

# OFCOM BROADCAST AND ON DEMAND BULLETIN

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## Contents

Introduction	3
<b>Broadcast Standards cases</b>	
<b>In Breach</b>	
Brilliant Number 1s <i>Box Hits, 13 May 2018, 15:57 and 14 May 2018, 20:31</i>	6
The Healing School <i>Loveworld Television Network, 10 November 2017, 06:30 and 10:00</i>	9
The Alex Salmond Show <i>RT, 16 November 2017, 07:30</i>	19
The Pete Snodden Breakfast Show <i>Cool FM, 22 March 2018, 06:00</i>	32
Bible ki Nabouat – The Prophecy of the Bible <i>Glory TV, 10 January 2018, 16:00</i>	35
Jago Pakistan Jago <i>HUM Europe, 15 March 2018, 10:00</i>	41
Free Jaggi Now <i>KTV, 6 January 2018, 21:30</i>	46
<b>Not in Breach</b>	
The Nigel Farage Show <i>LBC 97.3 FM, 3 October 2017, 19:00</i>	55
<b>Broadcast Licence Conditions cases</b>	
<b>In Breach</b>	
Provision of information and failure to comply with a Direction <i>Gravity FM CIC (Grantham)</i>	66
<b>Broadcast Fairness and Privacy cases</b>	
<b>Not Upheld</b>	
Complaint by Baroness Patricia Scotland PC QC, made on her behalf by Carter-Ruck <i>The World at One, BBC Radio 4, 26 January 2017</i>	69
<b>Tables of cases</b>	
Investigations Not in Breach	90

Complaints assessed, not investigated	91
Complaints outside of remit	100
BBC First	102
Investigations List	103

## Introduction

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

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

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

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant

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

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

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

licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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

## Broadcast Standards cases

### In Breach

#### Brilliant Number 1s

***Box Hits, 13 May 2018, 15:57 and 14 May 2018, 20:31***

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#### Introduction

Box Hits is a music television channel which is available on satellite subscription services. The licence for Box Hits is held by The Box Plus Network Limited ("TBP NL" or "the Licensee").

Ofcom received two complaints about the broadcast of offensive language in the music video for the track *Freaky Friday* by Chris Brown feat. Li'l Dickie, which was broadcast at 15:50 on 13 May 2018 and 20:31 on 14 May 2018. The video included:

- ten uses of the word "*fuck*";
- 11 uses of the word "*nigger*" and its variations; and
- 11 uses of the words "*shit*", "*pussy*" and "*bitch*".

We considered this raised potential issues under the following rules of the Code:

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

Rule 1.16: "Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed".

We therefore asked the Licensee for its comments on how the content complied with these rules.

#### Response

TBP NL acknowledged that the content was in breach of the Code and apologised "unreservedly". It confirmed that human error led to the post-watershed version of the track being added to the scheduling system, and subsequent warnings that flagged this were "missed by the channel manager". The Licensee further confirmed that the post-watershed version of the video was broadcast on the two occasions mentioned before being replaced by the edited version.

TBP NL said it has taken steps to prevent such incidents from recurring, including "remov[ing] all post watershed videos from all broadcast channels and...arranging for any video not certified for daytime transmission to be deleted from [their] playout system".

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

### Rule 1.14

This rule states that the most offensive language must not be broadcast before the watershed on television.

The programme included ten uses of the words “fuck”. Ofcom’s 2016 research<sup>2</sup> on offensive language clearly indicates that the word “fuck” is considered by audiences to be amongst the most offensive language and should not be broadcast before the watershed.

We acknowledged the steps taken by the Licensee to improve its compliance. However, Ofcom’s decision is that the two broadcasts of this video were clear breaches of Rule 1.14.

### Rule 1.16

This rule states that offensive language must not be broadcast before the watershed unless it is justified by the context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service on which the material is broadcast, the time of broadcast and the likely expectations of the audience. In any event, frequent use of such language must be avoided before the watershed.

Our research found that “nigger” is considered by audiences to be amongst the strongest language, and highly unacceptable without strong contextualisation. In this case, we did not consider there to be – and nor did the Licensee offer – any contextual justification for the broadcast of 11 uses of the word “nigger” and its variations.

The programme also included 11 instances of “shit”, “pussy” and “bitch”. Ofcom’s research also found that audiences consider “shit” and “bitch” to be medium language, potentially unacceptable pre-watershed. In addition, the word “pussy” was considered to be strong language and generally unacceptable pre-watershed.

We acknowledged that although the programmes were not specifically aimed at children, there was the potential to attract a child audience due to the nature of the channel and its content. Additionally, we considered the frequency with which the offensive language was broadcast was very likely to have exceeded parents’ and carers’ expectations for a programme broadcast at these times on a music television channel, when children could have been watching and may have been unsupervised. We therefore considered there was insufficient context to justify the broadcast of this offensive language.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<sup>2</sup> On 30 September 2016, Ofcom published updated research in this area – *Attitudes to potentially offensive language and gestures on television and on radio* – which is available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

We acknowledged the steps taken by the Licensee to improve its compliance. However, Ofcom's decision is that the two broadcasts of this video also breached Rule 1.16.

**Breaches of Rules 1.14 and 1.16**

## In Breach

### The Healing School

***Loveworld Television Network, 10 November 2017, 06:30 and 10:00***

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#### Introduction

Loveworld Television Network is a religious channel available on a variety of digital platforms. The channel broadcasts programmes for the Christian community. The Licensee for this service is Loveworld Limited ("Loveworld" or "the Licensee").

During routine monitoring, Ofcom identified two episodes of the series *The Healing School*. These programmes outlined the experiences of several people who had attended events at The Healing School, which, according to its website<sup>1</sup>, is "*a healing ministry of Rev. Chris Oyakhilome (Ph.D) which takes divine healing to the nations*".

#### 06:30 episode

The programme began with a montage which included footage of Rev. Chris Oyakhilome, referred to as "Pastor Chris", appearing at a Healing School event. Meanwhile, a voiceover said:

*"Many around the world have found themselves in difficult times, hopeless situations, and are in dire need of a miracle. But there is a place where seemingly hopeless and impossible conditions are turned around. A place where hope comes alive. Right here at The Healing School, God's power is present to heal, save and deliver by faith in the name of Jesus. Visit our website to register for the next Healing School session [website address given] or call the number showing on your screen [no number was shown]. There is hope for you in Christ. You can trust him today for a miracle".*

The website address for The Healing School appeared on screen throughout most of the programme.

After showing further footage from a Healing School event, a voiceover introduced a father, Siyabonga, and his son Shaun:

*"For several years, Siyabonga and his son, Shaun, had lived a life of hurt and anguish. Siyabonga suffered from pulmonary tuberculosis and his son, Shaun, suffered from bilateral pneumonia. Medications and various treatments didn't help their conditions much [image of a red cross over a picture of a person wearing a white coat and stethoscope handing a strip of pills to another person] and it seemed there would be no end to their pain".*

The programme continued with interviews with Siyabonga, and Shaun's mother, Mariam, as well as further voiceovers. Their statements included:

Siyabonga: [Regarding Shaun's pneumonia] *"And the doctors say to us, this sickness cannot be cured. He has to stay with it. All you need to do is manage his*

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<sup>1</sup> <http://www.enterthehealingschool.org/about-us.html>

*sickness. He mustn't play in the cold. He mustn't run because...once he starts running he may suffer an attack, by just running around. So they asked us not to allow our child to play in rain or outside in the cold".*

\*\*\*\*

Mariam: *"I had to give Shaun medication in the morning, during the day, in the evening and at night".*

\*\*\*\*

Voiceover: *"Shaun's condition grew worse over time and he had to stop schooling".*

\*\*\*\*

Siyabonga: *"Shaun's condition affected me financially because I had to buy different medication for him. And I found out that if I bought this and it doesn't work then I would have to go back to the doctors and they would give me another one, "Please try this". I would try that medicine but it still wouldn't work. So financially, it affected me".*

\*\*\*\*

Siyabonga: [talking about his tuberculosis diagnosis] *"The doctors said, this cannot be cured...That was the information that was given back to my mother, that I had to live with TB because this cannot be cured. As a result of this condition, the doctors gave me a medication that I had to take three times a day. I was forced to take it almost every day because once I miss it, then definitely the condition will be worse. So I was forced to take this medication three times a day...And I remember family members were advised not to come to close to me because of my condition".*

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Voiceover: *"As the years rolled by, dismay set in for Siyabonga's condition, and that of his son Shaun... Things went from bad to worse as the condition took its toll on their bodies, despite the several medications they had to use. The prospect of their recovery was dim. Until one day, Siyabonga's niece came visiting from Zimbabwe and informed him about The Healing School. And immediately Siyabonga didn't hesitate to register himself and his son Shaun for The Healing School's session in the year 2012".*

\*\*\*\*

Mariam: *"I knew in my heart that it was Shaun's set time. I knew Shaun was going to receive his healing today. I knew when he leaves that he wouldn't leave the same way that he came in".*

\*\*\*\*

Siyabonga: *"When I brought Shaun to the Healing School, I thought his condition was the most critical condition. Some were on stretchers, some were in their*

*wheelchairs. Serious conditions that doctors cannot...So looking at my son's condition, I had faith that if these people can come to this place, if these people can come to The Healing School, then my son will definitely receive his healing".*

\*\*\*\*

Siyabonga: *"As he [Pastor Chris] came in, the anointing was so powerful. People started screaming. Some other people started receiving their healing even before the man of God started touching them".*

\*\*\*\*

Mariam: *"And when Pastor came and he laid his hands on Shaun and blew on Shaun, I just don't know what happened, I just found myself on the floor ... and when I got up I just grabbed Shaun because I knew that he had received his healing. We were so happy, rejoicing, it was such an amazing experience".*

\*\*\*\*

Siyabonga: [after attending The Healing School] *"I started meditating on the word of God, saying what the word of God says pertaining his life, so from there he [Shaun] started improving".*

\*\*\*\*

Mariam: *"As the days went by I saw some changes in Shaun. He started walking. Seeing him gaining his appetite, eating without vomiting or crying. And having to stop him his medication, that's when I knew that he is healed. He went back to school and he also joined soccer, which is something that makes me happy. ... and I give all the glory to God because I know that when we went to The Healing School, he received the healing. And after receiving the healing his life changed, and he is living proof of that ... It's been four years since Shaun received his healing and ever since then Shaun has never had any problem. I also didn't think it was necessary for me to send him back to the hospital for any check-up, as I could see that there were no longer any symptoms of pneumonia; there was no need for it as he had received his healing at the Healing School and I give all the glory to God".*

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Siyabonga: *"I decided to go to the doctor so that the doctor could do the check-up. And the doctor did his check-up and he said to me he cannot find any trace of TB. So I was so excited, and I knew that I had received my healing. ... Now I am completely healed...".*

#### 10:00 episode

This programme also began with the same footage of Pastor Chris appearing at a Healing School event, with the same introductory voiceover (as set out above).

The website address for The Healing School appeared on screen throughout most of the programme.

More footage was then shown of Healing School events, along with a preview of some of the interviews to come later in the programme. A voiceover introduced The Healing School and Kari, who suffered from prostate cancer:

*"The Healing School is a place where thousands who have been sick with diverse ailments have been cleansed and restored by the anointing of God's spirit, and now they are living witnesses to the reality of God's power. The story you are about to watch is that of Kari Kourilehto, who suffered from prostate cancer for seven years, which metastasises to the bones. He experienced so much pain and stiffness in his body and, despite being on medication, his condition worsened and there was no known medical cure. This made life very difficult and totally unbearable for him. It was in this sad state Kari made his way to The Healing School. Watch his story".*

The programme continued with interviews with Kari as well as further voiceover, including:

Kari: *"I came here [to The Healing School] because I have cancer. Prostate cancer, spread to bones. ...Doctors said that this cancer is not possible to cure. That only medication will be the hormone therapy, and no other treatment in this case".*

\*\*\*\*

Kari: *"I came here so that God will heal me totally through Pastor Chris".*

\*\*\*\*

Voiceover: *"This is The Healing School, where hope is restored and lives are changed. A place where the anointing to heal and to save is mightily present. The people worship God, lifting up their hands and singing aloud, knowing well that they will not leave here the same way they came. The man of God, Pastor Chris, ministered to the people, one after the other, transferring the healing power of God into their bodies. Hope was restored to many as the man of God ministered to them, and truly their lives were changed forever. The man of God got to Kari and took a look at his case card. He laid his hands on his back, commanding the infirmity to come out of him. He blew on him and he fell, under the power of the Holy Ghost. Take a look at that! Wow, look at that, Kari is rejoicing for his miracle".*

[During the voiceover, footage was shown of a Healing School event where Pastor Chris moved along a line of people, taking a few seconds to read the "case card" each one was holding up detailing their condition, before laying hands on them and blowing in their faces. The people reacted by falling backwards either into the arms of someone else or onto the floor.]

\*\*\*\*

Kari: *"This is my medical report and that shows that before, my cancer level was 27.8, and after coming home from Canada, Pastor Chris meeting, it was zero – 0.05. It's fantastic. It's healed, totally healed".*

\*\*\*\*

Kari: *"Life was very bad because ...[I had] prostate cancer spread to bones very largely... I had a lot of pain, a lot of stress, pain all over my body... Life was terrifying... I heard about the Healing School... through the internet. I was seeking teaching about God's healing and I found Pastor Chris and his organisation".*

Interviewer: *"And you believed you would be healed?"*

Kari: *"Yes, immediately I know that that is the man I need".*

\*\*\*\*

Kari: *"I am now healed in such a way that I have no pain, no stiffness... I am strong. Hallelujah! Jesus is the healer. Thank you! Believe in Jesus, he is the healer".*

Interviewer: *"Amen. That means no more prostate cancer, cancer is gone?"*

Kari: *"Yes".*

\*\*\*\*

Kari: *"Thank you the Lord that you have given so much grace and mercy to Pastor Chris, and through him God can bring healing and health and restoration to all, to everybody, to the world!"*

\*\*\*\*

Voiceover: *"Kari came to the Healing School diagnosed with prostate cancer. As a result of the condition, he experienced so much pain and stiffness in his body and he had to depend on medication. This brought sadness to his life. At the Healing School, Kari received his healing and he was completely restored".*

Ofcom considered the material in both of these programmes raised issues warranting investigation under the following rule of the Code:

Rule 2.1: *"Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material".*

We therefore sought comments from the Licensee on how the programmes complied with this rule.

