

# Ofcom Broadcast and On Demand Bulletin

Issue 446  
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## BBC News at Six

<b>Type of case</b>	Broadcast Standards
<b>Outcome</b>	In Breach
<b>Service</b>	BBC 1
<b>Date &amp; time</b>	26 February 2021, 18:00
<b>Category</b>	Due accuracy in news The acknowledgement and correction of significant mistakes on air
<b>Summary</b>	A news programme featured an inaccurate statement regarding Alex Salmond’s view as to whether or not Nicola Sturgeon should resign as First Minister of Scotland whilst he gave evidence to a Scottish Parliament Committee. There was not any acknowledgement or correction on air. In breach of Rules 5.1 and 5.2.

### Introduction

Ofcom received a complaint that during the *BBC News at Six*, a reporter made a false claim that was not acknowledged or apologised for on air. The viewer had previously raised their concerns with the BBC in accordance with [Ofcom’s published procedures](#).

### The broadcast content

During the news headlines at the start of *BBC News at Six*, newsreader Sophie Raworth briefly introduced the top story about Alex Salmond giving his “long awaited” evidence to the [Scottish Parliament Committee](#) investigating the Scottish Government’s alleged handling of sexual harassment claims against him. This was followed: firstly by a brief clip of Mr Salmond giving his evidence in front of the Scottish Parliament Committee; and then a short statement from BBC Scotland Editor Sarah Smith (“the reporter”) who was reporting live from Holyrood. She said:

*“Alex Salmond said he believes Nicola Sturgeon has misled Parliament and broken the Ministerial Code, **which he thinks means she should resign** [Ofcom’s emphasis]”.*

After outlining the other featured news reports, the lead story, relating to Mr Salmond giving evidence to the Scottish Parliament Committee was returned to in the form of a pre-recorded report by the reporter featuring footage from that afternoon’s Scottish Parliamentary session. This was followed by a further live report by the reporter outside Holyrood. The above statement by the reporter about Mr Salmond thinking Ms Sturgeon should resign was not repeated. As later acknowledged by the BBC<sup>1</sup>, Mr Salmond had not called for Ms Sturgeon’s resignation. Rather, Mr Salmond had told the inquiry that he had “no doubt that Nicola [Sturgeon] broke the Ministerial Code, but it is not for me to suggest what the consequences should be” as reported in *BBC News at Ten* later the same day.

### The BBC’s investigation

The response of the BBC to the complainant in this case differed to the BBC’s published decision in relation to this programme:

- in correspondence with the complainant in this case, the BBC had made clear that they considered the complaint was not upheld. This was because the complaint was focused on the absence of an on-air apology, rather than the BBC’s wider response to the issue; but
- the BBC Executive Complaints Unit (“ECU”) also published a resolved<sup>2</sup> finding at the final stage of its own complaints process in relation to this programme. This finding related to two complaints the ECU had received that were concerned with the BBC’s general response to the alleged inaccuracy in this case, rather than the narrower issue of the absence of an on-air apology. The ECU found these two complaints (concerned with the BBC’s general response to the alleged inaccuracy in this case) to be resolved. This was because although the BBC acknowledged the comment in question did not meet the BBC’s standards of accuracy, it considered that the steps taken by the BBC to acknowledge and correct the error were sufficient. These steps included publicly acknowledging that what had been said during the programme did not reflect Mr Salmond’s comments<sup>3</sup> and posting a [summary](#) of the action taken by the BBC on the BBC complaints website<sup>4</sup>, as well as the reporter posting a clarification on their Twitter page<sup>5</sup>.

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<sup>1</sup> See: [BBC Corrections and Clarifications Archive](#) 2021, published 03/03/21 ([https://www.bbc.co.uk/helpandfeedback/corrections\\_clarifications/archive\\_2021/](https://www.bbc.co.uk/helpandfeedback/corrections_clarifications/archive_2021/)).

<sup>2</sup> See: [BBC News \(6pm\), BBC One, 26 February 2021](#) (<https://www.bbc.co.uk/contact/ecu/bbc-news-6pm-bbc-one-26-february-2021>).

<sup>3</sup> See footnote 1.

