

## Complaint by Mr Minhui Gui, made on his behalf by Ms Angela Gui<sup>1</sup> about News Desk and The World Today

<b>Type of case</b>	Fairness and Privacy
<b>Outcome</b>	Upheld
<b>Service</b>	CCTV News <sup>2</sup> / CGTN
<b>Date &amp; time</b>	17 January 2016, 16:00 / 11 February 2018, 02:00 <sup>3</sup>
<b>Category</b>	Fairness and Privacy
<b>Summary</b>	<p>Ofcom has upheld this complaint about unjust or unfair treatment in the programmes as broadcast and unwarranted infringement of privacy in connection with the obtaining of material included in the programmes, and in the programmes as broadcast.</p> <p>Ofcom also considers that the breaches of Rules 7.1 and 8.1 of the Code are serious. We are therefore putting the Licensee on notice that we intend to</p>

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<sup>1</sup> Mr Gui is currently detained in prison in China and the complainant notes that his whereabouts have not been released by the Chinese Government and he was therefore not able to bring a complaint himself nor to authorise another person to do so for him. Section 111(3) of the Broadcasting Act 1996 provides that, "Where the person affected is an individual who is for any reason both unable to make a complaint himself and unable to authorise another person to do so for him, a fairness complaint may be made by a member of the family of the person affected, or by some other person or body closely connected with him (whether as his employer, or as a body of which he is a member, or in any other way)". In the circumstances, Ofcom considered that Ms Gui could make the complaint on behalf of Mr Gui under section 111(3) of the Act.

<sup>2</sup> CCTV News was renamed China Global Television Network Channel (CGTN) in 2017 but the service continued to operate under the same licence.

<sup>3</sup> The complaint was submitted to Ofcom in December 2018.

consider the breaches for the imposition of a statutory sanction.

### Case summary

CCTV News broadcast *News Desk*, a news programme which reported on Mr Gui, who after being a “fugitive” for over ten years, had returned to China to serve a two year prison sentence for a drink driving offence and included footage of him appearing to express regret for his actions. CGTN then broadcast a follow up report during *The World Today*, which reported on Mr Gui’s return to China in relation to the drink driving offence, on the arrest of Mr Gui in connection with a different offence and included footage of him as he recounted how he had spent his time after he was released from prison. He was named in both programmes and his face was shown unobscured.

Ofcom found that:

- The *News Desk* and *World Today* programmes had the potential to materially and adversely affect viewers’ perception of him. The Licensee did not take sufficient steps to ensure that material facts had not been presented, omitted or disregarded in a way that was unfair to Mr Gui.
- Mr Gui had a legitimate expectation of privacy in relation to the filming and subsequent broadcast of the footage of him without his consent in the two programmes. In the circumstances, Mr Gui’s legitimate expectation of privacy was not outweighed by the broadcaster’s right to freedom of expression and the audience’s right to receive information and ideas without interference. The Licensee had therefore unwarrantably infringed Mr Gui’s privacy in respect of the obtaining of the material included in the programmes and in the programmes as broadcast.

### Background

CCTV News was renamed as China Global Television Network (CGTN) on 31 December 2016, and the service continued to operate under the same licence. The licence for the provision of the CGTN service was held by Star China Media Limited (“SCML” or “the Licensee”) until 4 February 2021 when the Licence was revoked by Ofcom.<sup>4</sup> Notwithstanding the fact that the Licence has been revoked and the CGTN service is no longer broadcasting, Ofcom still has power to complete its adjudication of ongoing investigations relating to broadcasts that took place before the revocation.<sup>5</sup>

In this particular case, Ofcom has decided that it is appropriate to publish its final adjudication in relation to the fairness and privacy complaint about these programmes. This is to ensure there is a

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<sup>4</sup> Ofcom revoked the Licence on 4 February 2021 under section 238(4) of the Communications Act 2003 (“the 2003 Act”) and Condition 28(2)(a) of the Licence on the basis that SCML had ceased to provide the CGTN service and, in the circumstances, it was appropriate to revoke the Licence. The reasons for Ofcom’s decision are set out in the [Notice of Revocation](#).

<sup>5</sup> By virtue of Section 346(3) of the 2003 Act, a person’s liability to have a penalty imposed under section 237 of the Act in respect of acts or omissions of that person while a holder of a Broadcasting Act licence is not affected by that Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty. It follows that Ofcom also has power to reach a decision as to whether the former holder of a Broadcasting Act licence has breached its obligations under the licence during the period that it remained a licensee.

complete compliance record in respect of the CGTN service, to ensure that the complainant receives a final determination of her complaint on behalf of Mr Gui and to facilitate public understanding of the Code, taking into account the seriousness of the allegations the complainant has raised (as summarised below).

### Programme summary

CCTV News was the name of an English language news and current affairs channel. It was renamed as China Global Television Network Channel (CGTN) on 31 December 2016. Provision of the service continued under the same licence held by Star China Media Limited (the “Licensee”). One of the programmes complained about was broadcast on the service prior to its rebranding and we therefore refer to both CCTV News and CGTN below whilst noting the two constitute a single service which changed its name.

### News Desk, CCTV News, 17 January 2016

On 17 January 2016, CCTV News broadcast a news programme, *News Desk*, which included a story about the complainant, Mr Gui. It said he had fled mainland China after he was convicted of causing a fatal car accident in 2003 and, following several years as a “fugitive”, had handed himself into the police in October 2015.

The presenter introduced the story:

*“Xinhua News Agency says that the owner of a Hong Kong bookstore, who was reported missing since last October, is in fact a fugitive from the Chinese mainland. Xinhua says the man identified as Gui Minhai had turned himself in to mainland police last year. He reportedly fled after being convicted for a fatal car accident”.*

The following caption was included: *““Missing” man reappears. Xinhua: One man turns himself in for fatal car accident”.*

A pre-recorded report was then shown. The reporter said:

*“This was the vehicle [footage included of the victim’s car] involved in a deadly road accident in Ningbo, an eastern Chinese city in December 2003. A female student [photographs included of the victim with her eyes obscured] was killed after being struck by businessman Gui Minhai. Before this, he had attended a dinner party”.*

A traffic police officer spoke in Mandarin about the incident and an English translation of what he said was spoken:

*“The alcohol testing report of Gui Minhai showed the alcohol level in his blood was 1.14mg per ml. We know 0.2 indicates driving under the influence and, 0.8 refers to drunk driving. So, the testing results shows he was definitely drunk while driving at that time”.*

A document written in Chinese was shown and the reporter said:

*“After months of investigation and trial, a Ningbo court convicted Gui in August 2004 and sentenced him to two years in jail with a two-year reprieve. But, just three months later, Gui fled overseas. He was then listed among the fugitives chased by China’s public security organ, but wasn’t arrested until he turned himself in last October. Gui said he regretted this decision as it kept him in depression and bore his family years of pain”.*

Footage of Mr Gui, speaking in Mandarin was included in the programme. He was described as a “fugitive” by a caption and an English translation of what he said was spoken:

*“I’m a fugitive. I could not go back to my country to see my parents. They were already in their eighties. My mother is seriously ill now, that really pains me. I want to see her while she’s still alive, that’s why I decided to return and turn myself in. [Mr Gui appears to become visibly upset] I’m willing to take my responsibility and accept any punishment”.*

The reporter then said: *“A foreign passport holder, Gui also requests for his choice to be respected”.*

Mr Gui continued:

*“Going back to my country and turning myself in was voluntary and this was not related to others. I don’t want any individuals or organisations, including the Swedish government, to get involved or intervene in this matter. Though I hold [a] Swedish passport, I still feel I’m a Chinese and my roots are still in China. I hope my choice can be respected by the Swedish government. I hope that my right to make a choice and my privacy can both be respected and let me face up to this issue”.*

The reporter concluded: *“Police say Gui is under investigation as he is also suspected for other crimes”.*

There was a scrolling caption included which said: *“Missing Hong Kong bookstore owner turns himself in for fatal car accident”.*

The report ended and there was no further reference to Mr Gui in the programme.

### **The World Today, CGTN, 11 February 2018**

On 11 February 2018, CGTN broadcast a news programme, *The World Today*, which included an update on the story about Mr Gui’s arrest and detention.

