

# OFCOM BROADCAST AND ON DEMAND BULLETIN

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## Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives<sup>1</sup>. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act<sup>2</sup>.

Ofcom reflects these requirements in its codes and rules. The Broadcast and On Demand Bulletin reports on the outcome of Ofcom's investigations into alleged breaches of its codes and rules, as well as conditions with which broadcasters licensed by Ofcom are required to comply. The codes and rules include:

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
  - the prohibition on 'political' advertising;
  - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
  - gambling, dating and 'message board' material where these are broadcast as advertising<sup>3</sup>.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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<sup>1</sup> The relevant legislation is set out in detail in Annex 1 of the Code.

<sup>2</sup> The relevant legislation can be found at Part 4A of the Act.

<sup>3</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

**It is Ofcom's policy to describe fully television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast and On Demand Bulletin may therefore cause offence.**

## Broadcast Standards cases

### In Breach

#### **The Capital Breakfast Show with Roman Kemp** ***Capital, 31 May 2019, 06:00***

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##### **Introduction**

*The Capital Breakfast Show with Roman Kemp* is broadcast across Capital's network of 11 local radio stations. It also broadcasts nationally on Capital's DAB service. The licences for all these services are held by Global Radio Limited ("Global" or "the Licensee").

Ofcom received a complaint about offensive language in this live programme during a pre-recorded feature called Don't Hang Up in which members of the public could nominate someone to be pranked.

On 31 May 2019 at 08:15 a listener featured in the Don't Hang Up segment said:

*"I'm not picking it up from fucking Leeds".*

Ofcom was informed by the Licensee that this content was also broadcast at 06:10.

Both broadcasts were followed by an apology. At approximately 06:30 Roman Kemp said:

*"Just a quick note just to apologise on our behalf if you heard any bad language during Don't Hang Up this morning. Just so that's an apology on our behalf for any bad language you may have heard this morning".*

At approximately 08:30, immediately after the second broadcast of Don't Hang Up, Roman Kemp said:

*"Well I just want to say just really quickly, I'm so sorry for any bad language that you heard inside that Don't Hang Up. It does get quite intense in there sometimes, it really does. But yes, apologies on our behalf for that one".*

We considered that this content raised issues under Rules 1.14 and 2.3 of the Code. These state:

Rule 1.14: "The most offensive language must not be broadcast...when children are particularly likely to be listening...".

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...".

Ofcom requested comments from the Licensee about how the content complied with these rules.

## Response

Global said that the offensive language in this programme feature was not identified and removed as required by its internal procedures.

In the segment at 06:10, Global said that the offensive language was identified immediately after it had been broadcast by the breakfast team. However, due to a technical issue the original, unedited version of the segment was broadcast again at 08:15.

The Licensee outlined new measures it said it had introduced "to prevent a recurrence". It told Ofcom that:

- two producers who had not been involved in recording each prank will now listen to the original audio to edit out any offensive language; and,
- the Executive Producer and the Senior Executive Producer for the Capital Breakfast show will listen to the final edited version before the audio is uploaded to the system.

Ofcom prepared a Preliminary View finding the Licensee in breach of Rules 1.14 and 2.3 and provided it to the Licensee for its comments. The Licensee replied and outlined additional measures it said it had introduced following this incident. It told Ofcom that:

- the "delay/dump button" is now used daily on this programme instead of only when live guests are on the air; and,
- all programming teams have undertaken online compliance training refreshers on the Code.

## Decision

### Rule 1.14

Reflecting our duties under the Communications Act 2003 (Section 319), Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening.

[Ofcom's research on offensive language](#) makes clear that the word "fucking" is considered by audiences to be among the most offensive language.

The Code states that the phrase "when children are particularly likely to be listening" refers to "the school run and breakfast time, but might include other times". [Ofcom's guidance on offensive language on radio](#) states that:

"broadcasters should have particular regard to broadcasting content at the following times: between 06:00 and 19:00...Monday to Fridays during school holidays."

We acknowledge the changes in compliance procedures Global said it had put in place following this broadcast to prevent any recurrence. However, as the most offensive language was broadcast at 06:15 and 08:15 on a Friday during summer half term we considered the most offensive language had been broadcast at times when children were particularly likely to be listening. Therefore, our Decision is that Rule 1.14 was breached.

### Rule 2.3

Section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size and composition of the potential audience and the likely expectation of the audience.

As stated above, Ofcom's research indicates that audiences consider the word "fucking" to be among the most offensive language.

Ofcom therefore considered whether the content was justified by the context.

[Our guidance on offensive language on radio](#) states that: "In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast". In our view, the majority of listeners to a nationally broadcast breakfast programme on a mainstream station that plays pop music would have been unlikely to expect the most offensive language to be broadcast on two occasions during the morning.

Therefore, our Decision is that Rule 2.3 was also breached.

### Conclusion

Ofcom was concerned that this pre-recorded package was broadcast twice, despite the Licensee clearly being aware that it included the most offensive language after its first broadcast. Following the changes to its compliance processes that the Licensee told Ofcom it had made, it would be a further concern to Ofcom if any other breaches of this type occurred.

### **Breaches of Rules 1.14 and 2.3**



## In Breach

### Live: FIFA U-20 World Cup Football (Ecuador v Italy) *Freesports, 26 May 2019, 16:52*

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#### Introduction

*Freesports* is a channel that provides free-to-air sports programming. Its licence is held by Freesports Limited ("Freesports" or "the Licensee"). This live match was broadcast from Gdynia Stadium, Poland.

Ofcom received a complaint about the broadcast of offensive language during this live coverage of the Under 20's World Cup match between Ecuador and Italy.

At approximately 16:42, during the Ecuadorian National Anthem, a microphone picked up the sound of a male voice, presumably a member of the production team, saying; "*oh God*" and "*fucking hell*".

We considered that this material raised potential issues under Rule 1.14 of the Code. This states:

Rule 1.14: "The most offensive language must not be broadcast before the watershed"

In accordance with paragraph 1.27 of our [Procedures for investigating breaches of content standards for television and radio](#), we did not consider it necessary to request formal representations from the Licensee before coming to our Preliminary View in this case.

#### Response

In response to our Preliminary View the Licensee explained that the feed it used for coverage of this match was received from FIFA who "apologises unreservedly for the audio malfunction and inappropriate language that could be heard..". It said that FIFA had experienced sound issues during the broadcast and "the world feed commentator swore out of frustration not realising he was being heard".

The Licensee stated that due to this being a live transmission it was "unable to react to bleep this profanity".

#### Decision

Reflecting our duties under the Communications Act 2003, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 of the Code states that the most offensive language must not be broadcast before the watershed.

[Ofcom's 2016 research on offensive language](#) clearly indicates that the word "fuck" and variations of it are considered by audiences to be among the most offensive language. In this case, the word "*fucking*" was broadcast at approximately 16:52. We took into consideration that this was a live feed acquired directly from FIFA, however, this is an example of the most

offensive language broadcast before the watershed and it is therefore our view that this broadcast was in breach of Rule 1.14.

**Breach of Rule 1.14**

## In Breach

### Programming during the European Parliamentary election period Time 107.5, 15 April 2019 to 23 May 2019

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#### Introduction

Time 107.5 is a local commercial radio station licensed to provide a service of broad music, information and news in the London Borough of Havering and the immediate area. The License for the service is held by Lyca Media II Limited ("Lyca" or "the Licensee").

Ofcom received a complaint that an interview with Andrew Rosindell ("AR"), a Conservative Party MP for Romford failed to preserve due impartiality in relation to the European Parliamentary elections. This interview was broadcast on the *Day Time Show* on 20 May 2019 at 12:00. About 25 minutes into the interview, there was the following exchange between the presenter and Mr Rosindell:

Presenter: *"Which party will you vote for in this week's European election because you obviously don't seem happy with the government's handling of Brexit, so maybe you could vote for the Brexit Party?"*

AR: *"I'm a Conservative MP and I will always vote Conservative, but I totally understand why a lot of people are very disillusioned at the moment and are considering voting for the Brexit Party. The fact is the Brexit Party is a brand new party which has been formed purely really to fight these elections to stand up for a clear Brexit that people voted for and it includes lot of former Conservatives, or people that are still Conservatives that are deciding to vote for that party, together with people from the Labour party and other parties. It's a mixture of people of all political views, but the one thing they're all agreed on is they want to leave the European Union and they want to do it quickly. I agree with that. But I am a Conservative MP, of course I'm going to vote Conservative and I going to urge people to vote Conservative. What I don't believe however is that the Conservative Party can be very proud about the situation we're in. But it's not the party as such, I think it's a failure of leadership, and once we have a new leader and a new prime minister which we will have very soon, I have no doubt there will be a strong, clear agenda to take Britain forward to leave the European Union, and to get back to getting our lives back and talking about ordinary things that matter to people: the crime, the health service, the schools, all the things that actually we do care about and we need. We need to get Brexit over with, and the only way we're going to do that now I'm afraid is to have a new prime minister. So the quicker Theresa decides to stand aside and give us a chance of choosing someone fresh, the better"*

Presenter: *"Okay, so, I mean when is that actually going to happen? When is she actually going to step down because we've heard various things over the weekend, but we've got no timescales. How quick do you think?"*

AR: *"Nobody knows for sure. It's in her hands. We have the European elections this week. I imagine they'll be a very strong message from the British people,*

*I'm sure people will punish the Conservatives. But I think, and rightly so, they'll punish the Labour Party too because equally so they have created a dreadful mess in terms of what they stand for over this. So yes, there will be a big protest on Thursday, and I very much hope that she will then take the hint and decide to stand aside. My understanding is that it's likely to happen at the beginning of June, but I think in the interests of the entire party, and more importantly the country, she should stand aside quickly because we need a new prime minister in post before the summer. We can't let it drag out until the autumn. We need a prime minister in charge, sorting things out as quickly as possible".*

Ofcom requested information from the Licensee about any programmes that were broadcast during the election period<sup>1</sup> for the European Parliamentary elections that included coverage of parties and independent candidates standing in the election. In its response, Lyca highlighted an interview with Labour councillor Darren Rodwell, Leader of Barking and Dagenham Council, which was broadcast on the *Day Time Show* on 22 May 2019 at 12:00. Ofcom assessed this content and found that the interview focused on local issues with no discussion of the European Parliamentary elections and the parties and/or candidates contesting those elections.

Lyca also highlighted the following three news items broadcast during the election period, which, in the Licensee's view, discussed issues relating to the European Parliamentary elections.

#### 7 May 2019 bulletin, 13:00

Presenter: *"The Prime Minister's spokesman's refused to comment on speculation that the Government could agree with Labour to temporarily stay in a customs union with the EU. The Conservative MP Rehman Chisti said that would go against the vote from 2016".*

Rehman Chisti: *"Before you had the referendum nearly three years ago, it was made very clear in the information that was sent out, it was leaving the customs union, leaving the single market which addressed the point of sovereignty. So I would say these discussions are going nowhere".*

Presenter: *"Theresa May's expected to meet with the chair of her party's 1922 committee which represents backbench Tories. She's also due to come under more pressure to announce when she plans to stand down".*

#### 8 May 2019 bulletin, 08:00

Presenter: *"Conservative MPs will meet again later to discuss Theresa May's future. Yesterday she spoke to the chair of the 1922 committee of backbench Tories, Sir Graham Brady, who's asked her to clarify when she'll resign. Eurosceptic Sir Bill Cash says the party should change the rules to get rid of her".*

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<sup>1</sup> In the case of the European Parliamentary elections which took place on 23 May 2019, the 'election period' ran from the notice of the elections on 15 April 2019 (or 12 April 2019 in the case of the South west electoral region) to the close of polling on 23 May 2019.

Sir Bill Cash: *"We've just had the local election results which were a complete disaster. We've got the European elections which were never supposed to take place, which apparently are now going to take place. We've got the deal with Corbyn over the withdrawal agreement which is completely unacceptable".*

Presenter: *"Next month a meeting of grassroots party activists will vote on whether they think she should quit as prime minister".*

22 May 2019 bulletin, 08:00

Presenter: *"Theresa May is pleading for Labour to back a new Brexit deal. The Prime Minister's written to Jeremy Corbyn urging him to compromise on the proposals, which including offering MPs a vote on a second referendum. But the Shadow Brexit Secretary Sir Keir Starmer says she should admit defeat as it won't get through parliament. Sky's political correspondent Tamara Cohen says some Tory backbenchers are also angry and want her out".*

Tamara Cohen: *"What senior conservatives are now talking about is how to speed up that timetable for departure. Many of them do not want to see a situation where Theresa May announces a timetable but perhaps it takes the entire summer and a new leader is not in place until September".*

Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules in Section Five of the Code. In addition, Rules 6.2 to 6.12 of the Code apply to programmes broadcast during the designated period running up to the date of elections in the UK known as the 'election period'<sup>2</sup>. Section Six of the Code under the heading 'Meaning of 'election' makes clear that for the purpose of this section: "elections include a...European parliamentary election".

We considered that the programming broadcast during the election period raised issues under the following Code rules:

Rule 6.1: *"The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums".*

Section Five of the Code in turn makes clear that Rule 5.13 applies to "local radio services...".

Rule 5.13: *"Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service...taken as a whole".*

Rule 6.2: *"Due weight must be given to the coverage of parties and independent candidates during the election period. In determining the appropriate level of coverage to be given to parties and independent candidates broadcasters must take into account evidence of past electoral support and/or current support. Broadcasters must also consider giving appropriate coverage to parties and independent candidates with significant views and perspectives".*

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<sup>2</sup> Ibid.

We therefore requested comments from the Licensee about how the content complied with these rules.

## Response

Lyca felt that it had not given “weight or undue prominence to the views of any persons, parties or parliamentary candidates during the EU election period”. It stated that Time 107.5 had “decided not to cover” the European Parliamentary elections and did not invite any guests to discuss it. It said its only coverage of the elections was in the form of news bulletins provided by Sky News Radio.

The Licensee emphasised that Andrew Rosindell MP was not a candidate in the European Parliamentary elections, and appeared on the 20 May 2019 programme for his “regular monthly Q&A session” which was arranged in advance in January 2019. Lyca stated Mr Rosindell’s appearance on the programme was announced “two hours prior to his visit”, and the Licensee invited questions from listeners about “local issues”. The Licensee said it was “inundated” with questions about “why people should bother voting” in the European Parliamentary elections given that the UK should have left the European Union. It said that it decided to ask this question which it felt “was important to our listeners”, and that as the question related to Brexit, asking it “would add no weight” to the election campaign of any party. The Licensee said that it “ensured Mr Rosindell did not mention any party’s policies, any candidates’ names or endorse any party in any way”, and that he did not answer any questions on for whom listeners should vote.

Lyca confirmed that Labour councillor Darren Rodwell, Leader of Barking and Dagenham Council also had “regular monthly interviews” on Time 107.5 to “answer questions from local residents” and Mr Rodwell appeared on 22 May 2019. It added that like Mr Rosindell, Mr Rodway was not a candidate in the European Parliamentary elections and Mr Rodway’s appearance was arranged in January 2019. It stated that neither Mr Rosindell nor Mr Rodwell were “invited to talk about the European elections”. The Licensee added that it had invited in other local MPs to “hold a monthly surgery” on air and that it had not received responses from them.

In response to our Preliminary View, which was to record breaches of Rules Rule 6.1 (with reference to Rule 5.13) and Rule 6.2, Lyca stated that there were “disappointed” with Ofcom’s provisional finding. It added that in “hindsight” it “should not have asked Andrew Rosindell the question regarding the EU elections”. The Licensee said that in its view, Mr Rosindell’s answer did not encourage listeners to vote for the Conservative Party or give “undue weight” to any party. It said that it would have included representatives of other parties during the election period had it felt otherwise, or if had “received a complaint directly”. Lyca added that by the time it was notified of the complaint by Ofcom on 22 May it was “too late”, and that it usually handles all comments and complaints it receives “urgently”.