<sup>4</sup> See: [BBC News at Six, BBC One and BBC News Channel, 26 February 2021](#) (<https://www.bbc.co.uk/contact/complaint/ssmithsixreport>).

<sup>5</sup> See: [Sarah Smith on Twitter](#) (<https://twitter.com/bbcsarahsmith/status/1365399553634144258?lang=en>).

## Ofcom's investigation

We considered that the content raised potential issues under the following rules of the Ofcom Broadcasting Code ("the Code"):

Rule 5.1: "News, in whatever form, must be reported with due accuracy and presented with due impartiality".

Rule 5.2: "Significant mistakes in news should normally be acknowledged and corrected on air quickly. Corrections should be appropriately scheduled".

Ofcom requested comments from the BBC about how the programme complied with these rules.

## Response

The BBC accepted the news report was not duly accurate and did not comply with Rule 5.1 of the Code. However, it said that it had taken what it considered to be appropriate action to mitigate the error, which included:

- making clear in the *BBC News at Ten* report on the same evening that Mr Salmond had stopped short of calling for Ms Sturgeon to resign;
- the reporter posting a clarification on her Twitter page<sup>6</sup> which it said was actively viewed by more than 47,000 users and appeared in the timeline or search results of more than 1,239,000 users;
- a correction being posted on the BBC's Corrections and Clarifications website on 3 March 2021; and
- a summary of the action taken being posted on the BBC Complaints website<sup>7</sup>, the page which "records the BBC's public responses to significant complaints of wide audience concern".

The BBC also said that it felt it was unlikely that the wording used in the report would have had a significant effect on the audience's understanding of Mr Salmond's opinion of the actions of the First Minister. It said viewers "would have been in no doubt Mr Salmond believed Ms Sturgeon had broken the rules governing the behaviour of ministers...[and] had misled Parliament over when she was first made aware of complaints of sexual harassment against him". In its consideration of the audience's likely understanding of this news story, the BBC referenced other media coverage following Mr Salmond's resignation and his "criticisms of Ms Sturgeon, the Scottish Government and the Scottish National Party" which it said had been "widely and consistently reported". It quoted Mr Salmond's written submission to the Committee in which he described what he considered was:

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<sup>6</sup> See footnote 5.

<sup>7</sup> See footnote 4.

“a deliberate, prolonged, malicious and concerted effort amongst a range of individuals within the Scottish Government and the SNP to damage my reputation, even to the extent of having me imprisoned”.

In light of the above, the BBC said it did not consider the inaccuracy to be a “significant mistake”. Therefore, in line with Rule 5.2 of the Code, and as indicated in the ECU’s published summary of its decision, the BBC considered the inaccuracy did not “rise to the level of significance which would require a broadcast correction”.

The BBC made further representations in response to Ofcom’s Preliminary View that the programme was in breach of Rules 5.1 and 5.2. In relation to Rule 5.2, the BBC said whether the mistake was “significant” (so as to engage Rule 5.2’s requirement for an on-air correction) was a matter of judgement. In this regard, it queried Ofcom’s view that the significance of the mistake was elevated by the proximity of the broadcast on the 26 February 2021 to the Scottish Parliamentary elections which took place on 6 May 2021. The BBC said that although it “did not suggest the relative proximity to the beginning of an election campaign period cannot be a legitimate editorial consideration, we find no reference to this in Ofcom’s Code and Guidance, even in the Sections (5 and 6) to which it is most clearly relevant”. It therefore questioned the weight given to this factor by Ofcom in determining compliance with the rules.

In relation to the decision to publish a correction on the reporter’s Twitter page, which the BBC confirmed had been taken by the programme team, it said that it was not until after 18.30 (after the end of this edition of *BBC News at Six* had finished) that it was ascertained that a mistake had been made. As the mistake had “occasioned a spike in Twitter activity, [Twitter] was considered to be the option best adapted to communicate the correction to those who had expressed concern about the matter” and among the speediest.

