



Programme Complaints

FINDING BY THE GOVERNORS' PROGRAMME COMPLAINTS COMMITTEE

Jerry Springer - the Opera, BBC Two, Saturday 8 January 2005

1. THE COMPLAINTS

The complaints were taken under the BBC complaints process in place prior to 1 February 2005, in which the (then) Programme Complaints Unit did not investigate matters on which the Director-General had already taken a view (as in this instance). The complaints were therefore referred directly to the GPCC for investigation and a finding.

Summary of complaints

Jerry Springer – the Opera was broadcast as part of *Jerry Springer Night*, which was made up of the following programmes:

- *Some Things You Need to Know about Jerry Springer*
- *Ruby Wax Meets ... The Jerry Springer Show*
- *Jerry Springer – the Opera: Story of a Musical*
- *Jerry Springer – the Opera*

Overall the night was the subject of over 65,000 communications with the BBC. Around 96% were complaints, and the vast majority concerned the transmission of *Jerry Springer - the Opera* from 10pm. Over 84% preceded transmission and the purpose of those was, in general, to persuade the BBC not to transmit the programme.

The main areas of complaint were that *Jerry Springer – the Opera* contained:

- strong language (the abundance of expletives and the severity of these expletives): that the language was either intrinsically unacceptable or beyond what was warranted by the context
- blasphemy/disrespect towards Christianity

One third of complaints mentioned both.

A recurrent point in correspondence was that the BBC would not dare to broadcast programmes which treated other religions (particularly Islam) in the manner in which Christianity was treated on this occasion.

One recurrent paragraph in many of the complaints referred to the opera containing “8000” expletives and the reported comments by Roly Keating, Controller of BBC Two about the programme pushing “back the boundaries of taste and decency”.

The complaints about blasphemy/disrespect were in the main explicitly or implicitly based on what complainants saw as portrayal of religious figures in the second half of the opera and that these figures (and, by extension, Christianity itself) were the targets of mockery.

These complaints about blasphemy/disrespect focused on a number of features of the second half of the performance, principally:

- the portrayal of “Jesus” as a man in nappies who wanted to “poop in his pants”
- the reference to “Jesus” being “a little bit gay”
- “Eve” attempting to fondle the genitals of “Jesus”
- the description of “Mary” as “raped by an angel, raped by God”
- the portrayal of “Mary” as accusing “Jesus” of neglect
- obscene language put into the mouths of members of the Holy Family
- the portrayal of “Jesus” as offering violence
- irreverent visual and verbal allusions to the crucifixion
- the portrayal of “God” as needing Jerry Springer’s advice

To help the decision making process the Committee commissioned a report from an independent external Editorial Adviser with considerable experience in regulatory issues around harm and offence. He was asked to review the factors relating to the commissioning and transmission of the programme, and relevant editorial standards, codes and guidelines. The Adviser was not required to make recommendations on the GPCC finding. The report drew on a number of documents (listed below), recent independent research (analysed by the Editorial Adviser) and interviews with senior BBC management responsible for the decision to commission and broadcast the programmes: Controller of BBC Two, Controller, Editorial Policy and the Director of Television.

In addition to the Editorial Adviser’s report, the Committee had available to them:

1. BBC Producers’ Guidelines Section 6
2. Note from Programme Complaints Unit on post transmission complaints
3. Correspondence and press release from the Bishop of Manchester
4. Response from BBC Management including chronology of the decision to broadcast
5. BBC Charter and Agreement
6. Communications Act section 319
7. Ofcom Code on Standards
8. Ofcom Guidance Note on Profanity
9. Human Rights Act 1998
10. GPCC finding on Cyderdelic, 15 March 2004
11. Television Compliance Form
12. Press releases relating to the transmission
13. Radio Times article 8 January 2005
14. Transcript of Roly Keating interview on PM, Radio 4
15. Sample of emails received by BBC Information
16. Responses sent out by the BBC to complainants
17. BBC Information statistics on complaints
18. Glossary of names

2. CHAIRMAN'S REMARKS

- The decision was not about personal taste, but about whether the programme transmitted met the requirements of relevant editorial standards, codes and guidelines. As always Committee members would be approaching the discussion and finding with an open mind
- the decision was not about any individual complainant(s) but about the nature and seriousness of the complaints
- the report from the Editorial Adviser summarised the main question as whether *Jerry Springer - the Opera* created an unacceptable level of offence. In coming to a view the Committee must consider all the complexities and draw on all the requirements of the Charter and Agreement and appropriate codes and guidelines
- where precedents are mentioned in the Editorial Adviser's report, these should not be considered legal precedents, nor binding on the GPCC but useful guidance and context.