The Licensee said that in future it would “be more diligent” during elections periods and “cancel regular features with local politicians and council leaders” during such periods. It also said it would be “looking into training” for its presenters regarding the rules that apply during an election period.

## Decision

Reflecting our duties under the Communications Act 2003 (see Section 319 and Section 320), Section Five of the Code requires that the accuracy and impartiality requirements are met, and Section Six requires that special impartiality requirements are applied at the time of elections.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

Ofcom's [Guidance](#) to Section Six (Elections and Referendums) of the Code ("the Guidance"): states that there is no obligation on broadcasters to provide any election coverage. However, if broadcasters choose to cover election campaigns, they must comply with the rules set out in Section Six of the Code. These rules apply, even if as in this case a broadcaster has not intended to cover the European Parliament election.

### Rule 6.1 (with reference to Rule 5.13)

Rule 6.1 states: "The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums".

Section Five makes clear that the relevant "due impartiality" rule as regards elections in relation to local radio services is Rule 5.13. This states that local radio services: "...should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service...taken as a whole".

In this case, a programme was broadcast on 20 May 2019 featuring an interview with a Conservative Party MP, Andrew Rosindell, during the election period (as defined by Section Six of the Code) for the European Parliamentary elections. Mr Rosindell made statements which expressed support for the Conservative Party (and to a lesser extent the Brexit Party) in the European Parliamentary elections, and criticised the Labour Party in the context of those elections, and urged listeners to vote for the Conservative Party. For example, although he did criticise the strategic direction of the Conservative Party (which he described as "*a failure of leadership*"), Mr Rosindell clearly expressed his support for the Conservative Party and urged listeners to support that party:

*"I'm a Conservative MP and I will always vote Conservative".*

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*"I am a Conservative MP, of course I'm going to vote Conservative and I going to urge people to vote Conservative",*

Mr Rosindell also voiced his partial support for the Brexit Party:

*"The fact is the Brexit Party is a brand new party which has been formed purely really to fight these elections to stand up for a clear Brexit that people voted for and it includes lot of former Conservatives, or people that are still Conservatives that are deciding to vote for that party, together with people from the Labour party and other parties. It's a*

*mixture of people of all political views, but the one thing they're all agreed on is they want to leave the European Union and they want to do it quickly. I agree with that".*

He also criticised the Labour Party in the context of the European Parliamentary elections when he predicted that voters would *"punish the Labour Party too because equally so they have created a dreadful mess in terms of what they stand for over this"*.

Under Rule 6.1, the Licensee was obliged to comply with the relevant rules in Section Five in relation to any broadcast statements about the European Parliamentary elections. Unlike many other licensees, which are required to demonstrate due impartiality in their coverage of controversial matters either within a programme or over a series of programmes<sup>3</sup>, non-national radio stations like Time 107.5 are afforded greater flexibility under Rule 5.13. What constitutes undue prominence under Rule 5.13 will depend on all the circumstances, including whether a programme is broadcast during an election or referendum period.

The Code and relevant [Guidance](#) makes clear that, for Rule 5.13 to be breached, Ofcom must be satisfied that:

- there has been a *significant* imbalance of views and opinions on a matter of political or industrial controversy and/or a matter relating to current public policy;
- the relevant views and opinions given prominence in this way are those of particular persons or bodies; and
- the relevant timeframe for a service to show compliance with Rule 5.13 is "all programming on a service dealing with the same or related issues within an appropriate period".

We therefore went on to consider whether the Licensee had given the views and opinions of Andrew Rosindell MP undue prominence. As the Code and Guidance make clear, undue prominence does not mean that, across all programming, 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 undue prominence of views on matters of political or industrial controversy and matters relating to current public policy depends on all the relevant circumstances, including the significance of the matter of political controversy or current public policy on which the person or body is giving a view or opinion. Clearly an election or referendum is likely to be a matter of political controversy, and therefore local radio broadcasters need to take appropriate care to ensure they comply with Rule 5.13 when covering it in programming.

Undue prominence of views and opinions can be avoided in a number of ways. It is an editorial decision for the broadcaster as to how it prevents the views and opinions of particular people or organisations from being given undue prominence. In this case the Licensee broadcast a programme which included a number of statements which expressed support for the Conservative Party (and indirectly the Brexit Party) in the European Parliamentary elections and were critical of the Labour Party standing in those elections. We acknowledged the Licensee's point on the high level of interest expressed by listeners wishing to ask an elected politician question about voting in the European Parliamentary

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<sup>3</sup> For example, Rule 5.5 states that "due impartiality on matters of political and 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".



elections three days before polling day for those elections. However, it was incumbent on the Licensee to ensure that the rules in Section Five and Six were complied with.

In considering whether Mr Rosindell's views and opinions were given undue prominence on Time 107.5, Ofcom took account of the parties that had demonstrated evidence of previous significant electoral support and evidence of significant current electoral support. Our analysis of this is discussed below under Rule 6.2.

Ofcom then assessed the views and opinions given across the output of Time 107.5 as a whole. Ofcom's published [Guidance](#) to Rule 5.13 states that just because a broadcaster to which Rule 5.13 applies broadcasts only a single viewpoint on a matter of political or industrial controversy and matter relating to current public policy does not mean that there has been undue prominence given to that viewpoint. However, in our view, the application of Rule 5.13 should take into account the particular significance of elections or referendums as matters of political controversy. As a precautionary approach a broadcaster should ensure that, if a viewpoint by one particular person or body on an election or referendum during the election or referendum period is reflected in its service, the broadcaster should also seek to reflect other alternative viewpoints as appropriate across the service as a whole.

We took into account the other programming broadcast during the election period, cited by the Licensee as providing coverage of the European Parliamentary elections.

Firstly, we assessed the interview with Labour councillor Darren Rodwell, Leader of Barking and Dagenham council, broadcast on 22 May 2019. In this interview Rodwell answered questions from listeners about local issues such as: fly tipping; green waste; and a local taxi card scheme. Second, Ofcom also assessed the three news bulletins broadcast on 7, 8 and 22 May 2019. In our view the bulletins provided brief, factual updates to listeners on: the Prime Minister's progress in trying to secure an agreement to leave the European Union; and Theresa May's future as leader of the Conservative Party. We considered that none of the additional content cited by Lyca dealt with issues directly relevant to the European Parliamentary elections. Nor did these programmes contain any content that could be reasonably said to reflect the viewpoints of parties other than the Conservative Party (or Brexit Party) contesting the European Parliamentary elections.

We took into account that as a result of this case, Lyca was "looking into training" for its presenters regarding the rules that apply during an election period. However, given the above, our Decision is that the Licensee gave undue prominence to the views and opinions of a particular person on a matter of political controversy, namely the European Parliamentary elections. Our Decision is that there was a breach of Rule 6.1 (with reference to Rule 5.13).

## Rule 6.2

Rules 6.2 states: "Due weight must be given to the coverage of parties and independent candidates during the election period. In determining the appropriate level of coverage to be given to parties and independent candidates broadcasters must take into account evidence of past electoral support and/or current support. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives".

In determining which parties demonstrate evidence of previous significant electoral support or where there is evidence of significant current support, broadcasters should take account

of the available evidence. In considering past electoral support, the [Guidance to Section Six](#) makes clear that Ofcom takes into account factors such as the electoral performance of parties (including the numbers of elected candidates and overall percentage of vote received) in the previous set of corresponding elections over at least two electoral cycles. The Guidance also states that one obvious objective and measurable type of evidence of significant current support for a candidate is opinion poll evidence, where it is available.

In this case, we considered what parties contesting the European Parliamentary elections had demonstrated evidence of previous significant electoral support. In doing so, we took into account the performance of relevant parties in relation to the [last two elections](#) when the seats being contested in May 2019 were last contested (2009 and 2014) over the past two electoral cycles at the European Parliament elections.

By way of example looking at past performance in the European Parliamentary elections in England, we took into account that among other parties whose viewpoints were not represented in the programme featuring Mr Rosindell:

- the Labour Party achieved 25.2% in the 2014 elections and 15.1% in the 2009 elections;
- the Liberal Democrats achieved 7.0% in the 2014 elections and 14.1% in the 2009 elections;
- UKIP achieved 29.2% the 2014 elections and 17.6% in the 2009 elections; and
- the Green Party achieved 8.0% the 2014 elections and 8.9% in the 2009 elections.

We also considered whether any parties contesting the European Parliament elections in England had demonstrated evidence of current support, in the form of opinion polls. In doing so we took account of [Ofcom's published digest of Evidence of past electoral support and current support](#) (figure 18) ahead of the various elections that took place on 2 May 2019. This showed that in relation to opinion poll evidence in England at the end of January 2019 (the last date included in Ofcom's published digest):

- the Labour Party was attracting support of 36.7%;
- the Liberal Democrats were attracting support of 9.3%;
- UKIP was attracting support of 5.3%; and
- the Green Party was attracting support of 3.6%.

As stated in paragraph 1.47 of our Guidance to Section Six, in reaching decisions in the area of elections, Ofcom places greater weight on the actual performance of a political party in elections over opinion poll data. We therefore considered that during the election period, Lyca should have reflected to some extent the viewpoints of: the Labour Party; the Liberal Democrat; UKIP; and the Green Party.

However, in the programme featuring Mr Rosindell, there was no reflection of other viewpoints which in our view could be reasonably described as either representing other parties contesting the European Parliamentary elections, and/or challenging Mr Rosindell's support for the Conservative Party (and indirect support for the Brexit Party). We therefore

disagreed with the Licensee's argument that Mr Rosindell's statements discussed above "would add no weight" to the election campaign of any party. As such, we considered that the programme was a one-sided treatment of the European Parliamentary elections.

In our view, given the evidence discussed under Rule 6.1 (and Rule 5.13) above, it was incumbent on Time 107.5 to give due weight to parties other than the Conservative Party (and Brexit Party), for example such as: the Labour Party; the Liberal Democrats; UKIP; and the Green Party, during the election period.

Once again, we took into account that as a result of this case, Lyca was "looking into training" for its presenters regarding the rules that apply during an election period. However, given all of the above, Ofcom's Decision is that the Licensee also breached Rule 6.2.

**Breaches of Rule 6.1 (with reference to Rule 5.13) and Rule 6.2**

## In Breach

### The Phil Mack International Country Show

**Keep It Country TV, 27 January 2019, 18:00 and 3 February 2019, 18:00**

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#### Introduction

Keep It Country TV was a country music television channel<sup>1</sup>. The licence for the service was held by KEEPITCOUNTRY.TV.LTD (“Keep It Country TV” or “the Licensee”).

*The Phil Mack International Country Show* is a weekly programme presented by Phil “Mack” McLaughlin (PM) and Natasha Magee (NM).

Ofcom received two complaints that the programmes promoted music events. The programmes included references to four events:

- The Phil Mack International Country Show, Keep It Country USA Tour 2019 (“the USA Tour 2019”);
- The Phil Mack International Country Show, Warner Leisure, Sinah Warren Coastal Resort;
- The Phil Mack International Country Show, Warner Leisure, Thoresby Hall Hotel & Spa; and
- The Phil Mack International Country Show, Warner Leisure, Bodelwyddan Castle Hotel.

The Sinah Warren, Thoresby Hall and Bodelwyddan Castle events were hosted at Warner Leisure Hotel venues and are referred to as the “Warner Leisure Events” in this Decision.

#### The USA Tour 2019

The 27 January broadcast began with the following introduction:

PM: *“Great feedback to last week’s show. Lots of people ringing in regarding our –”.*

NM: *“The USA Tour 2019. Huge response”.*

PM: *“...And we’re looking forward to meeting all of you. And to the people who have been calling in and have never met any of us, and are looking forward to the trip, let me tell you I can guarantee you we’re gonna have fun, fun, fun in the USA in October. And Natasha’s very excited about visiting New Orleans”.*

NM: *“I am. That has to be on the bucket list for most people”.*

PM: *“...And people are calling me and telling me ‘Phil, you’ve got to go to the French quarter’. Well, even better. We are staying in the French quarter”.*  
[Footage of the French quarter was shown].

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<sup>1</sup> In June 2019, this service was renamed ‘Spotlight TV’ by the Licensee.

NM: *"Oh, it looks gorgeous".*

PM: *"Yeah. And I tell you what I do like, Natasha – when you book these hotels and Deidre Grant does a fabulous job over there...A fabulous job, this time, we always look on Trip Advisor, don't we...I went on Trip Advisor and looked at the hotel that we're staying in in New Orleans. It was all five stars, so that's great. But anyway folks, if you want to know more about our USA trip they can go to, or you can go to, [website address]. The full itinerary is on there and we're going this coming October".*

A banner appeared on screen that said:

*"[website address] USA TOUR 2019 – FULL ITINERARY & BOOKING DETAILS"*

At around 35 minutes into the 3 February programme, the presenters said:

PM: *"...we've met many of you on my tours to the USA over the past five years. I had the pleasure of hosting last year with Natasha, didn't I Natasha?"*

NM: *"Yes, we had a great time!"*

PM: *"We had a fabulous time. And this year in October, we're going once again...Let me tell you folks. Loads of you are calling in, and they want a little bit more information. The itinerary is on my website [address given] But it's only fair to give you a bit more information. If you go on one of these trips, it is one big family".*

A banner then appeared on screen giving the website address.

NM: *"It really is. You cannot say that enough".*

PM: *"No. We wouldn't have survived for six years doing this if it wasn't for people booking year after year. The first coach is fully booked, and this year we're arriving in the fabulous New Orleans and we're staying in the French quarter". [Footage of New Orleans was shown] ...Now we leave on the 30th September. Flights from Ireland and also from Dublin, and also direct flights from the UK from Heathrow, and you'll be on that flight with me...Now tell us the date we depart, Natasha".*

NM: *"So we're heading out on Monday 30<sup>th</sup> September, and that's as Phil says direct flights from Dublin and Heathrow".*

PM: *"Yeah, and for the first three nights, Monday, Tuesday, Wednesday, we are staying in New Orleans...French Quarter. Doing tours of New Orleans. We've got some fabulous visits lined up can you say. [Footage of New Orleans was shown]...Then we're heading off on the Thursday. I believe it's the Thursday if I get it right...And we're heading up to Montgomery, Alabama, the home of Hank Williams, legend of country".*

A full screen banner appeared that said:

*"The Phil Mack International Country Show. Keep It Country USA Tour 2019.*

*Dates: Mon 30 Sep – Wed 9 Oct 2019*

*Flights: Direct from London (Heathrow) or Ireland (Dublin)*

*Mon 30 Sep: New Orleans, Louisiana (Hampton Inn & Suites)*

*Thu 3 Oct: Montgomery Alabama (Drury Inn & Suites)*

*Fri 4 Oct: Muscle Shoals, Alabama (Marriott Shoals Hotel & Spa)*

*Sat 5 October: Nashville, Tennessee (Opryland Hotel)".*

- PM: *"We're gonna be there for a night and do some great visits and touring around". [Footage of Alabama on screen]*
- NM: *"...We're heading up over to the Muscle Shoals where we'll tour that".*
- PM: *"Muscle Shoals. Never been there folks. Then after that we're back on the coach, sing song as we travel up to Nashville Tennessee to the fabulous Opryland Hotel...let me tell you, there's only one hotel to stay in. [Footage of Nashville on screen] ...They're all good, but if you want the real deal as I call it, absolutely fabulous hotel, Opryland Nashville is in a different league". [Footage of Opryland Hotel was shown].*
- NM: *"Yes, it really, really is. And you don't just have to take our word for it...You can see the clips on the website".*
- PM: *"Yeah, on my website of the people who have been before. We just have to go. We used to give people a choice of what hotel they wanted to stay in, but it's a no brainer. If you've not been to Nashville, believe you me, trust my word on this one, when you stay in the Opryland Hotel you'll never book anywhere else in Nashville. It's just absolutely spectacular. It's a massive hotel. It's got acres and acres of grounds to it and you don't have to go outside the hotel. The restaurants, the entertainment that's inside the hotel, it's just a different class. In fact, as I'm speaking to you, you'll see some scenes of the hotel on screen. Absolutely fabulous. I could go there and stay for nine days there alone...In fact, on the last trip, some of the people never left the hotel...And folks, it's right beside the Grand Ole Opry...So, part of the trip is a night at the Grand Ole Opry. Then last year, some of the folk enjoyed that so much, they booked in for another couple of nights. You included!"*
- NM: *"Oh, I had to go back. You couldn't not go back. It was just the Holy Grail of country music".*
- PM: *"And finally folks, why are we telling you all this? Because loads of people are calling me and saying Phil, 'We need a little more information on what happens when you go.' We just have a fabulous time, and I've been to Graceland so many times, and people have been with me before, but some people want to go again and again to the home of Elvis Presley up in Memphis, Tennessee. So, we do put on a day trip. This is extra actually because we give you the opportunity if you want to book to go to Graceland, and Natasha had the pleasure last time of going up to Graceland and Memphis, Tennessee".*

NM: *"And it's well worth the visit...It was incredible. You go and visit obviously Graceland. You take a little trip down Beale Street. Everything. It was just an exceptional day out".*

PM: *"And this trip appeals to not just country fans because there were a lot of other artists that came out of that area...So, if you want to come on the tour in October, go to my website [address given]. And when we do these promotions we always say to everyone, we always enjoy a night at the Grand Ole Opry. So right now, let's take a look at an artist on that world-famous stage where we will be once again this October".*

A banner appeared on screen giving the website address.