The presenter introduced the story:

*“A Swedish national and Hong Kong bookseller was detained again recently by Chinese police over suspected violations of law. Gui Minhai was released in October 2017, but it appears his troubles are not over...”*

A caption was shown which said: *“China law case. Bookseller Gui Minhai detained again over suspected violations”.*

A pre-recorded report was then shown. As footage of Mr Gui speaking was shown, the reporter said:

*“After a tragedy that killed one person over drunken driving more than a decade ago, Gui Minhai fled the country in 2004. He turned himself in to police in China in 2015. Gui then completed a two year prison term but, he was not allowed to leave the country according to law as the investigation into his business operation had not come to an end. After his release, Gui said in a letter of commitment to police in Ningbo, Zhejiang province, that he will continue<sup>6</sup> cooperating with authorities”.*

Footage was then shown of the outside of a building followed by footage of Mr Gui with a police officer beside him. In front of him was a group of eight people. Some of these people were filming Mr Gui on their mobile phones and there were microphones which had been placed on a table in front of Mr Gui. The reporter continued, *“During an interview with CCTV, after he was detained, Gui said his life in Ningbo was calm”.*

Footage of Mr Gui, as he spoke in Mandarin, was included in the programme as an English translation of what he said was spoken:

*“We plan to stay in Ningbo for a while. My mother’s health wasn’t in good shape. We rented an apartment in Ningbo and bought some furniture and household items. During this period of time, my wife came to Ningbo from Germany. We spent a whole month together and we had a good time”.*

The programme then included what appeared to be Mr Gui’s letter of commitment, and various other documents, and the reporter said:

*“Gui also promised in the letter of commitment that he would inform authorities if he leaves the city. But he was found on January 20<sup>th</sup> in Shanghai riding a car accompanied by two Swedish diplomats and then [he] boarded a high-speed train bound for Beijing. Chinese police say Gui was carrying a lot of materials concerning state secrets and was suspected of illegally providing state secrets and intelligence overseas endangering state security. When the high-speed train stopped at Jihan West railway station in Shangdon Province, police took Gui away and put him under custody. Shortly after Gui’s arrest, China’s public security authorities informed the Embassy of Sweden of Gui’s case through the Ministry of Foreign Affairs. China’s Foreign Affairs authorities also informed their Swedish counterparts about Gui’s case”.*

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<sup>6</sup> The Licensee stated in its representations on Ofcom’s Preliminary View that the words “he would continue” were used rather than “he will continue”. On review, we were satisfied “he will continue” is correct, but nothing turns on the point.

During the above narration, footage was included of a table with various recording devices on it and the camera filmed a mobile phone on a stand which was recording Mr Gui, and then close-up footage of Mr Gui was shown.

The report ended and there was no further reference to Mr Gui in the programme.

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

### **Complaint**

#### *Unjust or unfair treatment*

- a) Ms Gui complained that her father was treated unjustly or unfairly in the programmes as broadcast because:
- i) The programmes included footage of Mr Gui which made it appear, falsely, that he was voluntarily admitting to the charges levelled against him and, in the 2016 programme, that he was willing to reject consular assistance and had returned to mainland China of his own accord. Ms Gui said that Mr Gui was returned to China under duress. Ms Gui also said that Mr Gui was forced into taking part in the interviews in circumstances where he was being held incommunicado.

Ms Gui said that at the time the programmes were broadcast, Mr Gui's criminal trials had not yet taken place. She said that the purpose of the "confession" statements was to deprive Mr Gui of the right to a fair trial.

In terms of context, in her complaint, Ms Gui said that in October 2015, while on holiday in Thailand, Mr Gui was taken by Chinese authorities. Ms Gui said that there were no records to show that Mr Gui had left Thailand and that neither his family nor the Swedish government knew about his whereabouts until he resurfaced in the police interview which was broadcast in the News Desk programme in January 2016. Ms Gui said that Mr Gui was based in Hong Kong, where he sold and published books, which are banned in China, on the Chinese Communist Party and the government leadership. Ms Gui further alleged that Mr Gui would not have returned to China voluntarily as he was aware of the dangers this presented. Ms Gui also said she believed that as her father was detained incommunicado at the time his statements were made, he had no way to choose whether or not to agree to the filming.

- ii) The 2018 programme presented as fact that Mr Gui had been in possession of state secrets. Ms Gui said that Mr Gui had not yet faced trial in relation to this matter. She said that at the time he was alleged to have committed this crime, Mr Gui was already in police custody.

#### *Unwarranted infringement of privacy*

- b) Ms Gui complained that her father's privacy was unwarrantably infringed in connection with the obtaining of material included in the programmes because he was filmed by the broadcaster's journalists inside a detention centre without his consent. Ms Gui said that her father had no access to a lawyer and was incommunicado. Ms Gui added that the broadcaster's journalists were aware of her father's circumstances.

- c) Ms Gui complained that her father's privacy was unwarrantably infringed in the programmes as broadcast because the footage of him was included in the programmes without his consent.

### Licensee's response

#### *Background*

The Licensee set out the background for the *News Desk* broadcast in 2016. It said that Mr Gui, who had been missing since being convicted in August 2004 of drink-driving which caused the death of a female student, turned himself into Chinese police in October 2015. The Licensee said that this story, involving a convicted Chinese national (who also held a Swedish passport) who fled overseas to escape his punishment before returning to China several years later, was a matter of strong public interest.

The Licensee said that the Intermediate People's Court of Ningbo convicted Mr Gui on 18 August 2004 of causing a traffic accident in Ningbo, Zhejiang Province in December 2003. He was sentenced to two years' imprisonment with a two year reprieve. A few months later, Mr Gui had left his residence without permission after having been summoned to a police interview in November 2004. This was a violation of the laws and regulations regarding the supervision and management of his probation. As a result, the Ningbo Intermediate People's Court ruled in August 2006 that Mr Gui had left his residence with the intention of evading supervision without the requisite permission and ordered that the two year reprieve be abrogated and that Mr Gui was then listed as a fugitive by China's Ministry of Public Security. He was taken back into custody by police when he returned to China in October 2015.

The Licensee added that, in 2018 at the time of the *World Today* broadcast, there had been a further development in Mr Gui's case. It said that, although he had been released from prison in October 2017 after serving his two year sentence for drink-driving, it was a condition of his letter of commitment to the police that he could not leave Ningbo without permission due to an ongoing police investigation into his business activities. However, about three months after his release, Mr Gui was stopped by Chinese police on a train bound for Beijing accompanied by Swedish diplomats. It said he was further suspected of sharing state secrets and was arrested. The Licensee considered Mr Gui's ongoing case to be of public interest to its international audience.

#### *Unjust or unfair treatment*

In relation to the first broadcast which was the subject of this complaint (*News Desk*, 17 January 2016), the Licensee said it was informed by the Ministry of Public Security, along with other news media outlets, about Mr Gui's case and was invited to Ningbo to interview relevant people such as the traffic police officer involved in Mr Gui's drink-driving offence (for which Mr Gui was serving a prison sentence at that time). The Licensee said it asked to interview Mr Gui but the police said that it was not possible at that time. Prior to leaving Ningbo, however, the police provided a video interview of Mr Gui to the Licensee and other news media for onward publication and informed them that Mr Gui had consented to the interview.

In relation to the second broadcast which was subject to this complaint (*World Today*, 11 February 2018) the Licensee said that it had been invited by the Ministry of Public Security, along with other news media outlets, to interview Mr Gui in a detention centre in Ningbo. Mr Gui had been released from his earlier prison sentence in 2017 but had been rearrested in January 2018 on suspicion of possessing state secrets. The Licensee said it had been told that the interview was taking place at Mr Gui's request. It added that it did not have written consent from Mr Gui to confirm this as Mr Gui had

made it clear at the interview on camera that he consented to the interview. The Licensee said that, although it no longer held the unedited footage of the interview, the South China Morning Post's ("SCMP") coverage of the same interview<sup>7</sup> included the following:

SCMP: "Did you request this meeting, or did the Ministry of Public Security order you to do it because they wanted you to say certain things to the media?"

Mr Gui: Thank you for coming here to interview me. I'm Gui Minhai... I felt that it was necessary for me to come out and say something. I asked the public security authorities for a chance to meet the media in order to tell the public what has happened, and to tell the truth".

The Licensee also referred to SCMP's statement before the first question which said: "The South China Morning Post agreed to take part, provided no conditions were put on the questions it could ask, after being approached by the ministry on Wednesday"<sup>8</sup>.

The Licensee said it had viewed Mr Gui's police interview as included in *News Desk* and did not consider that Mr Gui appeared to be speaking involuntarily when admitting to being a fugitive who was willing to take responsibility for his drink-driving conviction and stating he did not want consular assistance. The Licensee noted that Mr Gui appeared upset during the first part of the interview that was shown when he discussed his parents, but said it considered that this was understandable given the subject matter. The Licensee said that it was not aware at that time of a suggestion that Mr Gui had been denied access to a lawyer and was incommunicado. The Licensee also did not consider that the police interview was presented in an unfair or deceptive way as it was consistent with what Mr Gui later said in his interview which was included in *The World Today* programme.