## Response

Loveworld said that it had carried out “accurate research and investigations” on The Healing School before transmitting the programmes, to ensure that they complied with the Code. It said that The Healing School always asks its visitors to provide their medical reports before attending the School and that “this shows that the attendees of the Healing School have been to doctors and conventional medical practitioners in their various localities and countries”. The Licensee said that, as in the cases of Siyabonga and Kari, “most of those who visit the Healing School...have been told by their own doctors that their case is hopeless and no longer amenable to known conventional medical methods”. It said that they therefore seek other remedies, including “faith based healing”. Loveworld said that “after attending the Healing School, the delegates are often encouraged to go back to their own doctors to be checked”. It said that it therefore did not believe it was “misleading or failing to protect the public” because in these programmes, “the people testifying were expressing their own personal faith and belief”.

The Licensee emphasised that “attending the Healing School is free”.

With regard to Rule 2.1, Loveworld said that “faith based healing/miracles is a fundamental principle of the Bible which many practising Christians of various denominations believe in. Our society is one of inclusion and freedom of expression and the Bible is not classified as an offensive or harmful material therefore the practice or expression of faith as taught by Jesus Christ who Himself performed many miracles and healings as taught by the Bible in our view is not harmful or offensive”.

Loveworld said that it has not received any complaints about the series, “rather it has had a positive reaction especially among a section of our viewers who believe in divine healing as the Bible teaches”.

The Licensee also made representations in response to Ofcom's Preliminary View that the programmes were both in breach of Rule 2.1 of the Code. It emphasised that “[w]e do not believe that the material in question is harmful or offensive in any way and your finding suggesting that it has the *potential* [Licensee's emphasis] to cause harm is unfair and may be biased against faith belief”. It said that it was also “unfair” for Ofcom to state that viewers might have understood that medical conditions could be cured solely through attendance at The Healing School. The Licensee stated, “we believe that there was no indication or suggestion that sought to make the public believe or accept that conventional medical treatment was ineffective”. While in their testimonies the attendees described their own experiences and opinions about medical treatment, the Licensee emphasised this was not presented as a recommendation for viewers, and “to suggest that this may cause viewers to stop following a course of recommended treatment or seek medical advice is very grossly inaccurate”.

The Licensee reiterated its previous comments about Christian belief in faith healing, saying “[h]ealing the sick is one of the commandments of Jesus to his disciples. As such, divine healing is an expression of the Christian faith. In churches and homes all over the UK, Christians pray to God; an act which in itself is an expectation of a miracle”. Loveworld also said that, as it is a religious broadcaster, “viewers who choose to watch it should reasonably expect that the view of the station...should be from the perspective of faith”.

In its representations, Loveworld also provided more detail about the engagement of those who attended The Healing School with conventional medical treatment. It said “[w]e are aware that there are professional medical practitioners who work at The Healing School...and provide medical assistance where necessary. We are also aware that they encourage the attendees to continue taking their prescribed medication or treatment even whilst attending The Healing School. According to The Healing School, the ultimate decision to not continue with conventional medical treatment solely rests the with attendees and their doctors”. The Licensee also said that they understood The Healing School runs a non-governmental organisation which provides free medical relief around the world. The NGO is promoted in several episodes of the same series, which the Licensee argued “is proof that they [The Healing School] are not in any way opposed to medical interventions”.

Following Ofcom's Preliminary View, the Licensee said it had advised the programme maker “to include a notice to the effect that conventional medicine has provided relief to millions and should not be discountenanced in their journey of healing”. This notice would be in effect from 1 May 2018.

## Decision

Reflecting our duties under the Communications Act 2003<sup>2</sup>, Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material that may be harmful and the right to freedom of expression.

Ofcom has also had regard to Article 9 of the ECHR which states that everyone “has the right to freedom of thought, conscience and religion”. This Article goes on to make clear that freedom to “manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of...health...or for the protection of the rights and freedoms of others”.

Our role is to require broadcasters to comply with the standards in the Code.

Rule 2.1 requires, among other things, that broadcasters apply generally accepted standards so as to provide adequate protection for the audience from the inclusion of harmful material. Context is important and the extent of any protection required will depend on all the circumstances, including the service on which the material is broadcast, the degree of harm and/or offence likely to be caused, the likely expectation of the audience and the effect of the material on viewers who may come across it unawares.

First, Ofcom examined the claims about healing to assess their potential for harm.

Both programmes included claims that certain serious illnesses had been completely cured at The Healing School. For example, in the programme broadcast at 06:30, Siyabonga said “*the doctor did his check-up and he said to me he cannot find any trace of TB...I knew that I had received my healing...Now I am completely healed*”; and Mariam said, of Shaun, “*I know that*

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

*when we went to The Healing School, he received the healing...it's been four years since Shaun received his healing and ever since then Shaun has never had any problem. I also didn't think it was necessary for me to send him back to the hospital for any check-ups, as I could see that there were no longer any symptoms of pneumonia".* In the programme aired at 10:00, Kari said, *"I came here [to The Healing School] because I have cancer. Prostate cancer, spread to bones", "I came here so that God will heal me totally through Pastor Chris" and "I am now healed in such a way that I have no pain, no stiffness...I am strong...Jesus is the healer".*

Both programmes also included statements which suggested to viewers that illnesses more generally could be cured at The Healing School. The voiceover at the beginning of each programme stated *"There is a place where seemingly hopeless and impossible conditions are turned around...Right here at The Healing School...There is hope for you in Christ. You can trust him today for a miracle".* In the programme aired at 10:00, another voiceover said: *"This is The Healing School...The people worship God...knowing well that they will not leave here the same way they came... Pastor Chris ministered to the people...transferring the healing power of God into their bodies...truly their lives were changed forever".* The testimony of Kari supported this, for example: *"Thank you the Lord that you have given so much grace and mercy to Pastor Chris, and through him God can bring healing and health and restoration to all, to everybody, to the world!"*

Ofcom's published research and guidance on health and wealth claims in programming<sup>3</sup> shows that one of the principal drivers for potential harm is the vulnerability of the audience. Audiences may be considered 'vulnerable' when they are suffering from financial or health issues. The severity of a health condition may increase this vulnerability. In Ofcom's view, the specific illnesses discussed, namely pulmonary tuberculosis, bilateral pneumonia and prostate cancer, are serious health conditions. This is reflected in the case of cancer in section 4 of the Cancer Act 1939, where Parliament has considered it appropriate to prohibit advertising which offers to treat cancer.

Ofcom considered that viewers would have reasonably understood from the claims made in both programmes that medical conditions, including those considered to be serious, could be cured completely through attendance at The Healing School alone. In Ofcom's view, such claims had the potential to cause harm, in circumstances where members of the audience may have been led to believe that it was unnecessary to rely on conventional medical treatment. The potential for such harm was likely to be particularly acute in circumstances where members of the audience may also have been suffering from the same, or similar, conditions and were therefore particularly vulnerable.

We acknowledged Loveworld's submission that the participants in these programmes had been asked to provide their medical reports before attending The Healing School and that this showed they "have been to doctors and conventional medical practitioners". However, despite the Licensee's claim that "there was no indication or suggestion that sought to make the public believe or accept that conventional medical treatment was ineffective", we considered that the references made in the programme to the participants' experience of conventional medicine and its effectiveness were largely negative. We therefore took into account the likely impact of this on the viewer.

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<sup>3</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/104650/Health-claims-report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/104650/Health-claims-report.pdf) and [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/104657/Section-2-Guidance-Notes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf)

In the programme broadcast at 06:30, this included the voiceovers about Siyabonga and Shaun, *"medications and various treatments didn't help their conditions much" and "the condition took its toll on their bodies, despite the several medications they had to use"*. Siyabonga also said, *"Shaun's condition affected me financially because I had to buy different medication for him. And I found out that if I bought this and it doesn't work then I would have to go back to the doctors and they would give me another one, "Please try this". I would try that medicine but it still wouldn't work. So financially, it affected me"*.

In the programme broadcast at 10:00, a voiceover said, *"[Kari] experienced so much pain and stiffness in his body and, despite being on medication, his condition worsened and there was no known medical cure"*. Kari also said, *"Doctors said that this cancer is not possible to cure. That only medication will be the hormone therapy, and no other treatment in this case"*. There was no suggestion that conventional medical treatment had played any part in the recoveries of Siyabonga, Shaun or Kari.

Ofcom took account of Loveworld's comments, that *"after attending The Healing School, the delegates are often encouraged to go back to their own doctors to be checked"*. In Ofcom's view, however, it was not clear that viewers would have understood this to be the case. We were particularly concerned that in the 06:30 broadcast, Mariam said of her child, Shaun, that after going to The Healing School, *"I also didn't think it was necessary for me to send him back to the hospital for any check-up, as I could see that there were no longer any symptoms of pneumonia; there was no need for it as he had received his healing at The Healing School"*.

For the reasons above, Ofcom was concerned that viewers may have been led to believe that conventional medicine was unlikely to be able to cure or treat effectively their illnesses, but that The Healing School was able to remedy those ailments completely. As a result, Ofcom was concerned that although there was no direct instruction to viewers to reject conventional medicine (as highlighted by the Licensee), there was the potential that viewers may have either failed to seek conventional medical advice or stopped following a course of recommended medical treatment as a result of what they had seen in these programmes. This material therefore had the potential to cause harm.

Ofcom went on to consider whether the Licensee had provided adequate protection to viewers from this potential harmful material.

It is an editorial matter for the individual broadcaster as to how adequate protection might be achieved and our guidance<sup>4</sup> states that there are various methods broadcasters can consider. The Licensee said in its representations that it had carried out *"accurate research and investigations"* on The Healing School before transmitting the programmes. It gave details, as described above, of The Healing School's work with conventional medical practitioners and its encouragement of attendees continuing with treatment and prescribed medication while at The Healing School. However, this information did not appear in the broadcast of either programme we investigated. We therefore concluded viewers would have been unlikely to have been aware of it.

In its representations the Licensee stated that *"faith based healing/miracles is a fundamental principle of the Bible which many practising Christians of various denominations believe in"* and *"the Bible is not classified as an offensive or harmful material therefore the practice or expression of faith as taught by Jesus Christ who Himself performed many miracles and*

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<sup>4</sup> See footnote 3.

healings as taught by the Bible in our view is not harmful or offensive". It is not Ofcom's role to question viewers' religious beliefs, nor caution against any particular religious teaching. However, all broadcasters are subject to the Code, regardless of their religious stance. Ofcom's duty is to ensure all members of the public watching television (whether people of faith or not) are provided with adequate protection from potentially harmful material. The nature of faith and the right to freedom of religion does not mean that religious broadcasters are at liberty to broadcast content that poses a potential risk to viewers, especially viewers who are potentially vulnerable (for example, because of their own health or medical circumstances), without adequate protection.

Our guidance suggests that one approach commonly used by broadcasters with a view to protecting audiences against potentially harmful material is to include a warning, for example advising viewers or listeners to consult a qualified medical practitioner before making decisions based on the programme. No such warning or advice appeared in these programmes. We acknowledge, however, the Licensee's intention to include a notice in future broadcasts of 'The Healing School' to encourage viewers to seek conventional medical advice and treatment.

In relation to the programmes at issue in this Decision, however, it is Ofcom's view that the Licensee did not take steps to provide viewers with adequate protection from the claims made in the programmes. Ofcom's Decision is therefore that the Licensee did not apply generally accepted standards and breached Rule 2.1 in both the 06:30 and 10:00 broadcasts.

### **Breach of Rule 2.1**

## In Breach

### **The Alex Salmond Show RT, 16 November 2017, 07:30**

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#### **Introduction**

RT is a global news and current affairs channel produced in Russia and funded by the Federal Agency for Press and Mass Communications of the Russian Federation. In the UK, the channel broadcasts on satellite and digital terrestrial platforms. The licence for RT is held by Autonomous Non-profit Organisation TV-Novosti ("TV Novosti" or the "Licensee").

*The Alex Salmond Show* is a political and current affairs series hosted by the former First Minister of Scotland, Alex Salmond and produced by his own production company, Slàinte Media.

Ofcom received a complaint about the first episode of the new series alleging that the programme "invented tweets presented as real from viewers of the show to direct the debate on his views and terms". The complainant suggested that this enabled Alex Salmond "to pretend that he was merely answering questions from concerned viewers about Brexit rather than trying to control the debate...".

At the start of this programme, Alex Salmond said:

*"Hello and welcome to the very first episode of The Alex Salmond Show. I'm looking forward to you joining me every week as we meet a whole host of politicians, stars of stage and screen, business personalities, influence leaders and of course, those who want to be any of the above. As Robert Burns said: 'O would some power the giftie gie us to see ourselves as others see us'. This programme will give people with something to say a platform to say it and we intend to find out about the personalities behind the public figures...Each week I'll be reading out your tweets and your emails so please get in touch".*

Mr Salmond briefly outlined which guests would be appearing later in that programme. He then introduced the section of the programme where he read out a series of tweets and emails, as follows:

*"But first to a really important part of the show – when I get to hear from you. Over the past week and even before the show has started we've received an avalanche of tweets and emails. And can I just say to the media – thanks folks for all the publicity. Let's just look at a few of them.*

*First up a tweet from Ella Loren who asks: 'Why RT?'. Well Ella, I have total editorial control and RT offers an international platform so why not RT? ("Question 1").*

*Then from Adam Roberts: 'What does Sláinte mean?'. Well Adam, its Gaelic. It means good health, cheers etc [raises a glass of water]...except it's not usually water in the glass ("Question 2").*

*And then from the Godfather: 'If you were Prime Minister would you stop Brexit?'. Yes, Godfather I certainly would ("Question 3").*

*An email from Neil in Miami: 'I think your show is a huge mistake and reveals a naivety previous only seen in your courting of Donald Trump'. Neil, I thought I'd atoned for that and as for the show – why don't you watch it and make up your own mind ("Question 4").*

*And then from Last John: 'When are you getting President Trump on the show?' Well Last John, I thought a joint interview with Chairman Kim of North Korea – that would be a cracking episode ("Question 5").*

*And lastly from Miss Kate Smith: 'How would you like history to remember you?'. Well Kate – alive, alive". ("Question 6").*

Mr Salmond then introduced the first programme guest.