At the end of the 3 February broadcast, the presenters said:

PM: *"...And who knows. Some of these viewers may be joining us in the USA in October".*

NM: *"They may do. I look forward to seeing you".*

PM: *"Natasha hates going to the USA. If you believe that, you'll believe anything. No, we have a great time when we go to the USA. We're looking forward to October, well 30<sup>th</sup> September this year when we head off once again from Heathrow and Dublin to the wonderful USA. For more information on that trip and on our Warner Leisure events across the UK, go to my website at [address given]".*

#### The Warner Leisure events

Around 18 minutes into the 27 January programme, the presenters said:

PM: *"...we love more meeting the people".*

NM: *"Yes. That's the best part".*

PM: *"It's absolutely fabulous, and of course the Warner Leisure events which have become a pivotal part of our show – we do three a year as you do know – we've made great friends with many, many people...so, everybody who attends our events are one big family. We absolutely love all of you. It's absolutely great, and when you've got 5- or 600 people in the halls, it's great to see at two or three in the morning all the artists chatting to them...Every artist has become a favourite to the viewers and the people who turn up. They've become friends, haven't they...Sinah Warren in not too long now in mid-March. Details on my website [address given], and hey, take a look at this artist who you'll see at Sinah Warren in a few weeks' time".*

At approximately six minutes into the 3 February programme, the presenters said:

PM: *"Well folks, the next video is going to feature an artist that we know very well because they're always on our Warner Leisure events, and the next Warner Leisure event is coming up so fast. It's in just a few weeks' time on*

*the 17<sup>th</sup> of March, or around about that time. Check it out on my website, and Natasha, you've been there...Well, I can tell you folks, 500 people book in there and the latest news is there are just a few rooms left...If you want to meet us there, we look forward to it. If you missed booking for Warner Leisure Sinah Warren, we go back to Thoresby Hall, July. Unbelievable".*

A full screen banner appeared that said:

*"Phil Mack Country Events 2019.  
FRI 15 MAR – MON 18 MAR  
Sinah Warren Coastal Resort  
Hayling Island, Hampshire*

*FRI 19 JUL – MON 22 MARCH  
Thoresby Hall Hotel & Spa  
Nottinghamshire*

*NOVEMBER  
Bodelwyddan Castle Hotel  
Wales".*

PM: *"...Only the best. And then later in the year it's Bodelwyddan Castle. And between all the guests on our events, and all the artists, and everyone connected with Keep It Country TV, there's always this 'Which event's the best?'. Is it Sinah Warren in March? Is it Thoresby Hall in July? Is it Bodelwyddan Castle in November? And let me tell you, it's very evenly split...So, the best way to find out which is best, as most of our guests do, they just book everyone".*

Ofcom requested information from the Licensee about any commercial arrangements associated with the references in the programme to the USA Tour 2019 and the Warner Leisure events.

The Licensee provided a copy of a contract between Killester Travel Group and Philip McLaughlin, regarding "the provision of travel services" for the USA Tour 2019. This contract specified that Killester Travel would pay Philip McLaughlin a set sum for each booking made. It also placed an obligation on Philip McLaughlin "to promote the tour on the Keep It Country music channel and any other necessary outlets".

In relation to the Warner Leisure events, the Licensee provided copies of separate agreements between Philip McLaughlin and Warner Leisure Hotels regarding accommodation arrangements for each event. In each of the agreements Warner Leisure Hotels undertook to pay a sum to "Phil Mack Promotions" for every booking it received, but it did not specify what service Phil Mack Promotions was performing in return for the payment being made.

#### The USA Tour 2019

We requested comments from the Licensee about how the references to the USA Tour 2019 complied with the following rules:



- Rule 9.9: "References to placed products, services and trade marks must not be promotional".
- Rule 9.10: "References to placed products, services and trade marks must not be unduly prominent".
- Rule 9.14: "Product placement must be signalled clearly, by means of a universal neutral logo, as follows:
- a) at the beginning of the programme in which the placement appears;
  - b) when the programme recommences after commercial breaks; and
  - c) at the end of the programme".

### The Warner Leisure Events

We requested comments from the Licensee about how the references to the Warner Leisure Events complied with the following rules:

- Rule 9.4: "Products, services and trade marks must not be promoted in programming".
- Rule 9.5: "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
- The presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
  - The manner in which a product, service or trade mark appears or is referred to in programming".

### **Response**

The Licensee said that the Code on the Scheduling of Television Advertising ("COSTA") applied to references to events in the programmes, and that the references could not be considered product placement as they were "directly connected" to the programme and "operated by the programme producer". Keep It Country TV quoted COSTA rules relating to time devoted to advertising. It stated that the events were "ancillary" to the programmes as they were a "net cost to the program"; it "did not receive payment for including references to the events" in the programmes; and, the audience "have come to expect" these references in programming.

The Licensee explained that it has always complied with the COSTA rules, and in its view, COSTA rules "prevailed" in this matter. It added that if Ofcom considered the Broadcasting Code to "outrank COSTA", it would remove references to events from programming where they "obviously belong" and include these references in advertising which it considered would be "far more distracting to the viewer experience".

Keep It Country TV said that the references could not be considered to have "undue prominence" due to their relation to the programme, and the fact the references occupied

“a tiny section of one ‘featured’ item in each show”. The Licensee questioned how Ofcom determines “undue prominence” and said that the term was “ambiguous in the extreme”, and that, in its view, “one or two mentions in every part” of the programme were not “excessive”. It added that references to events in the programmes provided information to viewers that they both “want” and “frequently request”.

The Licensee said that the contracts it had provided demonstrated that there were “no persons controlling persons, or corporate bodies controlling persons or bodies” in relation to the events referenced in the programmes. It said that Keep It Country TV is a “small, independent channel” that tries to comply with what it considered to be “confusing” and “conflicting” rules.

In response to Ofcom's Preliminary View, the Licensee stated that *The Phil Mack International Country Show* was broadcast on another channel for nearly four years before the Keep It Country TV channel was established. Keep It Country added that the programme was on the other channel “at least 18 months prior to any tour or promotion taking place”.

It considered that references to events in the programme which had already happened could “in no way, be regarded as promotion”.

The Licensee said that the programme served a “neglected audience” and that it operated in a business with a “general bias again small independents such as ourselves”. It was Keep It Country TV's view that the Code contained “an unnecessarily complicated set of rules”, and that it could be “revisited so that mature audiences can have what they want”. The Licensee stated it welcomed a meeting to discuss the “glaring ambiguities” it considered were created by the “conflicting guidelines” in the Code and COSTA.

## Decision

Reflecting our duties under the Communications Act 2003 (section 319 and section 321) Ofcom codes ensure that there is a distinction between advertising and programming.

This requirement is reflected in Rule 1 of COSTA, which states that “Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service...”.

COSTA also limits the amount of advertising that broadcasters can transmit but makes clear that these restrictions do not apply to advertising by the broadcaster in connection with its own programmes and ancillary products directly from those programmes<sup>2</sup>.

Section Nine of the Broadcasting Code includes rules that apply to commercial references included in television programming (that is, outside of the airtime that broadcasters are allowed to use for advertising). The rules in this section have been drafted to ensure that editorial content remains distinct from advertising. They require broadcasters to retain editorial control over the programmes they transmit.

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<sup>2</sup> COSTA states that ‘Rules 2 to 5 [which limit the amount of advertising that can be broadcast] do not apply to...advertising by the broadcaster in connection with its own programmes and ancillary products directly from those programmes...’

Taken together, the rules in COSTA and Section Nine serve to protect viewers from both excessive and surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming;
- requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and
- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

In this case, the Licensee said that the references were subject to the rules in COSTA. In its representations on Ofcom's Preliminary View it said that there were "glaring ambiguities" created by the "conflicting guidelines" in the Code and COSTA.

Ofcom did not accept that the guidance on the Code and COSTA conflicted in any way. The commercial references appeared within programming, integrated into the narrative, and were not scheduled during distinct advertising breaks. Ofcom therefore considered that it was clear that the content was subject to the Broadcasting Code rather than COSTA, and that Section Nine of the Code applied to the commercial references in these programmes.

The Licensee also argued that the commercial references were "directly connected" to the programmes because the events were "ancillary" to the programme and "represent[ed] a net cost" to the programme. Section Nine of the Code allows broadcasters, subject to certain restrictions, to refer to the availability of programme-related material ("PRM") in programming. Ofcom has published extensive [guidance](#) on what constitutes PRM and the extent to which it can be promoted in programming.

The relevant cost to a programme of an event is not determinative of whether it meets the definition of programme-related material. The guidance on what material meets the definition includes the following key considerations:

- PRM must fulfil the dual condition of being both ancillary to and directly derived from the programme concerned. It is very unlikely that Ofcom would consider a product or service which existed before that programme to meet the definition of PRM;
- the undue prominence rules apply to PRM promoted in programming and that programmes should not be a vehicle for promotion of the product or service;
- similarity in genre or theme between a programme and a product or service is not in itself sufficient to establish that the product or service is directly derived from the programme; and
- PRM is generally editorially based. Where it is not editorially based, broadcasters will need stronger editorial justification that the material is intended to allow viewers to benefit fully from, or interact with, the programme.

As mentioned above, in its response to Ofcom's Preliminary View, the Licensee clarified that the programme existed before the tour and for this reason argued that the references were programme-related. It explained that *The Phil Mack International Country Show* was broadcast on another channel for nearly four years before the Keep It Country TV channel was established and that the programme was on the other channel "at least 18 months prior to any tour or promotion taking place".

Taking these points into account, Ofcom proceeded to consider the other aspects of the guidance in assessing whether the references to the events were programme-related material. We acknowledged that there was a thematic link with the programme given that the events included country music performances as part of a hotel stay (and in the case of the US tour, a wider tour itinerary). While the events were likely to be of interest to viewers, the guidance makes clear that similarity in genre or theme is not in itself sufficient to establish that the product or service is directly derived from the programme. In this context, it was significant that the events themselves were self-standing events organised by a third party and that they did not appear to have any direct connection with the programme other than through the presenter, who also attended and took part in the events. We also considered that a significant part of the programmes was focused on promoting the events and in some cases multiple segments served no purpose other than to promote them. Ofcom did not consider, therefore, that the events were sufficiently editorially based. Taking all these factors into account, we did not consider that the events met the criterion of being directly derived from *The Phil Mack International Country Show*. Accordingly, we did not consider that the references to the events were programme-related material.

Having reached this view, Ofcom went on to consider whether the commercial references in the programmes to the USA Tour 2019 and to Warner Leisure events were promotional and unduly prominent.

#### USA Tour 2019

Ofcom first considered whether the references in the programmes to the USA Tour 2019 met the definition of product placement under the Code.

Reflecting Schedule 11a of the Act, "product placement" is defined in Section Nine as: "the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement".

Ofcom reviewed the agreement between Killester Travel Group and Philip McLaughlin for "the provision of travel services for the Phil Mack Luxury tour to the United States in September 2019". It listed the respective obligations of the parties under the headings "Killester Travel Responsibilities" and "Philip McLaughlin Responsibilities". Among other things, Killester Travel agreed to: "pay costs to Philip McLaughlin at €200 per fee paying client travelling from Dublin and £200 per client travelling from the United Kingdom". In turn, Philip McLaughlin undertook various responsibilities, which included travelling with customers and entertaining them on the tour. He was also required to advertise the tour in all social media outlets and, significantly in the context of the product placement rules, "to promote the tour on the Keep It Country TV channel and any other necessary outlets".

Notwithstanding the Licensee's submission that it "did not receive payment for including references to the events" in the programmes, Ofcom considered that agreement provided clear evidence of the existence of a commercial arrangement between the parties under which Mr McLaughlin undertook to carry out a number of responsibilities, which included "to promote" the USA Tour 2019 on Keep it Country. Ofcom considered that, as Philip McLaughlin is listed as a director of the Licensee (see [Companies House](#)), the commercial arrangement existed between KEEPITCOUNTRYTV.LTD and a third party (i.e. Killester Travel). Ofcom considered that this provided clear evidence of the existence of a product placement arrangement and, therefore, that the references in the programmes to the USA Tour 2019 met the definition of product placement under the Code.

### Rule 9.9

Rule 9.9 states that "references to placed products, services and trade marks must not be promotional".

We went on to consider whether the references in the programmes to the USA Tour 2019 were promotional. Ofcom's guidance on Rule 9.9 makes clear that "where a product service or trade mark is included in a programme as a result of a product placement arrangement, a positive reference to it...whether in vision or audio is likely to be perceived as promotional in intent".

Factors that are likely to be considered promotional include "encouragements to purchase (whether direct or indirect)", "price of availability information", "references (either explicit or implicit) to the positive attributes or benefits of the placed product, service or trade mark" and "endorsements (either explicit or implicit)". The guidance also explains that the level of prominence given to a product, service or trade mark will be judged against the editorial context in which it appears.

We considered the Licensee's submission that references to events in the programmes provided information to viewers that they both "want" and "frequently request", and that the "neglected" and "mature" audience "have come to expect" these references in programming. Ofcom acknowledged that Keep it Country is a country music channel which primarily serves country music fans and we accepted that viewers of the programmes were likely to be interested in hearing about country music events. However, it is a fundamental tenet of the Code that a clear distinction between editorial content and advertising must be maintained. This is to ensure that viewers are protected from both excessive commercial references in programming and from surreptitious advertising. It also prevents broadcasters from circumventing limits on the amount of advertising they can show.

Programmes should not be used to promote products and services; it was Ofcom's view that the programme became a promotional vehicle for the USA Tour because multiple segments in the 27 January and 3 February broadcasts served no purpose other than to promote the event through prominent, extended and repeated references.

In particular, the programme contained detailed information about the event, including a full itinerary, and a number of positive statements about the tour (e.g. "If you go on one of these trips, it is one big family", "The restaurants, the entertainment that's inside the hotel, it's just a different class"). We also considered that the presenters appeared to offer their personal endorsements (e.g. "Can safely say folks, one of the best hotels on the planet", "Let me tell you I can guarantee you we're gonna have fun, fun, fun in the USA in October"), and that

they indirectly encouraged viewers to purchase tickets to the tour by presenting it in a positive light and suggesting that places were limited and selling out fast (e.g. *"The first coach is fully booked"*).