The Licensee said that, at the time *News Desk* was broadcast, Mr Gui had already been convicted and sentenced for his drink-driving offence. It added that there was no further trial due to take place at that time. Rather, Mr Gui was in custody serving his sentence for the crime for which he had already been convicted. The Licensee said that although, as briefly stated at the conclusion of the report, Mr Gui was also being investigated on suspicion of other crimes (in relation to his business activities as later referred to in the *World Today* programme), they were unrelated to his previous conviction and the Licensee was not aware of Mr Gui having been arrested or charged with any further offences.

Turning to the *World Today* programme, the Licensee said that it was apparent from the footage of Mr Gui, together with what he said as quoted from the SCMP above, that he was aware that he was speaking to a group of news journalists about his situation, and that that would be broadcast in some form. It added that he was also aware that the Licensee was one of the news media outlets in the room due to its video camera being labelled "CCTV". The Licensee said that, according to the broadcast journalist, Mr Gui did not say nor do anything to suggest that he was not taking part

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<sup>7</sup> The Licensee provided a website link to an [interview](#) with Mr Gui recorded by SCMP (the interview had been edited) and a [transcript](#) of the full interview.

<sup>8</sup> The video which included extracts of the interview included the following statement: "On February 9, the Ministry of Public Security arranged for him to speak with several media, included SCMP. The Post agreed to the interview with strictly no conditions attached".

voluntarily. It said he spoke at length in a clear and coherent manner, and appeared normal and relaxed; at times, he smiled. The Licensee said there were two policemen present in the room with Mr Gui for security reasons. However, it said that this did not appear to bother Mr Gui and it referred Ofcom to the SCMP's video interview.

The Licensee said that Mr Gui was interviewed in a large room of a Ningbo detention centre in which at least seven journalists from different news media outlets were present. The Licensee denied that its journalists had "actively collaborated with the police" as suggested in the complaint. The Licensee said it was present at Mr Gui's interview with other news media, on the basis that he confirmed to them at the beginning of the interview that he consented to it, and they were there to ask him questions and give him an opportunity to respond to those. It said it was clear from the programme (and the SCMP interview with Mr Gui) that he was not reading from a pre-prepared statement. The Licensee also denied that it was aware, as alleged in the complaint, that Mr Gui was being held incommunicado and without access to a lawyer.

The Licensee said that it included only 20 seconds of Mr Gui talking about his life in Ningbo following his release from prison in October 2017 (after serving his two year sentence for the 2004 conviction) but before he was re-arrested in January 2018. The Licensee said that the overall context of the programme, including commentary and footage of Mr Gui giving an interview in the presence of a police officer (who was visible in the broadcast footage) made it apparent to viewers that Mr Gui was being interviewed while he remained in custody.

The Licensee said that the complaint wrongly suggested that the footage of Mr Gui in the programme constituted a "confession" regarding him admitting to the previous charges levelled against him, that he was willing to reject consular assistance and that he had returned to mainland China of his own accord. The Licensee said that Mr Gui said nothing about these matters and did not "confess" to anything. The Licensee said that Mr Gui discussed some of these matters in the remainder of the unaired interview, as evidenced by the SCMP transcript, but that these were not broadcast by the Licensee. The Licensee, however, noted that what Mr Gui said in the unaired interview was relevant as it was consistent with what he said in the police interview included in the *News Desk* programme, namely:

- He admitted to absconding following his drink-driving offence sentence and not returning to China for a long time, which he felt "painful" about; and,
- He discussed at length, the involvement of the Swedish government in his case, including that they kept instigating him to return to Sweden. This culminated in him agreeing to go to Beijing with two Swedish diplomats, only to be intercepted by Chinese police and being re-arrested, which he now regrets. Mr Gui expressed that he might have become Sweden's 'chess piece', that he broke the law at their instigation, and he would not trust the Swedish again.

The Licensee said that, taking the above factors into account, it did not consider that the footage of Mr Gui which it included in the programme or the related commentary was presented in an unfair or deceptive way.

The Licensee said that the complaint's assertion that the purpose of the "confession" statements was to deprive Mr Gui of the right to a fair trial was not correct. The Licensee said that at the time of

broadcast, Mr Gui had already been convicted and sentenced in 2004 for his drink-driving offence which caused the death of a female student. It said that as his trial had already concluded several years before, there was no trial due to take place in the near future. Rather, Mr Gui was in custody for having left Ningbo without permission (in breach of his letter of commitment to the police) as investigations into his business operation had not yet come to an end, and/or he was suspected of illegally provided state secrets overseas. In any event, it said that these matters were unrelated to his previous conviction and it did not accept that there was anything contained in his statements in the programme that could have caused prejudice to any future trial that he may be involved in.

The Licensee added that, even if a trial was imminent for Mr Gui (which it said it was not as 16 months after broadcast there had been no further trial), the broadcast of the programme in the UK would have no effect on Mr Gui's ability to obtain a fair trial in Chinese legal proceedings. Further, since the judicial system in China is different to that in the UK, including in relation to juries, media publications do not pose a real risk of prejudice to defendants in criminal trials. Therefore, it did not accept that the purpose of Mr Gui's interview was to deprive him of a fair trial.

In response to head a)ii), the Licensee referred to the following statement included in the programme: *"Chinese police say Gui was carrying a lot of materials concerning state secrets, and was suspected of illegally providing state secrets and intelligence overseas, endangering state security"*. The Licensee said that the words used to describe the allegations against Mr Gui were clearly attributed to the police and were presented as "suspicion of illegally providing state secrets". The Licensee said it did not accept that this commentary could prejudice any future trial in this matter for the same reasons as outlined above i.e. the broadcast of the programme in the UK would have no effect on Mr Gui's ability to obtain a fair trial in Chinese legal proceedings and the judicial system in China is different to that in the UK.

The Licensee also said that the *World Today* programme made clear in both the commentary and Mr Gui's own words that he was released from prison in October 2017 after serving his sentence for his 2004 conviction and spent time in Ningbo with his mother, wife and family until his re-arrest at the end of January 2018. Therefore, Ms Gui was incorrect in her assertion that at the time her father was alleged to have been in possession of state secrets and being suspected of illegally sharing them he was in police custody.

The Licensee referred to the fact Mr Gui was not making the complaint himself and that it did not know what Mr Gui's perspective or evidence was in relation to that matters that Ms Gui had raised, particularly with respect to whether he had provided consent to being interviewed by the police and for the interview to be passed to the media for onward publication. The Licensee said that although it had been informed that Mr Gui had consented to the interview, on reflection, it did not think that it took adequate enough steps to satisfy itself that Mr Gui had provided informed consent as set out in Practice 7.3 of Ofcom's Broadcasting Code. It added that even if Mr Gui had provided informed consent, it should have made it clear to the audience that the interview of Mr Gui was a police interview which had been provided to the media.

### *Unwarranted infringement of privacy*

In relation to the *News Desk* programme, the Licensee reiterated the circumstances which led to Mr Gui being filmed as set out above and that it had not taken adequate steps to secure his informed consent.

The Licensee reiterated that Mr Gui's statements in the police interview were consistent with what he said in his later interview in *The World Today*. Further, it said that given Mr Gui had been convicted of a serious traffic offence, had fled China to escape punishment (which it noted Ms Gui had not denied) and then returned over 11 years later to take responsibility, it maintained that there was a strong public interest in broadcasting the story to its international audience.

The Licensee said that the footage of Mr Gui included in the programme constituted a total of 50 seconds, in a news item which was two minutes and 42 seconds long, so around 30 per cent of the report included footage of Mr Gui.

In relation to the *World Today* broadcast, the Licensee repeated its submissions as set out above regarding the steps it took to obtain the consent of Mr Gui and the circumstances in which he was filmed.

As stated above, the programme covered a significant development in the story of Mr Gui whereby he had been arrested again for leaving Ningbo without permission and he was further suspected of illegally sharing state secrets. His business activities also remained under investigation. The Licensee said it was a matter of strong public interest involving a person who already had a serious criminal conviction.

The Licensee said that the footage of Mr Gui included in the *World Today* programme constituted a total of 50 seconds, in a news item which was two minutes long, so around 17 per cent of the report included footage of Mr Gui talking about his time in Ningbo when he was on release and able to spend time with his mother and wife. It also said that the footage did not constitute a "confession" of any sort.

### **Preliminary View**

Ofcom's Preliminary View was that the complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Both parties submitted representations which, insofar as they are relevant to the complaint entertained and considered by Ofcom, are summarised below.

