

Finding of the Editorial Standards Committee of the BBC Trust

Don't Make Me Laugh

BBC Radio 4 21 April 2016

Finding of 30 June 2016

Summary

Don't Make Me Laugh is a comedy panel programme created and presented by David Baddiel. Its format rests on the paradox that the comedians taking part must try not to make the audience laugh. A contestant is given a subject to discuss and begins a monologue explaining why there is nothing funny about the subject. The subject passes to the next contestant if, in explaining why the subject is not funny, the comedian raises a laugh from the audience.

This programme was the second in the second series and was broadcast at 6.30pm on The Queen's 90th birthday. It included the subject that "...The Queen must have had sex at least four times". In discussing this, panellists made comments about the Queen and The Duke of Edinburgh in a way that was personal, intrusive and demeaning.

The programme attracted a significant number of complaints from listeners concerned both about the content and the timing of the output and the BBC published an apology on its Corrections and Clarifications page the following day.

The Executive was asked whether it considered the output was a serious breach of the Editorial Guidelines. The Executive confirmed that it did and provided the Trust with a written report into the breach. This found there had been a failure of editorial judgement and of compliance.

Trustees noted that a good deal of comic output depended on a sense of shock and had the potential to cause offence. They also noted that audiences gave comedy greater leeway than other areas of output and that significant public figures – particularly those who occupied privileged positions or who held positions of power – were broadly accepted by the public as appropriate targets for comedy. Trustees noted the BBC's very significant history of developing comic output and comic talent. They noted in particular Radio 4's role as a commissioner of innovative comedy and they acknowledged that innovation inevitably involved taking editorial risks in what was a very subjective area.

However, Trustees were mindful that they had previously expressed their concerns about humour which singled out individuals for attack in a way which was humiliating or crude. They had also expressed their concerns about the broadcast of derogatory comments about individuals who were not in a position to respond.

Trustees considered that this output included personal, intrusive and derogatory comments which had exceeded the expectations of the audience. The offence felt was compounded by the date of the programme's transmission. They agreed with the BBC Executive that the date and timing of the broadcast had heightened the offence caused but, while accepting that they could reach a judgement only on the specific circumstances of this case, they found it hard to imagine circumstances in which this broadcast at any time or on any day would not have given rise to significant unjustified offence.

Trustees considered this was a serious breach of the Editorial Guidelines for Harm and Offence.

Background

Don't Make Me Laugh is a comedy panel show which is recorded in front of a live audience and edited for transmission. The first series had been broadcast in an 11pm slot, which is normally used for more experimental comedy. However, the second series was brought forward to an early evening slot of 6.30pm, which is a well-established comedy slot.

The programme attracted a significant number of complaints from listeners and, the following day, the BBC issued the following statement:

"While Radio 4 comedy is a broad church and often pushes boundaries, we would like to apologise for yesterday's broadcast of Don't Make Me Laugh. We never intended for the scheduling of the programme to coincide with The Queen's birthday and we are sorry for the offence caused by its timing and content."

The BBC informed the Palace that it had apologised for the remarks made in the programme. The planned repeat was not transmitted and the programme was removed from iPlayer. The remainder of the series was moved back to an 11pm timeslot.

The Executive provided a report to the Editorial Standards Committee into the breach which included the following points:

Executive Report - background

- The show was made by So Radio, a branch of So Television, now owned by ITV Studios. The format was devised by David Baddiel and the programme was co-produced with Fierce Tears, a company owned by David Baddiel.
- The first series of Don't Make Me Laugh was scheduled and made for 2300 on Radio 4. The programme was edgy, but it was decided to try the second series at 1830. A one off edition was broadcast at 1830 around Christmas without significant complaint.
- There were some conversations between Radio 4 and the production company at an early stage in the production process about editorial standards. The only specific issue raised by the production company relating to this was a request for permission to bleep some strong language.

- There had been a conversation between the BBC and the production company about the balance between freedom of speech and the BBC's editorial responsibility for its output.
- The series had been placed on the Radio Risk List and the Managed Risk Programme List. It was on the Radio Risk List partly because of its transfer from 2300 to 1830, and partly because one episode contained references to child abuse, Top of The Pops and other connected issues.
- The series was entered on the pan-BBC Managed Risk Programme List principally because of the references to child abuse, Top of the Pops and related matters – it was a matter of policy that references to child abuse were added to the MRPL.