Ofcom considered the Licensee's representations on its Preliminary View that the presenters' references to past events in the programmes could "in no way, be regarded as promotion". We disagreed. It was our view that references in the programmes to the presenters' and viewers past experiences on the USA Tour served to promote the upcoming event further by reinforcing positive statements about the event.

Taking all these factors into account, we considered that the references in the programmes to the USA Tour 2019 were promotional. Ofcom's Decision, therefore, is that the programmes were in breach of Rule 9.9.

#### *Rule 9.10*

This rule states that "references to placed products must not be unduly prominent".

Ofcom's guidance on Rule 9.10 explains that it should be read in conjunction with the guidance for Rule 9.5 (see below). The guidance also makes clear that editorial justification is one of the fundamental tests by which undue prominence will be assessed by Ofcom.

The Licensee submitted that references to the events occupied "a tiny section of one 'featured' item in each show" and that "one or two mentions in every part" of the programme were not "excessive". Contrary to the Licensee's submissions on undue prominence, and as discussed above under Rule 9.9, Ofcom considered that multiple segments in the 27 January and 3 February broadcasts served no purpose other than to promote the USA Tour. While, as previously, Ofcom acknowledged that viewers of the programmes were likely to be interested in country music events, it was our view that the references included in the programmes were prominent, extended and repeated and that the nature and duration of the references went beyond what could be justified editorially.

As a result, our Decision is that the references to the USA Tour 2019 were in breach of Rule 9.10.

#### *Rule 9.14*

This rule requires that where a programme contains product placement, the universal neutral product placement logo (a 'P symbol') must appear at the beginning of the programme in which the placement appears, when the programme recommences after commercial breaks, and at the end of the programme.

Rule 9.14 applies to all programmes produced under UK jurisdiction. This is defined in the Code as including any programme produced or commissioned by the provider of the television programme service or any person connected with that provider. In this case, the programme's end credits stated that *The Phil Mack International Country Show* was produced for Keep It Country TV and therefore we considered that Rule 9.14 was engaged.

The product placement logo was not broadcast in these programmes. Our Decision, therefore, is that the programmes were in breach of Rule 9.14 of the Code.

## Warner Leisure events

Ofcom considered whether the references to the Warner Leisure events met the definition of product placement. As set out in the Introduction, the agreements between Philip McLaughlin and Warner Leisure Hotels stipulated that Warner Leisure Hotels undertook to pay a sum to "Phil Mack Promotions" for every booking it received. However, we were unable to establish the existence of a product placement arrangement, particularly as there was no requirement in the agreements for the events to be promoted on the Keep It Country TV channel. We therefore considered the references to the Warner Leisure events under the following rules.

### *Rule 9.4*

This rule states: "Products, services and trade marks must not be promoted in programming".

Ofcom guidance on Rule 9.4 explains: "In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed".

We again took into account the Licensee's submission that references to events in the programmes provided information to their "neglected" and "mature" audience that they both "want" and "frequently request". However, the programmes repeatedly:

- used favourable and superlative language to describe the events, for example *"It's absolutely great, and when you've got 5- or 600 people in the halls, it's great to see at two or three in the morning all the artists chatting to them..."*;
- referred to availability, for example *"Phil Mack Country Events 2019. FRI 15 MAR – MON 18 MAR Sinah Warren Coastal Resort Hayling Island, Hampshire"* and *"the latest news is there are just a few rooms left...If you want to meet us there, we look forward to it"*; and
- urged viewers to attend events, for example *"Which event's the best?'. Is it Sinah Warren in March? Is it Thoresby Hall in July? Is it Bodelwyddan Castle in November? And let me tell you, it's very evenly split...So the best way to find out which is best, as most of our guests do, they just book every one"*.

In addition, viewers were directed to the host's website, where the events were promoted.

Ofcom again disagreed with the Licensee's submission that references to past Warner Leisure events could "in no way, be regarded as promotion"; we considered that the positive references to past events served to promote the upcoming events to viewers. Taking these factors into account, Ofcom considered that the programmes actively promoted the events. Therefore, our Decision is that the programmes were in breach of Rule 9.4 of the Code.

### *Rule 9.5*

This rule states that no undue prominence may be given in programming to a product, service or trade mark, and makes clear that undue prominence may result from a reference

to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred.

Ofcom's guidance states: "Whether a product, service or trade mark appears in a programme for solely editorial reasons... or as a result of commercial arrangement between the broadcaster or producer and a third-party funder... there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears".

Ofcom took into account the Licensee's submissions that references to the events occupied "a tiny section of one 'featured' item in each show" and its view that "one or two mentions in every part" of the programme were not "excessive". We also acknowledged the focus of the channel and the fact that viewers of the programmes were likely to be interested in hearing about country music events.

As with the references to the USA Tour 2019, it was Ofcom's view that while there may be editorial reasons to refer to country music events in programmes broadcast on the channel, the extent, nature and frequency of the references to the events in these programmes was much more extensive than "one or two mentions" in each part of the programmes. Indeed, a significant part of the programmes was focused on promoting the events, i.e. a large proportion of the studio discussion between each song referred to the events. As before, therefore, we considered that the level of prominence afforded to the Warner Leisure events went beyond what could be justified editorially.

Ofcom's Decision is that the references to the Warner Leisure events were in breach of Rule 9.5.

In light of the Licensee's own admission of confusion about the application of the rules in this area, we are requesting it attends a meeting to discuss the requirements of Section Nine of the Code.

We take this opportunity to remind all broadcasters that it is a condition of all Ofcom licences that sufficiently experienced staff and adequate compliance procedures and arrangements are in place to ensure that licensed services meet the requirements of the broadcasting codes.

#### **Breaches of Rules 9.4, 9.5, 9.9, 9.10 and 9.14**



## Not in Breach

### Channel 4 News

#### *Channel 4, 29 March 2019, 19:00*

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#### Introduction

*Channel 4 News* is Channel 4's flagship news programme, presented by Jon Snow, Monday to Friday from 19:00 to 19:55, and at varying times on Saturdays and Sundays. The Licence for Channel 4 is held by Channel Four Television Corporation ("Channel Four" or "the Licensee").

Ofcom received more than 2,600 complaints that a comment made by Mr Snow at the end of the programme was racist and offensive.

In this edition of *Channel 4 News*, Mr Snow was broadcasting live from College Green, Westminster, close to where a series of rallies and protests about Brexit were taking place on the date when the UK was due to leave the EU.

A significant proportion of the programme covered the following:

- Parliament's decision to reject the draft agreement on the withdrawal of the UK from the EU;
- the responses to this from MPs on opposing sides of the Brexit debate and with opposing views on the withdrawal agreement<sup>1</sup>, the European Union, business leaders, and trade bodies; and
- a number of marches and rallies to and around Parliament Square in support of leaving the EU.

Across the programme the marchers and protesters were described as: "noisy"; showing "exuberance"; and having "a day out" and "a bit of fun". The programme also said that there was "quite a bit of anger too" and "a bit of a dark underside to what was going on" with "hostility at MPs [and] the media", but that "determination...to absolutely press for Brexit to happen" was the overriding characteristic of the event. The programme said that some people had come for the day, but others had marched "270 miles from Sunderland to Fulham", with some calling themselves "latter day Jarrow marchers". It also described a flute band "arriving in Parliament Square [and providing] an unusually sectarian soundtrack". It further contrasted the different types of protesters as follows:

*"Eccentrics, pensioners, old, some young, many were here for a good-natured protest. Others though wandered a few hundred yards up the road to hear the far-right activist,*

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<sup>1</sup> The MPs were: Theresa May (Prime Minister), Jeremy Corbyn (Leader of the Opposition), Steve Barker (European Research Group of Conservative MPs); John Redwood (Conservative); Anna Soubry (Change UK); Iain Duncan Smith (Conservative); Lisa Nandy (Labour); Nadhim Zhadari (Children's Minister); Heidi Alexander (Change UK); "leading Brexiteer" Bernard Jenkin (Conservative); Richard Burgon (Shadow Justice Secretary); Jess Phillips (Labour); Caroline Lucas (Green party); and Gillian Keegan (Conservative). John Barron (Conservative) and Dominic Raab (Conservative and former Brexit Secretary) were shown addressing Parliament, one arguing against supporting the Prime Minister's motion and the other arguing in favour of supporting it. Liz Kendall (Labour) and Rebecca Pow (Conservative) were also shown addressing Parliament.

*Tommy Robinson, seize the opportunity of a UKIP platform to deliver an Islamophobic rant. It was the ex-English Defence leader's appointment as an adviser to UKIP which prompted former leader Nigel Farage to quit the party".*

There were also interviews with young, middle-aged and older male and female marchers, who were contrasted to one of the "rowdier protesters" who had tried to interrupt. One interviewee said they had marched from Sunderland and supported "Brexit [and] anyone who's willing to stand up and deliver the will of the people".

The programme discussed the identity of "Njordr AB" who had put on his Facebook page links to the "far-right extremist site 'Stormfront'", showing the Islamophobic and antisemitic content and "white supremacist symbol" it contained. It also showed some of the speakers who addressed the crowds, including:

- a "Brexit rebel MP" reading out the result of the parliamentary vote and referring to the "the instructions of 17.4 million people [who voted to leave the EU]";
- Nigel Farage, who said "if they force us to fight a second referendum, we'll beat them by a bigger margin"; and
- Tommy Robinson on a UKIP platform referring to "betrayal".

Nigel Farage was interviewed about Tommy Robinson's presence at the event. He said that Tommy Robinson was not his "cup of tea".

In the final interview of the programme, Mr Snow spoke to Lionel Shriver and Will Self, who he introduced as writers "on different sides of the Brexit debate". They both expressed some sympathy with those protesting in favour of leaving the EU.

Ms Shriver said:

*"Well I went to their rally at Parliament Square and it did strike me that the people, at least who showed up there, are very traditionally patriotic – have, um, what is to Remainers a more parochial idea of the country – um and whereas Remainers obviously identify with this larger unit – which I find a little emotionally odd – that's where I don't quite get Remainers – where that's coming from, why you would identify with a large bureaucratic organisation. One of the things that I've noticed in the New York Times in particular is that they've been promoting this bizarre version of the leave position which is all very nostalgic and trying to bring back the British Empire – and I don't understand where they got that because I've been following this very closely and I never hear any harkening back to empire – it's much more a kind of more limited and cosier version of what it means to be British".*

Mr Self said he was not sure that he and Lionel Shriver were on "such radically different sides of the argument" and that he was "militantly undecided" about Brexit. He added:

*"I think there's a perfectly good case for leaving the European Union. The problem is, as I've stated in numerous outlets, it's a vector that carries with it ethnic nationalism and that's a problem. That's been the problem for the 'Remain' side of the debate from day one. I don't care what Remainers say, if you go to the heartland and you talk to people, and you're, you know, not sort of insinuating but just lay it open in an honest way, the ethnic nationalism comes up right away, immediately, so it's there. That's not the point. Where was the argument on the leave side that this was a pragmatic, forward looking*

*way. Mervin King was on the radio this morning saying where was the argument about where the EU is really going and what the problems are with the currency union – what happened over that? So, I think it's been a problem. If you ask me Jon for a diagnosis of our country's character, it's that it doesn't listen – on either side of the debate. Because the Remainers have had plenty of years now to make the same principled case for Remain that is realistic about the options and hasn't made it either. And what worries me so much and I think many people is that that this sort of thing belies the old lie about the tolerance of the British character".*

Mr Self, Ms Shriver and Mr Snow then went on to discuss whether there is a way forward to heal divisions within British society and considered the state of democracy in the UK.

After this interview had ended, Mr Snow gave an update on how events in Westminster were unfolding. Footage showed crowds rallying outside Downing Street and police officers wearing "riot gear". Mr Snow said "the mood has changed". Then, bringing the programme to a close, he said:

*"It has been the most extraordinary day. A day which has seen – I've never seen so many white people in one place. It's an extraordinary story. There are people everywhere, there are crowds everywhere".*

Ofcom received complaints that Mr Snow's comment that he had "never seen so many white people in one place" was racist and offensive. Complainants expressed a variety of arguments, including that his comment:

- implied that differing views on Brexit were based on race;
- implied a potential link between Brexit supporters and white supremacists;
- encouraged racial tensions; and
- was biased, given that the racial background of participants in similar pro-Remain marches had not been referred to in the same way.

We considered that this content raised potential issues under the following Code rule<sup>2</sup>:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Such material may include, but is not limited to offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of... race...). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

We therefore asked the Licensee for comments on how the programme complied with this rule.

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<sup>2</sup> We acknowledged some of the complainants' concerns that Mr Snow's observation could raise potential issues under Rule 5.1 (due impartiality in news programming). However, taking into account the nature of the subject matter, the range of views expressed over the course of the whole programme, and audience expectations for this programme, we did not consider that the content warranted an investigation under Rule 5.1.

## Response

The Licensee said that it was “satisfied that Mr Snow’s comments were justified in the circumstances and do not breach the... Code”.

It said that the day’s edition of *Channel 4 News* had focused almost entirely on the day’s events relating to Brexit, including the various marches, rallies and protests that took place and the vote by MPs on the Prime Minister’s Brexit deal, which was defeated for a third time in the House of Commons. The programme had included interviews with a range of politicians, commentators and members of the public, “to cover the various sides of the Brexit debate and to ensure fairness, due impartiality and accuracy”. Channel Four described the comment made by Mr Snow at the end of the programme as “a spontaneous, unscripted observation”.

The Licensee said that following the broadcast it “became aware that the comments expressed by Mr Snow had prompted a polarised debate from viewers and the media”. It said that it takes seriously any complaint it receives, and as a result issued the following statement in writing to the media and to viewers who had written to complain:

“This was an unscripted observation at the end of a very long week of fast-moving Brexit developments. Jon has covered major events such as this over a long career and this was a spontaneous comment reflecting his observation that in a London demonstration of that size, ethnic minorities seemed to be significantly under-represented. We regret any offence caused by his comment.”

Channel Four said that it issued this statement “in recognition that some people may have been offended, but this in no way undermines the premise that that offence was justified and did not breach the Code”.

The Licensee said that Mr Snow’s comment was “factually accurate... pointing out the predominantly white make-up of the large numbers of crowd and protestors. Jon Snow, who is also a white person, told the public what he saw. Mr Snow did not say that the crowds were entirely white. Some have inferred that Mr Snow was making a negative comment about Brexit supporters and that there were racial overtones. That was not the case. There was no negative or pejorative language, tone, intent or implication behind it... he was entitled to point to this unusual situation.”

Channel Four said that it had in place “rigorous legal and compliance procedures to ensure compliance with the law and the Ofcom Broadcasting Code in particular”. It said that this includes “a dedicated lawyer watching each and every programme as it goes out, in case of any live broadcasting issues that require intervention such as on air distancing or apologies”. It observed that Mr Snow’s comment was made at the very end of the programme, but that it was “satisfied that it would not have required any such intervention in any event”.

The Licensee did not consider the content breached Rule 2.3. It said that while some viewers may have been offended, “any such offence was not intended”. It also said that any offence caused was “in line with what Channel 4 News viewers expect” and “justified in the context in which it was made”.

Channel Four also said that it considered the content fell “within the scope” of the right of Channel 4 and its viewers to freedom of expression, pursuant to Article 10 of the European Convention of Human Rights, as set out in Schedule 1 to the Human Rights Act 1998.

The Licensee said that part of Channel 4’s remit is “to take risks and deliver distinctive, innovative content that challenges the status quo”. It said that this includes “stimulating public debate on contemporary issues and promoting alternative views and new perspectives”. The Licensee said that “the controversy surrounding this matter has indeed stimulated a debate around issues of media reporting on race issues”, and that “promoting such debate is a core part of Channel 4’s remit”.

Ofcom prepared a Preliminary View finding the Licensee not in breach of Rule 2.3 and provided it to the Licensee for its comments. The Licensee replied, confirming it had no comments on the Preliminary View.