### *Complainant's representations*

Ms Gui agreed with Ofcom's provisional view that the complaint should be upheld. However, she said that she considered Ofcom should have further concluded that the Licensee's actions were "deliberate and premeditated" and stated that the Licensee was not independent of the Chinese Communist Party.

In relation to the broadcaster's independence, Ms Gui argued that the Licensee was controlled by the Chinese Communist Party, along with the Public Security Bureau (the Chinese police), and unable to

act independently from them.<sup>9</sup> Ms Gui argued that this lack of independence meant it was possible to conclude the Licensee had actively colluded with the Chinese police, and believed the Licensee had also misled Ofcom.

With regards to the *News Desk* programme, Ms Gui said that the Licensee was well-positioned to access information which would have clarified the circumstances of the production of the footage of Mr Gui. Ms Gui referred to the Licensee's claim that it had travelled to Ningbo, where Mr Gui was allegedly held, and that it was prevented from meeting him. Ms Gui said that had the Licensee requested a meeting with Mr Gui's lawyer, it would have found that he did not have legal representation (as required by Chinese law) and had the Licensee contacted the Swedish embassy, it would have been informed that his whereabouts were unknown because he had been forcibly disappeared. Ms Gui said that despite the ease with which such information could have been obtained, the Licensee chose to not take these steps and did not include any of this information in the programme. Ms Gui said that if Ofcom's view was that the Licensee "ought to have been aware" of these omissions at the time of broadcast (as Ofcom had suggested in its Preliminary View), then Ms Gui considered that Ofcom should also be able to conclude that the Licensee's actions were deliberate and premeditated.

Ms Gui said that the representation of Mr Gui's alleged "voluntary return" to China as undisputed fact in both programmes suggested that the Licensee deliberately refused to abide by the Code. Ms Gui added that it further suggested that the purpose of the programmes were to propound the narrative of the Chinese police and government. Ms Gui said that the Licensee's failure to take steps to obtain or verify Mr Gui's consent should therefore not be viewed as an oversight, but as intentional.

In addition, Ms Gui submitted that by the time *The World Today* programme was broadcast, Mr Gui's disappearance had attracted significant media and political attention worldwide and Ms Gui considered that Ofcom's Preliminary View did not reflect the bad faith in which the Licensee had acted. Ms Gui said that in 2015, the European Parliament passed a resolution which described Mr Gui's status as disappeared and Human Rights Watch said that Mr Gui's departure from Thailand was a case of "enforced disappearance".<sup>10</sup> Ms Gui added that since that same year, the United Nations Working Group on Enforced or Involuntary Disappearances has been engaged in continuous correspondence with the government of the People's Republic of China on Mr Gui's whereabouts and the circumstances of his return to China. Ms Gui also said that in 2016, Thai authorities stated, in comments that were widely reported, that no record of Mr Gui leaving Thailand had been found.<sup>11</sup> She also said that Mr Gui's colleagues, Mr Lam Wing-kee, who also disappeared around the same time as Mr Gui, managed to escape detention in 2016 and held a press conference testifying on his experience of abduction, detention and coerced participation in the production of a scripted interview.<sup>12</sup> Ms Gui said that this should sufficiently demonstrate that the claim that Mr Gui had returned to China

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<sup>9</sup> In support of this, Ms Gui referred to a submission by Safeguard Defenders dated 22 February 2020.

<sup>10</sup> [European Parliament resolution on the case of Gui Minhai, jailed publisher in China, 23 November 2016](#); and, [China: Release Abducted Swedish Bookseller, Human Rights Watch, 17 October 2016](#).

<sup>11</sup> [Thai authorities investigating case of missing bookseller Gui Minhai after it emerges there is no record of him leaving Thailand, South China Morning Post, 19 January 2016](#).

<sup>12</sup> [Hong Kong bookseller speaks out about detention in China, The Guardian, 16 June 2016](#).

voluntarily had, by the time of broadcast of *The World Today* programme, been disproven. Ms Gui said that in her view, not only was it that the Licensee ought to have been aware of the discrepancy between its representations and what was established by the time of broadcast, but it ought to also have been aware that it was disseminating disinformation.

Ms Gui said that in response to a letter which she sent to the SCMP in April 2018, the editor-in-chief admitted that the paper's interview with Mr Gui was stage-managed, referring to the following quote: "we were required to choose between interviewing your father in a stage-managed setting and having no access at all".<sup>13</sup> Ms Gui said that the Licensee's justification differs from that of SCMP and the Licensee did not mention any discussion or negotiation with police on the conditions of the "interview".

In relation to Ofcom's treatment in its Preliminary View of the programme's representation of the "letter of commitment", Ms Gui said that such "letter[s] of commitment" are not recognised in Chinese law as legally binding documents. Ms Gui also said that there were no court records showing that Mr Gui was being formally investigated for "illegal business practices", nor any documentation presented to Mr Gui, his family, or his government, to show that this was the case. Ms Gui said that, even if this was the case, no form of "illegal business practices" are currently, or were at the time, included under "Crimes of endangering national security" in Chinese criminal law. Ms Gui said that the Licensee had in its representations to Ofcom "actively presented Mr Gui's alleged breach of a meaningless document as a genuine violation with actual consequences". Ms Gui said that she believed that this omission was intentional.

Ms Gui submitted that the programme implied that Mr Gui had confessed to violating the "letter of commitment" and to have been carrying state secrets. Ms Gui said that since it follows that this must be interpreted as constituting a confession, it should be recognised that the programme violated Mr Gui's right to a fair trial.

#### *Licensee's representations*

The Licensee said that the complaint related to historic broadcasts and maintained its objection to the complaint being entertained by Ofcom in light of the fact that several years had passed between the broadcasts and the complaint being brought. In particular it said that Ms Gui appeared to be aware of the broadcast of the first programme in January 2016 but did not make a complaint to Ofcom until almost three years later. The issue of the delay in bringing the complaint was considered in Ofcom's decision to entertain the complaint and is not addressed further in this Adjudication. However, we reiterate that Mr Gui was not in a position to bring a complaint himself due to his imprisonment, and we considered it appropriate in light of the circumstances and issues raised to entertain the complaint outside the normal time limits.

The Licensee also said it did not believe that Ms Gui provided Ofcom with the appropriate written authorisation from her father to bring a complaint on his behalf and to know whether he agreed with the substance of the complaint presented by Ms Gui. It maintained its objection to the complaint being entertained by Ofcom on this basis and said that in the absence of Mr Gui's authorisation to

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<sup>13</sup> [An exchange between Gui Minhai's daughter and the Post's Editor-in-Chief, South China Morning Post, 18 April 2018.](#)

bring this complaint, it was based purely on supposition and conjecture. The issue of whether Ms Gui could bring a complaint on behalf of Mr Gui in the absence of his explicit authorisation from him was considered in Ofcom's decision to entertain the complaint and is not addressed further in this Adjudication<sup>14</sup>.

The Licensee reiterated its contention that the programmes did not breach the fairness and privacy provisions of the Code. The Licensee said that at the time of both broadcasts Mr Gui was a convicted criminal who had fled China to escape punishment (which the Licensee said was not disputed in the complaint). The Licensee added that it had been widely reported in 2020 that Mr Gui was convicted of a further offence of illegally providing intelligence overseas and is currently serving a 10 year prison sentence. The Licensee said that therefore Mr Gui's story was of a clear public interest to the broadcaster's international audience.

With regards to informed consent in relation to the *News Desk* and *The World Today* programmes, the Licensee said it took steps which it said it believed at the time to be sufficient to meet Ofcom's test for informed consent. In relation to the *World Today* programme, it emphasised that the SCMP transcript included a statement by Mr Gui to the effect that he had requested the opportunity to meet the media, and it reiterated that Mr Gui did not show any signs of distress during the interview.

In relation to the presentation of material facts in *The World Today* programme, it reiterated that it was apparent that Mr Gui was being interviewed while in police custody and said that he was speaking in his own words in response to a number of questions posed by journalists from various media outlets. It added that the interview did not constitute a confession of any kind.

With regards to head a)ii) the Licensee disagreed with Ofcom assessment. It said that the programme introduction said that Mr Gui was "detained over 'suspected violations of law' and goes on to say 'police say Gui was carrying a lot of materials concerning state secrets, and was suspected of illegally providing state secrets...'" . It said that the language used in the programme made it clear that these were clearly identified as police allegations rather than statements that Mr Gui was guilty.