Ofcom asked for background information from the Licensee on how the above six tweets and emails had been obtained and chosen. In its background information (summarised in the Response below), TV Novosti confirmed that four of the six tweets and emails referred to during this broadcast were sent by people connected either directly or indirectly to the production of the programme or to the presenter in some way.

Ofcom therefore considered this material raised potential issues under the following rule of the Code:

Rule 2.2: "Factual programmes or items or portrayals of factual matters must not materially mislead the audience".

We asked the Licensee how the content complied with these rules.

## **Response**

### Background information

As set out above, the Licensee confirmed in its response to our request for background information that four of the six tweets or emails were sent by people connected either directly or indirectly to the production of *The Alex Salmond Show* or to Alex Salmond in some way.

The Licensee identified the four tweets as follows:

- Question 1 ("Why RT?"). The sender of this tweet was "a freelance make-up girl who had been involved in rehearsals for the show".
- Question 2 ("What does Sláinte mean?"). This question had been asked by "a freelance cameraman and an acquaintance of one of the producers' technicians" who was not involved in the production of the first two episodes of the series but was working on the third. He asked informally what was the meaning of the word 'Sláinte' after seeing the advance publicity surrounding the launch of the series and gave his twitter handle for a reply. The producers thought it an amusing and innocuous question that people might

like to see answered and, no doubt to cut a corner, presented it as if it had been tweeted in the first place. When, on the day of transmission he saw his question had been broadcast, he tweeted it.

- Question 3 (“*If you were Prime Minister would you stop Brexit?*”). This question came from an acquaintance of Mr Salmond as a letter to Mr Salmond’s office with a request to use a twitter handle as he did not want his name used in the show, with which he has no connection.
- Question 5 (“*When are you getting President Trump on the show?*”). This question had been prepared by the series director for the dress rehearsal of this first episode of the series and found its way onto the final broadcast by an “editing mistake”. The mistake happened because the twitter handle “did not clearly identify” the Series Director and thus was not picked up by the production team or by Mr Salmond.

The Licensee said that neither Question 4 or Question 6 came from people involved in the production of the show.

#### TV Novosti’s representations

The Licensee said the audience was not misled and there was no breach of Rule 2.2.

It said that in introducing this first episode of his new series, Alex Salmond described “what viewers might expect...in future episodes” including that the series would “give ordinary people with something to say a platform to say it”. This was the very first programme of the series and was pre-recorded, rather than live. As such, there was no scope for comments on earlier episodes or any live viewer interaction. It said that this would have been apparent to the audience.

To illustrate how the new show would feature viewer responses the production team included a number of topical questions and comments about the show that had already come their way. The Licensee said that there was an abundance of these as a result of the media storm that had preceded the beginning of the series<sup>1</sup>. The programme editors selected some of the questions and comments and passed them to Alex Salmond, who read them out on screen and responded to them. They were selected in the following way:

- The producers made a search on Twitter between 9 and 10 November under the name “Salmond”, which showed that a “huge number of comments” about the show had already been posted;
- The six questions and comments were selected for “their content not their origin” and “all of them volunteered by the individuals concerned”, meaning that none was devised by the producers as part of some “propaganda plot” and all were provided by those concerned of their own volition;

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<sup>1</sup> *The Alex Salmond Show* was launched to the media on 9 October 2017. The Licensee said that this had generated widespread media coverage ahead of the first programme being transmitted on 16 November 2017.

- Question 1 was described as coming from a particular Twitter handle, but this was a “typing or transcription error” which meant the incorrect Twitter handle was broadcast on screen;
- Question 2 was from a “friend of one of the cameramen and not someone known to Mr Salmond”. His question had been submitted verbally along with his Twitter name and he tweeted his question when he saw it had been used in the programme;
- Question 3 was from someone who happened to know Mr Salmond through a previous employment relationship. He had not been asked to contribute to the show but “of his own accord delivered a handwritten letter to Mr Salmond’s office...offering his question for inclusion in the show”. In the event that his question was used, he asked for it be attributed to his Twitter account, for which he used a pseudonym;
- Question 5 had been used in a rehearsal and was “inadvertently included in the final version”. This tweet came from the Twitter account belonging to the Series Director, but Mr Salmond did not recognise the name. This “was a genuine tweet that was on the Series Director’s Twitter page and in the public domain”; and
- Questions 4 and 6 were from people who were “unknown” to Slàinte Media or to Mr Salmond.

The Licensee explained that, from an editorial point of view, the identity of the individuals putting the questions was not relevant. It said that the purpose of the exercise in this first episode... “was not to shape in any way the content which was to follow in that programme but to demonstrate how the viewer response feature would work in future programmes”.

It added that the tweets were not presented by Mr Salmond as being from “viewers of the show” but as tweets and emails received by the producers during the previous week in response to the media coverage following the launch of the series. Mr Salmond introduced these in the following manner:

*“...even before the show has started we’ve received an avalanche of tweets and emails. And can I just say to the media – thanks folks for all the publicity. Let’s just look at a few of them...”* [Licensee emphasis added].

The Licensee submitted that Mr Salmond was saying that the “avalanche” was triggered by other media and the tweets and emails were not from viewers of the show (since it did not have any viewers at that stage). Indeed, all he said was that they were occasioned by media reports after the press launch for the series. The complaint wrongly implied that all of the tweets and emails were about Brexit but only one, Question 3, referred to this subject.

With regard to Rule 2.2, viewers would not have had any expectation as to who the questions and comments featured in this episode might have been from. Furthermore, there was no compelling or other reason why viewers should have expected that acquaintances or individuals involved with the programme would necessarily have been disqualified from providing questions or comments to the producers or why they should have expected them not to be featured. This was because:

- the context of the tweets and emails was that they were mere (and very brief) illustrations of “a reading out procedure” which was to be a feature of the series in future episodes;
- this was the first programme of the series to be transmitted and therefore there “could not have been viewers who had seen an earlier episode and wished to respond to it”;
- there was nothing in the programme which indicated to viewers that the tweets and emails “would not have been, and were not, from acquaintances or individuals linked in some way to the producers”;
- the only person whose tweet (Question 5) was referenced in the programme who had any significant connection to the show was the Series Director and her contribution came about through an inadvertent error; and
- any connection that Questions 1 to 3 had with the editorial control of the programme was “too remote to be relevant”.

The Licensee submitted that nothing material turned on the source of the questions: viewers were being shown how the questions and comments would be read out in future and there was no reason why it would have mattered to the viewers where those comments and questions came from.

The Licensee accepted that if viewers did have any expectation regarding the source of the tweets they might have been “a little surprised” that one of the questions was “inadvertently” left over from a rehearsal. But it did not necessarily follow that such expectation would have led to disappointment or any sense that they had been materially misled in such a way as to cause harm or offence. The licensee did not accept that viewers would have suffered any detriment and said it was difficult to conceive of any harm and offence that may have been caused. In fact, the content did not come close to the threshold for materially undermining trust between the broadcaster and audience. Audiences could be expected to have understood that in this first episode of the show, where the illustrative questions and comments carried no particular weight, their source would be “inconsequential”.

It said it regretted the “minor teething problems” that led to this investigation and accepted that there “might have been some minor and inadvertent mishaps in the selection and presentation of the questions and comments” which came to light after the first episode. These led newspapers “to suggest (quite wrongly) that the tweets and emails were fake and were the product of an alleged Moscow propaganda machine”. An internal review involving the production team had been carried out and the Licensee stated that the issues will not be repeated. Nevertheless, if anything caused harm to the public it was the inaccurate news reporting about the origin of the tweets and emails, rather than the programme itself. Indeed, the public were not misled “either materially or at all” by the programme.

In conclusion, the Licensee said that none of the contributions were invented and all of them were from real people. The contributions were chosen to illustrate the way in which this segment of future episodes would be a platform for the views of ordinary people and carried no particular editorial weight; nothing was indicated as to their source which was, in any event, of no particular consequence in the context of the programme.

### Sláinte Media's representations

Sláinte Media, the producer of *The Alex Salmond Show*, also made representations. It echoed many of the points TV Novosti had made, as referred to above and said that:

- this programme was the first show; it was pre-recorded and had no viewers at the time of recording. The producers did everything they could to make this clear to viewers in the introductory section;
- there was a “genuine oversight” in allowing the Series Director’s tweet [Question 5] to remain from the rehearsal, but Mr Salmond was unaware of this when the show was broadcast;
- in relation to Questions 1 to 3, these people were not employees of the show and any connection they had to it was “completely tenuous or non-existent”;
- it would not invent or make up tweets under “any circumstances”. The tweets and emails were all authentic, from “real people who were going to view the show” and were selected on the basis of their subject matter rather than who they were from;
- it had exercised a “significant amount of diligence” to ensure it complied with Rule 2.2; and
- once a viewer audience had become established, later editions of *The Alex Salmond Show* showed the tweets and emails on a screenshot basis. This removed any possibility of transcription error and has proved “entirely successful”.

### TV Novosti Second Representations

The Licensee made additional representations following Ofcom’s Preliminary View, which was to record a breach of Rule 2.2.

TV Novosti said it disagreed with Ofcom’s Preliminary View. It disputed that there was any evidence to support Ofcom’s position: the tweets were not misleading and certainly not materially so. In any event, there could be no breach of Rule 2.2 unless the effect of the tweets was to cause harm, and there was no evidence of this.

#### *Misleading material*

The Licensee disagreed with Ofcom’s view that Mr Salmond was addressing viewers when he used the word “you” in the following statement at the start of the programme:

*“But first to a really important part of the show – when I get to hear from you. Over the past week and even before the show has started we’ve received an avalanche of tweets and emails. And can I just say to the media – thanks folks for all the publicity. Let’s just look at a few of them”.*

It argued that there was an “absence of evidence” that viewers would have had any expectation that the questions subsequently read out by Mr Salmond had originated from viewers rather than people linked to the programme or acquaintances of Mr Salmond. There

was no basis for finding such an expectation and therefore no basis for finding any misrepresentation.

When Mr Salmond said “*when I get to hear from you*” he was “obviously” talking about the future and any potential viewers to the programme. As RT is a global service the potential viewers could include “all the world”, including anyone connected with the production or with Mr Salmond. Even if Ofcom was right about what Mr Salmond meant by “you” (i.e. viewers of the programme), viewers would have surely understood that the pronoun was applied as a more general interpretation to mean anyone who wanted to send in comments in response to the media storm, whether or not they were known to him or the production.

Accordingly, when Mr Salmond thanked “the media” for the publicity, the audience would have anticipated that the tweets and emails were from a wide variety of sources including political friends and enemies known to Mr Salmond.

For these reasons, the Licensee submitted that there was no misrepresentation, and nobody was misled.

### *Materially misleading*

Even if Ofcom were to reject the Licensee’s arguments that the content was not misleading, it was not *materially* misleading. Ofcom had produced no evidence to demonstrate that audience trust would have been high, or that any misrepresentation would have resulted in material harm. Ofcom had taken a “sweeping approach” in asserting that audiences place high trust in current affairs programmes and had failed to consider the individual facts. This was “unfair” and “unjust”.

The Licensee pointed to the Guidance on Rule 2.2 which, it said, identified four items as examples of the factors on which an assessment of whether a programme or item is materially misleading depends. Ofcom’s Preliminary View incorrectly suggested that the programme implied that the tweets originated from members of the public wholly unconnected with the programme or Mr Salmond. However, the assessment in this case needed to be made by reference to the audience expectation of where the tweets had originated, rather than by reference to the tweets themselves.

The Licensee went on to consider each of the four factors identified in Ofcom’s Guidance:

- **Context:** This was the first episode of a new series of a pre-recorded programme. Therefore, there were no existing viewers from whom the tweets or emails might have come, and nothing was said about the source of the tweets and emails that Mr Salmond read out, other than that they had been “*received*”. The only direct evidence of audience expectation was from the complainant who thought that the tweets and emails had been contrived by the production team for their own purposes but the complainant evidently “did not suppose them to have been written for transmission by the production team”. This was a “far cry” from Ofcom’s view of audience expectation, which was that viewers would not have expected the tweets and emails to have been written by anyone who had any connection to the production team or who was an acquaintance of Mr Salmond.
- **The editorial approach:** In the absence of earlier episodes, there were no onscreen discussions for viewers to engage with, so instead of dealing with current affairs the

tweets and emails were selected so as deal in a light-hearted way with Alex Salmond himself, his company and the programme. This editorial approach would have made "obvious sense" to the audience to this first episode of the series, fostering "no particular expectation as to the origin of the questions" other than that they had been "received" by the production team.

- The nature of the misleading material: None of the four tweets was faked. They were all genuine responses to the press-launch or, in the case of the tweet that was inadvertently carried over from a rehearsal, a genuine tweet that was already in the public domain (because it was on the programme director's Twitter page). The tweets and emails which were read out concerned "relatively inconsequential questions" about Mr Salmond, his company and the programme. They were answered light-heartedly by him as illustrations of the way in which viewers would have the opportunity to express their views on current affairs in future programmes indicating, in the context of a new series, that this would *in future* be a really important part of the show not that it was a really important part of the first episode. The light-hearted nature of the questions and the answers provided by Mr Salmond would have left viewers in no doubt about this.
- Potential harm and offence: Ofcom's Preliminary View appeared to make a finding that the material had the potential to cause harm and offence on the basis that there was an implied representation that none of the questions originated from anyone with any connection whatever to the production or Mr Salmond "whether by acquaintance or otherwise". This implication was too wide. In any case, this would mean that the potential for harm and offence would have been correspondingly low. The only evidence of harm and offence was that evinced by the original complainant whose complaint was unfounded, as Ofcom had recognised. Notwithstanding this, Ofcom had provisionally decided the question on the basis that it would cause harm and offence because it was a current affairs programme and it would undermine audience trust but Ofcom has not adduced any evidence of harm and offence, other than the complainant's anger about the tweets. Accordingly, Ofcom's Preliminary View had "been reached without any consideration of the degree to which the presentation of the tweets would, in the particular context of this particular programme, have undermined audience trust". Ofcom had failed to address the fact that this segment of the programme "did not even approach the threshold for materially undermining trust between the broadcaster and the audience". Indeed, Ofcom had "simply looked at the matter in generic or theoretical terms". In summary, there was no implied representation of the kind suggested by Ofcom; viewers were not misled, whether materially or otherwise; and no actual or potential harm or offence was caused.