Finally, the BBC noted the distinction between the Code and the BBC’s own Editorial Guidelines. It said “while the latter reflect the effect of the former, they do not replicate it and, as Ofcom is aware, they are generally not expressed in terms of rules (such as may be appropriate to a regulatory code) but in terms of guidance to those responsible for the BBC’s output on what the BBC’s editorial standards consist of and how they are best observed. The particular relevance of the distinction in this instance is that the [BBC Editorial] Guidelines contain no direct equivalent of Rule 5.2”. As a result, the BBC said it would not be minded to consider that the absence of an “on air” correction in itself would constitute a breach of its own Editorial Guidelines.

In additional representations to Ofcom on the Preliminary View, the BBC further clarified its position on the consistency between this aspect of the BBC Editorial Guidelines and the Code. The BBC explained that the difference in wording between Rule 5.2 in the Code and the nearest equivalent in the BBC’s [Editorial Guidelines](#) (3.3.28, Correcting Mistakes<sup>8</sup>) is accounted for by the fact that “Ofcom’s Rule is addressed to accuracy and impartiality “in news” whereas the relevant Guideline is addressed to output in all genres”. The BBC confirmed that as a matter of practice, it would expect programme

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<sup>8</sup> “3.3.28: We should normally acknowledge serious factual errors and correct such mistakes quickly, clearly and appropriately. Inaccuracy may lead to a complaint of unfairness. An effective way of correcting a serious factual error is saying what was wrong as well as putting it right”.

makers to consider on every occasion the question of an on-air correction in news programmes in the light of the seriousness of the error. The BBC stated that there may well be instances, as in this case, where the BBC's judgement about seriousness differs from Ofcom's, but that does not indicate "inconsistency between the Code and the Guidelines as to the standards and principles which should apply". The BBC further explained that there may be types of output where the considerations around the on-air correction of a significant mistake may differ considerably from those which apply to regular news programmes.

## Decision

Reflecting our duties under the Communications Act 2003 ("the Act"), Section Five of the Code reflects the requirements of section 319 of the Act and requires that news must be reported with due accuracy and due impartiality.

In enforcing the Code, Ofcom must have regard to the need to secure the application of broadcasting standards in the manner that best guarantees an appropriate level of freedom of expression. In our assessment of this case, we have taken account of the broadcaster's right to freedom of expression and the audience's right to receive ideas and information without undue interference, as set out in Article 10 of the European Convention on Human Rights.

### Rule 5.1

Rule 5.1 requires that "news, in whatever form, must be reported with due accuracy and presented with due impartiality".

Section Five makes clear that "due" means adequate or appropriate to the subject and nature of the programme. The approach may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. The rule is primarily intended to ensure that audiences can trust broadcasters to report news with appropriate accuracy. It goes to the heart of the relationship of trust between a news broadcaster and its audience.

Ofcom first considered whether the material in this case was duly accurate. Ofcom's published Guidance to Rule 5.1 explains that, for example, where a matter is of particular public interest, the requirement to present that matter with due accuracy will be correspondingly higher. We considered that the ongoing Scottish Parliamentary inquiry into allegations made against the former First Minister was a matter of significant public interest, especially to audiences in Scotland. This was especially the case given that the programme was broadcast under one month prior to the start of election period for the Scottish Parliamentary elections, which had been determined by Ofcom to commence on 25 March 2021 with the election taking place on 6 May 2021. The May 2021 Scottish Parliamentary elections were a highly significant political event in Scotland, which Nicola Sturgeon and her party, the SNP, were due to contest. We discuss this issue further in relation to Rule 5.2 below.

Therefore, we considered that there was a particular need for accuracy when reporting on this matter.

At the start of the news report, the reporter said:

*“Alex Salmond said he believes Nicola Sturgeon has misled Parliament and broken the Ministerial Code, which he thinks means she should resign”.*

In fact, and as set out above, Mr Salmond had been clear in saying to the Committee *“it’s not for me to suggest what the consequences should be”*<sup>9</sup> and the BBC accepted that this was the case.

Ofcom considers that the reporter’s statement would likely have been interpreted by viewers as a factual description of, or direct quote from, Mr Salmond’s evidence to the Committee on the Scottish Government Handling of Harassment Complaints. This could be particularly so as it was broadcast during a BBC news programme in which viewers have a high level of trust<sup>10</sup>.

