

The Promise, Channel 4, 6 February 2011, 13 February 2011, 20 February 2011 and 27 February 2011 (all at 21:00)

I am writing in response to your recent complaint about aspects of the above series.

The Communications Act 2003 (“the Act”) requires Ofcom to set standards for programmes on television and radio in areas such as harm and offence, and impartiality. As a result of the Act, in 2005, Ofcom published a Broadcasting Code (“the Code”) containing the rules that broadcasters must abide by. This Code applies to all broadcasters licensed by Ofcom and has been regularly revised. You can download a copy of our Code from our website at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

Ofcom recognises that many portrayals by UK broadcasters of the history of and current situation in Israel and neighbouring territories are controversial – whether in non-fiction or as here drama programmes. I can assure you that Ofcom took your complaint, and all the other complaints, about this series very seriously. I should say at the outset, that Ofcom does not consider that the series has breached the Code. Let me explain in detail why.

Complaints

Ofcom received 44 complaints about this series. Complainants made the following broad points:

Offence:

- that the series was anti-Semitic and presented Jewish characters in a negative or unflattering way. Similarly, Erin and Len, the leading characters in the programme are depicted having strong relationships with Palestinian characters and poor relationships with Jewish/Israeli characters; and
- that the series included upsetting footage of the liberation of concentration camps in 1945;

Incitement:

- that the series would incite racial hatred and lead to increased attacks on British Jews;

Bias:

- that the series was biased, partial and unbalanced, and took a pro-Palestinian position;

Misleadingness:

- that the series presented historical facts in a misleading and inaccurate way, and despite being a drama, many viewers would have taken the series to be historically accurate in its depictions of Israel’s history and the situation in Israel today

and

Production of the programme:

- that the makers of the series did not take all appropriate steps in making of the programme. For example, one complainant alleged that the programme makers, in making the programme, only consulted groups with “antithetical views about Israel”; and
- that the main characters kept appearing at significant moments e.g. the heroine Erin being at the scene of a suicide bombing, and happening to meet the elderly daughter of Mohammed, who had been her the friend of her grandfather, Len.

Our investigation

Having viewed a recording of the programme, we examined whether the programme complied with the following Rules of the Code:

-Rule 2.2 of the code, which states that: “*Factual programmes or items or portrayals of factual matters must not materially mislead the audience*”;

-Rule 2.3 of the Code, which states that: “*In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context*”. The Code goes on to define a range of factors that can be taken into account, in deciding that potentially offensive material is justified by the context;

-Rule 3.1 of the Code, which states that: “*Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services*”; and

-Rule 5.5 of the Code, which states that: “*Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service. This may be achieved within a programme or over a series of programmes taken as a whole*”.

Our decision

Background

The Promise was a four part drama serial, made for Channel 4 by the writer and director Peter Kosminsky. The series featured Erin, an eighteen year old British girl visiting modern day Israel, and retracing the steps of her grandfather, Len, who served with the British forces stationed in Palestine in the period 1945 to 1948. The series showed the experiences of Erin in the present day against the back-drop of aspects of the current situation in Israel. For example, Erin was shown: staying with the Israeli parents of her best friend, Eliza, who has invited her to Israel; visiting the Gaza strip and Hebron; and being caught and injured by a Palestinian suicide bomb. During her experiences, Erin befriended Eliza’s Israeli brother, Paul and a Palestinian, Omar. Key background to Erin’s experiences was that she was reading her grandfather’s diary, documenting his own experiences in Palestine in the late 1940s, and Erin sought to visit places mentioned in the diary.

The structure of *The Promise* was to juxtapose Erin’s experiences with those of her grandfather Len, firstly serving as a British soldier liberating the concentration camp of Bergen-Belsen at the end of World War Two, and then serving in the last few years of the British Mandate of Palestine prior to the creation of the state of Israel in

1948. Amongst his experiences, Len is shown forming friendships with a Jewish woman Clara, and a Palestinian Arab, Mohammed. We considered two key themes in the drama were the parallels being drawn between: the experiences of the British army in late 1940s Palestine dealing with the realities of hostility from elements of the Jewish population, opposed to the British presence; and the experiences of the Israeli Defence Force in the present era dealing with the realities of hostility from elements of the Palestinian population, opposed to the Israeli policy towards, for example, Gaza and the West Bank.