The Chairman also brought the following points to the Committee's attention:

- the BSC Code on Standards: in addition to the paragraphs quoted in the report from the Editorial Adviser, the Committee was provided with an extract from the Code paragraphs 36, 37, 43, 44 and 45 for reference during the meeting
- the Human Rights Act: an amended extract of the Editorial Adviser's report which reminded members of the exact wording of Articles 9 and 10 was distributed
- blasphemy: the Committee was provided with an additional note citing extracts from the Home Office website on the proposed offence on incitement to religious hatred. The website makes it clear that the Government has no immediate plans to repeal the blasphemy law. It also comments that *Jerry Springer – the Opera* would not fall foul of the proposed incitement to religious hatred offence
- some of the complaints refer to a remark "*pushing back the boundaries of taste and decency*" attributed in the press to Roly Keating, Controller, BBC Two. As there is a dispute over whether Roly Keating did say this, when considering this aspect of the complaint the Committee was asked to rely on the undisputed quote which appeared in the Radio Times: "*The Opera is about confronting people with extremes of taste and behaviour, so to compromise that would be pointless. Of course it won't be to everyone's taste, and that's a risk you take when you broadcast serious work.*"

A barrister was made available to the Committee to give any clarifications.

3. THE DISCUSSION

The Committee structured its discussion around a number of issues before coming to an overall view. They used as guidance the key issues set out in the Editorial Adviser's report, referring when necessary to the detail of the relevant codes and guidelines.

3.1 The BBC process

The Committee referred to the Television Compliance Form which was considered as part of the report from the Editorial Adviser and the chronology of events provided by BBC Management.

Key points raised by the Committee:

- one member of the Committee felt that BBC management showed a degree of naivety in failing to recognise earlier the production's potential for causing religious offence. This member of the Committee was surprised that CRAC (the Central Religious Advisory Committee that advises the BBC and Ofcom) had not been consulted ahead of transmission. It is not a part of CRAC's role to view programmes ahead of transmission. Nevertheless, the member felt that it would have been prudent on this occasion to seek advice on the issues raised
- the Committee noted that there had been no significant protests surrounding the theatre production, and also that theatre-goers would not have had the benefit of the same kind of warnings that had been placed before the transmission of the television programme, and were therefore theoretically at least, less likely to know what to expect
- the Committee also noted that as a result of representations from the Churches' Media Council, BBC management consulted with the Council, which represents all the main Christian denominations
- the Committee considered that the Television Compliance Form showed that BBC management was well aware of the issues around strong language and the portrayal of religious figures and recognised that these would be offensive to some people. The form underlined the requirement for careful scheduling and detailed signposting
- it was evident that BBC management was not casual about the procedures, and the decision to broadcast *Jerry Springer - the Opera* was referred up to the highest level. The issue of potential offence was discussed by senior executives including the Head of Classical Music, Television, the Controller of BBC Two, the Director of Television and the Controller, Editorial Policy. The final decision to broadcast was taken by the Director-General as the BBC's Editor-in-Chief.

After considering the information provided in the Television Compliance Form and the chronology of events in the response from BBC management, the Committee concluded that:

- the BBC did observe the proper process.

3.2 The Volume of Complaints

The Committee considered to what extent the number of complaints represented a real and widespread concern.

Key points raised by the Committee:

- a large number of licence fee payers had registered a complaint before transmission, and a smaller but still significant number afterwards
- it was difficult to be precise about how many people were actually offended by the programme given that the majority of complaints were pre-transmission, and that a proportion of them appeared to be part of an organised email campaign
- regardless of whether a proportion of the communications was part of an organised campaign, the complaints should be examined on their merits
- the same criteria should be applied when considering any complaint, whether that complaint involves the offence taken by one individual or by a group of people.

The Committee concluded that:

- although the volume of complaints should not be ignored, the key issue was the nature of the complaint itself and whether that complaint was justified

- for the purposes of this complaint, the Committee agreed to consider only complaints made after transmission, as these related to the content of the programme as broadcast
- the Committee took into account the volume and substance of the pre-transmission complaints which were the same in substance as the post transmission complaints in all material respects.

3.3 How well founded were the complaints?

The Committee noted that a proportion of the complaints received before transmission was based on press reports which were inaccurate. However although these were based on the misconception that the programme contained “8000 swearwords”, very many complaints did identify elements of the programme which were likely to cause offence. The Committee noted that the complaints after transmission of the programme generally fell into four categories:

- strong language
- offence to Christians or actual blasphemy
- the BBC’s intention to push “back the boundaries of taste and decency”
- putting the view that the programme would not have been broadcast if it had been blasphemous to other faiths.

The Committee looked at each of these in the course of the discussion.