Therefore, our Decision is that the statement made in the programme was not duly accurate and in breach of Rule 5.1, as accepted by the BBC.

## **Rule 5.2**

Rule 5.2 states that *“Significant mistakes in news should normally be acknowledged and corrected on air quickly...corrections should be appropriately scheduled”*.

We then considered whether the inaccuracy in this case was a *“significant mistake”* that therefore would normally require an acknowledgement or correction on air. In determining its significance, we took into account factors such as the level of inaccuracy addressed under Rule 5.1, the nature of the inaccuracy, the subject of the news story and the timing of any correction in relation to the original broadcast.

In Ofcom’s view, the issue being reported was one of significant public interest, as discussed in relation to Rule 5.1.

The Scottish Parliamentary inquiry followed a long-running and very high-profile series of events. It was seen by some as putting Ms Sturgeon’s position as First Minister in jeopardy. Furthermore, given the previous close political relationship between Mr Salmond and Ms Sturgeon, and their highly prominent roles in Scottish politics, it would have been a very significant statement for Mr Salmond to make, should he have called for Ms Sturgeon’s resignation.

We also took into account, as mentioned above, that the broadcast took place on 26 February 2021, just under one month prior to the start of the election period for the Scottish Parliamentary elections, commencing on 25 March 2021 with the election taking place on 6 May 2021. In Ofcom’s view, the context of this news item, that is the upcoming elections, elevated the significance of the issues being reported. This is because it is particularly important that viewers are provided with accurate information about the people and parties they may be considering voting for as an election approaches to ensure that their voting decisions are fully informed. We noted the BBC’s comments that neither the Code nor the Guidance relating to Sections Five and Six of the Code specifically

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<sup>9</sup> See [Committee on the Scottish Government Handling of Harassment Complaints, Friday 26 February 2021](https://www.scottishparliament.tv/meeting/committee-on-the-scottish-government-handling-of-harassment-complaints-february-26-2021) (<https://www.scottishparliament.tv/meeting/committee-on-the-scottish-government-handling-of-harassment-complaints-february-26-2021>).

<sup>10</sup> See [Ofcom’s Annual Report on the BBC 2019/20](#).

reference the proximity of an election period as a factor which might impact the significance of a mistake; and questioning the weight given by Ofcom to this factor in determining compliance with the Code. In our view, the significance of a mistake in news reporting has to be considered in light of all the relevant circumstances and contextual factors. This includes the importance of a particular news story and its relevance to viewers, which, in our view, were heightened in this particular case by the upcoming elections.

We took into account the BBC's submission that it was unlikely that the wording used in the report would have had a significant effect on the audience's understanding of Mr Salmond's opinion of the actions of the First Minister. However, for the reasons outlined in the above two paragraphs, we considered that the mistake was a significant one. We also considered that the audience's understanding of what was said by Mr Salmond in his evidence to the Committee on the Scottish Government Handling of Harassment Complaints would have had a significant impact on the audience's understanding of Mr Salmond's position on the matter. Further, given Mr Salmond's former role as First Minister of Scotland and leader of the SNP, and his previous close relationship with Ms Sturgeon, we considered it likely that viewers would have put particular weight on what Mr Salmond's view was about Ms Sturgeon. Against this backdrop, we considered that this additional contextual factor would have exacerbated the significance of the inaccuracy in this case.

The BBC also stated that the news relating to Mr Salmond's resignation from the SNP in 2018 had been "widely and consistently reported", making reference to "various legal proceedings which followed". We did not consider that the wider context of other news coverage of Mr Salmond's resignation and his "criticisms of Ms Sturgeon, the Scottish Government and the Scottish National Party" were relevant to the error that had occurred here.

For these reasons – as well as the reasons we have set out above under Rule 5.1 – we considered that the statement constituted a "significant mistake" that Rule 5.2 would require to "normally be acknowledged and corrected on air quickly".

The BBC confirmed that the reporter posted a correction on her personal Twitter page<sup>11</sup> and provided data regarding the engagement metrics of the tweet, suggesting that it was an "effective way to publicise the BBC's correction". We also recognised that the error had been acknowledged on the BBC website. However, the purpose of an on-air correction is so that significant mistakes can be quickly corrected to the likely audience exposed to the original error. While we acknowledge Twitter and website corrections and clarifications have a place in reaching some viewers, the audience who watched the original broadcast may not have been reached in this way.

