>4</sup>. 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 watching<sup>5</sup>.

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.

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<sup>3</sup> 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>).

<sup>4</sup> Ibid, p.106.

<sup>5</sup> 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*

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#### 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 hoe<sup>1</sup>, 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 head<sup>2</sup>".*

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

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

<sup>2</sup> 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 language<sup>3</sup> 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.

### Rule 1.16

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<sup>3</sup> 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 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-watershed<sup>4</sup>. 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**

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<sup>4</sup> Ibid, p.90.

## In Breach

### Candy Bar Girls (Trailers)

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

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#### 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 language<sup>1</sup> 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.

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

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 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 guidance<sup>2</sup> 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 language<sup>3</sup> 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**

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

<sup>3</sup> 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

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#### 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 research<sup>1</sup>).”

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 language<sup>1</sup> 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

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<sup>1</sup> 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

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#### 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”<sup>1</sup>. 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:

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<sup>1</sup> 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”<sup>2</sup>;*

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

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<sup>2</sup> 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

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#### 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 shawty<sup>1</sup> 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."

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<sup>1</sup> 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”<sup>2</sup>. 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

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<sup>2</sup> 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

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#### 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 shawty<sup>1</sup> 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

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<sup>1</sup> 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"<sup>2</sup>. 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

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<sup>2</sup> 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*<sup>1</sup>, 22 January 2011, 08:30

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#### 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:

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<sup>1</sup> 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

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#### 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 103<sup>1</sup>. 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.

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<sup>1</sup> [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb103/bb103.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb103/bb103.pdf)

## Decision

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 83<sup>2</sup> 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

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<sup>2</sup> [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb83/issue83.pdf](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*

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#### 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

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#### 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

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#### 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

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#### 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**