3.4 Strong Language

Before transmission, it was reported that there were “3168 mentions of the f-word and 297 of the c-word”. (Daily Mail, 3rd December 2004). Many complainants said they believed the programme contained 8,000 expletives.

Key points raised by the Committee:

- the reported figure was in fact a vast exaggeration. In reality, there were around 200 f-words and nine c-words. While a substantial number, this was not necessarily unacceptable in terms of late night terrestrial television
- nevertheless, some use of swearing was extreme and shocking (for example, Satan threatens Jerry with being “f***ed up the ass with barbed wire”)
- the vast majority of swear words were used in the context of the portrayal of the Jerry Springer television programme
- one member felt that the juxtaposition of strong language being sung by a choir was particularly offensive, although another felt that such contrasts were a recognised theatrical device.

The Committee concluded that:

- they recognised the principle embodied in the BBC’s Producers’ Guidelines (Chapter 6 section 8) that “*offence is more likely to be caused if audiences are taken by surprise when strong language occurs without warning, is contrary to the expectations of the programme’s audience or feels gratuitous.*” In this case there were clear warnings about the level of extreme language. In addition, the swearing did not start until well after the watershed, and there was a progression beyond that which allowed time for viewers to switch off as it escalated. Hence, the use of strong language in this context did not breach the requirements of the relevant guidelines and codes

- however, the committee noted that the juxtaposition of strong language with the names of holy figures was far more offensive than either would be by themselves. There were few such references: “the f***ing Pope”; “always with the crucifixion....why don’t you get over it and give us all a f***ing break” and “Jesus grow up for Christ’s sake and put some f***ing clothes on.”

The Committee decided to consider these usages in the wider context of religious portrayal – see below.

3.5 Level of offence to Christians

Key points raised by the Committee:

- it agreed there could be no doubt about the extreme nature of the religious references in the piece. The reference to the “f***ing Pope” and “raped by an angel... raped by God” were clear examples
- most (but not all) members noted that the religious portrayal was contained in Jerry’s nightmare vision, and hence felt the portrayal was different than had it been a literal portrayal
- the Committee noted that there were clear warnings both before and during the programme, and in particular that immediately before Act II there was a voice-over the text of a full-screen warning. The warning stated “In Act II, as Jerry Springer descends into Hell, some viewers may find aspects of the imagery and characterisation of God, Jesus and Mary offensive.”
- the very fact that the programme was broadcast at all would have caused offence to a significant number of people.

All members of the Committee agreed that:

- despite the creative construct of Jerry’s nightmare, the extent to which some people would have been offended should not be underestimated. From their perspective, the ‘nightmare’ justification was irrelevant, and while it was not intended as a serious attack on Christian sensibilities, some people would undoubtedly have interpreted it as an attack on their faith
- in itself, there could be no doubt that these religious references were very extreme. As such, it was clear that these would cause offence and that that offence to some viewers would be genuine. The Television Compliance Form shows that the BBC fully realised this. The issue was whether these elements (and hence subsequent offence) could be justified on grounds of exceptional or outstanding quality or relevance, which is discussed below.

3.6 The views of Church leaders

The Committee noted in particular the views of: the Bishop of Manchester; Peter Blackman (Director of the Churches’ Media Council); and the Bishop of Chelmsford.

The Committee agreed that the status of those writing was not of itself the issue. The issue was more whether the concern expressed by the Bishop of Manchester indicated widespread Christian concern.

Again, the Committee re-stated the view that:

- there could be no doubt that significant offence was caused to sizeable numbers of people
- it was also important to recognise that by no means all Christians would have taken offence
- the issue was whether the level of offence was justified on the grounds of outstanding quality or exceptional relevance. This is discussed below.

3.7 Can *Jerry Springer - the Opera* be justified on grounds of outstanding quality? Did it have exceptional relevance?

Having agreed that *Jerry Springer - the Opera* did (and would) cause offence to a large number of people, the Committee felt a key issue was whether the broadcast could be justified on grounds of outstanding artistic quality, or exceptional relevance.

The majority of the Committee took the view that:

- the number and range of awards demonstrated that the work was considered artistically exceptional among peers
- it was a satire on a particular genre of television rather than Christianity – the religious element was a creative device. The use of religion as a creative construct in this way was justified by the satire on *Jerry Springer* the television programme – it was thoughtfully done
- it made important comments on certain television programmes and their consequences
- the BBC Charter and Agreement requires that the BBC “*should stimulate, support and reflect in drama, comedy and music and the visual and performing arts, the diversity of cultural activity in the United Kingdom.*”
- the BBC had to balance the rights of some licence payers not to be offended with other licence payers’ right to view innovative and challenging programmes.

One member of the Committee disagreed, and that while accepting that others had judged it an exceptional piece of work in the theatre, felt that *Jerry Springer - the Opera* did not translate well onto television.