Given the significance of the mistake in this case, we considered that an on-air correction, broadcast quickly and appropriately scheduled, was required to comply with Rule 5.2. This did not take place. We have previously highlighted<sup>12</sup> our concerns when the BBC failed to act sooner to correct a materially misleading statement in a non-news programme. In a similar way, we are concerned that in this case the BBC failed to correct a significant inaccuracy on air at the earliest opportunity.

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<sup>11</sup> See footnote 5.

<sup>12</sup> See our April 2019 [Decision](#) regarding an edition of *Sunday Politics* on BBC 1, p.25.

Given all the above, our Decision is that the programme was also in breach of Rule 5.2.

## **Breaches of Rules 5.1 and 5.2**

### **Consistency between the Broadcasting Code and the BBC's Editorial Guidelines**

Under the BBC Agreement<sup>13</sup>, the BBC is required to set and observe guidelines designed to secure appropriate standards in broadcast content and the guidelines “must incorporate the more specific obligations” referred to in Paragraph 3 of Schedule 3 to the Agreement. Paragraph 3 states that: “in providing the UK Public Broadcasting Services, the BBC must observe the standards set under section 319 of the Communications Act 2003 (Ofcom’s “Standards Code”)”. Therefore, for the BBC First complaints system to function correctly, the BBC’s Editorial Guidelines must fully incorporate the rules contained within the Ofcom Broadcasting Code as a minimum requirement.

The BBC acknowledged that the Editorial Guidelines must reflect the effect of Ofcom’s Code, but we are very concerned that the BBC’s initial representations in response to Ofcom’s Preliminary View did not appear to be consistent with this requirement under the BBC Agreement. In particular, the BBC made reference to “a distinction between Ofcom’s Code and the BBC’s Editorial Guidelines” in that the Editorial Guidelines contain no direct equivalent of Rule 5.2 and as such do not reflect the Code requirement for significant mistakes in news to “normally be acknowledged and corrected on air”.

We welcome the BBC’s subsequent clarification on this issue, that in their view there is no “inconsistency between the Code and the Guidelines as to the standards and principles which should apply”. In particular, we acknowledge that the relevant BBC Editorial Guideline applies to all output, whereas Rule 5.2 of the Ofcom Broadcasting Code is only concerned with news programmes. However, in Ofcom’s view the BBC should amend its Editorial Guidelines to make clearer that in all news programmes in particular, significant mistakes should normally be acknowledged and corrected on air quickly and corrections should be appropriately scheduled, as required by Rule 5.2. We intend to discuss this matter further with the BBC as a priority.

### **Complaints handling and transparency**

The BBC Charter and Agreement<sup>14</sup> introduced the “BBC First” system of complaints handling. The BBC First<sup>15</sup> system allows audiences to hold the BBC to account by engaging with it directly through a single complaints process, with independent regulatory oversight of editorial matters by Ofcom.

Public confidence in the operation and effectiveness of the BBC’s complaints process depends on the BBC being sufficiently transparent in how it handles and resolves complaints. Ofcom has, on a number of occasions, raised with the BBC the issue of transparency in its complaints handling. In particular, in 2017 we set a series of requirements, by way of our BBC [Complaints Determinations](#), for the BBC to

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<sup>13</sup>See [Schedule 3 of the Agreement](#) ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/584329/57965\\_Cm\\_9366\\_Print\\_1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584329/57965_Cm_9366_Print_1.pdf)).

<sup>14</sup> See: [BBC Charter and Agreement](#) (<https://www.bbc.com/aboutthebbc/governance/charter>).

<sup>15</sup> ‘BBC First’ means that, if a viewer or listener has a complaint about something they have seen or heard in a BBC programme, they must normally complain to the BBC in the first instance.

publish detailed data regarding its complaints function. This was intended to build and maintain public confidence in the operation of the BBC First framework. Since then we have reviewed and amended these Determinations to improve the transparency of the BBC's complaints handling.