Executive Report – this edition of the programme

- The Editor, Editorial Standards, listened to a rough-cut of the programme during the production process and considered that the section about The Queen did not raise an issue in terms of editorial standards. At this point, the date of the programme's transmission was not known. Although he requested significant changes to other programmes in the series, he did not consider this particular sequence needed amending.
- The independent production company had responsibility for filling in the compliance form. The compliance form for the programme arrived with the BBC on the Monday of the week of transmission. The form asked whether the output included: "potentially controversial references to public figures". The question was answered "no".
- The form did not note the reference to The Queen, although by this point, the date of transmission was known. The Executive Producer at So Radio knew the transmission schedule and the form asked the Executive Producer to make a judgement about its suitability for the intended slot.
- The Editor, Editorial Standards, reviewed the form and signed it off, but did not re-listen to the whole series as he had already reviewed the section he had asked to be re-edited.
- Had the form contained information alerting the station to the reference to The Queen, the relevant section would have been listened to again because of the proximity to the 90th birthday celebrations. It was normal practice to review sections highlighted on compliance forms as raising new topical issues.

Executive Report - conclusion

- The Executive concluded that the timing and content of the output was entirely inappropriate on Radio 4 on the day of The Queen's 90th birthday.

This was a regrettable failure of editorial judgement and compliance processes.

- The BBC had issued a statement the following day apologising for the content and timing of the programme. It informed the Palace of the apology, removed the programme from iPlayer and did not broadcast the intended repeat of the programme.
- Radio 4 had already discussed the future of this series before this incident. The Controller Radio 4 and the Commissioning Editor no longer felt that the 1830 slot was right for this programme and the remaining episodes were moved to 2300.
- A letter was written to the Executive Producer reminding him of his responsibilities in terms of the compliance form. A face to face conversation was also due to take place. A new updated compliance form was shortly being introduced which would include a section reminding executive producers in independent production companies what the BBC expected of them.

The BBC Executive concluded that, in comedy, even quite strong content was generally acceptable as long as it was appropriately scheduled and of sufficiently high quality. It considered it possible, had this been broadcast on another day in another slot, that it would have provoked some complaint but would largely have gone unnoticed. However the timing, content and inconsistent quality of the programme all compounded the offence caused.

Finding

Trustees considered that the Editorial Guidelines for Harm and Offence were relevant to this output. The most relevant sections are in **Annex 1**, at the end of this finding.

Trustees noted that the Editorial Guidelines stated that: "unduly... humiliating, intrusive...or derogatory remarks aimed at real people... must not be celebrated for the purposes of entertainment". They also noted that the BBC must be sensitive to audience expectations – both in terms of the "likely audience" for the output and also in terms of "generally accepted standards". The Guidelines also specifically noted that programme makers should take account of "...any special sensitivities surrounding the slot, for example religious festivals or anniversaries of major events".

They noted that the BBC had to balance its right to broadcast and publish innovative and challenging content, appropriate to each of its services, with its responsibility to protect the vulnerable and have due regard to audience expectations.

Trustees noted that decisions about what was and what was not funny were highly subjective and that comedy, perhaps more than any other genre, was given

considerable leeway by audiences. They understood that comic impact was often related to shock value and that here, too, there was a potential to cause offence which had to be considered by output producers.

Trustees noted the BBC's very significant history of developing comic output and comic talent. They noted in particular Radio 4's role as a commissioner of innovative comedy and they acknowledged that innovation inevitably involved taking editorial risks in what was a very subjective area.

Trustees noted that the transmission time for the series had changed and considered that the early-evening audience would have been less likely to expect the most challenging kind of humour than the audience for a late-night comedy timeslot. They also noted the date of the broadcast and considered this compounded the offence felt by audiences.

Trustees acknowledged that public figures were regularly the targets of humour and that, to an extent, this was an inevitable part of life for those who occupied high profile roles or who held positions of power.

However, they were mindful that Trustees had previously expressed their concerns about humour which singled out individuals for attack in a way which was humiliating or crude. They had also expressed their concerns about the broadcast of derogatory comments about individuals who were not in a position to respond.