Under the Code, there is no prohibition on drama programmes, such as this, covering particular issues or cover issues from a particular viewpoint, as long as such programmes comply with Code. To do otherwise would be an unacceptable restriction on the broadcaster's right to freedom of expression, as contained in Article 10 of the European Convention on Human Rights ("the Convention"). In particular, the right to freedom of expression encompasses the audience's right to receive and impart creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. Applied to broadcasting, Article 10 therefore enshrines 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.

I now take each of the subject areas of complaint in turn and lay out out decision against the relevant Code rules.

Offence

A number of complainants were offended by aspects of *The Promise*. However, the Code does not prohibit the broadcast of offensive content, as long as it can be justified by the context. The two main alleged areas of offence identified by complainants were: firstly, that the series was anti-Semitic and presented Jewish characters in a negative or unflattering way. Similarly, Erin and Len, the leading characters in the programme are depicted having strong relationships with Palestinian characters and poor relationships with Jewish/Israeli characters; and second, that the series included upsetting footage of the liberation of concentration camps in 1945.

In relation to the allegations of anti-Semitism and portrayal of some Jewish and Israeli characters, we noted that complainants had raised instances of what they considered to be Jewish characters being shown in a negative light. For example, people in a night-club were shown laughing when Erin had an epileptic fit, triggered by the flashing lights in the nightclub. Another example cited by complainants, was the instance of Jewish passersby seeming to ignore the shooting of Len and two of his companions in their jeep, whilst caught in a traffic jam. It is an editorial matter for the broadcaster how characters are portrayed in televised dramas, as long as the Code is complied with. Just because some individual Jewish and Israeli characters were portrayed in a negative light does not mean that the programme was, or was intended to be, anti-Semitic.

We considered that this programme included a range of characters of different nationalities who at times could be seen in a negative light and that just as there were Jewish/Israeli characters that could be seen in a negative light so there were British and Palestinian characters who could also be seen in a negative light. For instance, a key event in the series was the Palestinian suicide bombing in which both Erin and Paul were injured. The Palestinian suicide bomber was clearly condemned

by various characters including Erin. Erin also strongly criticised the relatives of the dead suicide bomber later in the series, when Erin discovered that the relatives were celebrating the fact that the bomber had carried out the suicide bombing.

Some complainants objected to Erin and Len, the leading characters in the series, being depicted having strong relationships with Palestinian characters and poor relationships with Jewish/Israeli characters. We noted that whilst Erin and Len did form close relationships with, for example Omar in the case of Erin, and Mohammed in the case of Len, Erin and Len also formed friendships with Jewish/Israeli characters. For example, Erin befriends Paul, a former Israeli soldier turned peace activist. In addition, whilst her relationship with Eliza and Eliza and Paul's parents becomes strained at times, this is a reflection of the dramatic narrative unfolding. Similarly, Len has a passionate and complicated relationship with the Jewish activist Clara. We considered that the fact that the range of complicated relationships that the key protagonists in the series experienced was indicative of the complicated story that was unfolding and showed the difficulty of ascribing labels of 'good' or 'bad' to any character.

The context of the programme was important: the characters were appearing in a complex fictional dramatic narrative seen through the eyes of two related people in different historical eras. We considered that the likely expectation of the potential audience to the series would have been to view the series as providing the experiences of these two fictional characters in Palestine/Israel, and was not a documentary or current affairs programme analysing the complex situation in that part of the world. In addition, we noted that the series was shown on a channel known for its hard-hitting and challenging drama, and which has a special statutory remit to make and broadcast high quality and diverse programming^[1]. Given the above, and taking into account the broadcaster's right to freedom of expression, we considered that while the portrayal of some Jewish/Israeli characters, and the relationships featured in the series, clearly offended some viewers, the potential offence caused by such portrayals could be justified by the context and they were not in breach of Rule 2.3 of the Code.

We also received complaints about upsetting footage, featured in the first episode of the series, of the liberation of concentration camps in 1945. We noted that in this episode, Len recalls his experience of liberating the concentration camp of Bergen-Belsen. At this point in the programme, archival footage is shown of the actual liberation of concentration camps including scenes of dying and dead Jewish inmates that were found by the Allied forces. Clearly, such images had the potential to be upsetting and offensive. However, we considered that the offence could be justified by the context. For example, we noted the following broadcast warning before the first episode:

"Now on Four, though, flashing images, strong language, images of war and death: it's the drama everyone's talking about".

