



From Controller, Scotland

[REDACTED]

6th July 2004

Nick Raynsford Esq MP
House of Commons
London
SW1A 0AA

Dear Mr Raynsford,

Re: Mr David Whelan.

Thank you for your letter of 22nd June.

As regards the points raised by Mr Whelan:

1. This matter has not been investigated by the BBC Complaints Unit unless Mr Whelan has contacted them himself. If your constituent has not made such a complaint, and wishes to do so, he should contact the Programme Complaints Unit. A form for this is available on the BBC Homepage at www.bbc.co.uk/info/contactus/series_form.shtml. There is an appeal from the Programme Complaints Unit to the Board of Governors Appeal Committee.

You will appreciate that we try to make the complaints process as accessible as we can, as a public service broadcaster, but that we cannot assume that a viewer wishes to be enrolled in this process.

2. The production team is not "self-regulated". The content of BBC programmes is regulated by Ofcom, whose website is at www.ofcom.org.uk. Complaints can be made to them. They can also be contacted by telephoning 0845 456 3000 or 020 7981 3040 or by writing to Ofcom Contact Centre, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

3. Although it is not the only way to take forward a complaint, a proper procedure has been followed. Mr Whelan involved you to ask questions on his behalf about this BBC programme. We have done our best to answer them on his terms by putting his questions to the production team, who seemed the most likely people to have the answers. If you remember, your constituent previously complained about not having had an answer from this organisation, when in fact he had already received two letters, one directly from our former Controller and one via yourself.

We have also received an extensive application for Mr Whelan under the Data Protection Act 1998, which requires to be dealt with within the statutory timescale, and now, with your own most recent letter, a bundle of further papers about two centimetres thick, making a range of diffuse allegations about third parties.

It is very easy to sympathise with the feelings of someone in Mr Whelan's position, who has seen someone convicted of appalling acts, when that conviction is challenged, but most serious journalism involves putting opposing points of view – especially where there are claims that an innocent man has been wrongly imprisoned.

We would very rarely, as a public service broadcaster, turn down any opportunity amicably to resolve a complaint with a licence fee payer. However, given the efforts which have already been made in this case, and the number of hares which your constituent has set running, I doubt whether this is realistic. Mr Whelan is quite properly concerned that his case is handled with complete impartiality. It may therefore be most appropriate for him to consider pursuing his case through the Office of Communications as indicated at 2 above.

Yours sincerely,



Ken MacQuarrie
Controller, Scotland

Schedule: - Mr David Whelan, "Secrets or Lies"

The programme was called "Secrets or Lies". This was a deliberate lexical choice to reflect the fact that the programme did not wish to take sides on the question of John Porteous's convictions, but rather to point out that questions were being raised by other Quarriers children who had been in John Porteous's care.

1. Unfortunately, the programme did not have access to the children's files at Quarriers, for the obvious reason that these files are highly confidential. However, the programme team did speak several times at length to Joe Mortimer, who was Director of Child Care at Quarriers during the period that the abuse is alleged to have taken place. Mr Mortimer assured the journalist to whom he spoke that there was nothing in the files of which Frontline was not already aware.
2. It was known that Irene Whelan left Quarriers a few years before David Whelan, but they were both at Quarriers at the same time for around two years. We understand that they were in touch with each other for several years after David Whelan left Quarriers, but they had drifted apart in later years, and were not in touch at the time we interviewed Irene Whelan.
3. Nobody from Frontline Scotland was in court to hear the case, as the matter was brought to our attention as a possible miscarriage of justice after the verdict and sentencing of John Porteous. However, Sonya Rothwell, the producer, spoke to people who were present in court, including the lawyers involved. There was no transcript of the case, but the production team did obtain a transcript of the Judge's summing-up. Clearly, the production team was not entitled to access to police records, nor would anyone from Strathclyde Police speak to the programme off-the-record about the case. Irene Whelan told Sonya Rothwell that she was interviewed by the police and that she had told them categorically that she had never seen or heard of anyone being sexually abused by John Porteous while she was at Quarriers. She mentioned one incident when she was washing her face at the sink and John Porteous prodded her in the back of the head, causing her nose to bump the sink. She was upset about this and reported it to Joe Mortimer, Director of Child Care at Quarriers – but it was a one-off incident and she chose not to take it any further at the time. She described this incident in her taped interview for the BBC but we took the view that, as it was a one-off incident, was out-of-character as regards Irene Whelan's account of her experience of John Porteous and did not relate to allegations of sexual abuse, and therefore did not need to go into our time-limited programme. Another legal source who has seen Irene Whelan's precognition has confirmed that there is nothing in it to contradict her account to Frontline Scotland.
4. Neither Sonya Rothwell, the producer, nor Sam Poling, the presenter, is aware of people contacting the police to call Mr Henderson a liar after the broadcast of the programme.

