

**Julian Knight MP, Chair, Digital, Culture, Media and Sport Committee**  
**Lord Gilbert, Chair, Communications and Digital Committee**

9 June 2021

Dear Julian and Lord Gilbert,

There has recently been some discussion in the media about Ofcom's approach to regulating content standards for TV and radio programmes during the pandemic, including an article in the Sunday Telegraph last weekend. Some of this coverage mischaracterises our approach, and at times conflates it with the research we have done about people's experiences of online material during the pandemic.

Given the importance we place on freedom of expression in our work, I thought it important to write to you and clarify the position. I hope that this will be useful to both your Committees in their work on broadcasting and on freedom of expression online.

### **Ofcom's approach to broadcasting standards and freedom of expression**

As the UK's broadcasting standards regulator, Ofcom is responsible for implementing the rules introduced by Parliament to provide adequate protection to audiences from harmful content in programmes on TV and radio. As required by law, we maintain a [Broadcasting Code](#), which describes the standards that broadcasters are expected to meet in order to secure the objectives set by Parliament.

Broadcasters make their own decisions about what to include in their programmes and how to comply with our Code, aided by their own editorial guidelines. But Ofcom can assess content after it has been broadcast, which we do in response to complaints, to determine whether the Code has been breached. Our decisions can be – and have been on multiple occasions – reviewed by the courts.

You will see from our Code and the guidance that goes with it that broadcasters have a lot of discretion in determining how to comply with the Code. The context in which material is broadcast is very important. So is the need to protect freedom of expression, which Ofcom takes into account every time we assess complaints about broadcast content. This fundamental right includes the freedom to hold opinions and to receive and impart information and ideas without unnecessary interference. It is central to Ofcom's work in applying broadcast standards and when considering which programmes to investigate.

In the twelve months to March 2021, we received over 140,000 complaints, concerning over 11,000 pieces of broadcast content. We investigated 48 of these cases and found only 29 breaches of our

rules. In 14 cases we imposed a statutory sanction on the broadcaster concerned – a fine, a direction to broadcast a statement of our findings, and/or a direction not to repeat the content in question.

### **Broadcasting standards and Covid-19**

At the start of the pandemic we issued guidance to the broadcasters that we license. This reminded them of the importance of compliance with the existing rules of the Code. We said we recognised that broadcasters would want to air content relating to the coronavirus and that dissemination of accurate and up-to-date information to audiences would be essential. We also reminded them of the significant potential harm that could be caused by material relating to the virus, including:

- Health claims related to the virus which may be harmful;
- Medical advice which may be harmful;
- Accuracy or material misleadingness in programmes in relation to the virus, or public policy regarding it.

We said that we would be prioritising our enforcement of broadcast standards in these areas.

The Sunday Telegraph article quotes an allegation from Jon Dobinson, the director of Recovery, that Ofcom is “telling broadcasters that they could face losing their licences if they report facts or expert scientific opinions which could suggest that lockdowns and restrictions are excessive.” This is simply not correct.

Our [guidance notes to broadcasters on coronavirus](#) that were published in the Broadcast and On Demand Bulletin are available on our website, and I have attached the full letter which we sent to the broadcasters on 27 March 2020. In this guidance, we advised broadcasters to take particular care when broadcasting unverified information about the virus (such as causes or potential treatments), or statements that sought to undermine the advice of public health bodies or trust in mainstream sources of information about the disease. But we said explicitly that this kind of content can be broadcast with appropriate protections. We have certainly not told broadcasters that they cannot question the need for lockdowns and restrictions. Indeed, the imposition of unprecedented restrictions on public freedoms during the pandemic makes the right to freedom of expression all the more vital, and questioning of government advice and policy on broadcast media may be of particular importance in this context.

In the twelve months to March 2021, we received over 12,000 complaints which mentioned the coronavirus (or related terms). The vast majority of these did not raise issues warranting investigation under our rules. However, when they did, we expedited investigations due to the serious nature of some of the content. We found eight programmes to have breached our rules. Those cases included the broadcasting of highly contentious conspiracy theories – such as the allegation that the virus was caused by 5G rollout – without evidence, or sufficient challenge or context. One programme presented hydroxychloroquine as a “cure” for Covid-19, without acknowledging that its effectiveness and safety as a treatment was clinically unproven, or making clear that it has potentially serious side effects. None of these programmes were found in breach of the Code because the broadcast content was critical of lockdown measures or excessive restrictions.

As you can see from [our decisions](#), in all these cases the material was potentially highly harmful and was broadcast without adequate protections for the audience. In six of these cases we imposed

statutory sanctions: fines; a direction to broadcast a statement of our findings; and/or a direction not to repeat the content in question. We recognise that revoking a broadcaster's licence is the ultimate sanction, which we would only ever contemplate in the most extreme of cases because of the adverse effect this would have on a broadcaster's – and its audience's – right to freedom of expression. In none of the cases mentioned above did we withdraw the broadcaster's licence.

As I mentioned above, our decisions can be tested in the courts. In this case they were. Last year, Toby Young and the Free Speech Union applied for judicial review of Ofcom's guidance to broadcasters on the coronavirus. In his [judgment](#), delivered on 9 December last year, the judge refused permission for the challenge. He considered both the guidance that we had given to broadcasters and the approach we had taken in assessing the cases themselves. He said there was no realistic prospect of a court concluding that guidance was incompatible with the right to freedom of expression of either broadcasters or audiences.

### **Ofcom's research on online information about the coronavirus**

The Sunday Telegraph article also mentions research carried out by Ofcom into people's experiences of news and potential misinformation online. Ofcom has a statutory duty to promote media literacy, in pursuance of which we carry out a wide programme of research of people's experiences of different types of electronic communications media. In the last few years we have stepped up our research into people's experiences online in particular.

At the start of the pandemic, we quickly set up a new survey looking at people's consumption of news and information about the coronavirus. This highly topical research has been published regularly and has been regularly cited in the media and by those interested in tracking attitudes and experiences of audiences online. It is entirely separate from our work in setting broadcast standards.

Our survey includes questions about whether people have come across information or news about the virus that could be considered false or misleading. In order to understand the nature of this information, we asked respondents to say whether they had seen information from a specific list of categories, provided to us by Full Fact (a charity established on a cross-party basis). This list of categories was updated over time and used as a way of categorising information in this survey. It was *not* a definition of misinformation adopted by Ofcom in our regulatory work, nor did it play any part in us reaching any of our broadcasting standards decisions described above.

I hope this letter helps set out our position in these important areas. I am copying this letter to the Secretary of State for Digital, Culture, Media and Sport, and for the purposes of transparency we will make it available on our website.

Yours sincerely,



**MELANIE DAWES**