In addition, we considered the images helped to impress upon the viewer Len's horror at his experiences in Bergen-Belsen, experiences he referred to later in the series. We also noted that these images were broadcast after the 9pm watershed in a serious drama that touched on important historical matters, including the Holocaust, and would have been likely to have been recognised as such by the potential audience to this programme.

^[1] See sections 198A(1)(a) and 265(3) of the Act.

Given the above, and taking into account the broadcaster's right to freedom of expression, we considered that the footage of the liberation of the concentration camps, though potentially offensive to some, could be justified by the context, and was not in breach of Rule 2.3 of the Code.

Incitement:

Rule 3.1 of the Code requires that broadcasters must not broadcast material likely to encourage or incite the commission of crime or to lead to disorder. Some complainants considered that the series would incite racial hatred and lead to increased attacks on British Jews. We considered that within the series, there were Jewish/Israeli characters and their actions that, arguably, that could have led to members of the Jewish faith, or the Israeli State, being perceived in a negative light to some degree. However, we noted that the same could be said of the how the series treated British and Palestinian characters and their actions. We recognise that some viewers might have been upset by the portrayal of some Jewish and Israeli characters and their actions. By extension, we also note that such viewers considered that the negative aspects of the Jewish/Israeli characters could be interpreted as criticisms of the Jewish faith and the Israeli nation more widely. However, Ofcom believed that portrayal of members of the Jewish faith and/or Israeli nation featured in the series, would not, on a reasonable view, be likely to encourage or incite the commission of a crime (e.g. harm or prejudice against members of the Jewish faith), given the context of the series, namely, that it was a serious fictional drama. We therefore considered there was no breach of Rule 3.1 of the Code.

Alleged bias

We received a number of complaints that the series was biased, partial and unbalanced, and took a pro-Palestinian position. In relation to these complaints, we considered whether Section Five of the Code, which deals with due impartiality, was applicable in this case.

In non-news programmes, such as this, broadcasters are only required to maintain due impartiality if programming is dealing with "*matters of political or industrial controversy or matters relating to current public policy*". Therefore, in this case, Ofcom had to ascertain: firstly, whether the programme was dealing with a matter of political or industrial controversy or matter relating to current public policy (i.e. whether Section Five was engaged or not); and second, if it Section Five was engaged, whether due impartiality had been preserved within the programme.

The Code defines "*matters of political or industrial controversy and matters*" as "*political or industrial issues on which politicians, industry and/or the media are in debate*". The Code also states that "*matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant European institutions, etc*".

Also relevant is the definition of "*Due impartiality*" laid down in the Code:

"'Due' is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. 'Due' means adequate or appropriate to the subject and nature of the programme. So 'due impartiality' does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due

impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signaled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important”.

We considered that the likely expectation of the audience as to the content, and other contextual factors, was crucial in determining whether Section Five was applicable in this case. We noted that *The Promise* was structured as interleaved twin storylines, placed in the present day and the late 1940s respectively. Clearly, both storylines were clearly placed in the context of the social and political situation in Israel and Palestine in the present day and the late 1940s respectively. For example, in relation to the modern-day storyline featuring Erin, the series featured: Israeli soldiers trying to demolish a Palestinian house in the Gaza strip; the former Israeli soldier Paul arguing with his father about the actions of the Israeli State; and Jewish settlers in Hebron receiving protection from Israeli soldiers. However, just because the series made reference to the on-going tensions and political debates between the Jewish/Israeli and Palestinian communities, does not automatically mean that Section Five was engaged in this case.

In our view, whilst references were made to the political disputes and conflicts between the Jewish/Israeli and Palestinian communities, these references were essentially descriptive in nature, setting the location in an historical and dramatic context. Importantly the references were made in the context of a televised drama series, and we considered their purpose was to add a back-drop to the dramatic narrative, and would have been likely to have been seen as such by the potential audience to the series.

It is Ofcom’s opinion therefore that the references to aspects of the political and policy debates between the Jewish/Israeli and Palestinian communities comments on the political status of the area were throughout incidental to the main purpose of the series, namely, the dramatisation of the ‘personal view’ experiences of two related people visiting the same country 60 years apart.