The Licensee also argued that Ofcom had attributed an unreasonably high degree of deduction to the ordinary viewer in suggesting that viewers would consider that (i) Mr Gui's interview being voluntary meant that he was actively cooperating with the police and therefore that (ii) the absence of a response by Mr Gui to the allegation of wrongdoing in the programme meant that he did not dispute the police's allegations. It reiterated that the part of Mr Gui's interview included in the programme discussed what Mr Gui did with his time after being released from prison in October 2017.

The Licensee said that Ofcom did not appear to have concluded that the footage of Mr Gui's interview had led to any unfairness to him, which in its view was correct as the footage of Mr Gui showed him discussing that he planned to stay in Ningbo, his mother's health was poor and he had rented an apartment to spend time with his family. The Licensee said that it appeared, therefore, that Ofcom's conclusion on unfairness was based solely on the Licensee's failure to obtain informed consent. The Licensee said that failure to obtain informed consent was not in itself unfair treatment, since a breach

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<sup>14</sup> See footnote 1 above.

of a Practice in Section Seven of the Code will only result in a breach of the Code if it results in unfairness to the individual concerned.

The Licensee disagreed with Ofcom's balancing of the complainant's Article 8 privacy rights and broadcaster's and audience's Article 10 rights to freedom of expression. The Licensee said that Mr Gui was a convicted criminal at the time of the broadcast of the programme. With regards to *The World Today* programme, it reiterated that Mr Gui had requested for the interview to take place and as such, Mr Gui had provided his informed consent. The Licensee also said that Mr Gui's interview for *The World Today* programme did not reveal information that was so private or sensitive in nature that it outweighed the public interest in reporting it. The Licensee said that the information disclosed was general in nature and not sensitive at all, rather than highly sensitive in nature. It said that the information was of such a non-sensitive nature that the public interest in reporting it was clearly warranted.

The Licensee reiterated that there was a strong public interest in reporting Mr Gui's case to the international audience and that the later developments in his story continued to remain of strong public interest.

## 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 and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes 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 this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programmes as broadcast, both parties' written submissions and both parties' representations on the Preliminary View. After careful consideration of the representations, we considered that the points raised did not materially affect the outcome of Ofcom's Preliminary View to uphold the complaint.

### *Unjust or unfair treatment*

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.

a) We first considered Ms Gui's complaint that her father was treated unjustly or unfairly in the programmes as broadcast because:

i) The programmes included footage of Mr Gui which made it appear, falsely, that he was voluntarily admitting to the charges levelled against him and, in the 2016 programme, that he was willing to reject consular assistance and had returned to mainland China of his own accord. Ms Gui said that Mr Gui was returned to China under duress. Ms Gui also said that Mr Gui was forced into taking part in the interviews in circumstances where he was being held incommunicado.

Ms Gui said that at the time the programmes were broadcast, Mr Gui's criminal trials had not yet taken place. She said that the purpose of the "confession" statements was to deprive Mr Gui of the right to a fair trial.

ii) The 2018 programme presented as fact that Mr Gui had been in possession of state secrets. Ms Gui said that Mr Gui had not yet faced trial in relation to this matter. She said that at the time he was alleged to have committed this crime, Mr Gui was already in police custody.

Head of complaint a) i) is relevant to both programmes, but a) ii) relates only to *The World Today*.

In considering the heads of complaint a) i) and ii), we had particular regard to the following Code Practices:

- Practice 7.3 sets out that individuals who are invited to make a contribution to a programme should normally, at an appropriate stage, be given sufficient information about (amongst other things): the nature and purpose of the programme; when (if known) and where the programme is likely to be first broadcast; the kind of contribution the individual is expected to make (for example, whether it will be live or pre-recorded, edited or unedited); the areas of questioning and, wherever possible, the nature of other likely contributions; and any changes to the programme that might affect their decision to contribute. Taking these measures is likely to result in any consent that is given being 'informed' consent (which, for the purposes of Rule 7.1 and the Code more generally means 'consent').
- Practice 7.9 states that 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 the individual or organisation.

### News Desk

As set out in the "Programme summary", the *News Desk* programme reported on Mr Gui's October 2015 return to China following his 2004 conviction relating to a fatal car accident. The report said Mr Gui had spent 11 years as a "fugitive" but had handed himself into the police and was rearrested. It also said that he was "under investigation as he is also suspected for other crimes".

The programme also included footage of Mr Gui speaking to the camera in Mandarin where he was described as a “*fugitive*” in a caption and he said: “*I’m a fugitive. I could not go back to my country to see my parents. They were already in their eighties. My mother is seriously ill now, that really pains me. I want to see her while she’s still alive, that’s why I decided to return and turn myself in.* [Mr Gui appears to become visibly upset] *I’m willing to take my responsibility and accept any punishment*”. The programme included further footage of Mr Gui in which he said: “*Going back to my country and turning myself in was voluntary and this was not related to others. I don’t want any individuals or organisations, including the Swedish government, to get involved or intervene in this matter...*”

We considered that the inclusion of the footage of Mr Gui, where he appeared to speak openly having voluntarily returned to China, would have been understood by viewers as Mr Gui willingly accepting responsibility for a serious criminal offence (i.e. a drunk driving offence which resulted in the death of another person) and confessing to having been a “*fugitive*” following his conviction for this offence. Taking this into account, and the fact the report concluded by saying that Mr Gui was suspected of other crimes, we considered that the programme had the clear potential to materially and adversely affect viewers’ opinions of Mr Gui.

The complaint, which was reiterated by Ms Gui in her representations to Ofcom, referred to the intention of the broadcast confession being to “deprive Mr Gui of the right to a fair trial”. The Licensee noted that the broadcast occurred more than 11 years after Mr Gui’s conviction. It is not necessary for Ofcom to determine whether legal avenues existed in 2016 for Mr Gui to potentially overturn the conviction or sentence, nor whether the broadcast deprived him of those opportunities. In our view, the inclusion of footage of Mr Gui accepting responsibility for the offence and confessing to having been a “*fugitive*”, would still have had an impact on Mr Gui’s personal reputation. We do not agree with the Licensee’s argument to the effect that Mr Gui’s status as a convicted individual precluded the conclusion that the inclusion of a purported confession (i.e. an acceptance that the conviction was justified) was unfair. As such, the Licensee should have taken reasonable steps to satisfy itself that unjust or unfair treatment was avoided, including through the application of relevant Practices of the Code.

The complaint, which was reiterated by Ms Gui in her representations to Ofcom, also alleged that Mr Gui had not returned to China of his own accord (as maintained by the Licensee). In particular, the complainant said that in October 2015, while on holiday in Thailand, Mr Gui was taken by Chinese authorities. The complainant said that there were no records to show that Mr Gui had left Thailand and that neither his family nor the Swedish government knew about his whereabouts until he resurfaced in the police interview which was broadcast in the *News Desk* programme in January 2016. The complainant said that Mr Gui was based in Hong Kong, where he sold and published books, which are banned in China, on the Chinese Communist Party and the government leadership. The complainant further alleged that Mr Gui would not have returned to China voluntarily as he was aware of the dangers this presented.

Ofcom understood that Mr Gui was one of five booksellers from Hong Kong who had gone missing in October 2015 and that the matter was high profile and well-publicised prior to the broadcast of the

programme.<sup>15</sup> For example, Ms Gui said that in 2015, the European Parliament passed a resolution which described Mr Gui's status as disappeared and Human Rights Watch said that Mr Gui's departure from Thailand was a case of "enforced disappearance".<sup>16</sup> Ms Gui added that since that same year, the United Nations Working Group on Enforced or Involuntary Disappearances has been engaged in continuous correspondence with the government of the People's Republic of China on Mr Gui's whereabouts and the circumstances of his return to China. It is Ofcom's view, therefore, that the Licensee ought to have been aware that the circumstances of Mr Gui's return to China were in dispute and as such, that the inclusion of statements that he had voluntarily returned to China, without acknowledging that this was disputed by others including Mr Gui's family, may not have accurately or fairly represented the facts.

While Ofcom is not able to make a finding of fact in relation to the circumstances which had led to Mr Gui returning to China, the programme would have left viewers with the misleading impression that it was an uncontested fact that Mr Gui had returned to China voluntarily. In Ofcom's view, omitting such context surrounding the circumstances of Mr Gui's return to China and his detention had the potential to be unfair to him. We also considered that this, in the context of the report, reinforced the impression that Mr Gui voluntarily accepted responsibility for his previous actions, and that his apparent confession could be taken at face value. As noted above, this had the potential materially and adversely to affect viewers' opinions of him.