#### Sláinte Media's second representations

Sláinte Media made similar representations on Ofcom's Preliminary View. In particular:

- this was "one inadvertent mistake" in "a very first show" and to find it in breach of Rule 2.2 would lower the bar to a level which jeopardises freedom of speech under the European Convention on Human Rights and would call into question the proportionality and fairness of Ofcom's decision making;
- there was no agenda and no attempt to mislead "nor can it be seriously argued that there was" and the fact that only a single complaint was made demonstrated there was

no harm or offence, particularly given the “substantial prior publicity” and the fact that the whole basis of that single complaint was “clearly misconceived”;

- Mr Salmond’s introductory remarks needed to be considered in their full context. The following key passages came before the part that Ofcom had extracted in its Preliminary View: *“This programme will give people with something to say a platform to say it and we intend to find out about [...]. Each week I’ll be reading out your tweets and your emails so please get in touch...”*. It was in the context of these comments that Mr Salmond then went on to refer to the *“really important part of the show where I get to hear from you”*. It was “patently obvious” from looking at this sentence in its proper context that it was illustrating what will happen in future shows and that “where I get to hear from you” means exactly that – what will happen”. This was further supported by the last two sentences which explain that in this first show he is reading out a few examples of the avalanche of commentary received *“even before the show has started”*. [Sláinte Media emphasis added.] There was “no other possible interpretation” of what Mr Salmon said and it was “extraordinary” for Ofcom to maintain that his words were misleading on the basis that viewers watching this first episode would have an expectation that the email and tweets read out originated from viewers and not individuals associated with the programme or Mr Salmond.
- the fact that few, if any at all, believed that Mr Salmond was reading out live tweets on what was a clearly pre-recorded show was further demonstrated by “new information”. This was from a Twitter search which revealed that only three people tweeted the show during the first episode and that their tweets were “observations” not questions. This showed that Ofcom’s assumptions and reasoning were unsustainable as it was evident that no-one believed the questions read out by Mr Salmond were live tweets or messages being read out and therefore “no one could have had their expectations or opportunity to tweet a question at that time at all disappointed”;
- the structure of the show, to include audience comments and questions, was only established during the first broadcast so there could have been no prior expectation and no disappointment. Everyone who subsequently tweeted or contacted the programme had a “full and fair” opportunity to see their views reflected in subsequent programmes; and
- the “jocular” nature of the chosen questions read out by Alex Salmond showed “no attempt to mislead or dictate an agenda”.

Sláinte Media made the following comments regarding any potential harm to viewer trust:

- no one could have had the impression that messages would have come from viewers instead of people connected to the programme as there were no existing viewers because this was the first episode;
- ‘material connection’ with the programme should mean people involved in production and editorial decisions rather than someone who is merely a friend of a camera man or a freelance makeup girl and is not involved in the editorial or production decisions of the show;
- to rule out any acquaintance of Mr Salmond would exclude “a very substantial section of the population” from having the right to express their questions to the programme.

Being an acquaintance of Mr Salmond should not disqualify someone from sending in a question. To prevent them from doing so would be a limit to their right to freedom of expression; they are just as entitled to have the same right to freedom of expression as any other potential viewer;

- Ofcom had misdirected itself in saying that it would have been legitimate for the audience to have anticipated that the avalanche of tweets and emails would have come from people likely to have been viewing the first episode rather than from people linked in some way to the production of the programme or acquaintances of Mr Salmond. These two groups are not mutually exclusive: most, if not all of the six messages used came from people who subsequently viewed the show and therefore became audience members.
- the one tweet which did originate from a person with a material connection to the show was “an honest mistake” and Rule 2.2 is specifically not designed to punish honest mistakes. Elevating a minor mistake in this first programme to a breach of a serious rule such as Rule 2.2 was disproportionate;
- the one complaint that was made about the programme was “clearly misguided”. This demonstrates that there was no serious harm or offence caused by the programme;
- Ofcom does not seem to have applied its own rules or followed its own guidance notes: none of the areas given in these as examples of material “which may cause offence” was “in any way transgressed”, even though there is a generic expression that material is *not limited* to these areas.

## Decision

Reflecting our duties under the Communications Act 2003<sup>2</sup>, Section Two of the Code requires broadcasters to apply generally accepted standards to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance this freedom to discuss any controversial subject or point of view in programming and compliance with Section Two.

Rule 2.2 states: “Factual programmes or items or portrayal of factual matters must not materially mislead the audience”. Ofcom's Guidance<sup>3</sup> to Rule 2.2 explains: “Ofcom is required to guard against harmful or offensive material, and it is possible that actual or potential harm and/or offence may be the result of misleading material in relation to the representation of factual issues”. The Guidance also explains that Rule 2.2 is “designed to deal with content that *materially misleads the audience so as to cause harm or offence*” and not with “issues of inaccuracy in non-news programmes”. “Whether a programme or item is ‘*materially*’ misleading depends on a number of factors such as the context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred”. [Emphasis in original.]

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/104657/Section-2-Guidance-Notes.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf)

Ofcom acknowledged that this episode was the first in the new series of *The Alex Salmond Show* and therefore that viewers would not necessarily have had any specific expectations of it, other than that it was presented by the former First Minister of Scotland and it was a current affairs programme. As we have explained in previous decisions, notably the RT decision: *The Truthseeker: Media 'Staged' Syria Chem Attack*<sup>4</sup>, concerning Rule 2.2, Ofcom considers audience trust is likely to be particularly high in current affairs programmes.

We also acknowledged that the questions read out by Mr Salmond were not "invented" as alleged by the complainant and that only one of the six tweets and emails referred to Brexit, the matter raised by the complainant in this case.

Against this background, Ofcom first considered the representations made regarding the authors of the six questions read out in the programme. We acknowledged that the contributions received were from genuine individuals and that Questions 1 to 3 originated from people connected to the production of *The Alex Salmond Show* or who were acquainted with Mr Salmond. However, we noted that the Licensee and the production company both argued that the authors of Questions 1 to 3 did not have any *material* connection to the editorial content of the show and that their connection was either "completely tenuous" or "too remote" to be relevant. Both parties maintained that the only person with any significant connection to the show was the Series Director and that her contribution (i.e. Question 5), which had been used in the rehearsal, was inadvertently included in the programme and was an "honest mistake".

In Ofcom's view the key issues were:

- whether any information was given explicitly or implicitly to the audience to inform their expectations of the origin of the tweets and emails; and
- whether the information that was given or the omission of any such information was likely to have materially misled the audience.

The Licensee said that Mr Salmond did not suggest that the tweets and emails originated from viewers or indicated where they were from other than that they were occasioned by media reports after the launch and had been received in the run up to the show. Ofcom considered Mr Salmond's introductory remarks in full. We noted that the programme was introduced as being a show that people would be able to interact with by providing their views and comments in the form of tweets and emails and that these would be read out to viewers.

We also noted that Mr Salmond introduced the segment as a "*really important part of the show*" because it was when the programme heard from "*you*" (i.e. the viewers), as follows (with Ofcom emphasis added):

***"But first to a really important part of the show – when I get to hear from you. Over the past week and even before the show has started we've received an avalanche of tweets and emails. And can I just say to the media – thanks folks for all the publicity. Let's just look at a few of them".***

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<sup>4</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/50507/issue\\_288.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/50507/issue_288.pdf)

In Ofcom's view Mr Salmond was directly addressing the audience and, from the full context of his remarks, he was doing so in a generic way to refer to all viewers, i.e. viewers of this episode and anyone who might watch the programme in the future (whether or not they watched this episode). Ofcom understood the phrases "*your tweets and emails*" and "*when I get to hear from you*" within this context. We accepted that Mr Salmond went on to refer to tweets and emails that had been received before the show and that, as this was the first episode, the authors of those tweets and emails could not have been viewers at the time they were sent. However, we considered it reasonable to expect that anyone who reacted to the so-called "media storm" by sending a tweet or email before the first show would be likely to watch the programme and that the audience would have understood Mr Salmond's introductory remarks about "*the avalanche of tweets and emails*" in this context.

Ofcom noted the Licensee's argument that the selection of tweets and emails was to "illustrate" how the viewer response segment would work in the future. If this was the intention we did not accept this was "obvious" to viewers given the context we have discussed above. Similarly, taking account of the representations made by TV Novosti and Sláinte Media, we did not consider that the audience would have anticipated that the tweets and emails would have come from "all sides", whether or not they were known to Mr Salmond or the production. If this was what Mr Salmond had meant, Ofcom would have expected this to have been made clear to the audience in unambiguous terms, particularly as Mr Salmond introduced the segment ("*where I get to hear from you*") by stating this was "*a really important*" element of the programme. In the absence of any such express indication or any other information to explain this, Ofcom considered that ordinary viewers would not have expected that any of the emails and tweets originated from people who were in any way linked to the programme or to Mr Salmond (whether materially or not). Therefore, the fact that Questions 1, 2, 3 and 5 did originate from such sources was a misrepresentation of a factual matter and was misleading.

Ofcom went on to consider whether the content was materially misleading so as to cause harm or offence.

Ofcom noted that the Licensee argued that this was the first episode of the series and therefore viewers would not have had any particular expectation of it. Sláinte Media made similar arguments, referring to "new evidence", which it said showed that no-one believed the questions read out by Mr Salmond were live tweets or messages and therefore "no one could have had their expectations or opportunity to tweet a question at that time at all disappointed". As we have said previously, Ofcom considers audience trust is likely to be particularly high in current affairs programmes as they deal with important matters of debate in areas such as politics and economics<sup>5</sup>. Therefore, it is important that the content of current affairs programmes can be relied on by viewers and listeners, as breaches of that trust can result in material harm and offence. Ofcom noted that neither the Licensee, nor Sláinte Media had sought to argue that this was not a current affairs programme and neither had provided any evidence to demonstrate that audience trust would have been any less high for this programme than for any other programme in this genre. Ofcom underlines that the Code would not have prevented the Licensee from including questions from individuals linked to the production or people acquainted with Mr Salmond from being included in this programme. However, in order to prevent the audience from being materially misled, we would have expected viewers to have been made aware as to where these questions had originated.

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<sup>5</sup> See footnote 4.

In Ofcom's view, the fact that this was the first episode in the series did not lessen the likely high level of trust that viewers would have had in *The Alex Salmond Show*, as a current affairs programme. Neither was it lessened by the fact that the questions in the tweets and emails read out in this particular episode related to 'lighter' non-political matters.

In summary, Ofcom considered that viewers would have been under the impression that the four questions quoted by Mr Salmond had originated from members of the public wholly unconnected with the programme or with him, when this was not, in fact, the case. The failure to disclose this information meant that viewers were misled. Because viewer trust in this current affairs programme would have been undermined, we considered that this was materially misleading.

We acknowledged that the inclusion of the tweet from the Series Editor (Question 5) was an error and the Licensee referred to there being "some minor and inadvertent mishaps in the selection and presentation of the questions and comments". We also took into account TV Novosti's regret about the "minor teething problems" in this first programme in the series and its confirmation that an internal review had been carried out which included a meeting with the production team and these issues will not be repeated.

However, for the reasons given above, our Decision is that the programme was in breach of Rule 2.2 of the Code.

## **Breach of Rule 2.2**

## In Breach

### The Pete Snodden Breakfast Show *Cool FM, 22 March 2018, 06:00*

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#### Introduction

Cool FM is a commercial radio station providing a rock and pop music service in Belfast and a music and information service throughout Northern Ireland. The licence for Cool FM is held by Downtown Radio Ltd ("Downtown Radio" or "the Licensee").

*The Pete Snodden Breakfast Show* is the weekday breakfast programme on Cool FM broadcast between 06:00 and 10:00.

Ofcom received a complaint about the song "Don't Give In" by Snow Patrol, which was broadcast on the programme at 09:40. The song lyrics included one use of the word "fuck". Before the track was played the presenters said:

Pete Snodden (PS): *"Now, the original [unedited track] has some curse words at the end".*

Paulo Ross (PR): *"It does, we haven't been able to get hold of the clean version yet have we".*

PS: *"Well, PK's put this into the system, so this is my disclaimer: if there's any curse words..."*

Rebecca McKinney (RM): *"His fault".*

PR: *"Blame Paul".*

PS: *"...It's not our fault".*

Pete Snodden then went on to say:

*"Right, anyway, this is the new single, if you haven't heard it yet we, well I personally really like it. I listened to it three times last night..."*

The song was then played and included one use of the word "fuck", following which the song was cut off and Pete Snodden said:

*"So...apologies, obviously, for that. That shouldn't've gone out, so...and we did mention at the top of the song, so...there you go, that's new Snow Patrol. Not the version obviously that we'd wanted, but there you have it".*

RM: *"Sorry guys. What's the official line that they use on television?...If any offence was caused we really didn't mean it. Sorry".*

PS: *“Hopefully no one took offence by what you heard, but if you did, please accept our apologies”.*

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

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

Ofcom requested comments from the Licensee on how the programme complied with this rule.

### **Response**

Downtown Radio explained that it received a copy of the track from the record company who, on this occasion, had uploaded the incorrect version of the song to its file distribution system. It said that the presenters were aware of the different versions of the song, and joked about playing the non-radio edit, but believed they were playing the ‘clean’ version, given that they had received the track directly from the record company and with no “warning, disclaimer or any other literature” alerting them to it being potentially unsuitable for broadcast. The Licensee added that generally only radio-edits of tracks are loaded onto the playout system, as the purpose of it is to hold tracks that are ready and available for broadcast. Nonetheless, Downtown Radio accepted full responsibility for the content broadcast, and acknowledged that the “checks and balances” that form part of the process of adding new music to the playout system were not adhered to by a music producer due to an “eagerness to get the song to air as quick as possible”.

Downtown Radio said that the presenter (Pete Snodden) immediately cut the song off after it became apparent that the incorrect version had been played, and that the presenters instantly apologised for the mistake and any offence caused. It added that the track was broadcast at 09:40 when “children would be less likely to be listening” which in its view “reduced risk of causing offence”.

As a result of the complaint, Downtown Radio said that it had taken steps to minimise any similar incidents occurring in the future, including requiring additional checks to be made by staff prior to tracks being loaded onto the playout system.

### **Decision**

Reflecting our duties under the Communications Act 2003<sup>2</sup>, Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by context. Context is assessed by reference to a range of factors including the editorial content

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<sup>1</sup> As this material was broadcast after the time when children were particularly likely to be listening, Rule 1.14 was not engaged.