Given the above, we therefore considered that the programme was not dealing with a matter of political or industrial controversy or matter relating to current public policy. As a consequence, Section Five was not engaged in this series and there was no breach of Rule 5.5 of the Code.

Alleged misleadingness

A number of complainants felt that the programme presented facts in a misleading and inaccurate way. For example, in relation to the storyline set in the late 1940s, complainants variously objected to: the implication in the series that Israel was created purely because of “Western guilt about the Holocaust”; the implication in the series that all Palestinian Arab refugees fled their lands in 1948 due to fear of Jewish forces; the portrayal of Jewish forces attacking Haifa as British forces departed the city in 1948; the negative portrayal of the Jewish guerrilla movement, the Irgun; the depiction of the massacre of Palestinian Arabs at Deir Yassin in 1948; the depiction of the King David Hotel bombing in 1946; and the implication that the Palestinian Arabs never committed any violence or revolted against British Rule.

In relation to the storyline set in the present day, complainants variously objected to: the depiction of modern day Israelis as, for example, “either as living in California-style houses with swimming pools or as heartless soldiers who mistreat Arabs and protect the most extreme settlers”; the scene of Jewish settlers throwing stones at

Palestinian children, without being stopped by Israeli soldiers; the depiction of Israeli soldiers using a Palestinian child as a ‘human shield’; and the lack of an explanation as to why the partition wall, for instance, surrounding the West Bank is in place.

Although it is a fundamental requirement of broadcasting that an audience should not be misled in the portrayal of factual matters, Ofcom only automatically regulates due accuracy in news programmes. Nevertheless, Ofcom is required to guard against harmful or offensive material, and it is possible that actual or potential harm and/or offence may be the result of misleading material in relation to the representation of factual issues. Therefore, Rule 2.2 is designed to deal with content that materially misleads the audience, but only in factual programmes or portrayals of factual matters, and only to the extent it causes material harm or offence (see Ofcom Guidance^[2]). Rule 2.2 is not designed to deal with issues of due inaccuracy in non-news programmes.

Whether a programme or item is “materially” misleading depends on a number of factors such as the context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred.

In relation to the storyline set in the 1940s, we noted that the narrative was played out against some key historical events, as outlined above and made reference to particular groups of people, such as the Jewish guerrilla movement, the Irgun. Ofcom is aware that, as with many events and personalities in history, there are factual and interpretative disputes concerning these events and personalities. However, Ofcom is not an arbiter or interpreter of history. Rather, our role is to ensure that factual content or portrayals of factual matters do not materially mislead the audience so as to cause harm or offence. We considered that the references to actual historical events or groups of people were clearly in the context of a serious television drama, and were not presented as a historical and faithful recreation of those events, and would have been likely to have been viewed as such by the potential audience. For example, it is Ofcom’s understanding that the Irgun did kill a number of British soldiers in the late 1940s. Therefore, we considered that it would not have been materially misleading for the series to feature examples of British soldiers being killed by the Irgun. In addition, we noted that at one point in the series, when Len has dinner at Mohammed’s house, one Palestinian man asks Len:

“Why do the British treat the Jews with kid gloves; and you were brutal enough to us during the uprising before the war”.

We consider that this was a clear reference to the Palestinian Arab uprising against the British authorities in Palestine during the late 1930s.

Given the above, we do not consider that the references to various historical events and groups of people would not have been materially misleading so as to cause harm and offence and therefore were not in breach of Rule 2.2 of the Code.

Similarly, we considered that the instances of alleged misleadingness included in the storyline set in the present day were not in breach of Rule 2.2. For example, we noted one complainant objected to: the depiction of modern day Israelis as “today: “either as living in California-style houses with swimming pools or as heartless soldiers who mistreat Arabs and protect the most extreme settlers”. We considered a range of Israeli characters were portrayed. For example, Paul was portrayed as a

^[2] See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

complicated character, who whilst a peace activist, showed his loyalty to his former military comrades by picking up a gun and firing back at Palestinian attackers in Hebron. Furthermore, the series depicted: Eliza and Paul's parents as being mainstream liberals who were critical of both aspects of Israeli Government policy as well as Palestinian extremism; and also Eliza's grandfather, who strongly justified his actions in the Irgun, including the bombing of the King David Hotel, as follows:

"People of my generation, those of us who had managed to survive [the concentration camps] were determined that the Jewish people would never again capitulate in the face of genocide".