## Decision

Reflecting our duties under the Communications Act 2003 (section 319), Section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Ofcom takes account of the audience’s and the broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights when considering a broadcaster’s compliance with Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes, for example, the nature of the content, the service in which the programme is broadcast, its editorial content and the likely expectation of the audience.

Section Two does not prevent broadcasters from transmitting programmes about controversial subject matters or topics which may elicit strong opinions and emotions, such as the UK’s departure from the EU (“Brexit”). It is crucial that broadcasters have the editorial freedom to cover such topics. However, broadcasters are required to comply with Section Two, which includes the provision that any offence in programmes is justified by the context.

We first considered whether Mr Snow’s comments had the potential to cause offence.

We acknowledged that the comment, *“I’ve never seen so many white people in one place”*, was a spontaneous reflection on the predominantly white make-up of the crowd in Westminster. However, we also observed that the comment did not necessarily appear to relate directly to anything that had preceded it and therefore that its intent may have been unclear to some viewers. In particular, we recognised that the complainants had placed varying interpretations on Mr Snow’s comment which had caused them to find it offensive.

In considering these complaints we took into account Channel Four’s position that the comment was merely a factual observation and that any potential offence would be mitigated because it was unintended. However, the brief comment was ambiguous in its meaning and touched on a clearly sensitive issue. We also acknowledged that it followed a discussion in which Mr Snow spoke to writers Lionel Shriver and Will Self, in which they had

spoken about the divisions within British society and Mr Self had drawn a connection between the Leave position and "*ethnic nationalism*". Taking these various factors into account, we considered Mr Snow's comment had the potential to cause offence to viewers even if it was unintended.

We therefore went on to consider whether the potential offence was justified by the context. We firstly took into account the nature of the content. As set out above, Mr Snow's statement had the potential to be understood by viewers as him making a connection between the racial background of participants at the march and their pro-Brexit views. This programme was broadcast on 29 March 2019, which was the day the UK was due to leave the EU. Against a background of volatile political discourse about Brexit, an assertion of this nature required clear context.

In considering our duty to provide adequate protection for members of the public from offensive material, Ofcom had careful regard to Channel Four's right to freedom of expression as well as the audience's right to receive information and ideas without interference. We took into account that the Channel 4 audience would expect a broadly challenging approach to reporting the day's events on the service and that this was in keeping with the channel's statutory remit, which the Licensee described as requiring it "to take risks and deliver distinctive, innovative content that challenges the status quo" and to stimulate public debate by "promoting alternative views and new perspectives". However, considering the particular sensitivity of the issues being discussed, we did not consider that the audience's expectation would necessarily extend to Mr Snow making a potentially offensive comment of this nature in the context of a programme examining the day's events and a discussion about the divisions within British society as a result of the Brexit debate.

Against this background, we considered whether the Licensee had taken steps across the programme as a whole to provide context to the discussion and ensure that the various sides of the Brexit debate, and the variety of people marching and protesting, were represented. We took into account that the Licensee had taken such steps to provide context to the discussion. These included interviewing a range of politicians, campaigners, and other contributors who gave many different views. It differentiated between the speakers addressing the crowds, making it clear that Mr Farage distanced himself from the far-right activism of Tommy Robinson. It also differentiated between the "*many*" attendees there for "*a good-natured protest*" and "*others*" who chose to "*hear the far-right activist, Tommy Robinson...deliver an Islamophobic rant*" and described the differing character of those present at the protest. It said some showed "*exuberance*", but that others demonstrated "*hostility at MPs [and] the media*" and that some were "*rowdier*" than others, giving prominence to the latter in interviews.

Towards the end of the programme, and in close proximity to Mr Snow's comment ("*I've never seen so many white people in one place*") Lionel Shriver and Will Self gave differing views of Leave supporters. Mr Self gave a view that "*leaving [the EU is] a vector that carries with it ethnic nationalism*". He then said, however, "*that's not the point*", adding that neither side of the Brexit debate had cogently argued their case. Ms Shriver had said that those rallying in Parliament Square were "*very traditionally patriotic*", in contrast to Remainers who she found "*a little emotionally odd*" for "*identify[ing] with a large bureaucratic organisation [the EU]*".

Ofcom considered that the proximity of Mr Self's comment about "*ethnic nationalism*" to Mr Snow's comment about "*white people*" might have contributed to the interpretation by

some that Mr Snow had implied that there was a link between Brexit supporters and white supremacists, or that his comment was in some way racially charged. Ofcom took into account, however, that Mr Self's comment formed part of a discussion in which Ms Shriver had characterised the protesters quite differently ("*very traditionally patriotic*"). Ofcom also took into account that Mr Snow's comment did not form part of that same discussion but followed after he had reported on the latest events at the protest and as he spoke to the camera in closing the programme.

We also took into account the live nature of the programme and the fact that the broadcast was taking place from College Green, next to some of the protestors, rather than from the studio. We considered that these factors meant viewers were more likely to expect unplanned remarks to be made and to interpret Mr Snow's comment as a high-level, personal impression of the day's events ("*the most extraordinary day*") and an account of what he had seen ("*many white people in one place*"). We also acknowledged that the large number of people protesting and in the crowd appeared to be predominantly white.

We further considered the fact that Mr Snow's unscripted comment came at the very end of the programme, leaving limited opportunity for any further clarification about its intent or meaning. While the Licensee said it was "satisfied that... any such intervention" was not required, we were mindful that Channel Four had made the decision to issue a press release soon afterwards "in recognition that some people may have been offended". The press release provided some extra context by explaining that Mr Snow's comment was an observation that ethnic minorities appeared to be under-represented, given the size of the demonstration and the fact that it was located in London.

Taking all the elements above into consideration, it was our view that the potential offence arising from Mr Snow's statement was sufficiently contextualised in this particular case.

Our Decision is that this content was not in breach of Rule 2.3.

Ofcom reminds broadcasters that in the context of the current volatile public discourse surrounding Brexit, particular care is needed to fully contextualise any ambiguous statements in programmes on sensitive issues that have the potential to cause offence to audiences.

### **Not in Breach of Rule 2.3**

## Not in Breach

### The Nigel Farage Show

**LBC 97.3 FM, 31 March 2019, 10:19**

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#### Introduction

LBC 97.3FM is a London-based national talk and phone-in radio station. Its licence is held by LBC Radio Limited ("LBC Radio" or "the Licensee").

The *Nigel Farage Show* is a live programme presented by Nigel Farage, Monday to Thursday from 19:00 to 20:00. On Sundays it is broadcast from 10:00 to 12:00. Mr Farage gives his views on topical issues and encourages listeners to call in or send messages by email or text, setting out their opinions.

Ofcom received seven complaints that during the programme on 31 March 2019, Nigel Farage said that "*Jon Snow should be attacked*". The complainants felt this was "inappropriate" and "unsuitable" and potentially encouraged violence against Channel 4 News journalist Jon Snow.

In this programme, Alastair Campbell was invited to discuss Brexit and the fact that the UK did not leave the European Union on 29 March 2019, as originally intended when Article 50 of the Treaty on European Union was invoked. During the interview, Mr Farage and Mr Campbell commented on the "Put it to the People" march that took place on 23 March 2019 and on the "March to Leave" march that took place on 29 March 2019. Their discussion on the latter was as follows:

Mr Farage: *"And what we had, Alastair, very interestingly, is we had Fire Brigade Union Representatives, we had people from left and right [Mr Campbell: "you had a very good pipe band, I saw the pipe band"]. It was a very very peaceful afternoon. Now, look...[interrupted by Mr Campbell]"*.

Mr Campbell: *"No wait a minute, no, it wasn't peaceful. They were trying to storm Downing Street. They started beating up journalists"*.

Mr Farage: *"At 9 o'clock of the night, when they were all drunk, yeah"*.

Mr Campbell: *"You can't defend it, you can't defend it"*.

Mr Farage: *"No, no, and nor can you defend anti-Semitism and unpleasantness within the Labour Party"*.

Mr Campbell: *"Don't give me "whataboutery" you cannot, you must absolutely, unequivocally condemn the fact that they were attacking journalists and police"*.

Mr Farage: *"I've just done it three times"*.

Mr Campbell: *"No you haven't. You justified it by saying they were drunk"*.



Mr Farage: *"I just said, I have nothing to do with them".*

Mr Campbell: *"Will you unequivocally condemn [Mr Farage interrupting: "Of course, of course"] people who attack journalists, like Trump does, and also attack police and the Cenotaph".*

Mr Farage: *"Well I think Jon Snow should be attacked without doubt, but that's slightly a separate issue".*

Mr Campbell: *"Why?"*

Mr Farage: *"Because of his terrible condescending bias, but that's a separate issue".*

Mr Campbell: *"Now this is what you're doing, you're equating that with hard right fascists".*

Mr Farage: *"One of the reasons I have put so much into Leave means Leave and one of the reasons I set up the Brexit Party, is because I want people to have peaceful and democratic means of expressing their anger. And the one thing I have never, ever done [Mr Campbell interrupting: "well I think in that case, I think you should have pulled out of that event"]. Sorry our event which included Trade Unionist and Labour Party people, our event had nothing to do with some yobbo called Robinson".*

Approximately four minutes later and immediately after a commercial break, Mr Farage read out a Tweet from a listener which said:

*"Nigel Farage calls for Channel 4's Jon Snow to be attacked, is it incitement?"*

Mr Farage replied:

*"No! Verbally, verbally attacked for his disgraceful coverage of the Leave rally on Friday, for which I'm pleased to say that Channel 4 has made a grovelling apology, so fine. It does worry me that we have Public Service Broadcasters who clearly display too much bias".*

We considered that this content raised potential issues under the following Code rule<sup>1</sup>:

Rule 2.3 *"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence....Appropriate information should also be broadcast where it would assist in avoiding or minimising offence"*

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<sup>1</sup> We acknowledged some of the complainants' concerns that Mr Farage's statement that *"Jon Snow should be attacked"* could be construed as an incitement to violence. We carefully assessed the material included in the programme against Rule 3.1 which prohibits the broadcast of material likely to encourage or to incite the commission of a crime or lead to disorder. In assessing the likely effect of the material on the audience, the editorial context in which the material was presented to the audience and the nature of the material in this case, we did not consider that it warranted an investigation under Rule 3.1.

We therefore asked the Licensee for comments on how the programme complied with this rule.

## Response

The Licensee argued that Alistair Campbell “challenged robustly” Nigel Farage’s statement that the “March to Leave” was peaceful. It said that when Mr Campbell asked Mr Farage to “*unequivocally condemn people who attack journalists*”, referring to the alleged behaviour of some of the protesters at the march, Nigel Farage replied “*of course, of course, of course*”. LBC argued that Mr Farage’s response confirmed “that he did not support the violent behaviour displayed at the rally”. The Licensee further argued that Mr Campbell’s reference to “*people who attack journalists, like Trump does [...]*”, made it clear that the use of the word “*attack*” was “in the realm of political debate and not physical violence at the point when Nigel Farage commented that “*Jon Snow should be attacked [...]*”.

LBC also referred to Mr Farage’s subsequent statement that “*One of the reasons I’ve put so much into ‘Leave Means Leave’, and one of the reasons I set up the Brexit Party, is because I want people to have peaceful and democratic means of expressing their anger*”. It said that, following this statement, listeners “could not have reasonably expected Nigel Farage’s comment on Jon Snow to be incitement for violence”.

LBC further argued that Mr Farage “promptly clarified” what he meant by “*Jon Snow should be attacked*” at the next available opportunity in the programme, approximately four minutes after, when he “read out a Tweet which addressed how the audience could have misinterpreted his statement and clarified that he had meant to say, “verbally attacked” and not insinuate that Jon Snow should be attacked physically”. The Licensee said that Mr Farage explained that “in his opinion this verbal reproval would have been justified following Jon Snow’s “*disgraceful coverage of the Leave rally on Friday*” in reference to Jon Snow’s comment that he had “never seen so many white people in one place”.

LBC did not believe the content caused offence under Rule 2.3 because:

- Mr Farage “promptly clarified” what he meant;
- Mr Campbell “robustly” challenged Mr Farage; and,
- “Listeners would have reasonably understood the reference to Jon Snow was not an incitement for violence”.

Ofcom prepared a Preliminary View finding the Licensee not in breach of Rule 2.3 and provided it to the Licensee for its comments. The Licensee replied, confirming it had no comments on the Preliminary View.

## Decision

Reflecting our duties under the Communications Act 2003 (Section 319), Section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Ofcom takes account of the audience’s and the broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights when considering a broadcaster’s compliance with Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes for example: the nature of the content, the service in which the programme is broadcast, its editorial content and the likely expectation of the audience.

Section Two does not prevent broadcasters from transmitting programmes about controversial subject matters or topics which may elicit strong opinions and emotions, such as the UK's departure from the EU ("Brexit"). It is crucial that broadcasters have the editorial freedom to cover such topics. However, broadcasters are required to ensure they comply with Section Two, including that any offence is justified by the context.

We first considered whether Mr Farage's comments had the potential to cause offence.

The discussion between Mr Campbell and Mr Farage took place two days after the UK was due to have left Europe on 29 March 2019. They were commenting on the pro-Remain "Put it to the People" march that took place on 23 March and on the pro-Brexit "March to Leave" which set off from Sunderland on 16 March 2019 and culminated in the "Leave Means Leave Rally" in Parliament Square on 29 March, the date Brexit was originally due to occur. Mr Farage commented that the "March to Leave" event had been peaceful, and Mr Campbell strongly challenged his statement.

The exchange between Mr Campbell and Mr Farage was framed around the reports that physical attacks against journalists and the police occurred at the pro-Brexit march: Mr Campbell referred to the fact that the pro-Brexit march "*wasn't peaceful*" and that protesters "*started beating up journalists*" and "*the fact that they were attacking journalists and police*". Against this context, we were of the view that Mr Farage's statement that "*Jon Snow should be attacked*", had the clear potential to be interpreted by the audience as a reference to the use of physical violence against Jon Snow. In our view, this had the potential to cause significant offence to listeners.

We acknowledged that Mr Campbell's comments about "*people who attack journalists, like Trump does [...]*" could have been interpreted as referring to a verbal attack against journalists rather than a physical one, in light of Donald Trump's well publicised verbal confrontations with journalists. However, we disagreed with the Licensee that this brief and practically inaudible reference to Mr Trump would have made clear to listeners that Mr Farage's statement that "*Jon Snow should be attacked*" was in the "realm of political debate rather than physical violence". At best, this reference would only have created an ambiguity around whether Mr Farage's statement was to be taken literally or metaphorically. In this case the clear potential for offence arose from the ambiguity around the use of the word "attack" by Mr Farage and Mr Campbell which could have led some listeners to interpret Mr Farage's statement as highly inflammatory and provocative.

We went on therefore to consider whether the potentially significant offence was justified by the context. We firstly took into account the nature of the content. As set out above, Mr Farage's statement had the potential to be understood by listeners as him expressing the view that Jon Snow should be physically attacked. This programme was broadcast two days after 29 March 2019, which was the day the UK was due to leave the EU. Against a background of volatile political discourse about Brexit and the reports of abuse and threats against journalists, the police and politicians at and around that time, we considered that Mr Farage's statement required particularly strong contextualisation.

In considering our duty to provide adequate protection for members of the public from offensive material, Ofcom had careful regard to LBC's right to freedom of expression as well as the audience's right to receive information and ideas without interference. The *Nigel Farage Show* is a regular live 'phone-in' programme. Mr Farage is well-known for his forthright stance in favour of Brexit and his criticism on some of the media coverage of it and it is a theme he regularly addresses in his programme. In Ofcom's view, listeners were therefore likely to have expected Mr Farage to address the fact that the UK had not left the EU on 29 March and the pro- and anti-Brexit marches. We also took into account that the live nature of the programme and the controversy around Brexit were conducive to spontaneous and potentially provocative remarks being made between a pro-Remain politician and a pro-Brexit one. It is essential that broadcasters have the editorial freedom to debate topics of public interest and to be permitted to make provocative and potentially inflammatory remarks. We considered that the LBC audience would expect such debate on this service.