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectation of the audience.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other.

Ofcom's 2016<sup>3</sup> research on offensive language clearly indicates that the word "fuck" and variations of it are considered by audiences to be amongst the most offensive language. The use of the word in this case clearly had the potential to cause offence. Ofcom therefore considered whether the content was justified by the context.

Our guidance on offensive language in radio<sup>4</sup> states (regarding Rule 2.3) that: "In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast".

In our view, the majority of listeners to a commercial radio station playing a range of rock and pop music at this time in the morning would not expect programmes to contain the most offensive language. As a result, we considered the broadcast of this language was not justified by the context.

We acknowledged the immediate steps taken by the presenters on air and subsequently by Downtown Radio following the broadcast of this language. However, we remained concerned that despite being aware that an unedited version of the track that included highly offensive language existed, the Licensee failed to check this content to ensure it was suitable for broadcast.

Ofcom takes this opportunity to remind the Licensee that it is responsible for all content broadcast on its service, and for checking that any material it receives from third parties does not raise potential compliance issues before it is broadcast.

Ofcom's Decision is that the broadcast was in breach of Rule 2.3 of the Code.

### **Breach of Rule 2.3**

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<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

<sup>4</sup> Ofcom Guidance, Offensive language on radio, December 2011  
(<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>)

## In Breach

### **Bible ki Nabouat – The Prophecy of the Bible Glory TV, 10 January 2018, 16:00**

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#### **Introduction**

Glory TV is a religious, digital television channel serving Indian and Pakistani Christian communities in the UK. The licence for Glory TV is held by Glory TV Limited (“Glory TV” or “the Licensee”).

During routine monitoring, Ofcom identified the one-hour programme, *Bible ki Nabouat – The Prophecy of the Bible*. As the programme was broadcast mainly in Urdu, Ofcom translated the content into English. The Licensee was given an opportunity to comment on the accuracy of the translation and did not dispute it. We relied on this translation for the purposes of this investigation.

In this programme, which was originally broadcast in 2014, two presenters interpreted the Biblical books of Daniel, Ezekiel, Zechariah and Matthew. They said:

*“...the prophecy we are looking at today is based on a period of seven years. When will this period start and what will be the signs? That is what we will look at today. There are many who know that Lord Jesus will return, that there will be war, that there will be a need to call the 666 number of the devil, that we will have 1,000 years with Lord Jesus, that Iblis [meaning “Satan”] will be thrown into the fire. They know there will be a fake prophet. However, what will be the system or method?”*

The presenters referred to attempts ongoing in 2014 to achieve a peace agreement between Israel and Palestine and commented that these looked likely to fail. They said that many prophecy experts agreed that an eventual treaty would be for seven years, and after this period *“Armageddon will take place... as Ezekiel 38:39 states”*.

The presenters said *“When peace is declared [between Palestine and Israel], after that Satan will begin his work”*. They went on to say:

Presenter A: *“One good thing to say is that, in an Indian survey, 58 per cent of people there supported Israel. It’s one of the countries that sympathises with them – this place is for the Jewish people and they have a right to live in peace. On the other hand, the Arab world doesn’t want any sign or remnant of the Jewish people to remain”*.

Presenter B: *“They want it finished”*.

Presenter A: *“We can see on the map [no map was shown], they want the whole of Israel to become Palestine and that the Jewish people should be erased from the world – and that they should be finished”*.

The presenters said that the international community would support the peace treaty *“and people will believe...there would be no threat to the Israeli people from the Palestinians or*

*vice versa...However, according to holy scripture, it is when the people cry peace, peace, peace, that is when there will be destruction. Suddenly, the situation will change”.*

The presenters discussed Israeli and Palestinian claims to Samaria and Judea, which they correlated to the West Bank from a Biblical and historical perspective. They also discussed Jewish and Muslim claims to the Temple Mount<sup>1</sup> area of Jerusalem. They added “...*this 37-acre piece of land is the most contested land in the world – all the conflict and bloodshed is over this*”.

The presenters then discussed how a peace treaty might be reached in which the Temple Mount area would “*become a shared area*” of religious tolerance in which the Jewish people would replace Solomon’s Temple (the Jewish Holy Temple in ancient Jerusalem, now destroyed). They added that a two-state settlement would give Palestinians control of Judea and Samaria (the West Bank), but in a reciprocal agreement Palestinians would be allowed to remain in Israel and Israelis allowed to live in the West Bank, but as minorities.

The presenters said there would be three and a half years of peace, but the Antichrist would stand in the Jewish people’s new Temple and announce his arrival, claiming to be both the Muslim people’s Christ and the Jewish people’s Messiah. They added that he would demand worship and build a statue to himself. Reading from the Bible, they said that at this point “*Those in Judea should flee to the mountains; those on the rooftops of their homes should not descend*”, which they interpreted to mean there would be a “*slaughter...like another holocaust for the Jewish people*” there. They added:

*“What you said before about [Jewish] minorities left in Palestine, the 100,000. The first attack will be on them. Those in Judea must flee to the mountains. This won’t be good for them, as they will be attacked first. Those on the rooftops should not descend below”.*

The presenters discussed a new world order. They said the Antichrist would be respected for bringing peace and providing for humanity’s needs, but place his mark, “666”, on people through a universal identity system and technological advances, which would compromise people’s freedoms. Then, discussing end of the world Biblical prophecies, they said:

*“He [the Antichrist] will provide so many facilities, but after three and a half years he will turn to everyone and say, you’ve been waiting for the Messiah, but why have you been fighting all these years? I’m here now, I’m the solution. About this, God’s scripture says you will know that there will be great destruction at a time in which many innocents will be killed. Those who hold faith will be the first to be lifted upwards. According to the Torah<sup>2</sup>, it is ordained that there will be a temple, there will be sacrifices, but the animal sacrifices in the temple will be opposed by the international community. They will say you wanted this temple to be built here in the name of peace, yet now [incomplete sentence] – Arabs will not tolerate this, when there are daily sacrifices, chanting and prayers. They’ve already been throwing stones, just imagine what they might do then. The hatred will rise again, and these people will be murdered. There will be much bloodshed and the temple will be taken over again by the Arabs. The Antichrist will return and erect a statue of himself. This will be a very bad sign for the Jewish people. When it will say in the*

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<sup>1</sup>Central to the Israeli-Palestinian conflict, The Temple Mount area of Jerusalem is of religious, historical and geo-political significance to both Jewish and Muslim people. Also known as The Haram al-Sharif, it is the third most holy place in Islam and the most revered site in Judaism.

<sup>2</sup>This generally refers to the first five books (Pentateuch) of the sacred Jewish text *Tanakh*.

*agreement that 150,000 Jewish people can live in Judea and Samaria, recalling the verse that [my co-presenter] read, they will be slaughtered and murdered”.*

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*“So, when those seven years are complete, after everyone is agreed on the promises and positive benefit of the changes, how it will destroy the world and how Satan’s 666 will finish people off. Armageddon will follow; there will be war. As we have read in the verses, hooks will be placed in the jaws of those who will be brought before us by God. It will be a terrible time, especially for the pregnant. The Antichrist’s system is already underway, but we are waiting to have him revealed to us – his face should be revealed, as we can see his back already. He has people behind him. In the same way that God’s angels are doing their job, Satan’s work is also being done, day and night. He will quickly try and form his regime and destroy God’s world. Even though Arabs and Jewish people are cousins...”.*

*“In religious terms, yes”.*

*“In religious terms. Meaning, not every country in the Middle East is Arab. The offspring of Ishmael, they are connected ...yes, through their Abrahamic creed. They are cousins. I am so sorry – the devil deceives so much – all the Muslim countries are showing hatred towards the Jewish people when there shouldn’t be any hatred. They aren’t all Arabs, they aren’t all the children of Ishmael”.*

*“...you’re saying that the Antichrist, the one who will rule the world, he will be the cause of so much bloodshed and conflict”.*

*“He will cause so much bloodshed and conflict...”.*

The presenters then discussed the second coming of Jesus Christ, which they said would “open the eyes of everyone” and brought the programme to a close.

We considered that some of the comments raised potential issues under the following Code rule:

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...race, religion, beliefs...). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

Ofcom requested comments from the Licensee on how the programme complied with this rule.

## **Response**

Glory TV said that the presenters were dealing with an interpretation of Bible prophecy relating to events in the Middle-East and how they related to Israel with a Christian eschatological scriptural view. The programme was aimed primarily at an Asian Christian audience, but also to a Pakistani Muslim audience who watch Glory TV and have an interest

in these issues due to their convergent Islamic view on the subject. It had received no complaints about the programme.

Glory TV said that it takes our rules seriously and appreciates the need to avoid making comments out of context, when handling potentially offensive subjects. It said that the comments made about Arab opinion were derived from comments made by numerous Arab political commentators in news and social media. It said that although this is very well known in the Asian community, it should have "give[n] examples of, these statements/policies being a matter of public record". It said it would "no longer repeat this programme and will update it in due course, with greater context and clarification, especially as recent events serve to highlight the tenet of the original programme".

## Decision

Reflecting our duties under the Communications Act 2003<sup>3</sup>, Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights ("ECHR"). We have also had regard to Article 9 of the ECHR, which states that everyone "has the right to freedom of thought, conscience and religion". Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from harmful or offensive material and the right to freedom of expression and the right to freedom of thought, conscience and religion.

In accordance with Articles 9 and 10 of the ECHR, broadcasters can transmit programmes based on religious beliefs that some viewers may find controversial or offensive. However, when doing so, broadcasters must ensure the material complies with the Code.

Rule 2.3 of the Code requires potentially offensive material to be justified by context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service on which the material is broadcast, the time of broadcast and the likely expectations of the audience.

We first considered whether the comments had the potential to cause offence. We took into account the following comments: "... the Arab world doesn't want any sign or remnant of the Jewish people to remain"; and, "We can see on the map, they want the whole of Israel to become Palestine and that the Jewish people should be erased from the world – and that they should be finished".

We also took into account the following interpretations of Biblical prophecy:

*"...Arabs will not tolerate this, when there are daily sacrifices, chanting and prayers. They've already been throwing stones, just imagine what they might do then. The hatred will rise again, and these people will be murdered. There will be much bloodshed and the temple will be taken over again by the Arabs. The Antichrist will return and erect a statue of himself. This will be a very bad sign for the Jewish people. When it will say in the agreement that 150,000 Jewish people can live in Judea and Samaria, recalling the verse that [my co-presenter] read, they will be slaughtered and murdered".*

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

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*"...In the same way that God's angels are doing their job, Satan's work is also being done, day and night. He will quickly try and form his regime and destroy God's world. Even though Arabs and Jewish people are cousins ...In religious terms. Meaning, not every country in the Middle East is Arab. The offspring of Ishmael, they are connected ...through their Abrahamic creed. They are cousins. I am so sorry – the devil deceives so much – all the Muslim countries are showing hatred towards the Jewish people when there shouldn't be any hatred. They aren't all Arabs, they aren't all the children of Ishmael".*

We recognised that the Arab-Israeli conflict<sup>4</sup> is long-fought and ongoing. However, in Ofcom's view, this offered little contextual justification for the comments in question.

These comments portrayed the entire Arab world as wanting the annihilation of Jewish people and asserted that the Antichrist would present himself as their Christ/Messiah and stand in the new Jewish Temple, before Arab people slaughtered Israelis in a persecution like the holocaust.

The discussion of a future persecution of Jewish people including the statement that *"they will be attacked first"* and likening such an atrocity to the *"holocaust"* was likely to be highly offensive to both Jewish people and viewers more generally.

In our view these comments included discriminatory generalisations, which portrayed all Arab people as favouring a crime against humanity, and against Jewish people in particular. The portrayal of Arab people in the future schemes of the Antichrist was also likely to have been highly offensive to them, given that Arab people comprise both Christian and Muslim people and a fundamental tenet of both faiths is their rejection of Satan.

We therefore considered that these statements had the potential to cause a high level of offence to viewers, across a range of faiths.

Ofcom then considered whether the broadcast of the potentially offensive content was justified by the context. In our view, there needed to have been very strong, if not exceptional, contextual factors to justify the inclusion of parts of this material.

Broadcasters may transmit programmes taking a critical view of a particular religion or broadcasting opinions that some viewers may find offensive, and the Code does not seek to prevent followers of one religion from being able to express views rejecting or criticising people of differing views or beliefs. To do so would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information.

This was a religious programme on a Christian channel. The audience would have expected to see programmes promoting and exploring Christian beliefs and potentially the discussion of deeply controversial subjects, such as the ongoing Arab-Israeli conflict. Further, Ofcom

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<sup>4</sup> See: <https://www.theguardian.com/world/gallery/2009/aug/17/israel-middleeast>; <https://www.telegraph.co.uk/news/worldnews/1581051/Timeline-of-the-Israel-Palestine-conflict.html>; and <https://www.reuters.com/article/us-palestinians-israel-timeline-sb/timeline-milestones-in-six-decades-of-middle-east-conflict-idUSTRE4BQ13U20081227>

recognised that it was legitimate for the channel to examine Biblical prophecies and consider how they might come to pass with reference to current events, including prophecies about human suffering. However, when broadcasting material of this nature, broadcasters must comply with all relevant rules of the Code to ensure that any such content does not cause unjustifiable offence. The potential for this may be greater when a programme offers a singular interpretation involving other religions or groups.

While the comments in this programme were made through the prism of Biblical prophecy, in our view, they portrayed the Arab world and all Arab people as susceptible to the influence of the Antichrist. They also portrayed all Arab people as hating Jewish people to the extent that they would be prepared to persecute them. The comments also portrayed a negative future for Israel, in which the Antichrist would stand in the new Jewish Temple and in which Jewish people would suffer another holocaust. Ofcom recognised the primary audience for this channel is Indian and Pakistani Christian communities in the UK. However, in our view the discriminatory and potentially offensive nature of these comments was likely to have exceeded audience expectations. Further, the wider audience of British Muslim people, who share the same faith as many people in the Arab world was likely, in our view, to have been highly offended by the comments about and characterisation of the Arab world and people in this programme.

Ofcom considered that the presenters' comments carried added weight and a greater potential to offend by virtue of their position as respected commentators on the Bible. The programme did not reflect differing interpretations of the religious texts and no alternative perspective was offered to counter their extremely negative views.