We considered that the series showed a range of characters, holding a range of views, which mirrored to some degree the complex range of opinions within the Israeli-Palestinian debate.

We noted that complainants also objected to: firstly, the scene of Jewish settlers throwing stones at Palestinian children, without being stopped by Israeli soldiers; second, the depiction of Israeli soldiers using a Palestinian child as a 'human shield'; and third, the lack of an explanation as to why the partition wall, for instance, surrounding the West Bank is in place. With regard to the first two of these matters, we noted that the scenes of Israeli settlers throwing stones at Palestinians and Israeli soldiers attempting to use a Palestinian child as a human shield might be unsettling for some viewers. However, we considered that these scenes were imagined dramatic events occurring in the storyline. In addition, we also noted that these scenes could be traced to similar events that have happened in Israel in recent years. For example, there have been media reports that Jewish settlers have thrown stones at Palestinians^[3]. Ofcom acknowledges there may be complex and contested reasons for why there might have been examples of settlers behaving in such a way. However, given that media sources suggest that such behaviour has taken place, we considered that it would not have been materially misleading for similar activity to be featured in the series.

In addition, we noted that it has been reported that in October 2010, an Israeli military court convicted two Israeli soldiers for using a Palestinian child as a human shield during the Israeli army's military offensive in Gaza in January 2009^[4]. Therefore, we considered that it would not have been materially misleading for the series to include the depiction of Israeli soldiers using a Palestinian child as a human shield.

With regard to the appearance of the partition wall, given that, as explained above, the series did not engage Section Five of the Code, relating to due impartiality, there was no requirement on the broadcaster to provide any background or range of viewpoints about the partition wall. Furthermore, we did not consider it materially misleading to the viewer that the series did not mention any policy rationale for the existence of the partition wall. To do otherwise, in our view, would be an unacceptable restriction of the right to freedom of expression.

We considered that, given the above, the series was not materially misleading so as to cause harm and offence, and therefore, there was no breach of Rule 2.2.

Production of the programme

^[3] See <http://www.haaretz.com/news/settlers-throw-stones-at-palestinian-homes-in-hebron-1.175158> and <http://www.jpost.com/MiddleEast/Article.aspx?id=212126>

^[4] See <http://www.bbc.co.uk/news/world-middle-east-11462635>

The final group of complaints we received related to complainants' concerns about aspects of the production of the programme. In summary, firstly, one complainant considered that the makers of the series did not take all appropriate steps in making of the programme. For example, one complainant alleged that the programme makers, in making the programme, only consulted groups with "antithetical views about Israel". Second, another complainant considered that it was implausible that the main characters in the series kept appearing at significant moments e.g. the heroine Erin being at the scene of a suicide bombing, and happening to meet the elderly daughter of Mohammed, who had been her the friend of her grandfather, Len.

In relation to the first complaint, it is a matter for the broadcaster what steps it takes in making programmes, as long as it complies with the Code. Therefore, there is no requirement under the Code as to which organisations, if any, a broadcaster consults in making a programme. Therefore, given our decision, outlined above, that the series complied with the Code, we considered it was a matter for the broadcaster as to how it researched the programme, including which organisations, if any, it consulted in producing the programme.

We also considered there were no issues under the Code in relation to the second complaint, namely the alleged implausibility of some of the experiences of the main characters. There is a long tradition in dramas to rely to some extent on unlikely coincidence or events, including drama based on real historical events when the narrative action unfolds against the backdrop of such historical events. Therefore, it is unsurprising that in *The Promise* the main characters were shown against the backdrop of key actual historic events, such as for example, the King David Hotel bombing. It is equally unsurprising that a drama would involve characters in generic events particular to an area or era, for example Palestinian suicide bombings in the present day. We are also of the view that common within many literary and dramatic traditions, the instance of Erin meeting Mohammed's elderly daughter was a dramatic device to drive forward the narrative of the series.

I appreciate that our decision in this case will no doubt disappoint you. But I have set out the reasoning in this case in some detail to help explain clearly how we came to this decision. I should like to thank you for taking the time to contact us with your concerns.