As mentioned in the BBC's investigation section above, the response of the BBC to the complainant in this case differed to the BBC's published decision in relation to this programme. In correspondence with the complainant, the BBC had made clear that they considered the complaint was not upheld. However, the ECU's published finding on this programme and the BBC's initial correspondence with Ofcom in relation to this complaint stated that this case had been "resolved". We sought clarification from the BBC on this point and, in response, the BBC said the member of staff who had provided the initial representations to Ofcom in this case:

- had only been aware of the two complaints the ECU had considered "resolved". These two viewers had complained that the inaccuracy in the programme was serious and had not been adequately corrected; and,
- had not been made aware of two further complaints to the BBC, including the one escalated to Ofcom, that were concerned with the issue that the broadcast error had not been corrected on-air specifically.

The BBC said this oversight was a result of remote working practices and its reporting systems not allowing "for an exhaustive check of complaints by programme title except by manual means". In our view, this demonstrated a lack of coordination in the ECU's response to the complaints about this programme. We are concerned that the BBC's comments suggest that its current reporting systems do not allow it to have a complete overview of multiple complaints it has received about the same programme.

In addition, having sought clarification from the BBC, we understand the complainant who escalated their complaint to Ofcom did so on 17 May 2021, having received their final response from the ECU. However, at this time, the ECU was still considering the related complaints about the same content that the ECU subsequently decided to resolve. These complaints were received by the ECU in early April and the associated decision was published on 24 June 2021. In this case, we considered that it would have been beneficial if the complainant who escalated their complaint to Ofcom had been aware of the ECU's decision to resolve the complaints that were concerned with closely related issues about the same content. It is important to the success of the BBC First system that complainants are reliably informed of the ultimate outcome of the BBC's overall consideration of all related standards issues arising in the programme about which they have complained. This will mean that the complainant can make an informed decision about whether they wish to escalate their complaint to Ofcom.

In this context, and as stated in the third edition of the BBC Annual Report<sup>16</sup> – and as referred to above – Ofcom revised its complaints handling determinations<sup>17</sup> in July 2020 in order to require the BBC to publish details for all upheld, partially upheld, resolved and **some** not upheld findings in accordance with criteria specified by the BBC and agreed by Ofcom. We also note that some of the BBC ECU’s published partially resolved, partially not upheld findings about particular programmes also include some details of reasoning where the BBC ECU has not upheld a complaint about those programmes. In the present case, given the timing and similarity between the complaints about this programme that the BBC considered were resolved and not upheld, it would also have been helpful for the BBC to have made clear in its published “resolved” decision (concerning the BBC’s overall response to the inaccuracy in the programme), the outcome of the related complaints (concerning any on-air correction of that inaccuracy) and the reasons why the BBC had considered these to be “not upheld”.

The issue of the BBC’s transparency around the substance of the decisions reached by the ECU is a matter that we are currently considering, as part of our [review of How Ofcom regulates the BBC](#), which will inform the UK Government’s own mid-Charter Review of the BBC. In our consultation launching our review we stated that we would be considering how the BBC could improve its transparency in decision-making and complaints handling, including in relation to due impartiality. More recently, we have publicly noted<sup>18</sup> that since the revised complaints handling determinations were published in July 2020, the BBC had not – and at the time of writing this Decision the BBC is still yet to have – published details of a single fully not upheld decision by the ECU. Given the importance for the BBC to be as transparent as it can be in explaining its editorial standards decision-making to audiences to maintain public confidence, we are discussing with the BBC why this has been the case. We intend to also discuss the circumstances around the present case as part of those discussions.

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<sup>16</sup> See Page 94 of Ofcom’s [Annual Report on the BBC 2019/20](#) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/207228/third-bbc-annual-report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/207228/third-bbc-annual-report.pdf)).

<sup>17</sup> See footnote 9, [Determinations by Ofcom in relation to BBC complaints handling](#), published on 3 July 2020 ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/106855/bbc-complaints-handling-determination.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/106855/bbc-complaints-handling-determination.pdf)).

<sup>18</sup> See Ofcom’s Fourth, and latest, [BBC Annual Report](#).