For the reasons set out above, we considered that the potential offence caused by the programme was not justified by the context. Therefore, Ofcom's Decision is the programme breached Rule 2.3.

### **Breach of Rule 2.3**

## In Breach

### Jago Pakistan Jago

**HUM Europe, 15 March 2018, 10:00**

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#### Introduction

HUM Europe is a general entertainment channel that serves the Pakistani community in the UK, broadcasting in Urdu. The licence for HUM Europe is held by HUM Network UK Limited ("HUMN UK Ltd" or "the Licensee").

*Jago Pakistan Jago* is a lifestyle programme which is broadcast from 09:00 to 11:00 on weekdays and from 10:00 to 12:00 on Saturdays.

Ofcom received three complaints about racially offensive material.

As the programme was in Urdu, Ofcom commissioned an independent English translation of the material and gave the Licensee an opportunity to comment on the accuracy of the translation. The Licensee did not raise any issues and we therefore used the translation for the purposes of this investigation.

We identified a section of the programme where make-up artists taking part in a competition were set the task of applying make-up to models live on the programme. The first part of the task required the contestants to make the models' skin tone appear darker. They were shown doing this, then photographs of the models without make-up were shown by means of comparison as the mentors and presenter discussed the contestants' work. Then, in the second part of the task, the contestants were instructed to apply bridal make-up over the darker base colour.

Several verbal references to this task were made, which included:

*"Generally, our people say, mate, we just want white skin – my complexion should be fair. This is because one can play with many colours on a white skin tone. People are not very keen on brown skin tone".*

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[woman held up a stick of make-up and said:] *"This stick is called Negro. Models use what is called F17. You must have seen how black they are. You have to make it A-1. You have to prepare it, make it and apply it on the face. This is what the base will look like – black. This will be the complexion. All beauticians need to listen. The bride's complexion should have a black skin tone. If it is not a black skin tone but the bride's make-up is very good, even then we will not give you any marks".*

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*"...if a girl is to be a model and her skin tone is like mine [a light tone], you have to give her this skin tone [showed an example of the make-up]. You are not supposed to make it lighter than this".*

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*"If you apply this dark skin tone, you will know, when one with a dark complexion comes to you – there are people with a dark complexion too who come to you – how you are going to do their make-up".*

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*"And you have to make sure that you use the Negro skin tone. You should not make it lighter just because you prefer a lighter skin tone. And the interesting thing is that we have made up so many brides but we never had a pitch black woman coming to us for make-up. But this is a huge challenge for you".*

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*"Have you never done it before – making someone so dark?"*

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*"You have seen Shabbir – by Allah's grace, he is very white – but, in [the TV drama called] Liari Express, he applied this base on his face. It was the skill of the make-up man – what a base he applied on his face! And it gave him a real Makrani<sup>1</sup> colour or Negro skin tone – whatever you call it".*

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*"You have to turn the skin tone of your model into this colour which is like dark chocolate".*

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*"Today we are going to make a chocolate bride".*

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*"Razia has received a lot of chastisement from us. A lot. But she doesn't listen. Absolutely not. During the break, she was applying a white base on this skin tone saying it's gone too dark. I said: But this was the task given to you – you have to make it dark. And she replied: The model wouldn't like being so dark. I said: What do you mean? This is your task. She said: The model was saying it. The good thing is that the model herself said: They have told you to make it dark so you have to make it dark. When we are assigned a character to play in a drama, we must do it. Why not? It is not about what you like and what you dislike. You have to see what the task is".*

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*"Even in a brown colour, she shows so much charm. Beautiful".*

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<sup>1</sup>A term generally used to describe people of African descent, many of whom have settled along the Makran coastline in Balochistan, Pakistan.

Presenter 1: *"I want lots of clapping for their hard work and for taking the challenge, and also for our models who allowed newer artists to do their make-up".*

Presenter 2: *"And had their complexions darkened. Sure".*

We considered this raised potential issues under the following rule of the Code:

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

Ofcom requested comments from the Licensee on how the programme complied with this rule.

### **Response**

HUMN UK Ltd said that while this broadcast "touch[ed] on an issue which some may have found challenging", it believed that when viewed in context it did not cause harm or offence. The Licensee said that the make-up artist competition took place over five episodes of *Jago Pakistan Jago*. The task in the episode broadcast on 15 March 2018 posed "the challenge to work on a darker skin tone" and this required the application first of the same base colour to all the models "to give all the contestants the same blank canvas, thus providing them a level playing field".

HUMN UK Ltd said "the discussions during this episode highlighted the differences of skin tones. The inclusion of this specific challenge for the contestants led to discussions and informed the audience". It said that "the majority of our audience understood the competition and the reason for ensuring all the contestants had the same base to work from in this episode" and "our audience is from the Pakistani community".

HUMN UK Ltd said it had not received any direct complaints from viewers about this broadcast.

### **Ofcom's Preliminary View**

Ofcom prepared a Preliminary View in this case that there had been a breach of Rule 2.3. The Licensee was given the opportunity to make representations on the Preliminary View and confirmed to Ofcom that it had no comments to make.

### **Decision**

Reflecting our duties under the Communications Act 2003<sup>2</sup>, Section Two of the Code requires that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectations of the audience.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other.

We first considered whether the material had the potential to cause offence.

We considered that specific terms used to refer to the darker skin tone had the potential to offend. These included three uses of the word "negro": *"This stick is called Negro"*; *"make sure that you use the Negro skin tone"*; and *"it gave him a real Makrani [black] colour or Negro skin tone – whatever you call it"*. Ofcom's 2016 research<sup>3</sup> on offensive language makes clear that the word "negro" is considered by audiences to be a derogatory term for black people and categorised as "strong language, generally unacceptable" and "problematic outside of a proper historical context". We acknowledged that in the first two instances in this broadcast, the word was likely to be the manufacturer's name for the particular shade of make-up being used. However, this was not obviously the case in the third instance.

Other terms used in this broadcast which are not listed in the research but we considered were likely to cause offence included: *"a pitch black woman"*; *"this colour which is like dark chocolate"*; and *"Today we are going to make a chocolate bride"*.

There were also several comments which appeared to criticise or denigrate people with darker skin, for example: *"People are not very keen on brown skin tone"*; *"this is a huge challenge for you"*; *"The model wouldn't like being so dark"*; *"Even in a brown colour, she shows so much charm"*; and one of the presenters asking the audience to applaud the models because they *"had their complexions darkened"*. We considered that these comments, which were not challenged, had the potential to cause clear offence to viewers.

Ofcom then considered whether the broadcast of this material was justified by the context.

The Licensee said that sufficient context was provided by the make-up contest setting and the specific task of "the challenge to work on a darker skin tone". It said that the use of the make-up was to provide a "level playing field" for the contestants. However, Ofcom considered it was likely that some viewers would have been very offended by the suggestion that applying beautiful make-up to people with a darker skin tone was a "challenge". We also considered that this would have been exacerbated by the fact that the programme-makers

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<sup>3</sup> Attitudes to potentially offensive language and gestures on TV and radio, September 2016. See page 13 of the Quick Reference Guide:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/91625/OfcomQRG-AOC.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf)

See also the main report:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

did not use models whose own skin tone was darker, but rather used make-up to first create "the same blank canvas", as described by the Licensee, with lighter-skinned models.

HUMN UK Ltd also said that "The inclusion of this specific challenge for the contestants led to discussions and informed the audience". However, we found no discussion in the programme of the issues raised by this task and no challenge to the potentially derogatory statements listed above.

The Licensee also said that "our audience is from the Pakistani community". We considered that the negative comments about darker skin were likely to have caused offence to viewers, including members of this community, viewing HUM Europe in the UK. We were aware that when this programme was originally broadcast in Pakistan on HUM TV on 14 March 2018, there were some strongly critical reactions to it from within Pakistan on social media and in an article in the English-language Pakistani newspaper Pakistan Today.

In our view, the audience for *Jago Pakistan Jago*, a morning magazine lifestyle programme, was unlikely to have expected to encounter this type of potentially offensive material at this time of day in this programme. No attempt was made to avoid or mitigate the potential offence, even though the Licensee accepted that the programme "touch[ed] on an issue which some may have found challenging".

For the reasons set out above, Ofcom's view is that this programme contained potentially offensive material which was not justified by the context, in breach of Rule 2.3 of the Code.

### **Breach of Rule 2.3**

## In Breach

### Free Jaggi Now

***KTV, 6 January 2018, 21:30***

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#### Introduction

KTV is a religious and cultural channel aimed at the Sikh community in the UK and Europe, broadcasting in Punjabi and English. The licence for KTV is held by Khalsa Television Limited ("Khalsa Television" or "the Licensee").

*Free Jaggi Now* was a current affairs programme covering the arrest of Jagtar Singh Johal ("Jaggi")<sup>1</sup>, a UK citizen arrested in India on 4 November 2017, and detained in the State of Punjab.

We received a complaint that the programme included statements promoting "separatism" in India. Ofcom translated the programme and gave the Licensee an opportunity to comment on the accuracy of the translation. The Licensee did not raise any issues and we therefore used the translation for the purpose of this investigation.

This 55-minute programme focussed on support for the 'Free Jaggi now' campaign. It included a discussion about the alleged torture of Jaggi by India's National Intelligence Agency ("NIA") during his interrogation and detention, the alleged restriction on Jaggi receiving consular assistance and an independent medical report following allegation of torture, and allegations about corruption in the Indian judiciary<sup>2</sup>.

The presenter was joined in the studio by: Jaggi's brother Gurpreet Singh ("GS"); Sikh activist Shamsher Singh ("SS"); and a representative of the Sikh Federation. Viewers were invited to contact the programme to discuss Jaggi's plight and the reported actions of the Indian authorities. The programme included several statements by the presenter and his guests about the actions and policies of the Indian authorities in relation to the detention of Jaggi and the Indian Government's actions and policies towards the Sikh community:

Presenter: *"As you know for the past two months in the Punjab young men have been taken into custody and have been subjected to torture. One of these individuals is a young man a British national by the name of Jagtar Singh Johal more popularly known as 'Jaggi', who after an extended period of time, almost two months has been transferred to Nabha Jail. Despite being transferred to Nabha jail a conspiracy by the government and agencies was uncovered by a newspaper. That related to his independent examination and*

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<sup>1</sup> On 4 November 2017, Jaggi was arrested and is currently being detained in the State of Punjab by India's National Intelligence Agency:  
<https://www.independent.co.uk/news/world/asia/india-british-tourist-youth-social-media-arrest-jagtar-singh-johal-jalandhar-punjab-dumbarton-a8048211.html>

<sup>2</sup> Ofcom understands that at the time of broadcast a preliminary hearing was pending following previous adjournments, however charges against Jaggi were yet to be filed by the NIA. However, in May 2018, charges of aiding and abetting murder of Hindu Nationalist leader Ravinder Gosain in October 2017 were filed against Jagtar Singh Johal.

*medical treatment and exposed the fact that even during the examination he was being observed and monitored by the state...".*

GS: *"[F]irst thing to report is that Jagtar has had his first meeting with his wife, a meeting that took place after a period of two months. They had a meeting and he confirmed that he had been tortured a great deal in jail in the early days, and this continued but since he has now arrived in Nabha [Central] Jail he has access to a few more facilities because he is now no longer in police custody but is now in judicial custody....He has also met a lawyer, his lawyer in a private room where nobody else was present, and he again confirmed to him that he had been tortured, no doubt more information will come out soon...".*

Presenter: *"I want to say to all the communities out there that despite the change in awareness that occurred in 1984 our situation has not changed very much and we see that not much has changed since then particularly when we look at the situation of Jagtar Singh Johal we note that he has been tortured and denied the right to meet his wife for some time...In all the time that Jagtar Singh has been held by the government, police, NIA or the agencies we see that he has been consistently refused the right to meet his family, his representatives or his lawyers, nor even his UK representatives, and it is only now after such a long delay that he has been able to meet his family and representatives...Now Shamsher Singh, I want to ask you about Jagtar Singh Johal's health and can I request that the technical team put up a picture of him being brought to court in chains, flanked by these two individuals [an image of Jaggi in chains was shown]. When he was taken for his medical you see the same two individuals [an image of Jaggi flanked by two people was shown], and these images dispel any notion that the medical report is an independent report because the photos show the reality. Any suspicion or doubt is immediately dispelled by these images, and you can forget any notion that this medical report is truly independent, these photos prove that the medical was carried out under the supervision of the agencies".*

SS: *"...At Nabha [Central Jail] he was tortured through electric shock treatment, and his legs were stretched, and he was severely beaten up, badly abused and his family threatened. Right from the outset once we became aware of the torture that he was under, we appealed to the courts that he should have an independent medical and we brought an application before the court that he should have an independent medical report prepared. We applied to the High Court for an independent medical. At one point the police were going to carry out the medical in a police van. So, he was taken to the back of this van and he was given a cursory examination and asked, 'are you ok?', and we saw it reported in a newspaper that he had been independently medically examined but you can see in the images that are being shown on screen that is not the case and it is clear that the two individuals on either side of him are the same two NIA officers who were present when he was seen by British embassy staff, by the lawyers and by the medical staff its always the same two guys. So how can we expect anything when this happens every time? How can we expect from India, that claims to be the world's biggest democracy? Nothing is being done according to any procedure or in accordance with any law. At every point he is being suppressed, we have told*

*the courts and raised the matter at every level that all his medical reports have been prepared under the gaze of the agencies, we even raised this with the British High Commission, and we have appealed and said that you should take an interest in his welfare, because at every level he is being mistreated and oppressed". [This was accompanied by three images of Jaggi shown with his face hooded by a dark cloth and a caption stating: "20th Preliminary Hearing. Jagtar Singh Johal will be in court on 2 January 2018 for the 20th time since his illegal arrest on 4 November 2017"]].*

GS: *"The first application [for bail] was on the 14th of November, and this was dismissed on the 17th of December, after that a fresh application was made to the NIA court. We thought that this court would behave in a professional manner. Jaggi should have received a reply to the application that was lodged on the 22nd by the 26th when he appeared before the court on that day. But when he appeared in court the NIA had not submitted their reply, and when they were asked why they hadn't replied, they said that they did not have the time to reply. The judge in the case said that he didn't have Jaggi's file before him. Now you make your own minds up! Instead he [the state prosecutor] just laughed. This is such an important matter and that was his reaction? Nothing happened on the 26th and nor did the NIA give a reply to the application which gives you some idea of what is happening. The judge made no attempt to make further enquiries from the NIA as to why they hadn't replied. The NIA instead of responding to the matter in court, came out and gave interviews to the waiting media outside. Instead they carry on about how his medical has taken place and repeat the same old mantra. Remember that he has been under torture since November, and we are now into January and whether he has been physically tortured or mentally tortured during that time, it all amounts to torture. In fact, on the 22nd it came out that he was under considerable mental torture as they issued threats against him. He is repeatedly threatened that he should accept his guilt and if he doesn't accept his guilt he would remain behind bars for the rest of his life. They say that could be up to 30 years behind bars, and they would do this by piling case upon case upon him. This is all being done by the NIA [the logo of the NIA appeared on screen]"*.