5. Neither Sonya Rothwell nor Sam Poling is aware of abusive telephone calls being reported to the police, as the police would not speak to Frontline Scotland and no-one else brought this to the programme's attention.
6. Frontline Scotland wished to make sure that David Whelan had an opportunity to reply to the allegations being made in the programme. Sonya Rothwell followed Mr Whelan's instructions to contact his solicitor, Cameron Fyfe, but Mr Fyfe said that he could not speak for his client in this regard. To ensure that she got a definitive answer as to whether David Whelan wished to make a statement or even speak off-the-record prior to the programme going out, Sonya Rothwell contacted him by telephone.
7. Irene Whelan said that she was not in touch with any other family members and could not provide Sonya Rothwell with contact details for them.
8. Sonya Rothwell says that she has neither called Mr Whelan a liar nor spoken to Mrs Williams. She sent the latter a letter in response to her complaint about the programme which did not mention David Whelan's name. Following the broadcast of the programme, Sam Poling says that she received a number of phone calls from Mrs McWilliams, who was irate, upset and often verbally aggressive. Sam Poling told her on each occasion that she could not discuss who the individuals involved were and at no time used any names or gave any facts which could have led to Mrs McWilliams knowing who the individuals were. Mrs McWilliams said during the conversation that she knew who all the characters were; Sam Poling did not confirm or deny anything, but said repeatedly that she could not discuss the identities of individuals.
9. Sam Poling says that she did not at any point reveal anyone's name that was involved in the programme and had been given anonymity.
10. As an organisation, the production team understands that Quarriers is keeping itself neutral in regard to all allegations of abuse of children by former staff members and have in fact recently been quoted as saying that their "sympathies had always been with the victims". Against that background, it is difficult to see that any of the people who participated in the programme had anything to gain from Quarriers by taking part in the programme – rather the reverse.
11. The programme did not dispute that the Church was a central part of life in Quarriers.
12. The production team do not know what is meant by the reference to "annual report", nor what its relevance is to their programme.
13. Again, the production team are not sure of the relevance of this point to their programme.
14. The two experts interviewed in the programme were Dr Ray Wyre, an expert witness and widely-recognised expert on sex offenders, and John McCormick, a Scottish defence lawyer with much experience of historic sexual abuse cases.

Neither Dr Wyre nor Mr McCormick talked specifically about the John Porteous case. Their role in the programme was to give general background about the issue of historical sexual abuse cases.

15. Clearly, the convictions do stand against John Porteous. It will be appreciated, however, that what went before the court as an appeal, not a re-trial.

Sonya Rothwell says that, although she provided Irene Whelan with contact details on more than one occasion, Ms Whelan never got in touch, attempted to contact her by telephone or left her a telephone message. Sonya Rothwell sent Irene Whelan a copy of the programme following TX, but said that she never heard anything from her. After the article in The Sunday Herald, Frontline Scotland also sent Irene Whelan a transcript of her interview. Again, the production team say that they never had a response from her.

Sam Poling confirms that Irene Whelan has never attempted to contact her and that she is aware of Sonya Rothwell's making numerous attempts to contact Irene Whelan, all of which were unsuccessful.

Sam Poling wishes to comment that she and Sonya Rothwell together tracked down and managed to speak with as many former Quarriers children and house-parents from the relevant period as was physically possible. She comments:

"The programme contents were not taken lightly. Far from it. At every turn both Sonya and I were aware of the contentious nature of the programme and I think this is reflected in the script. At no point did the programme say John Porteous was innocent or guilty. The programme's aim was to explore the difficulties in defending historic child abuse cases, using the case of John Porteous as an example, and to question the safety of these convictions."