3.8 Could it be justified by precedent?

The Committee considered whether there were precedents that would help it decide whether or not *Jerry Springer - the Opera* should have been broadcast.

There was consensus that any previous controversial broadcasts (for example *The Last Temptation of Christ*) did not help here. *Jerry Springer - the Opera* was unique in its particular approach and the issues should be considered in relation to the programme itself.

3.9 What does research say about likely offence?

The Committee considered the wider research available to help consider how widespread the offence would be. This includes a report by the House of Lords Select Committee on Religious Offences (December 2003) and audience research by the BBC, ITC, BSC and BBFC.

The following key points were noted:

- while the majority of people say they are Christians for the purposes of census-gatherers, the strength of their commitment is less clear
- whereas strong concern is registered about strong language and terms of racial abuse, religious expletives are of less concern
- a strong minority felt that religious expletives were inappropriate for broadcast at any time
- research by the ITC also shows that 68% of people disagreed that “things that are likely to upset or offend even a minority of people should not be shown on television.”

3.10 Was the broadcast discriminatory?

The Committee considered the complaint that the BBC would treat Sikhs, Muslim or other non-Christian faiths differently.

- a majority of the Committee believed that the BBC would broadcast a programme raising similar issues relating to another religion, and hence felt that the broadcast was not discriminatory
- all members of the Committee took the view that BBC management should apply all relevant codes and guidelines equally to all religions.

3.11 Was the BBC’s aim to push back the boundaries of taste and decency?

The Committee noted that some complainants had quoted press reports that Roly Keating, Controller of BBC Two, had said at a press conference the BBC was pushing “back the boundaries of taste and decency”.

As already noted above, Roly Keating does not remember saying the specific attributed quote. The Committee did note that Roly Keating was on the record as saying: “*The Opera is about confronting people with extremes of taste and behaviour, so to compromise that would be pointless. Of course it won’t be to everyone’s taste, and that’s a risk you take when you broadcast serious work.*”

The Committee made the following comments:

- the BBC has a duty to produce excellent content, and true innovation may involve pushing at creative boundaries
- there was no evidence that the BBC had broadcast *Jerry Springer - the Opera* in order to ‘push back the boundaries’. The BBC was not acting irresponsibly for the purposes of pushing back the boundaries for their own sake, or for sensationalism.

3.12 The right to protection against offence to religious feelings and the right to freedom of expression

The Committee took into account that some of the complaints had referred to the right to freedom of religion under Article 9 of the European Convention on Human Rights. The Committee noted that there is legal uncertainty about whether Article 9 applies in this context. Without needing to form a concluded view on that issue, the Committee proceeded on the basis that in any event the decision which it faced depended on how, in the circumstances of this particular programme, it should weigh, on the one hand, the offence caused to some viewers and in particular the offence to their religious beliefs, and, on the other hand, freedom of expression,

under Article 10 of the European Convention of Human Rights, that is both the right of the BBC to transmit programmes of quality and the right of viewers to watch such programmes. The Committee regarded that as the central question which it had to decide, giving appropriate weight to the offence to religious beliefs and the right to freedom of expression, whether the matter is considered by reference to Articles 9 and 10, or by reference to the other applicable Codes and Guidelines.

4. The Committee's Decision

Having discussed each issue thoroughly and with reference to the Charter and Agreement and all the relevant codes and guidelines, the Chairman asked each committee member to summarise their view on whether the programme breached any of the requirements of the above codes and guidelines.

The Committee concluded that:

- the BBC had followed the proper procedures in deciding whether or not to broadcast *Jerry Springer - the Opera*.

A majority view, held by four of the five members was that:

- the offence – particularly the offence to religious beliefs - caused to sizeable numbers of people should not be underestimated or taken lightly
- reasonable and comprehensive attempts were made to minimise offence through appropriate scheduling, clear warnings, and the use of other programmes prior to the broadcast to set the piece in context
- the BBC is committed to freedom of expression, and has a duty to innovate, to reflect new and challenging ideas, and to make available to its audiences work of outstanding artistic significance
- in all the circumstances, the outstanding artistic significance of the programme outweighed the offence which it caused to some viewers and so the broadcasting of the programme was justified.

By a majority of four to one, the complaints were not upheld.

The Committee's finding was that BBC management's decision to broadcast *Jerry Springer – the Opera* was not in breach of the relevant editorial standards, codes and guidelines.

One member of the Committee, Angela Sarkis, profoundly disagreed with the decision not to uphold the complaints. While she agreed on many points, particularly that the programme was well signposted and scheduled, she did not agree that the artistic significance outweighed the offence caused by what would have been considered literal portrayal of holy figures by many people.

Ends

March 2005