We were mindful that, after saying that *"Jon Snow should be attacked"*, Mr Farage went on to say: *"One of the reasons I have put so much into Leave means Leave and one of the reasons I set up the Brexit Party, is because I want people to have peaceful and democratic means of expressing their anger"*. In our view, this reference to *"peaceful and democratic means"* would have helped to mitigate the potential for offence caused by his earlier statement.

We also acknowledged that, approximately four minutes later and immediately after a commercial break, in a response to a Tweet questioning whether Mr Farage had incited violence against Mr Snow, Mr Farage said:

*"No! Verbally, verbally attacked for his disgraceful coverage of the Leave rally on Friday, for which I'm pleased to say that Channel 4 has made a grovelling apology, so fine. It does worry me that we have Public Service Broadcasters who clearly display too much bias"*.

In our view, this provided further contextualisation of his earlier statement, by clarifying that he did not mean that Mr Snow should be physically attacked. The timing of this statement was a factor in our consideration of this issue. We acknowledged that upon reading the Tweet Mr Farage had clarified his ambiguous statement *"at the next available opportunity in the programme"*.

Taking all the elements above into consideration, it was our view that the potential significant offence caused by Mr Farage's ambiguous statement was sufficiently contextualised in this particular case. Our Decision is therefore that this content was not in breach of Rule 2.3.

Ofcom reminds broadcasters that in the context of the current volatile public discourse surrounding Brexit, particular care is needed to fully contextualise any ambiguous statements in programmes that have the potential to be understood by audiences as highly inflammatory and provocative.

### **Not in Breach of Rule 2.3**

## Broadcast Licence Conditions cases

### In Breach

#### Providing a service in accordance with 'Key Commitments'

#### *Nova Radio North East 102.5 FM<sup>1</sup>, 18, 19 and 20 March 2019 and 2, 3 and 4 May 2019*

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##### Introduction

Nova Radio North East 102.5 FM is a community radio station licensed to provide a service for the community of Newcastle-upon-Tyne. The licence is held by Community Broadcast Initiative Tyneside Ltd ("CBIT" or "the Licensee").

Like other community radio stations, CBIT is required to deliver its service in accordance with the '[Key Commitments](#)', which form part of its licence. These set out how the station will service its target community and deliver social gain (community benefits), and also include a description of the programme service.

Ofcom received two complaints that CBIT was not broadcasting the service described in its Key Commitments. In particular, that it was not delivering its programming requirements relating to the provision of speech content and original output. We therefore requested programme schedules for the weeks 18 to 24 March 2019 and 29 April to 5 May 2019, alongside recordings of the services output from 18, 19 and 20 March 2019 and 2, 3 and 4 May 2019.

Having listened to the recordings and assessed the programme schedules, it appeared that CBIT was not delivering the following of its Key Commitments:

- "Speech: The main types of speech output broadcast over the course of each week are: news, community news and information, features, discussions or interviews on topics of local interest".
- "The service provides original output for a minimum of 10 hours per day".

Ofcom considered that this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to CBIT's licence. These state, respectively:

"The Licensee shall provide the Licensed Service specified in the Annex for the licence period". (Section 106(2) of the Broadcasting Act 1990); and

"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period". (Section 106(1) of the Broadcasting Act 1990).

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<sup>1</sup> The name of this service on the dates relevant to this Decision was NE1FM 102.5. Ofcom recently approved a request from the Licensee to change the name of this service to Nova Radio North East 102.5FM.

We requested comments from CBIT on how it was complying with these conditions, with reference to the specific Key Commitments set out above.

### Response

The Licensee did not provide any representations on Ofcom's Preliminary View.

However, in earlier correspondence CBIT recognised that it had not delivered its Key Commitments on speech content and original output in the recordings requested. It said that, following changes in management at CBIT between January and April 2019, several volunteers had decided to leave the station, leaving "a large gap in its programming".

The Licensee explained that by the end of April 2019 "the station had collapsed and the bulk of presenters had left". However, it explained that a new director had since been put in place and that the services' programming now "exceeds the level required in its Key Commitments".

### Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licensees are required to provide the licensed service specified in their Key Commitments. This is a fundamental purpose for which a community radio licence is granted.

From the recordings, programme schedule and representations from the Licensee, it was clear that CBIT had not met its Key Commitments for speech content or original output in the period monitored. The service is required to broadcast a minimum of ten hours of original output per day, however, we found that it had not met this requirement on any of the days monitored.

We also noted that there was no news or community news broadcast at any point over the six days monitored. Additionally, content meeting the services requirement to provide speech content in the form of community information, discussions and interviews was extremely limited and only evident in the recordings provided during a two-hour programme broadcast on 3 May 2019.

Ofcom acknowledged the Licensee's submission that changes to the management of CBIT over this period affected its ability to meet its requirements for speech content and original output. We also took into account its assurance that the current programming on the service "exceeds the level required in its Key Commitments". However, the Licensee failed to meet the requirements for speech content and original output set out in its Key Commitments for the weeks 18 to 24 March 2019 and 29 April to 5 May 2019. Ofcom's Decision is therefore that CBIT is in breach of Licence Conditions 2(1) and 2(4).

Additionally, we are putting the Licensee on notice that Ofcom will monitor this service again to check its compliance with these Conditions.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Community Broadcast Initiative Tyneside Ltd (licence number CR000050)**

## Broadcast Fairness and Privacy cases

### Upheld

#### Complaint by Dr Syed Alam Shah

#### *Breaking News, Samaa, 22 November 2018*

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##### Summary

Ofcom has upheld this complaint by Dr Syed Alam Shah of unjust or unfair treatment in the programme as broadcast.

Dr Shah complained that the programme described him as an Indian citizen who posed as a Baloch<sup>1</sup> nationalist and had protested against the building of dams in Pakistan in support of the Indian Prime Minister. He said that the report showed images of him and referred to him as an Indian "agent".

Ofcom considered that the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Dr Shah.

##### Programme summary

Samaa TV is an Urdu language channel broadcast under an Ofcom licence held by Up and Coming TV Limited. As the programme was broadcast in Urdu, an English translation was obtained by Ofcom and provided to the complainant and the broadcaster for comment. No comments on the translation were received, and therefore the parties were informed that Ofcom would use this translation for the purposes of investigating the complaint.

On 22 November 2018, Samaa TV broadcast an edition of its *Breaking News* programme. During the programme captions said:

*"India's cursed conspiracy unveiled.  
Those protesting dams on Chief Justice's arrival to London, turned out to be Indians.  
The person protesting has protested Pakistan in the past".*

Later, the programme contained a report on the construction of dams across the Indus river in Pakistan. Footage was shown of a protest against the dam construction, which included the close-up footage of the complainant, shown in an inset box. This footage was shown throughout the report.

Further captions were repeated throughout the report:

*"The person protesting has also requested help from India.  
Another one of India's cursed conspiracies has been unveiled!!!  
The person protesting against dams on Chief Justice's arrival to London turned out to be an Indian.  
Indian citizen has also protested against Pakistan in the past".*

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<sup>1</sup> A group of people who live in the Balochistan regions of Pakistan, Iran, and Afghanistan.

The presenter spoke to a reporter:

Reporter: *"...the Chief Justice of Pakistan, Saaqib Nisaar was to attend a function in one of London's local restaurants. This function was arranged so he could talk about dam fundraising. Before the function, before the Chief Justice's arrival, some individuals who weren't high in number were raising slogans against dam fundraising, outside that very restaurant. Because we knew them from the time when Narendra Modi [Indian Prime Minister] last visited the UK and these people were chanting slogans in favour of him [Mr Modi], in front of the British parliament. Today, these very same people, these Indians whom we knew who they were, are disguised as Pakistanis, as Sindh and Baloch, and participating in that anti-dam demonstration we saw today. We asked them, "Are you originally from Pakistan or India?" to which they didn't respond to us. But, we had the footage of the event we had covered where these people were welcoming the Indian Prime Minister and holding a demonstration in his favour, in front of the British Parliament, yes Shahzeb?*

Presenter: *...do tell us a bit more, I mean this man has protested [about] Pakistan in the past, what details have come forth regarding this individual?*

Reporter: *...whenever functions like this have been held in London, we have seen activities from these Indian lobbies, these Indian agents, these people, we actually call them 'rent-a-crowd' or 'daily-wage owners' who are involved in anti-Pakistan activities. The Indian lobby fully backs these people.*

Presenter: *The Indian lobby backs them. Kausar Kazmi tell us, the demonstrator had appealed to the Indian government for help before this, do you have any information regarding this?*

Reporter: *Absolutely, many incidents like this have taken place in front of the British Parliament, they raised Balochistan flags and, basically, they are originally Indians. They disguised themselves as Baloch and asked Narendra Modi and the British Prime Minister Theresa May for help – literally just in front of 10 Downing Street. Today, these people disguised themselves as Pakistanis and stood outside the restaurant, protested against dam-building, just before the arrival of the Chief Justice".*

The presenter and the reporter talked about the function itself before the presenter concluded the report:

*"...thank you for updating us on the details. Let us tell you [the viewers] that yet another one of India's cursed conspiracies have been unveiled, the person who was protesting dams on Chief Justice's arrival to London turned out to be an Indian..."*

Further captions were shown repeatedly:

*"India's cursed conspiracy unveiled.*

*The people who protested against dams on arrival of the Chief Justice in London, turned out to be Indian.*

*The person who protested against dams on arrival of the Chief Justice in London, turned out to be Indian.*



*The person protesting has protested against Pakistan in the past.  
On Modi's arrival to London, this very person demonstrated whilst disguising himself as a Baloch nationalist.  
Another one of India's cursed conspiracies has been unveiled!!!  
This Indian citizen has protested Pakistan in the past.  
The person protesting has also requested help from India".*

The report ended, and no further footage of the complainant was shown.

## **Summary of the complaint and broadcaster's response**

### Complaint

Dr Shah complained that he was treated unjustly or unfairly in the programme as broadcast because the programme described him as an Indian citizen posing as a Baloch nationalist who had participated in protests against the building of dams in Pakistan in support of the Indian Prime Minister. He also said that the programme alleged that he was an Indian agent working on behalf of Indian government and its spy agency, the Research and Analysis Wing ("RAW"). Dr Shah said that the programme had depicted him as if he was "a spy, or citizen of India, or the part of Indian conspiracy against Pakistan". He said that he is Pakistani, and a human rights worker "raising my voice for the missing persons of Baluchistan and Sindh". Dr Shah said that the report had "destroyed my image, integrity" and had put him in danger.

### Broadcaster's response

Samaa TV said that the news report was "accurate and impartial".

It said that relations between Pakistan and India had been "extremely strained especially in relation to disputes over the division and distribution of water" and that any news reporting of protests being carried out "by Indian citizens against the construction of the dams in Pakistan" was of "grave public importance". Samaa TV said that Dr Shah had not denied that he is not an Indian citizen, nor had he provided any evidence along with his complaint to show that he was not an Indian citizen. The broadcaster said that Dr Shah did not deny that he was part of the crowd welcoming the Indian Prime Minister, or had taken part in anti-Pakistan protests in the past.

Samaa TV said that it was not mentioned in the programme that Dr Shah was an agent working for RAW. The broadcaster said that before the news report was aired, Dr Shah was provided an opportunity to clarify his position when a correspondent of Samaa TV approached Dr Shah at the protest and inquired if he was originally from Pakistan or India. It said that Dr Shah had refused to answer. Samaa TV said that it was therefore "inconceivable that a person claiming to be a Pakistani citizen not only participates in anti-Pakistan protests, but is also part of the crowd welcoming the Indian Prime Minister", during his visit to the UK.

### **Preliminary View**

Ofcom prepared a Preliminary View that Dr Shah's complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

## Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision in this case, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a translated transcript of it, and both parties' written submissions.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code").

In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

We considered Dr Shah's complaint that he was treated unjustly or unfairly in the programme as broadcast because the programme described him, falsely, as an Indian citizen who had participated in protests against the building of dams in Pakistan in support of the Indian Prime Minister and of being an agent working for the Indian "spy agency", RAW.

In considering this complaint, Ofcom had particular regard to Practice 7.9 which states:

"Before broadcasting a factual programme...broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation...".

Ofcom's role is to consider whether the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to Dr Shah. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they were presented in the programme. Therefore, Ofcom began by considering whether the matters complained of had the potential to materially and adversely affect viewers' opinions of Dr Shah in a way that was unfair.

We first took into account that while Dr Shah was not named expressly in the programme, close-up footage of him was shown repeatedly during the report. The parties did not dispute that the references made in the programme were about Dr Shah, despite him not being

named. Being satisfied that Dr Shah was identifiable as the subject of the allegations, we therefore went on to consider whether the comments made in the programme resulted in any unfairness to him.

As set out in the "Programme summary" above, the presenter and the reporter made a number of allegations about Dr Shah. While the full extent of these allegations and references to Dr Shah are set out in detail in the "Programme summary", we took account particularly that the programme included captions that said that those (including Dr Shah) shown protesting about the dams "*turned out to be Indians*" and that "*The person protesting has protested [about] Pakistan in the past*". Later in the report, the captions said that "*The person protesting has also requested help from India; The person protesting against dams on Chief Justice's arrival to London turned out to be an Indian; and, Indian citizen has also protested against Pakistan in the past*". At the end of the report, another caption said that "*On Modi's arrival to London, this very person demonstrated whilst disguising himself as a Baloch nationalist*". During the broadcast, the reporter referred to those shown demonstrating as "*these Indian agents, these people, we actually call them 'rent-a-crowd' or 'daily-wage owners' who are involved in anti-Pakistan activities. The Indian lobby fully backs these people*" and that they "*are originally Indians. They disguised themselves as Baloch and asked Narendra Modi and the British Prime Minister Theresa May for help*". The reporter also said that "*these people disguised themselves as Pakistanis and stood outside the restaurant, protested against dam-building, just before the arrival of the Chief Justice*". Ofcom also took into account the remarks made by the presenter who said that "*we had the footage of the event we had covered where these people were welcoming the Indian Prime Minister and holding a demonstration in his favour*" and "*I mean this man has protested [against] Pakistan in the past*". The presenter also said that "*The Indian lobby backs them. The demonstrator [Dr Shah] had appealed to the Indian government for help before this*" and concluded the report by saying that "*that yet another one of India's cursed conspiracies have been unveiled, the person who was protesting dams on Chief Justice's arrival to London turned out to be an Indian*". Throughout this report, close-up footage of Dr Shah was shown repeatedly.

Ofcom considered that the language used by the presenter and the reporter, along with the captions, was accusatory in nature and that viewers would have been left in no doubt that the programme claimed that Dr Shah was "*Indian citizen*" who had protested against Pakistan previously, and was, with others, involved in an Indian conspiracy against Pakistan as "*...Indian agents, who are involved in anti-Pakistan activities*". While the report did not say that Dr Shah was "*an Indian agent*" working for RAW, as stated in Dr Shah's complaint, we understood that the reference to "*agent*" meant someone working for the interests of another, rather than in the sense of a "*spy*". Nevertheless, we considered that the comments in the programme would have suggested to viewers that Dr Shah, who is Pakistani, was engaged in behaviour that was acting against the interests of Pakistan and was aligned to the interest of neighbouring India. We considered that these comments, and the accompanying captions, constituted serious allegations about Dr Shah which had the potential to materially and adversely affect viewers' opinions of him.