The complaint also alleged that Mr Gui had been forced to take part in the interview in circumstances where he was being held "incommunicado". The Licensee said that it was not aware of the circumstances in which the filming of the interview may have taken place. Ofcom is not able to, and does not need to, definitively establish details of the complainant's treatment in custody. It is not disputed that Mr Gui was in a vulnerable position as a person in police custody. It is also not disputed that the Licensee was not present during the filming of the interview and the filming had been carried out by the police. As such, the Licensee could not and did not discuss with Mr Gui the reasons for giving the interview or the nature of his contribution and was not in a position to establish why Mr Gui was giving the interview and whether he was subject to undue pressure. The interview had instead been carried out by those holding him in custody (i.e. the people who, if there was undue pressure being applied, might reasonably be assumed to be the ones applying it).

Regarding Practice 7.3 on informed consent, we noted that the Licensee said it had stated to the Ministry of Public Security its wish to interview Mr Gui, and only when it was informed that this was not possible did it receive and broadcast the police interview. We had regard to Ms Gui's representations that the Licensee would have easily been able to access information about the circumstances in which he was purported to be held in, i.e. without access to a lawyer, and that his whereabouts were unknown to his family prior to the broadcast of the programme. In our view, the fact that Mr Gui was interviewed by those holding him in custody and in that interview he confessed to the offence, to being a "fugitive" who had voluntarily rejected consular assistance and to voluntarily

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<sup>15</sup> For example: [Gui Minhui: the strange disappearance of a publisher who riled China's elite, The Guardian, 8 December 2015](#); [Hong Kong bookstore disappearances shock publishing industry, BBC News, 10 November 2015](#).

<sup>16</sup> [European Parliament resolution on the case of Gui Minhui, jailed publisher in China, 23 November 2016](#); and, [China: Release Abducted Swedish Bookseller, Human Rights Watch, 17 October 2016](#).

returning to China, ought to have been sufficient to create substantial doubt as to whether his purported consent was genuine. In any case, we also took into account that the Licensee said in its initial response that, although it had been informed by the police that Mr Gui had consented to the interview, it accepted that it had not taken adequate steps to satisfy itself that Mr Gui had been provided with the information as set out in Practice 7.3 of the Code. Taking all the above into account, we considered that the Licensee had not ensured that Mr Gui's informed consent had been obtained.

Ofcom next considered the application of Practice 7.9 and the extent to which the Licensee had exercised reasonable care in satisfying itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Gui. As set out above, we recognised the Licensee's statement that Mr Gui had already been convicted and sentenced for the offence referred to in the *News Desk* programme. We also took into account the Licensee's argument that the interview was consistent with what Mr Gui later said in the interview which was included in *The World Today* programme.

Ofcom considered that the Licensee presented the confession and apologies by Mr Gui as being genuine, voluntary, in his own words, and sufficient to conclude that Mr Gui accepted responsibility for his previous actions, to such an extent that he had been willing to return voluntarily to China (which, as noted above, was itself disputed) and was willing to put on the record his rejection of any consular assistance. We do not consider it was reasonable for the Licensee to have presented the footage in this way because of the evidence that the Licensee had at the time that there were substantial grounds to doubt that these were genuine, voluntary admissions. This included that the interview had been carried out by the police, rather than the Licensee, and that the Licensee had neither verified that Mr Gui had given his informed consent (for the reasons set out above) nor established the circumstances which had led to Mr Gui agreeing to the interview with the police. Further, there was nothing included in the programme to suggest to viewers that Mr Gui was being filmed by the police in a detention centre. Failing to present facts which cast significant doubt on whether Mr Gui's statements were made voluntarily, regardless of whether Mr Gui had already been convicted for the offence, had the clear potential to be unfair to the complainant.

Therefore, we considered that the Licensee did not take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to the complainant, as set out in Practice 7.9.

Given the facts set out above, we considered that the Licensee had not followed the requirements as set out in Practices 7.3 and 7.9 of the Code. However, as set out in the Foreword to Section Seven of the Code, a failure to follow Practices will only constitute a breach of Rule 7.1 where it results in unfairness to an individual or organisation in the programme as broadcast. We therefore went on to consider whether the inclusion of the footage of Mr Gui in the programme resulted in unfairness to him.

As stated above, Ofcom considered that the inclusion of the footage of Mr Gui in the programme as broadcast would have given viewers the clear impression that he had given his informed consent to appear and was making a genuine, voluntary statement on the basis of which it was reasonable to conclude that he had committed the drink driving offence, had been a "fugitive" for several years, had returned to China of his own accord and that he was willing to reject consular assistance and wanted

to “take responsibility” and “accept any punishment” . This constituted unjust or unfair treatment of the Mr Gui because, in our view, the Licensee had substantial grounds to doubt any consent was informed and that the statement was genuine and voluntary, and this was not conveyed in the programme. We took into account the Licensee’s view that Mr Gui had already been convicted for the offence which was referred to in the programme. However, we considered that, regardless of whether this had been the case, the unfairness derives from the failure by the Licensee to obtain informed consent and to present facts which would have cast serious doubts on the presence of consent and on whether the alleged confession, as well as the rejection of consular assistance and statement in relation to his return to China, could be taken at face value.

Taking these factors into account, we considered that material facts were presented, disregarded or omitted in a way that was unfair to Mr Gui.

### The World Today

As set out in the “Programme summary”, the *World Today* programme included a report which provided an update on Mr Gui’s case. It referred to his drink driving conviction and sentence, including stating that he had fled the country in 2004 and turned himself in to police in China in 2015. It also said that on his release from prison, he had signed a letter of commitment stating that he would inform authorities if he left Ningbo. The report then said that on 20 January 2018, he had left Ningbo, accompanied by two Swedish diplomats, and was intercepted and arrested by police and placed in custody. The programme reported that “Chinese police say Gui was carrying a lot of materials concerning state secrets and was suspected of illegally providing state secrets and intelligence overseas endangering state security”. The programme also included footage of Mr Gui, which the programme said had been filmed after he had been detained, speaking to the camera in Mandarin where he described his time in Ningbo after he had been released from prison and prior to his arrest.

In terms of the statement in the programme that Mr Gui had turned himself in to police in China in 2015, Ofcom considered that the programme would have left viewers with the clear impression that Mr Gui had returned to China voluntarily to serve a custodial sentence he had received in relation to a drink driving offence. The circumstances of Mr Gui’s return to China was important context for the rest of the report regarding Mr Gui’s detention, subsequent time in Ningbo and subsequent re-arrest. As set out above, by the date of broadcast it had been well publicised that this narrative was in dispute, and it is Ofcom’s view that the Licensee ought to have been aware that the inclusion of this statement may not have accurately or fairly represented the facts, and therefore could have given viewers a misleading impression of the circumstances of Mr Gui’s return to China and detention. Therefore, in our view, the Licensee did not take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to the complainant, as set out in Practice 7.9.

We next considered the use in the report of footage of Mr Gui. Before assessing the actual content of the footage of Mr Gui included in the programme, in considering whether or not the programme resulted in overall unfairness to Mr Gui, it was important to have regard to whether the broadcaster had obtained Mr Gui’s informed consent to the filming and broadcast of this footage.

Regarding Practice 7.3 on informed consent, we took into account that the Licensee referred to the coverage of the same interview by the SCMP, which it said showed that it was Mr Gui who had invited

a number of media outlets to film him. In particular, Mr Gui had been asked whether he or the Ministry of Public Security had requested the interview, to which the Licensee said he responded: “I felt that it was necessary for me to come out and say something”. Having regard to the SCMP transcript, we also recognised that Mr Gui apparently said that he had “asked the public security authorities for a chance to meet the media in order to tell the public what has happened, and to tell the truth”. The Licensee did not argue that it had independently taken steps to inform the complainant of the matters included in Practice 7.3, including the nature and purpose of the programme, any specific areas of questioning, or the nature of other likely contributions. It is also not disputed that the Licensee did not discuss with Mr Gui his reasons for giving the interview. The Licensee also said that Mr Gui was not reading from a pre-prepared statement and he would have been aware that he was speaking to a group of news journalists about his situation and that it would be broadcast in some form. It also said that he did not say nor do anything to suggest that he was not taking part voluntarily, and did not show any signs of distress during the interview, and that he spoke at length in a clear and coherent manner.

