[GB] Ofcom decision that undercover report at a young offenders institution breaches privacy

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The BBC breached Rule 1.28 of Ofcom's Code of Conduct for broadcasting undercover footage using the real name of an under-eighteen-year-old during an edition of their Panorama current affairs programme. However, the BBC was not considered in breach for not taking immediate intervening action as neither of them were considered to be at immediate risk of substantial harm.

In January 2016, the BBC's Panorama programme examined evidence of young people in the Medway Secure Training Centre (MSTC) - then being operated by the private security company G4S - being allegedly mistreated, bullied and hurt by G4S staff. The programme included material filmed by an undercover BBC reporter posing as a member of G4S's MSTC staff.

The episode was due to be broadcast on 18 January 2016, but transmission was advanced to 11 January 2016 because G4S had issued a press release dated 8 January 2016 stating that it had referred a number of serious allegations of inappropriate staff conduct at MSTC to the appropriate investigating authorities. However, the BBC considered that the press release and subsequent G4S statements had not stated that the security company's action was a direct response to the evidence gathered by Panorama. Accordingly, the BBC considered that there was editorial justification for broadcasting evidence of G4S staff malpractice into the public domain as quickly as possible and moved the screening to 11 January.

A BBC reporter had filmed covertly from early October until December 2015 and their filming included two young persons, a 14-year-old known as "Billy" and a 16-year-old boy, "Lee". In the broadcast, their faces were disguised but not their voices; in Billy's case, his real name was identified on three occasions.

Each day, the footage was examined by the programme's producer or deputy producer. The BBC took advice from an internationally recognised expert on managing challenging young people's behaviour and from a specialist in child protection. Both professionals considered that neither Billy nor Lee were at immediate risk of substantial harm and that there was no requirement for the BBC to take any "pre-emptive action".

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In December, the BBC spoke with the local authorities responsible for Billy and Lee. There were at least three conversations about Billy with the responsible Director of Children's Services in order to discuss steps to protect Billy's physical and emotional needs. The BBC agreed to blur Billy's face and use a pseudonym. It was considered unnecessary to disguise Billy's voice, as doing so may have misrepresented the seriousness of the events filmed.

In Lee's case, the BBC contacted the relevant local authority on a number of occasions about Lee's inclusion, but the broadcaster was unaware of any concerns until after the 11 January 2016 broadcast.

During the broadcast of 11 January 2016, Billy's real name was revealed. The BBC said that this was a mistake caused by the screening being rushed forward from 18 January; this had resulted in the oversight not being noticed. Immediately after the error had been identified, the BBC reedited further versions for broadcasting, such as used for their "iPlayer" service. The BBC contacted the local authority and made contact with Billy's mother. She confirmed that, to the best of her knowledge, "her son had not been identified by anyone who did not already know him."

The relevant local authority expressed concern that Lee could have been identified from the footage, thus causing him harm as a vulnerable young person.

Ofcom had to consider whether there had been any breach of rule 1.28 of the Code: "Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis."

Ofcom determined that there had been no breach in respect of Billy or Lee during filming, with the broadcaster taking sufficient steps to monitor the filmed content to determine whether the BBC should immediately intervene and report the conduct towards the young offenders. The BBC was not in breach by waiting until December 2015 before notifying the appropriate authorities, as neither Lee nor Billy were at immediate risk of serious harm. The BBC was in breach for disclosing Billy's true name, although Ofcom acknowledged the time pressures. Otherwise, the steps taken to disguise Billy and Lee were deemed sufficient, and it was considered unnecessary to change their voices. It was thought to be in the public interest that the footage be broadcast.

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