Presenter: *"...The thing to note is that Captain Amarinder Singh<sup>3</sup> has made statements that it is only Jagtar Singh Johal's family that is making these allegations of torture, and denies that any torture has taken place. They try and deny it at every level but whenever he gets a minute to talk to his lawyer he reiterates that he has been subjected to torture. Even when he has appeared before the judge and declared his innocence, the judge has simply replied that he doesn't have the case yet. The NIA say they don't have the time, the judge says that he doesn't have the file, and the family are accused of inventing all of this. Such a major case, an international level case and yet all these excuses about files not arriving and people not having time. Captain Amarinder Singh is lying, and other MLA's [members of the Legislative Assembly] are telling lie upon lie and trying to turn their lies into truth. Even when they presented a video of Jagtar Singh it was clear that the video had been edited and was not genuine. To this day the Punjab police, nor any judge has been able to place any charges against him. For two months they*

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<sup>3</sup> Captain Amarinder Singh is the Chief Minister of Punjab, India.

*have physically tortured him continuously, and when the bruises and signs of torture begin to disappear they continue with the mental torture which is unrelenting. The mental torture extends to his family too. The NIA have threatened his family here in the UK including his immediate family, and even his in-laws, who have all received threatening phone calls. The pressure has increased lately because the Punjab police, the NIA and Captain Amarinder Singh are all worried about how to handle the case and it has become a major headache for them as they try and threaten the family to make some admission of guilt and sign a document to that effect...”.*

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Caller: *“My advice to all of you in the UK is that you should not fall for their [i.e. the Indian Government’s] lies, and the fake news that they have placed in the media, particularly when they falsely attribute some comment to an individual, don’t just believe it, ring up that person, or when they say that a particular Gurdwara is in agreement with them, ring the Gurdwara and check that that is indeed the case, and don’t fall for their lies. Once you do that, everything will become clear, and you will see that the Indian consulate is behind all of these activities [influencing the Sikh community in Canada and the UK]...we see clearly how the government was trying to control us, and they try and control our media and are applying pressure upon them, but we must give balanced coverage and not be influenced by them. They [the Indian government] have even tried to influence and apply pressure in other ways by saying that some of our leading businessmen would not be issued visas if they were thinking of visiting India, and even trying to influence the outcome of local Gurdwara elections, and elections to City Councils. This even applied to individuals who were otherwise supportive of the Indian government but because this individual had raised his voice in support of Jaggi the consulate opposed his candidature”.*

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Guest: *“Since 1984 we have had an unofficial ban [of officials from India attending Gurdwaras] here in the UK, but in Canada the matter is different. There the Indian government was really meddling in Sikh affairs, which is why they took such a firm stance. Here because we took such a firm stance way back in 1984 we have not felt the need to take any further steps as we have not had the same level of interference from the Indian state. But in the last five years we have started to see a rise in interference from the Hindu or Indian government. They started introducing other secular events and tried to show that these are also Sikh events and mislead the community, and in one or two Gurdwara’s their influence began to grow, as they misled the congregation. When the case of Jagtar Singh Johal came to the public attention it was a wake-up call to the entire community that despite the passage of time, almost 35 years but the conduct of the Indian government had not changed whatsoever, and it was like 1984<sup>4</sup> all over again. You would think that things had improved, with the passage of time, the change in governments, but they have to be judged by their actions. Nothing has changed in their attitude*

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<sup>4</sup> A reference to Operation Blue Star and the anti-Sikh riots in Delhi in 1984.

*whatsoever, they have desecrated the holy book, disappeared Sikhs, carried out mass killings and now overseas Sikhs have also been disappeared...Our intention is not to simply ban these people just for the sake of it, but they come over here into the Gurdwaras and sow the seeds of discord. There are some amongst us who disagree and say, well, they are the government and we should have something to do with them, as we will need them at some stage, but this all a deception. If you remember Modi<sup>5</sup> came over here in 2015 and there were many that said that we should sit down and negotiate and have a dialogue with the government as that is the only way that the affairs of Sikhs would improve. But the thing is that we can only negotiate or have a dialogue, from a position of equality, and everything should be on the table but that is not the case now. In any event it's been two and a half years and those that met him and had discussions with him, can they point to one single issue that has been resolved? Can those that met him, can they point out what improvement has occurred. In fact, since meeting the Indian Prime Minister matters have worsened for Sikhs".*

Presenter: *"...It's very important to remember that treaties that are signed after a war, are signed following a meeting or discussion around a table when all your conditions and demands are placed before the parties. But just when we need our leaders to step forward we see that these fat-bellied self-appointed leaders are doing nothing other than filling their bellies or having meetings to advance their business interests [an image of Punjab Chief Minister Captain Amarinder Singh was shown], and it's our responsibility to be aware of such leaders and avoid them we need to have a sharp mind to spot these individuals".*

For the reasons set out in our Preliminary View, it was Ofcom's view that the programme was dealing with a matter of political or industrial controversy and matter relating to current public policy, namely, the policies and actions of the Indian authorities in the State of Punjab in relation to the treatment a UK citizen, Jagtar Singh Johal, and of the Indian Government towards the Sikh community in India, Canada, and the UK.

We therefore considered that this material raised potential issues under the following rule of the Code:

Rule 5.5: "Due impartiality on matters of political or industrial controversy and matters relating current public policy must be preserved".

We asked the Licensee for its comments about how the material complied with this rule.

### **Response**

The Licensee stated that the *Free Jaggi Now* show formed part of a series of daily shows about the abduction and detention of Jagtar Singh Johal. It said that given the serious nature of events surrounding the detention of a British citizen, and its relevance to the Punjabi community worldwide, KTV had broadcast about 150 hours of content on this subject matter over the course of five months. This included news reports and discussions shows.

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<sup>5</sup> Narendra Modi, Prime Minister of India.

Khalsa Television explained that according to reports Jaggi was “violently” apprehended by three men and eventually his family were able to determine that Jaggi had been abducted by members of the Punjab Police. However, it added that Jaggi’s access to the British authorities was “initially obstructed” and details regarding his safety and the circumstances of his arrest were not provided.

The Licensee said that the “clandestine arrest” caused “great alarm amongst the global Punjabi community” particularly when details of Jaggi’s alleged physical and mental torture emerged. The arrest and torture of the accused also prompted responses internationally and the hashtag #FreeJaggiNow became a “clarion call” amongst politicians, celebrities, human rights groups and individuals who had been touched by this matter.

Khalsa Television said that it took every effort to ensure its programming was “fair, well balanced and interesting” and provided impartial opinions and analysis “from across the spectrum” throughout the series. This included for example material by: senior prosecution lawyer of the NIA Surinder Singh; defence lawyer Jaspal Singh Manjphur; the Chief Minister of the Indian state of Punjab Captain Amarinder Singh; and the Director General of Police Suresh Arora. Specifically, the Licensee provided recordings of four editions of *Free Jaggi Now* broadcast between 11 November 2017 and 20 November 2017 and an edition of a news update broadcast on 24 December 2017, that it considered reflected alternative viewpoints

The Licensee acknowledged that while some views and opinions expressed by the presenters in the show “may not be perceived as impartial” when considered out of context, the opinions made by the presenters were made on the basis of preceding news reports, press conferences, and analysis of the subject that had been broadcast. It added that its viewers had been following the issue from the outset. Khalsa Television was therefore confident that viewers would have understood the full context surrounding the opinions and views expressed and would have been able to reach a balanced opinion on the circumstances of the case.

The Licensee accepted that due to limited resources it had experienced “teething problems” in “getting to grips” with aspects of the Code. It stated that it was: “overhauling” its internal procedures; recruiting a permanent compliance officer; providing compliance training to staff on the Code; and exploring alternative viewpoints and “retaining balance” during its programming. However, in the interim the Licensee said it had suspended live broadcasts relating to issues of political and industrial controversy.

## Decision

Reflecting our duties under the Communications Act 2003<sup>6</sup>, Section Five of the Code requires that the special impartiality requirements are met. Rule 5.5 requires that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

Ofcom takes account of the audience’s right and the broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance broadcaster’s freedom to discuss any controversial subject or point of view in their programming, and compliance with Section Five.

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<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

The Code makes clear that the term “due” means adequate or appropriate to the subject matter. “Due impartiality” does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

Ofcom underlines that the broadcasting of highly critical comments about the policies and actions of any government or state agency is not, in itself, a breach of impartiality rules. However, depending on the specific circumstances, it may be necessary to reflect alternative viewpoints or provide context in an appropriate way to ensure compliance with Section Five.

Ofcom's Guidance<sup>7</sup> to Section Five (“the Guidance”) makes clear that “whether or not due impartiality has been preserved will also be dependent on a range of factors such as: the nature of the programme; the programme's presentation of its argument; the transparency of its agenda; the audience it is aimed at; and what the audience's expectations are”.

Ofcom first considered whether Rule 5.5 applied in this case – that is, whether the programme concerned matters of political or industrial controversy or matters relating to public policy.

This programme was a discussion about the arrest and detention of Jaggi by Indian authorities in the State of Punjab. For example, the presenter and contributors made a number of statements about the failure of the Punjab Police and the courts in formally charging Jaggi, the alleged physical and mental torture of Jaggi, and alleged threats, to Jaggi's family in the UK, by the NIA, to make an “*admission of guilt*”.

The programme also included a brief discussion on the Indian Government's policy towards the Sikh community in India, Canada and the UK. For example, a caller said that the Indian consulate had lied to the Sikh community in Canada and the UK and had been “*trying to influence the outcome of local Gurdwara elections, and elections to City Councils*”. The caller also stated the Indian Government was applying “*pressure*” on prominent Sikh businessman by refusing visa applications to visit India.

The programme included serious allegations of Jagtar Singh Johal being unlawfully arrested, detained and tortured in India by the NIA and the Indian authorities in the Punjab. It also included critical statements about the efficiency of the Indian Judiciary and the Indian Government's policy towards the Sikh community in India, the UK and Canada. We therefore considered any discussion about the arrest and detention of a UK citizen, and the actions and policies of the Indian Government towards the Sikh community, were clearly matters of political controversy and current public policy in India and the UK. Rule 5.5 was therefore engaged.

We therefore went on to assess whether due impartiality was preserved in the programme.

As set above, this programme contained serious allegations against the Indian Government and the NIA. It included a number of criticisms that:

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<sup>7</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf)

- Jaggi had been *“tortured through electric shock treatment, and his legs were stretched, and he was severely beaten up”*;
- the NIA had *“threatened his family here in the UK including his immediate family, and even his in laws”*;
- the Indian authorities had *“consistently refused”* Jaggi the right to meet his family, his legal representative, and UK representatives;
- Jaggi's medical inspection was not independent and *“was carried out under the supervision of the agencies”*, in particular the NIA;
- there had been repeated delays in the Judicial process due to the number adjournment of the preliminary hearing. Judicial papers had not been filed and the NIA did not have the time;
- the Indian Government had tried to *“influence and apply pressure”* on *“leading businessmen”* within the UK Sikh community by suggesting that the granting of visas to visit India would be rejected and by *“trying to influence the outcome of local Gurdwara elections, and elections to City Councils”*; and
- the Indian Government had *“desecrated the [Sikh] holy book”*, were behind the disappearance of Sikhs, and had carried out *“mass killings”*.

Ofcom was of the view that the Indian authorities' views in response to these allegations should have been represented to ensure due impartiality was preserved.

The presenter did make a brief reference the viewpoint of the Chief Minister of Punjab, Captain Amarinder Singh, as follows:

*“Captain Amarinder Singh<sup>8</sup> has made statements that it is only Jagtar Singh Johal's family that is making these allegations of torture, and denies that any torture has taken place...”*

There were also brief references to the reason why the Indian authorities had adjourned previous preliminary hearings in relation to Jaggi, such as: *“The NIA say they don't have the time, the judge says that he doesn't have the file”*.

However, we considered these brief statements were significantly outweighed by the large number of critical statements made about the Indian authorities.

Under Rule 5.5 of the Code, due impartiality can be *“achieved within a programme or over a series of programmes taken as whole”* – i.e. more *“than one programme in the same service, editorially linked, dealing with related issues within an appropriate period and aimed at a like audience”*. The Licensee provided recordings of four editions of *Free Jaggi Now* broadcast between the 11 November 2017 to 20 November 2017 that it considered reflected alternative viewpoints. However, in Ofcom's view, three of these four programmes did not contain any content that could be said to represent the viewpoint of the Indian authorities,

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<sup>8</sup>Captain Amarinder Singh is the Chief Minister of Punjab, India.

while the fourth programme contained one brief statement by the Punjab Chief Minister, Captain Amarinder Singh. However, in our view, all of these programmes were broadcast nearly seven weeks before the programme in this case, and were not, therefore broadcast within an appropriate period of time. We therefore considered that these programmes were not editorially linked for the purposes of Rule 5.5.

Khalsa Television also provided a recording of a news update broadcast on 24 December 2018, approximately two weeks before the programme in this case. While the news update featured coverage of an appearance in court in the Punjab by Jaggi, it did not, in our view, contain any content that could be said to represent the viewpoint of the Indian authorities. We therefore considered that alternative views were not adequately reflected over a series of programmes taken as whole.

We took into account that the programmes broadcast on KTV were mostly of interest to the Sikh community in UK. Ofcom also acknowledged that the target audience for this programme consisted of members of the UK South Asian community, who may have already been aware of Jaggi's arrest and detention in India. However, we considered that these contextual factors did not mitigate the need to ensure that due impartiality was preserved in the absence of sufficient alternative viewpoints and/or challenge to the critical views expressed about the policies and actions of the Indian authorities.