We had regard to the programme, the video footage filmed by SCMP and also the SCMP transcript of the interview. We considered that, given the similarity in the words spoken by Mr Gui in the programme, the SCMP transcript was likely to reflect, at least to some degree, the interview given by Mr Gui to the Licensee. However, we considered that there was nothing in the interview transcript, nor the information provided by the Licensee, to indicate that the matters in Practice 7.3 had been explained to Mr Gui, including the nature and purpose of the programme, what the programme was about, why he was being asked to contribute, when and where it would be broadcast, areas of questioning and any contractual rights and obligations. Further, and importantly there were at least two police officers present during Mr Gui’s interview. We considered that, although Mr Gui may have said that he had asked to meet with the media, the fact that Mr Gui was speaking to the media in the presence of those holding him in custody ought to have created some doubt as to whether Mr Gui’s consent was genuine and informed and whether he was making genuine, voluntary statements. We did not consider that the Licensee’s observations about the complainant’s demeanour was sufficient to alleviate such concerns.

Taking all these factors into account, it was Ofcom’s view that insufficient steps had been taken by the Licensee to inform Mr Gui about the nature and purpose of the programme, or to provide him with the information set out in Practice 7.3. Given this, while we accept that Mr Gui would likely have been aware during the course of this interview that he was being filmed by the Licensee, we considered that the Licensee had not obtained Mr Gui’s informed consent to contribute to *The World Today* programme.

The complaint alleged that Mr Gui had been forced to take part in the interview where he was being held “incommunicado”. The Licensee said that it was not aware of the circumstances in which the filming of the interview may have taken place. As set out above, Ofcom is not able to, and does not need to, definitively establish details of the complainant’s treatment in custody (or the Licensee’s degree of awareness of the same) or the circumstances which had led to Mr Gui returning to China. It is not disputed that Mr Gui was in custody in China facing serious criminal charges, and as such was in a vulnerable position during the interview. We did not consider that the fact Mr Gui only described how he had spent his time in Ningbo had any impact on his relative vulnerability. It is also not disputed that the Licensee did not discuss with Mr Gui his reasons for giving the interview or the nature of his

*Issue 422 of Ofcom’s Broadcast and On Demand Bulletin*  
8 March 2021

contribution in the absence of those holding him in custody (i.e. the people who, if there was undue pressure being applied, might reasonably be assumed to be the ones applying it). These factors all underlined the particular importance of the Licensee taking reasonable steps to satisfy itself that unfair or unjust treatment was avoided.

Ofcom next considered the application of Practice 7.9 and the extent to which the Licensee had exercised reasonable care in satisfying itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Gui. We acknowledged the broadcaster's contention that it would have been apparent that Mr Gui was being interviewed while in police custody and that he was speaking in his own words. We also took into account that the Licensee said that journalists asked Mr Gui questions during the interview and the police were only there for security purposes.

We acknowledged that the programme did not include footage of Mr Gui in which it appeared that he voluntarily admitted to the charges against him, as alleged in the complaint. Instead, footage was included of Mr Gui, where he appeared to speak openly, as he described his time in Ningbo after he had been released from prison and prior to his arrest, and his intention to remain in Ningbo. Nevertheless, the programme presented these comments as being genuine and voluntary, when in fact, the Licensee was unable to verify the existence of informed consent (for the reasons set out above).

In considering whether or not the programme and the inclusion of footage of Mr Gui's interview resulted in unfairness to him, Ofcom took into account the context in which the interview appeared. This context was provided by the statement that Mr Gui had "*turned himself in*", implying he had voluntarily returned to China (which, as noted above, is disputed) and had voluntarily admitted responsibility for the drink driving offence and, further, that he had signed a letter of commitment stating he would "*continue cooperating with authorities*" and "*inform authorities if he leaves the city*". We took into account the Licensee's representations that Ofcom had, in its Preliminary View, assumed an unreasonably high degree of deduction by the ordinary viewer to conclude that viewers would have inferred that Mr Gui was actively cooperating with the police. However, we considered that the programme included statements as set out above that clearly presented Mr Gui as, at the time the footage was obtained, actively and voluntarily cooperating with the Chinese police, and saying he had intended to remain in Ningbo in line with written commitments.

When the programme went on to say Mr Gui was detained in the process of leaving Ningbo with Swedish diplomats, this contrasted with the content of the interview and implied Mr Gui had reneged on statements he had voluntarily made regarding his circumstances and future intentions. We considered this had the potential to materially and adversely affect viewers' opinions of him.

We also took into account that this context framed the statement that followed that, "*Chinese police say Gui was carrying a lot of materials concerning state secrets and was suspected of illegally providing state secrets overseas endangering state security*". We acknowledge that this was identified as a police allegation by the broadcaster. However, the report did not give any account of whether or not Mr Gui contested the charges against him, nor whether his response on this matter had been sought. We also considered that the presentation of Mr Gui's interview, which the programme signalled to viewers had been obtained after he was detained in relation to the offence, as voluntarily given implied that, at the very least, Mr Gui was actively cooperating with the police. In the absence of a response from Mr Gui

in relation to the allegation of wrongdoing in the programme, the way the programme presented the footage of his interview, setting out his previous intentions to stay in Ningbo, taken together with the police's account that he had been in possession of state secrets and was suspected of endangering state security, had the potential materially and adversely to affect viewers' opinions of Mr Gui. Therefore, in our view, the Licensee did not take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to the complainant, as set out in Practice 7.9.

The Licensee said that, although Mr Gui had not at the time of broadcast faced trial in connection with allegedly providing state secrets overseas, there was nothing contained in his interview included in the programme that could have caused him prejudice to any future trial. The Licensee also said, even if a trial was imminent for Mr Gui, the broadcast of a programme in the UK was unlikely to have an impact on his ability to obtain a fair trial. It is not necessary for Ofcom to determine whether the broadcast of the programme could in fact have deprived Mr Gui of a fair trial in relation to allegedly being in possession of state secrets. We considered that the impact of broadcasting the story on Mr Gui's personal reputation alone (i.e. that he was suspected of endangering state security and his response to that allegation was not included) was such that the broadcaster should have taken reasonable steps to satisfy itself that unjust or unfair treatment was avoided, including through the application of relevant Practices of the Code.

Given the assessment set out above, we considered that the broadcaster had not followed the requirements as set out in Practices 7.3 and 7.9 of the Code. However, as set out in the Foreword to Section Seven of the Code, a failure to follow Practices will only constitute a breach of Rule 7.1 where it results in unfairness to an individual or organisation in the programme as broadcast. We therefore went on to consider whether the inclusion of the footage of Mr Gui in the programmes resulted in unfairness to him.

As stated above, Ofcom considered that the inclusion of the footage of Mr Gui in the programme as broadcast would have given viewers the clear impression that he had given informed consent to appear and was making genuine and voluntary statements about how he spent his time following his previous release from prison. This constituted unjust or unfair treatment of the complainant because, in our view, the Licensee had substantial grounds to doubt any consent was informed and therefore whether he was making genuine, voluntary statements. In addition, the report stated that he had returned to China voluntarily in October 2015, when in fact the circumstances of his return were disputed. Further, given the programme did not give any account of whether or not Mr Gui contested the charges against him, nor whether his response on this matter had been sought, we considered that the way the programme presented the footage of his interview, setting out his previous intentions to stay in Ningbo, and the police's account that he had been in possession of state secrets, had the potential materially and adversely to affect viewers' opinions of Mr Gui.

We took into account the Licensee's representations that Mr Gui was convicted of an offence of illegally providing intelligence overseas in 2020. However, regardless of the outcome of Mr Gui's trial, the programme as broadcast resulted in unfairness to Mr Gui in that the Licensee had failed to obtain informed consent and presented or omitted material facts in a way that was unfair to Mr Gui.

We noted Ms Gui's representations to the effect that Ofcom should conclude based on the circumstances that the breaches set out above were deliberate. It is not, however, necessary for Ofcom to reach a determination in relation to this matter for the purposes of this Adjudication.

Taking all the above factors into account, we considered that material facts were presented, disregarded or omitted in a way that was unfair to Mr Gui.

### *Unwarranted infringement of privacy*

In Ofcom's view, the individual's right to privacy must be balanced against the competing rights of the broadcaster to freedom of expression and of the audience to receive ideas and information without undue interference. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In addition to this rule, Section Eight (Privacy) 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 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

b) We considered Ms Gui's complaint that her father's privacy was unwarrantably infringed in connection with the obtaining of material included in the two programmes because he was filmed by the broadcaster's journalists inside a detention centre without his consent. Ms Gui said that her father had no access to a lawyer and was held incommunicado. Ms Gui added that the broadcaster's journalists were aware of her father's circumstances.