They considered that it was important to bear in mind that however high a profile an individual might have, it did not necessarily make it acceptable for them to be the target of highly personal, offensive, intrusive, or degrading humour. It was still incumbent on the BBC, when considering the broadcast of challenging output, to balance it with the danger of causing offence and to be able to demonstrate a legitimate editorial purpose.

Trustees noted the BBC's report that the breach was the result of the combination of editorial misjudgement and a failure of the compliance process. They noted that the senior editorial figure at the BBC – without an awareness of the date of transmission – had considered the output met the requirements of the Editorial Guidelines. They further noted that the failure to draw attention to the reference to The Queen in the compliance form meant that a final opportunity to review the output in the light of the transmission date had been missed. They were very concerned at this failure and, though they appreciated that assessing comedy output was a difficult and subjective matter, were clear there had been a failure of judgement on this occasion. In terms of the failure of the compliance process, they considered the further action that the Executive had outlined ought to ensure the independent production company fully understood the requirements of the compliance process.

Trustees considered that this output included personal, intrusive and derogatory comments which had exceeded the expectations of the audience. The offence felt was compounded by the date of the programme's transmission. They agreed with the BBC Executive that the

date and timing of the broadcast had heightened the offence caused but, while accepting that they could reach a judgement only on the specific circumstances of this case, they found it hard to imagine circumstances in which this broadcast at any time or on any day would not have given rise to significant unjustified offence.

Trustees considered this was a serious breach of the Editorial Guidelines for Harm and Offence.

Annex 1 - Editorial Guidelines.

Harm and Offence

Introduction

The BBC aims to reflect the world as it is, including all aspects of the human experience and the realities of the natural world. In doing so, we balance our right to broadcast innovative and challenging content, appropriate to each of our services, with our responsibility to protect the vulnerable and avoid unjustifiable offence.

Creative risk-taking is a vital part of the BBC's mission. However, in all our output, the greater the risk, the greater the thought, care and planning required to bring creative content to fruition. We must be sensitive to, and keep in touch with, generally accepted standards as well as our audiences' expectations of our content, particularly in relation to the protection of children. Audience expectations of our content usually vary according to the service on which it appears.

When our content includes challenging material that risks offending some of our audience we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards, and ensure it is clearly signposted. Such challenging material may include, but is not limited to, strong language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, and discriminatory treatment or language.

Generally Accepted Standards

The Agreement accompanying the BBC Charter requires us to apply "generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material". The understanding of what constitutes 'generally accepted standards' will evolve over time and will be informed by relevant research. Applying 'generally accepted standards' is a matter of judgement, taking account of the content, the context in which it appears and editorial justification.

Context

Context includes, but is not confined to:

- the surrounding editorial material
- the service on which the content is available
- the time at which it is available
- other programmes or content that are available around the programme or content concerned
- the likely size and composition of the potential audience and likely expectation of the audience
- the harm or offence likely to be caused by the inclusion of the particular content in output generally, or in output of a particular nature or description

- the extent to which the nature of the content can be brought to the attention of the potential audience, for example, by signposting and content information
- the effect of the content on audiences who may come across it unawares.
- When making our judgements, these factors will not necessarily carry equal weight.

For new series on television and radio (or when existing series change channels) where content may raise issues of generally accepted standards, there should normally be a discussion early in the production process with the commissioning executive and the production team, including presenters and performers, to establish parameters of tone and content appropriate to the platform, context and slot. A returning series which has established expectations of strong language and content should have a similar discussion before the start of each run.

Those planning online content should also consider whether there will be issues of generally accepted standards and determine, early in the process, whether the content is likely to appeal to a significant proportion of children or younger people and select material appropriately.

Audience Expectations

5.4.1

We should judge the suitability of content for our audiences, including children, in relation to the expectations of the likely audience, taking account of the time and day on which it is available, the nature of the service and the nature of the content.

...Are there any special sensitivities surrounding the slot, for example religious festivals or anniversaries of major events?

Intimidation and Humiliation

5.4.32

BBC content must respect human dignity. Intimidation, humiliation, intrusion, aggression and derogatory remarks are all aspects of human behaviour that may be discussed or included in BBC output. Some content can be cruel but unduly intimidatory, humiliating, intrusive, aggressive or derogatory remarks aimed at real people (as opposed to fictional characters or historic figures) must not be celebrated for the purposes of entertainment. Care should be taken that such comments and the tone in which they are delivered are proportionate to their target.