We then considered whether the presentation of these comments in the programme as broadcast resulted in unfairness to Dr Shah. Ofcom acknowledges broadcasters' right to freedom of expression and that they must be able to broadcast programmes on matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this freedom comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

We understood that the programme was broadcast live and the report consisted of dialogue between the programme's presenter and the reporter. Live programmes can give rise to unforeseen circumstances. However, given the absence of any guests or contributors commenting on the content of the report, we considered that the risk of unexpected comments with the potential to create unfairness should have been very limited. However, this was not the case in this programme. Broadcasters need to be particularly aware that they have a duty to ensure that reasonable care is taken that the broadcast material is consistent with the requirements of the Code.

Given this, Ofcom then assessed what steps, if any, the broadcaster took to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Dr Shah. The broadcaster did not provide any evidence that it had taken any reasonable steps before the broadcast of the report to ensure that unfairness to those discussed in the programme was avoided. Ofcom also took into account that nowhere in the programme was anything said to balance or place into appropriate context the comments made about Dr Shah, for example, that the comments were personal views held by those making them, nor did the programme include his viewpoint in response to the claims made about him. Therefore, in our view, the comments made about Dr Shah in the programme were presented as facts that went unchallenged. Given this, we considered that these comments amounted to significant allegations about Dr Shah which had the potential to materially and adversely affect viewers' opinions of him and which were presented in the programme in a way that was unfair to him.

Taking all of the above into account, Ofcom considered that, in the particular circumstances of this case, the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Dr Shah.

**Ofcom has upheld this complaint by Dr Shah of unjust or unfair treatment in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 15 and 28 July 2019 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

### Investigations conducted under the Procedures for investigating breaches of content standards for television and radio

Programme	Service	Transmission date	Categories
Maajid Nawaz	LBC 97.3 FM	02/12/2018	Religious/Beliefs discrimination/offence

[How Ofcom conducts investigations about content standards on television and radio programmes](#)

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 15 and 28 July 2019 because they did not raise issues warranting investigation.

### Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

Programme	Service	Transmission Date	Categories	Number of complaints
Britain's Gypsy Claimers	5Select	11/07/2019	Race discrimination/offence	1
The Yorkshire Vet	5Select	19/07/2019	Gender discrimination/offence	1
Hansel and Gretel: Witch Hunters	5Star	19/07/2019	Violence	1
Alcatraz: Search for the Truth	Blaze TV	07/07/2019	Generally accepted standards	1
Ackley Bridge	Channel 4	09/07/2019	Offensive language	1
Celebrity Crystal Maze	Channel 4	12/07/2019	Due impartiality/bias	5
Celebrity Crystal Maze	Channel 4	19/07/2019	Generally accepted standards	1
Celebrity Gogglebox	Channel 4	28/06/2019	Generally accepted standards	1
Celebrity Gogglebox	Channel 4	05/07/2019	Race discrimination/offence	1
Celebrity Gogglebox	Channel 4	12/07/2019	Generally accepted standards	1
Celebrity Gogglebox	Channel 4	12/07/2019	Race discrimination/offence	1
Celebrity Gogglebox	Channel 4	19/07/2019	Nudity	1
Channel 4 News	Channel 4	14/06/2019	Due impartiality/bias	27
Channel 4 News	Channel 4	18/06/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	26/06/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	04/07/2019	Due impartiality/bias	1
Come Dine With Me	Channel 4	07/07/2019	Race discrimination/offence	1
Extreme Tribe: The Last Pygmies	Channel 4	08/07/2019	Animal welfare	4
Extreme Tribe: The Last Pygmies	Channel 4	08/07/2019	Generally accepted standards	1
Extreme Tribe: The Last Pygmies	Channel 4	08/07/2019	Race discrimination/offence	3
Extreme Tribe: The Last Pygmies	Channel 4	15/07/2019	Generally accepted standards	2
Extreme Tribe: The Last Pygmies	Channel 4	15/07/2019	Offensive language	1

<b>Programme</b>	<b>Service</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Extreme Tribe: The Last Pygmies	Channel 4	15/07/2019	Race discrimination/offence	2
Extreme Tribe: The Last Pygmies	Channel 4	15/07/2019	Under 18s in programmes	4
Frasier	Channel 4	29/06/2019	Generally accepted standards	1
Generation Porn (trailer)	Channel 4	05/07/2019	Scheduling	1
Generation Porn (trailer)	Channel 4	10/07/2019	Scheduling	1
Hollyoaks	Channel 4	14/05/2019	Race discrimination/offence	1
Inside North Korea: Life in the World's Most Secretive State	Channel 4	21/06/2019	Generally accepted standards	1
Naked Attraction	Channel 4	29/06/2019	Generally accepted standards	1
Once Upon a Time in Hollywood (trailer)	Channel 4	14/07/2019	Scheduling	1
Petplan's sponsorship of The Supervet	Channel 4	17/07/2019	Sponsorship credits	1
The £1 Houses: Britain's Cheapest Street	Channel 4	15/07/2019	Offensive language	1
The Invention of Boris Johnson	Channel 4	17/07/2019	Due impartiality/bias	3
The Last Leg	Channel 4	28/06/2019	Generally accepted standards	1
Year of the Rabbit	Channel 4	01/07/2019	Crime and disorder	1
13 Reasons Why: The Death of Amy Winehouse	Channel 5	19/07/2019	Generally accepted standards	1
Cyclists: Scourge of the Streets?	Channel 5	09/07/2019	Materially misleading	34
Friends	Channel 5	29/06/2019	Sexual material	1
Jeremy Vine	Channel 5	08/07/2019	Generally accepted standards	1
Naughty! The Life and Loves of Boris Johnson	Channel 5	16/07/2019	Due impartiality/bias	3
Nightmare Tenants, Slum Landlords	Channel 5	22/07/2019	Materially misleading	1
Restless Legs Syndrome: The New Cure?	Channel 5	23/07/2019	Materially misleading	1

Programme	Service	Transmission Date	Categories	Number of complaints
The Nile: Egypt's Great River with Bethany Hughes	Channel 5	21/06/2019	Animal welfare	1
The Thames: Britain's Great River with Tony Robinson	Channel 5	20/07/2019	Race discrimination/offence	1
Scott Phillips	Chris Country	23/07/2019	Offensive language	1
Jon Richardson: Ultimate Worrier (trailer)	Dave	10/07/2019	Race discrimination/offence	1
Cop Car Workshop	Dave Ja Vu	21/07/2019	Animal welfare	1
E News	E!	20/07/2019	Race discrimination/offence	1
Blackish	E4	27/06/2019	Race discrimination/offence	1
Andy Crane	Greatest Hits Radio	03/07/2019	Competitions	1
Morning Mouldy Mystery Oldie Competition	Greatest Hits Radio	01/07/2019	Competitions	1
Broadcast competition	Heart (Kent)	03/06/2019	Competitions	1
Heart Breakfast with Jamie and Amanda	Heart FM	13/06/2019	Competitions	1
Heart Breakfast with JK and Kelly Brook	Heart FM	24/07/2019	Sexual orientation discrimination/offence	1
Britain's Next Prime Minister: The ITV Debate	ITV	09/07/2019	Due impartiality/bias	2
Coronation Street	ITV	30/05/2019	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	26/06/2019	Undue prominence	1
Coronation Street	ITV	05/07/2019	Generally accepted standards	1
Coronation Street	ITV	05/07/2019	Materially misleading	1
Coronation Street	ITV	08/07/2019	Offensive language	1
Coronation Street	ITV	12/07/2019	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	12/07/2019	Materially misleading	1
Coronation Street	ITV	15/07/2019	Undue prominence	1
Coronation Street	ITV	17/07/2019	Product placement	1
Emmerdale	ITV	18/07/2019	Generally accepted standards	1
Emmerdale	ITV	20/07/2019	Generally accepted standards	1
Endeavour	ITV	28/06/2019	Scheduling	1



Programme	Service	Transmission Date	Categories	Number of complaints
Gemma Collins Diva Forever (trailer)	ITV	23/07/2019	Generally accepted standards	1
Good Morning Britain	ITV	01/07/2019	Race discrimination/offence	1
Good Morning Britain	ITV	03/07/2019	Competitions	3
Good Morning Britain	ITV	03/07/2019	Due impartiality/bias	1
Good Morning Britain	ITV	03/07/2019	Generally accepted standards	1
Good Morning Britain	ITV	03/07/2019	Offensive language	7
Good Morning Britain	ITV	03/07/2019	Violence	1
Good Morning Britain	ITV	05/07/2019	Due impartiality/bias	1
Good Morning Britain	ITV	05/07/2019	Race discrimination/offence	1
Good Morning Britain	ITV	08/07/2019	Due impartiality/bias	1
Good Morning Britain	ITV	09/07/2019	Generally accepted standards	3
Good Morning Britain	ITV	09/07/2019	Materially misleading	1
Good Morning Britain	ITV	09/07/2019	Race discrimination/offence	1
Good Morning Britain	ITV	09/07/2019	Religious/Beliefs discrimination/offence	15
Good Morning Britain	ITV	10/07/2019	Due impartiality/bias	1
Good Morning Britain	ITV	10/07/2019	Generally accepted standards	2
Good Morning Britain	ITV	11/07/2019	Scheduling	1
Good Morning Britain	ITV	12/07/2019	Due impartiality/bias	1
Good Morning Britain	ITV	12/07/2019	Generally accepted standards	1
Good Morning Britain	ITV	15/07/2019	Due impartiality/bias	1
Good Morning Britain	ITV	15/07/2019	Generally accepted standards	1
Good Morning Britain	ITV	16/07/2019	Generally accepted standards	3
Good Morning Britain	ITV	17/07/2019	Generally accepted standards	1
Good Morning Britain	ITV	22/07/2019	Generally accepted standards	1
Good Morning Britain	ITV	24/07/2019	Sexual material	5
ITV News	ITV	05/07/2019	Generally accepted standards	1
ITV News	ITV	12/07/2019	Due impartiality/bias	1
ITV News	ITV	16/07/2019	Generally accepted standards	1
ITV News	ITV	17/07/2019	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
ITV News	ITV	18/07/2019	Due impartiality/bias	1
Loose Women	ITV	05/06/2019	Materially misleading	1
Loose Women	ITV	04/07/2019	Materially misleading	2
Loose Women	ITV	12/07/2019	Generally accepted standards	1
Loose Women	ITV	19/07/2019	Race discrimination/offence	9
Peston	ITV	17/07/2019	Due impartiality/bias	4
Tenable	ITV	15/07/2019	Transgender discrimination/offence	3
The Chase	ITV	13/07/2019	Fairness	4
The Chase: Celebrity Special	ITV	07/07/2019	Race discrimination/offence	2
The Sara Cox Show	ITV	06/07/2019	Generally accepted standards	1
The Voice	ITV	13/07/2019	Race discrimination/offence	1
This Morning	ITV	04/07/2019	Religious/Beliefs discrimination/offence	1
This Morning	ITV	08/07/2019	Crime and disorder	1
This Morning	ITV	15/07/2019	Materially misleading	1
This Morning	ITV	22/07/2019	Generally accepted standards	1
This Morning	ITV	24/07/2019	Generally accepted standards	1
Tipping Point: Lucky Stars	ITV	21/07/2019	Gender discrimination/offence	3
Wild Bill	ITV	17/07/2019	Offensive language	1
ITV News West Country	ITV West Country	10/07/2019	Due accuracy	1
Advertising placement	ITV2	02/07/2019	Advertising placement	1
Hey Tracey	ITV2	08/07/2019	Race discrimination/offence	1
Hey Tracey	ITV2	15/07/2019	Generally accepted standards	1
Iain Stirling's Celebability	ITV2	26/06/2019	Animal welfare	99
Iain Stirling's Celebability	ITV2	02/07/2019	Animal welfare	3
Love Island	ITV2	13/06/2019	Generally accepted standards	1
Love Island	ITV2	21/06/2019	Generally accepted standards	1
Love Island	ITV2	24/06/2019	Race discrimination/offence	45

<b>Programme</b>	<b>Service</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Love Island	ITV2	25/06/2019	Generally accepted standards	10
Love Island	ITV2	26/06/2019	Generally accepted standards	1
Love Island	ITV2	27/06/2019	Dangerous behaviour	1
Love Island	ITV2	27/06/2019	Generally accepted standards	11
Love Island	ITV2	27/06/2019	Offensive language	1
Love Island	ITV2	28/06/2019	Gender discrimination/offence	1
Love Island	ITV2	28/06/2019	Generally accepted standards	1
Love Island	ITV2	28/06/2019	Sexual material	1
Love Island	ITV2	30/06/2019	Generally accepted standards	1
Love Island	ITV2	02/07/2019	Gender discrimination/offence	1
Love Island	ITV2	02/07/2019	Generally accepted standards	52
Love Island	ITV2	02/07/2019	Sexual orientation discrimination/offence	1
Love Island	ITV2	03/07/2019	Generally accepted standards	301
Love Island	ITV2	04/07/2019	Generally accepted standards	29
Love Island	ITV2	05/07/2019	Generally accepted standards	13
Love Island	ITV2	06/07/2019	Generally accepted standards	1
Love Island	ITV2	07/07/2019	Generally accepted standards	17
Love Island	ITV2	07/07/2019	Voting	1
Love Island	ITV2	08/07/2019	Animal welfare	2
Love Island	ITV2	08/07/2019	Generally accepted standards	2
Love Island	ITV2	08/07/2019	Voting	1
Love Island	ITV2	09/07/2019	Generally accepted standards	5
Love Island	ITV2	10/07/2019	Generally accepted standards	7
Love Island	ITV2	10/07/2019	Religious/Beliefs discrimination/offence	1
Love Island	ITV2	11/07/2019	Gender discrimination/offence	2
Love Island	ITV2	11/07/2019	Generally accepted standards	4