Ofcom had regard to Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

We assessed the extent to which Mr Gui had a legitimate expectation of privacy in the particular circumstances in which the material included in the programmes was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We took into account that, in both interviews, Mr Gui was filmed at a detention centre, where access to him would have been limited and was likely to be restricted. We considered that this was clearly the case in relation to the interview filmed for *News Desk* given that it was the police who had filmed it and provided it to the Licensee. In such circumstances, we considered the filming took place in a highly sensitive situation where it was not clear whether Mr Gui had been informed about the purpose for which he was being filmed or that he understood that the material recorded might subsequently be included in a programme, and where Mr Gui was clearly and visibly distressed in the interview. In relation to *The World Today*, the Licensee had only been able to film Mr Gui having been invited by the Ministry of Public Security to do so. As recognised in

Practice 8.8. of the Code, prisons or police stations are considered potentially sensitive places, and we considered that Mr Gui was filmed in a sensitive environment where someone may be feeling vulnerable.

We also took into account the circumstances which, according to the Licensee, had led to Mr Gui being interviewed. In relation to the first interview, which was conducted by the police and provided to the Licensee, the Licensee said that their understanding was that Mr Gui had apparently voluntarily returned to China to serve the two-year custodial sentence he had received in connection with a drink driving offence which had resulted in the death of another person. However, as explained in relation to head a) above, the complainant disputed this account and the Licensee ought to have been aware that it was disputed whether Mr Gui's return to China, or his statements regarding his responsibility for the drink driving offence, were voluntary. In relation to the second interview, which was conducted by the Licensee, the Licensee said that following Mr Gui's release from prison, he had been arrested as he was suspected of illegally providing state secrets and intelligence overseas. However, we considered that, as explained in relation to head a) above, the Licensee ought to have been aware that Mr Gui was in a vulnerable position in police custody at the time of this interview. We understood that, in February 2020, Mr Gui received a 10 year custodial sentence<sup>17</sup>.

In relation to the *News Desk* programme, the Licensee was unable to provide Ofcom with the unedited footage (or a full transcript) of Mr Gui's police interview and we have therefore reached our decision in connection with the obtaining of the material included in the programme with reference to the broadcast footage available. In Ofcom's view, we considered that Mr Gui was filmed disclosing highly sensitive information (i.e. stating that he had voluntarily returned to China, apparently confessing to the criminal offence and rejecting consular assistance), and in circumstances where, for the reasons set out above, there were serious reasons to doubt that these amounted to genuine, voluntary statements. In relation to *The World Today* programme, the Licensee was also unable to provide Ofcom with the unedited footage of Mr Gui's interview. However, we took into account that the Licensee had suggested in its submissions that the transcript of the interview recorded by SCMP provided a good indication of the type of material which the Licensee had obtained in relation to *The World Today* programme. Therefore, while we had concerns about the potential reliability of aspects of the SCMP transcript in accurately recording Mr Gui's statements, as discussed further above, we considered that it appeared likely that the Licensee obtained personal and sensitive information during this interview. In particular, the SCMP transcript indicated that Mr Gui spoke about a medical condition he might have, provided details about his family life prior to his first arrest and after he was released from prison, and also provided a detailed account of the events which had led to his more recent arrest.

Taking all these factors into account, we considered Mr Gui had a legitimate expectation of privacy in connection with the obtaining of material included in the programmes.

Next, we considered whether the expectation of privacy had been infringed or whether the Licensee had obtained informed consent for the filming.

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<sup>17</sup> [Hong Kong bookseller Gui Minhui jailed for 10 years in China, The Guardian, 25 February 2020.](#)

For the reasons set out above in relation to fairness, we do not consider that the Licensee ensured Mr Gui's informed consent for the interviews had been obtained for either the *News Desk* or *World Today* programmes.

In the absence of informed consent in relation to the filming of the footage, we considered that it amounted to a significant intrusion into his legitimate expectation of privacy. We therefore considered whether the infringement of Mr Gui's legitimate expectation of privacy in connection with the obtaining of the footage was warranted.

The Code states that "warranted" has a particular meaning. Where broadcasters wish to justify an infringement of privacy, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

Ofcom carefully balanced Mr Gui's right to privacy with regard to the obtaining of the footage with the broadcaster's right to freedom of expression. We took into account the Licensee's submission that there was a public interest in reporting Mr Gui's case in the *News Desk* programme to its international audience, the details of which concerned a convicted Chinese national who, the broadcaster said, had fled overseas to escape his punishment before returning to China, and also a public interest in reporting on the interview featured in *The World Today* programme, as in its view, it provided a significant development in the story of Mr Gui.

We considered that both interviews reported on serious issues, relating to alleged criminal offences. We also considered that it was important for broadcasters to be able to make programmes which report on news stories with a view to imparting information about such topics to the audience. However, we considered that the obtaining of the footage of Mr Gui in relation to the *News Desk* programme and the filming of Mr Gui in relation to *The World Today* programme was a significant intrusion into his legitimate expectation of privacy given the highly sensitive situation of Mr Gui (being detained in police custody) in both interviews, and the sensitive nature of the information he disclosed. In the absence of any measures on the part of the broadcaster to verify the circumstances which had led to his interviews and to ensure his informed consent had been obtained, we considered that such a significant intrusion into his privacy was not warranted by the public interest in reporting on obtaining the footage of Mr Gui for inclusion in television programmes.

On this basis, Ofcom considered that Mr Gui's legitimate expectation of privacy was unwarrantably infringed in the obtaining of the broadcast footage in respect of both programmes.

- c) We next considered Ms Gui's complaint that her father's privacy was unwarrantably infringed in the programmes as broadcast because the footage of him was included in the programmes without his consent.

We had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

We considered the extent to which Mr Gui had a legitimate expectation of privacy in relation to the footage of him being included in the programmes, taking into account the context in which he was filmed, as set out in detail in head b) above. For the reasons already set out at head b), we considered that the footage of Mr Gui included in the *New Desk* programme showed him in a highly sensitive environment and revealed highly sensitive information i.e. stating that he had voluntarily returned to China, apparently confessing to a criminal offence and rejecting consular assistance. We acknowledged that Mr Gui had already been convicted for this offence, however, we did not consider that this meant Mr Gui should be deprived of a legitimate expectation of privacy in relation to matters connected to the offence. We considered that a person's apparent confession to a criminal offence is highly sensitive regardless of whether or not they had been convicted. We also considered that the footage of Mr Gui included in *The World Today* programme showed him in a highly sensitive environment. We recognised that in the footage broadcast Mr Gui discussed how he had spent his time following his release from prison, rather than information connected to his arrest or detention. However, in our view, the information related to Mr Gui's private and family life and it was necessary to take into account the circumstances in which he had been filmed. Therefore, we considered that he had a legitimate expectation of privacy regarding the inclusion of the footage in the programmes as broadcast.

Next, we considered whether the infringement was warranted.

As noted in head b) above, we did not consider that Mr Gui's informed consent to be filmed had been secured, nor had the Licensee subsequently obtained his consent for the interviews to be broadcast. We therefore considered the broadcast of the footage was a significant intrusion into Mr Gui's legitimate expectation of privacy

We therefore went on to consider whether the broadcast of the material was "warranted" within the meaning set out in the Code (see above under head b)). In doing so, we carefully balanced Mr Gui's right to privacy regarding the inclusion of the relevant footage in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference.

We took into account the public interest arguments put forward by the Licensee (as set out under head b)). We also acknowledge that the Licensee said that there was only a small amount of footage of Mr Gui included in the programmes. However, as with head b) above, we did not consider the public interest in reporting on Mr Gui's case and in broadcasters being able to report news stories and impart information warranted the significant intrusion into his legitimate expectation of privacy in such a sensitive situation. This was particularly the case where footage of him stating that he had voluntarily returned to China, apparently confessing to a criminal offence and rejecting consular assistance was included in the *News Desk* programme without having taken further measures to verify the circumstances which had led to the interview and to confirm that his consent had been obtained. With regard to *The World Today* programme, we considered that information about the way in which Mr Gui had spent his time after he was released from prison

was of very limited public interest and did not warrant the significant intrusion into his legitimate expectation of privacy in such a sensitive situation, again without having taken further measures to verify the circumstances which had led to the interview and to confirm that his consent had been obtained.

On balance, we did not consider that the broadcaster's right to freedom of expression and the audience's right to receive information and ideas about the matters explored by the programmes outweighed the significant intrusion into Mr Gui's right to privacy.

Ofcom therefore considered that there was an unwarranted infringement of Mr Gui's legitimate expectation of privacy in the programmes as broadcast.

**Ofcom has upheld Ms Gui's complaint, made on behalf of Mr Gui, of unjust or unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programmes and in the programmes as broadcast.**

**Ofcom also considers that the breaches of Rules 7.1 and 8.1 of the Code in this particular case are serious. We are therefore putting the broadcaster on notice that we intend to consider the breaches for the imposition of a statutory sanction.**