<b>Programme</b>	<b>Service</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Love Island	ITV2	11/07/2019	Race discrimination/offence	1
Love Island	ITV2	11/07/2019	Sexual material	2
Love Island	ITV2	12/07/2019	Gender discrimination/offence	2
Love Island	ITV2	12/07/2019	Generally accepted standards	2
Love Island	ITV2	12/07/2019	Race discrimination/offence	3
Love Island	ITV2	14/07/2019	Generally accepted standards	4
Love Island	ITV2	14/07/2019	Offensive language	1
Love Island	ITV2	14/07/2019	Voting	2
Love Island	ITV2	15/07/2019	Generally accepted standards	240
Love Island	ITV2	16/07/2019	Generally accepted standards	4
Love Island	ITV2	17/07/2019	Generally accepted standards	10
Love Island	ITV2	18/07/2019	Gender discrimination/offence	3
Love Island	ITV2	18/07/2019	Generally accepted standards	6
Love Island	ITV2	19/07/2019	Generally accepted standards	4
Love Island	ITV2	21/07/2019	Generally accepted standards	1
Love Island	ITV2	21/07/2019	Materially misleading	1
Love Island	ITV2	21/07/2019	Race discrimination/offence	1
Love Island	ITV2	21/07/2019	Violence	4
Love Island	ITV2	22/07/2019	Generally accepted standards	5
Love Island	ITV2	22/07/2019	Sexual orientation discrimination/offence	1
Love Island	ITV2	22/07/2019	Voting	1
Love Island	ITV2	23/07/2019	Generally accepted standards	85
Love Island	ITV2	24/07/2019	Gender discrimination/offence	1
Love Island	ITV2	24/07/2019	Generally accepted standards	18
Love Island	ITV2	24/07/2019	Race discrimination/offence	1
Love Island	ITV2	Various	Gender discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Love Island: Aftersun	ITV2	30/06/2019	Generally accepted standards	1
Love Island: Aftersun	ITV2	30/06/2019	Race discrimination/offence	10
Love Island: Aftersun	ITV2	14/07/2019	Generally accepted standards	6
Love Island: Aftersun	ITV2	21/07/2019	Generally accepted standards	9
Love Island: Unseen Bits	ITV2	06/07/2019	Materially misleading	1
Shopping with Keith Lemon	ITV2	27/06/2019	Generally accepted standards	1
You've Been Framed: Kids Special	ITV2	04/07/2019	Generally accepted standards	1
World Series of Darts	ITV4	12/07/2019	Generally accepted standards	1
Dallas Cowboys Cheerleaders: Making the Team	ITVBe	06/07/2019	Generally accepted standards	1
The Bachelor	ITVBe	23/06/2019	Generally accepted standards	1
Yummy Mummies	ITVBe	23/06/2019	Generally accepted standards	1
Skönheten i allt	Kanal 5 (Sweden)	30/05/2019	Advertising placement	1
Shamrock City	Keep It Country	13/06/2019	Advertising minutage	1
Andrea on Kisstory	Kisstory	13/07/2019	Sexual orientation discrimination/offence	1
Darren Adam	LBC 97.3 FM	05/07/2019	Generally accepted standards	1
Eddie Mair	LBC 97.3 FM	27/06/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	11/07/2019	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	12/07/2019	Materially misleading	1
Maajid Nawaz	LBC 97.3 FM	14/07/2019	Due impartiality/bias	1
News	LBC 97.3 FM	25/06/2019	Due accuracy	1
Nick Abbot	LBC 97.3 FM	19/07/2019	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	18/07/2019	Generally accepted standards	1
Nigel Farage	LBC 97.3 FM	01/06/2019	Due impartiality/bias	1
Nigel Farage	LBC 97.3 FM	29/06/2019	Due impartiality/bias	1
Nigel Farage	LBC 97.3 FM	01/07/2019	Due impartiality/bias	2
Nigel Farage	LBC 97.3 FM	04/07/2019	Due impartiality/bias	1
Nigel Farage	LBC 97.3 FM	08/07/2019	Due accuracy	1
Nigel Farage	LBC 97.3 FM	09/07/2019	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
Nigel Farage	LBC 97.3 FM	10/07/2019	Due impartiality/bias	1
Nigel Farage	LBC 97.3 FM	15/07/2019	Due impartiality/bias	2
Nigel Farage	LBC 97.3 FM	16/07/2019	Due impartiality/bias	1
Nigel Farage	LBC 97.3 FM	16/07/2019	Elections/Referendums	1
Nigel Farage	LBC 97.3 FM	17/07/2019	Elections/Referendums	1
Nigel Farage	LBC 97.3 FM	18/07/2019	Due impartiality/bias	2
Shelagh Fogarty	LBC 97.3 FM	29/05/2019	Generally accepted standards	1
Shelagh Fogarty	LBC 97.3 FM	18/07/2019	Religious/Beliefs discrimination/offence	1
Steve Allen	LBC 97.3 FM	20/06/2019	Gender discrimination/offence	1
Steve Allen	LBC 97.3 FM	20/06/2019	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	27/06/2019	Sexual orientation discrimination/offence	1
Steve Allen	LBC 97.3 FM	19/07/2019	Disability discrimination/offence	2
Various	LBC 97.3FM	24/05/2019	Due impartiality/bias	1
Various	LBC 97.3 FM	04/07/2019	Due impartiality/bias	1
Lincs FM Evening Show	Lincs FM	19/07/2019	Generally accepted standards	1
Horizon: Is Binge Drinking that Bad?	London Live	13/07/2019	Drugs, smoking, solvents or alcohol	1
Breakfast Show	Lyca Radio	11/07/2019	Commercial communications on radio	1
Magic Radio Breakfast Show	Magic 105.4	09/07/2019	Due impartiality/bias	1
Ronnie Herel	Mi-Soul	09/07/2019	Offensive language	1
Casillero Del Diablo's sponsorship of programming on Movies 24	Movies 24	10/07/2019	Religious/Beliefs discrimination/offence	1
Cesar Millan: Dog Whisperer	National Geographic Channel	17/04/2019	Materially misleading	1
Off the Record with Kashif Abbasi	New Vision TV	25/07/2019	Undue prominence	1
Fundraising for Darul Hadis Latifah	NTV	21/05/2019	Charity appeals	1
Britain's Most Evil Killers	Pick	26/06/2019	Crime and disorder	1
Nothing to Declare UK	Pick	26/06/2019	Religious/Beliefs discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Various	Pick	17/07/2019	Generally accepted standards	1
Fantom Works	Quest	14/07/2019	Offensive language	2
Mick Brown's Drivetime Show	Radio Jackie	17/07/2019	Generally accepted standards	1
Johnny Vaughan	Radio X	01/07/2019	Generally accepted standards	1
The Chris Moyles Show	Radio X	11/07/2019	Offensive language	1
My Granny the Escort	Really	14/07/2019	Generally accepted standards	1
Saving Babies	Really	03/07/2019	Disability discrimination/offence	1
Headline News	RT	05/07/2019	Due impartiality/bias	1
Cats	Sky Cinema Premiere	06/07/2019	Animal welfare	1
The Open	Sky Golf	20/07/2019	Materially misleading	1
Kay Burley	Sky News	10/07/2019	Generally accepted standards	3
Kay Burley	Sky News	11/07/2019	Due accuracy	1
Press Preview	Sky News	10/07/2019	Generally accepted standards	1
Sky News	Sky News	25/06/2019	Generally accepted standards	1
Sky News	Sky News	26/06/2019	Generally accepted standards	1
Sky News	Sky News	09/07/2019	Due impartiality/bias	1
Sky News	Sky News	10/07/2019	Generally accepted standards	1
Sky News	Sky News	11/07/2019	Due accuracy	1
Sky News	Sky News	12/07/2019	Due impartiality/bias	1
Sky News	Sky News	14/07/2019	Due impartiality/bias	1
Sky News	Sky News	15/07/2019	Due impartiality/bias	1
Sky News	Sky News	16/07/2019	Due impartiality/bias	1
Sky News	Sky News	23/07/2019	Disability discrimination/offence	1
Sky News	Sky News	23/07/2019	Due impartiality/bias	1
Sky News	Sky News	23/07/2019	Offensive language	1
Sky News	Sky News	24/07/2019	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	25/07/2019	Due impartiality/bias	3
The Pledge	Sky News	11/07/2019	Gender discrimination/offence	1
My Kitchen Rules: Australia	Sky Witness	01/07/2019	Race discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Jamie Jones Day Show	Studio 66 TV	30/06/2019	Participation TV – Offence	1
Studio 66	Studio 66 TV	05/06/2019	Participation TV – Offence	1
Studio 66	Studio 66 TV	08/06/2019	Participation TV – Harm	1
Studio 66	Studio 66 TV	25/06/2019	Participation TV – Offence	1
Studio 66	Studio 66 TV	29/06/2019	Participation TV – Offence	2
Studio 66	Studio 66 TV	02/07/2019	Participation TV – Offence	1
Studio 66	Studio 66 TV	11/07/2019	Participation TV – Offence	1
STV News	STV	12/07/2019	Due accuracy	1
News	Talksport	11/07/2019	Due accuracy	1
Sports Bar	Talksport	05/07/2019	Animal welfare	1
The Alan Brazil Sports Breakfast	Talksport	02/07/2019	Generally accepted standards	1
The Alan Brazil Sports Breakfast	Talksport	15/07/2019	Generally accepted standards	1
Programming	The Breeze	15/07/2019	Materially misleading	1
90 Day Fiancé: Happily Ever After?	TLC	29/05/2019	Dangerous behaviour	1
Matt Richardson	Virgin Radio UK	09/07/2019	Generally accepted standards	1
Emma Willis: Delivering Babies (trailer)	W	16/07/2019	Scheduling	1

[How Ofcom assesses complaints about content standards on television and radio programmes](#)



## Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

Programme	Service	Transmission Date	Categories	Number of complaints
D Day 75: A Tribute to Heroes	BBC 1	05/06/2019	Offensive language	1
Newsnight	BBC 2	24/05/2019	Due impartiality/bias	1
News at 5	BBC News Channel	06/03/2019	Due impartiality/bias	1
World at One	BBC Radio 4	10/05/2019	Generally accepted standards	1
Various	BBC Wales / BBC Radio 1	04/01/2019	Due accuracy	1

### [How Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS](#)

## Complaints assessed under the General Procedures for investigating breaches of broadcast licences

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 15 and 28 July 2019 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories	Number of complaints
High Peak Radio Limited	High Peak Radio / Ashbourne Radio	Provision of licensed service	4

### [How Ofcom assesses complaints about broadcast licences](#)

## Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts or an on demand service that does not fall within the scope of regulation.

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	All 4	14/07/2019	Advertising content	1
Bulbulla	ARY Family	01/07/2019	Outside of remit	1
Babestation	Babestation	12/07/2019	Outside of remit	1
Have I Got News for You	BBC 1	01/07/2019	Outside of remit	1
NHS Fraud	BBC 1	01/07/2019	Outside of remit	1
Various	BBC 1 / BBC 2	Various	Outside of remit	1
Wimbledon	BBC 1 / BBC 4	14/07/2019	Outside of remit	1
Horizon	BBC 4	14/07/2019	Outside of remit	1
Wimbledon	BBC 4	14/07/2019	Outside of remit	1
Programming	BBC channels	Various	Outside of remit	1
n/a	BBC iPlayer	19/07/2019	Outside of remit	1
After Midnight: Alex Lester	BBC Radio 2	29/01/2017	Outside of remit	1
Advertisement	Channel 4	10/07/2019	Advertising content	1
Continuity announcements	Channel 4	19/07/2019	Outside of remit	1
Advertisement	Channel 5	10/07/2019	Advertising content	1
Naughty! The Live and Loves of Boris Johnson	Channel 5	16/07/2019	Outside of remit	1
Super Scoreboard	Clyde 1	19/07/2019	Outside of remit	1
Alaskan Bush People	DMAX	23/07/2019	Outside of remit	1
Advertisement	E4	13/07/2019	Advertising content	1
Programming	Entirely Radio 80s	15/07/2019	Outside of remit	1
Hochanda Craft TV	Hochanda	19/07/2019	Teleshopping	1
Picket Fence	Hochanda	n/a	Teleshopping	1
Advertisement	ITV	24/06/2019	Advertising content	1
Advertisement	ITV	19/07/2019	Advertising content	1
Advertisement	ITV	20/07/2019	Advertising content	1
Advertisement	ITV	21/07/2019	Advertising content	1
Peston	ITV	n/a	Outside of remit	1
Advertisement	ITV2	15/07/2019	Advertising content	1
Advertisement	ITV2	18/07/2019	Advertising content	1
Advertisement	ITV2	22/07/2019	Advertising content	1
Love Island	ITV2	01/07/2019	Outside of remit	1
Love Island	ITV2	06/07/2019	Outside of remit	1
Love Island	ITV2	14/07/2019	Outside of remit	1
Love Island	ITV2	15/07/2019	Outside of remit	1
Love Island	ITV2	19/07/2019	Outside of remit	1

<b>Programme</b>	<b>Service</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Love Island	ITV2	21/07/2019	Outside of remit	1
Love Island	ITV2	24/07/2019	Outside of remit	1
Advertisement	ITVBe	06/07/2019	Advertising content	1
Advertisement	ITVBe	10/07/2019	Advertising content	1
Advertisements	More4	21/07/2019	Advertising content	1
ICC: World Cup Final	More4	14/07/2019	Outside of remit	1
Programming	Naija FM	06/07/2019	Outside of remit	1
Advertisement	Nick Jr	18/07/2019	Advertising content	1
Advertisement	Quest	21/07/2019	Advertising content	1
ICC: World Cup Final	Sky channels	14/07/2019	Outside of remit	1
Sky News	Sky News	25/07/2019	Outside of remit	1
Advertisement	Sky Sports Cricket	11/07/2019	Advertising content	1
Advertisement	Sky Sports Cricket	14/07/2019	Advertising content	1
Advertisement	Sky1	09/07/2019	Advertising content	1
Advertisement	Sky2	07/07/2019	Advertising content	1
Advertisements	Talking Pictures TV	26/07/2019	Advertising content	1
Advertisement	Various	Various	Advertising content	1
Programming	Various	Various	Outside of remit	1
Various	Various	Various	Outside of remit	1

[More information about what Ofcom's rules cover](#)

## BBC First

The BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the independent regulator of the BBC.

Under the BBC Agreement, Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision (the 'BBC First' approach).

The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

### Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC 1	29/04/2019	Animal welfare	1
Breakfast	BBC 1	16/07/2019	Due impartiality/bias	1
Countryfile	BBC 1	14/07/2019	Due impartiality/bias	1
Gentleman Jack (trailer)	BBC 1	09/07/2019	Sexual material	1
Killing Eve	BBC 1	29/06/2019	Violence	1
Newsnight	BBC 1	15/07/2019	Due impartiality/bias	1
Panorama: Britain's Brexit Crisis	BBC 1	18/07/2019	Due impartiality/bias	1
Panorama: Is Labour Anti-Semitic?	BBC 1	10/07/2019	Due accuracy	29
Panorama: Is Labour Anti-Semitic?	BBC 1	10/07/2019	Due impartiality/bias	4
Britain's Next Air Disaster? Drones	BBC 2	01/07/2019	Materially misleading	5
Britain's Next Air Disaster? Drones	BBC 2	03/07/2019	Due impartiality/bias	1
Inside the Factory	BBC 2	16/07/2019	Promotion of products/services	1
Question Time	BBC 2	15/07/2019	Due impartiality/bias	1
Tonight with Vladimir Putin	BBC 2	23/06/2019	Race discrimination/offence	1
Victoria Derbyshire	BBC 2	15/07/2019	Due impartiality/bias	2
BBC News	BBC channels	Various	Due impartiality/bias	1
Programming	BBC channels	18/07/2019	Due impartiality/bias	1
Programming	BBC channels	Various	Due impartiality/bias	1
Various	BBC channels	Various	Due impartiality/bias	1
Britain's Next Air Disaster? Drones	BBC iPlayer	04/07/2019	Due impartiality/bias	1
European Elections 2019	BBC iPlayer	27/05/2019	Due impartiality/bias	1
Question Time	BBC iPlayer	05/07/2019	Due impartiality/bias	1
Afternoon Live	BBC News Channel	25/06/2019	Due impartiality/bias	1

<b>Programme</b>	<b>Service</b>	<b>Transmission or Accessed Date</b>	<b>Categories</b>	<b>Number of Complaints</b>
BBC News	BBC News Channel	23/07/2019	Due impartiality/bias	1
Newsbeat	BBC Radio 1	15/05/2019	Race discrimination/offence	1
BBC News	BBC Radio 4	24/07/2019	Due accuracy	1
Heresy	BBC Radio 4	11/06/2019	Generally accepted standards	1
Reading Europe: Fear	BBC Radio 4	07/07/2019	Scheduling	1
Today	BBC Radio 4	13/04/2019	Due impartiality/bias	1
Bing	CBeebies	13/07/2019	Other	1
Get Well Soon Hospital	CBeebies	26/07/2019	Materially misleading	1

## Investigations List

If Ofcom considers that a broadcaster or service provider may have breached its codes, rules, licence condition or other regulatory requirements, it will start an investigation.

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster or service provider has done anything wrong. Not all investigations result in breaches of the codes, rules, licence conditions or other regulatory requirements being recorded.**

Here are alphabetical lists of new investigations launched between 15 and 28 July 2019.

### Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Service	Transmission date
The Sex Business: Me and My Sex Doll	Channel 5	17/06/2019
The Sex Business: OAPS on the Game		18/06/2019
The Sex Business: Teens Selling Sex		19/06/2019
Early Evening Show	Fiesta FM	29/06/2019
Winter Sports	Freesports	08/06/2019
Programming	Radio Leyland	24/06/2019
Programming	Radio Matryoshka	12/07/2019

[How Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes](#)

### Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Service	Transmission date
News	A1TV	31/12/2018

[How Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes](#)

## Investigations launched under the General Procedures for investigating breaches of broadcast licences

<b>Licensee</b>	<b>Licensed Service</b>
Alpha Radio Limited	Vintage Music Radio (Durham & Darlington)

### [How Ofcom assesses complaints and conducts investigations about broadcast licences](#)