We also took into account that the Licensee said it had taken steps to "overhaul" its compliance process. Nevertheless, for the reasons outlined above, Ofcom's Decision is that Khalsa Television failed to preserve due impartiality and breached Rule 5.5 of the Code.

### **Breach of Rule 5.5**

## Not in Breach

### The Nigel Farage Show

**LBC 97.3 FM, 3 October 2017, 19:00**

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#### Introduction

LBC is a London-based national talk and phone-in radio station. The Licensee for this service is LBC Radio Limited ("LBC" or "the Licensee").

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

Ofcom received a complaint that during the programme Mr Farage was trying to "present positive Brexit information", but he had incorrectly stated that the UK had been ranked as the eighth most competitive economy in the world in 2017 and that this was its highest ranking for the last 10 years. The complainant felt that this was "incorrect and misleading".

In the programme, Mr Farage said:

*"Now, a few weeks ago I promised you I would try to bring you up-to-date, Brexit business briefings, because I feel we're getting too much negativity from the other side. So here is some up-to-date, financial news that you won't have heard anywhere else:*

- *the United Kingdom has just been ranked as the eighth most competitive economy in the world ahead of Japan, making this the UK's highest ranking for the last 10 years ("Statement 1");*
- *on top of that, our [the UK's] position has been confirmed as the eighth largest manufacturer in the world, manufacturing goods worth 185 billion sterling every year with only Germany and Italy above us in Europe ("Statement 2");*
- *interestingly, last year, UK engine production was up by 12% and 55% of those engines have been sold for export ("Statement 3");*
- *so perhaps, on that, it's no surprise to see that overall UK exports to the rest of the world last year grew at 12%, double that of our exports to the European Union ("Statement 4"); and*
- *the ever-pessimistic Office for National Statistics have now been made to eat humble pie after their previous suggestion that business investment had stagnated. That has proved to be wrong as business investment grew in the second quarter by 2.5% ("Statement 5").*

*That is the positive, up-to-date economic news. You won't hear a briefing like that on the BBC".*

We considered that some of these statements raised potential issues under the following Code rule:

Rule 2.2: "Factual programmes or items or portrayal of factual matters must not materially mislead the audience".

Ofcom requested comments from the Licensee on how the content complied with this rule.

## Response

LBC stated its belief that in "such a contested area of public debate...the briefing would [not] have 'materially misled' listeners".

The Licensee provided background information on the sources of the various statements included in the "*Brexit business briefing*", as set out in the Introduction and made specific representations about those statements.

### *Statement 1 – Competitiveness ranking*

LBC said that this Statement was derived from the World Economic Forum ("WEF")'s 2017/18 Global Competitiveness Report<sup>1</sup>. It added that "the presenter's comments on 'highest-ranking' referred to the increase [in the UK's] competitiveness score over 10 years". The Licensee acknowledged that "there may have been some confusion over use of the word 'ranking' here". However, it argued that "what is not in dispute is that according to the [WEF] the UK is at its most competitive for a decade".

LBC further said that the WEF Report that was the basis of the statement "concluded that the drop in ranking from the UK [from seventh to eighth place] 'does not yet reflect the outcome of the Brexit negotiations'". It added that "a spokesman for the [WEF] had said the improvement in score had declared the decision to leave the EU had not had a 'material impact' on the UK's competitiveness so far". In the Licensee's view "the overall message of the presenter's report was correct: that there are clear economic data that indicate Brexit has not had a negative effect".

### *Statement 2 – Manufacturing position*

LBC said the information on the UK's position as the eighth largest manufacturer in the world was derived from a September 2017 fact card ("*UK Manufacturing 2017/18, The Facts*"). It said this fact card was published by the manufacturer's organisation, EEF, based on data produced from the UN<sup>2</sup>. The Licensee added that it had contacted the EEF who had "confirmed the 2015 data [is] the most recent UN data available pending the 2016 release in December [2017]". It further added that EEF had confirmed to it that "economic indicators

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<sup>1</sup> See <http://reports.weforum.org/global-competitiveness-index-2017-2018/chapter-2-key-findings-of-the-global-competitiveness-index-2017-2018/>

<sup>2</sup> The fact card, published by EEF on 18 September 2017, showed the UK's manufacturing position in 2015 and that the source of this information was the United Nations Conference on Trade and Development

typically have a lag, as data is compiled...given the size of this data set (the entire world) a lag of just over 12 months is not unreasonable”.

### *Statements 3 to 5*

Statement 3 was derived from UK motor industry statistics. The Licensee said that the statistics in Statement 4 concerning the growth of UK exports to the rest of the world compared with the EU, were derived from EU trade figures. Further, the statistics in Statement 5 on business investment were derived from Office for National Statistics figures.

### *Context*

The Licensee argued that there were the following contextual factors which meant that the content in this case was not materially misleading:

- the *“Brexit business briefing”* was a *“very short aside of just over a minute”* in a programme that *“focussed on Nigel Farage’s assertion that Jean-Claude Juncker had ‘ignored’ the controversy around the Spanish referendum in the European Parliament”*;
- the presenter introduced the briefing, by saying, *“I feel we’re getting too much negativity from the other side”*. LBC said this statement *“indicated immediately to listeners that it is a subject up for dispute”*. It added that *“There was no detailed analysis, nor were firm conclusions drawn from the data. It was merely a summary of information that gave balance to the aforementioned ‘negativity’”*; and
- listeners were *“encouraged to view the show as a discussion featuring the opinions of the presenter – which are always available to challenge”*. LBC added that, *“as ever, the presenter invited listeners to call and text in”* if they disagreed with him. It also said that: *“Some listeners disagreed with [Mr Farage’s] principles but agreed with his view on this occasion. Others agreed entirely; others felt he was a liar and ‘made up’ stories”*.

Although LBC considered that the briefing was not materially misleading, it said that it had *“flagged this complaint to the presenter”*. It added that in future *“it will highlight that it may be helpful for listeners, who are not familiar with economic statistics, to be made aware of the dates associated with publications in such instances”*.

The Licensee also provided representations in response to Ofcom’s Preliminary View, which was to record a breach of Rule 2.2.

LBC acknowledged that Statement 1 *“conflated the details of the UK’s 2017/18 WEF relative ranking with its absolute 2017/18 WEF [Global Competitiveness Index (“GCI”)] GCI score”*. However, it said the overarching point was that the UK economy was at its most competitive for a decade. The Licensee therefore argued that *“[for] a listener, there is little substantive difference in whether this argument is made by reference to the [GCI] score or by reference to its ranking among other countries”*. It argued, therefore that Statement 1 was not materially misleading.

The Licensee said that, in its view, Statement 2 was *“factually accurate”* and *“represented up-to-date information”* against the backdrop of Mr Farage’s opening words that he would provide *“up-to-date”* information. It added that whilst Statement 2 was based on economic data from 2015, it was the most recently published EEF Fact Card at the time of broadcast.

LBC disagreed that the “only possible purpose” of the statements, including Statement 2, was to provide, as stated by Ofcom in its Preliminary View, factual evidence to support the position that there had been a positive impact on the UK economy since the EU Referendum. It said that it would have been “reasonable for the audience to have understood that Mr Farage was listing the most recent available figures to show that the UK was entering Brexit from a position of strength”. The Licensee said that Statement 2 in itself was not “factually inaccurate” and Mr Farage, rather than making a “specific case solely in respect of the UK economy’s performance after the EU Referendum” was providing a “more general business up-date about the UK’s economy as it goes through Brexit”.

LBC added that “the removal of Statement 2 or of any of the other individual statements would make a negligible difference in the listener’s understanding of the arguments that Brexit has had positive effects on the UK economy or that the UK is entering Brexit from a position of strength”. It therefore concluded that the five statements collectively were not materially misleading.

The Licensee referred to Ofcom’s guidance that Rule 2.2 is “designed to deal with content that materially misleads the audience so as to cause harm or offence”. It said the harm Ofcom had identified in respect of the statements made by Mr Farage fell far below the standard established in three previous Ofcom Decisions.

LBC argued that two separate Ofcom Decisions<sup>3</sup> (*Justice with Jeanine Pirro* and *Frances and Friends*) showed that “there is a high threshold to establish that the statements caused harm and/or offence”, adding that in both cases:

- there was “clearly an identified group of people harmed in tangible ways [and the] misleading statements caused harm and offence by implying factually incorrect, hugely negative images of Muslims that could instigate prejudice against these communities”; and
- these programmes were broadcast at times of heightened tension due to geopolitical events.

By contrast, the Licensee said that in the present case:

- as opposed to causing any “material harm to a community that extends beyond the listening audience”, Mr Farage’s statements were said by Ofcom to “only cause potential harm to the listening audience by providing inaccurate details to be had in debates about Brexit”; and
- the harm of being misinformed by potential details of the strength of the UK economy following the Brexit vote “does not come close to the substantial harm of encouraging prejudices against specific communities at times of heightened tension”. In this context, the Licensee argued that Mr Farage’s statements were not made “at a time of an election or referendum, or any other significant political event where the statements could have been reasonably expected to have been influential”.

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<sup>3</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/50507/issue\\_288.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/50507/issue_288.pdf); and, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0035/49796/issue\\_304.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0035/49796/issue_304.pdf)

LBC also referred to a third Ofcom Decision<sup>4</sup>, *An Inconvenient Truth*, where Ofcom had not found a breach Rule 2.2, despite the fact that a court<sup>5</sup> had found there were “nine errors” in the film in that case. The Licensee said that “Ofcom ignored the fact there were some factual errors in the film and concluded it did not cause harm to viewers because it was ‘...unlikely to have materially altered their understanding of Anthropogenic Global Warming in a way that would have adversely affected them or society’”. The Licensee therefore suggested that Mr Farage’s statements would similarly have been “unlikely to have materially altered listeners’ understanding of the UK economy following the Brexit vote”. In any event, LBC said that “much like the arguments in the *An Inconvenient Truth* film”, the audience would have appreciated that Mr Farage made the statements as a proponent of a particular political view. The Licensee therefore argued that Mr Farage’s statements were “unlikely” to have materially altered “listeners’ understanding of the UK economy following the Brexit vote in a way that would have adversely affected them or society”.

## Decision

Reflecting our duties under the Communications Act 2003<sup>6</sup>, Section Two of the Code requires broadcasters to apply “generally accepted standards” to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

Ofcom takes account of the audience’s and the broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance this freedom to discuss any controversial subject or point of view in programming and compliance with Section Two.

Under Rule 2.2, “Factual programmes or items or portrayal of factual matters must not materially mislead the audience”. Ofcom’s Guidance<sup>7</sup> to Rule 2.2 states that Ofcom is “required to guard against harmful or offensive material, and it is possible that actual or potential harm and/or offence may be the result of misleading material in relation to the representation of factual issues”. The Guidance also states that it is “*designed to deal with content that materially misleads the audience so as to cause harm or offence*” [emphasis in original] and not with “issues of inaccuracy in non-news programmes”. It also says: “Whether a programme or item is ‘*materially*’ misleading depends on a number of factors such as the context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred [emphasis in original]”.

Section Two does not prevent a broadcaster from making programmes about controversial subject matters or topics which may elicit strong opinions and emotions, such as the UK’s departure from the EU (“Brexit”). It is crucial that broadcasters have the editorial freedom to cover such topics. However, licensees are required to ensure they comply with Section Two, including ensuring that facts are not misrepresented in a way which materially misleads the audience. This is particularly important in current affairs programmes as the level of

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<sup>4</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/45670/issue165.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/45670/issue165.pdf)

<sup>5</sup> *Dimmock v Secretary of State for Education and Skills* (2007) EWHC 2288

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<sup>7</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0037/86788/section2-july15.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0037/86788/section2-july15.pdf)

audience trust and the audience's expectation that such programmes will not be materially misleading is likely to be higher.

*The Nigel Farage Show* is a regular 'phone-in' programme, presented by Mr Farage. He is well-known for his forthright stance in favour of what is labelled as a 'hard' Brexit, and Brexit is a theme he regularly addresses in his programme. Listeners were therefore likely to have expected the programme, and Mr Farage, to address the controversial issue of Brexit. As the programme covers current affairs, it was important that it did not present facts in a way which was materially misleading. This was particularly the case on the controversial and sensitive subject of Brexit, and on the significant debate as to whether the UK's vote to leave the EU has had negative or positive consequences for its economy.

Ofcom's role is not to determine what the material effects of the result of the EU Referendum may or may not be. Instead we are required to determine whether an established fact was misrepresented so as to materially mislead the audience.

In our view, Statements 1 and 2 inaccurately presented factual matters.

The source for Statement 1 (*"the United Kingdom has just been ranked as the eighth most competitive economy in the world ahead of Japan, making this the UK's highest ranking for the last 10 years"*) was derived from the World Economic Forum ("WEF")'s 2017/18 Global Competitiveness Report<sup>8</sup>. We took into account that:

- the WEF Report showed that the UK's Global Competitiveness ("GCI") for 2017/18 was 5.51, which was an increase of 0.02 on the UK's GCI for 2016/17;
- the UK's GCI, for 2017/18 (5.51) in absolute terms, is the highest GCI achieved by the UK in the period since 2007;
- in Statement 1, Mr Farage referred to the UK's relative ranking to that of different countries by reference to their GCIs (*"ahead of Japan"*). Mr Farage labelled the UK's eighth place ranking in 2017/18 as the *"UK's highest ranking for the last 10 years"*; and
- although the UK's GCI in the previous year, 2016/17, was slightly lower, its ranking was actually one place better (seventh), which we understand to be the UK's highest ranking since 2007.

LBC acknowledged that Mr Farage appeared to conflate the UK's 2017/18 WEF relative ranking with its absolute 2017/18 WEF GCI score. We considered that, in doing so, he inaccurately presented a factual matter.

We took into account that the source for Statement 2 (*"on top of that [Statement 1] our [the UK's] position has been confirmed as the eighth largest manufacturer in the world"*) was derived from figures published by the manufacturer's organisation, EEF, in the form of a fact card (*"UK Manufacturing 2017/18, The Facts"*)<sup>9</sup>. These figures were produced by UNCTAD, the United Nations Conference on Trade and Development. Even though the data from which Statement 2 was derived was published on 15 September 2017, the underlying data

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<sup>8</sup> See footnote 1.

<sup>9</sup> See <https://www.eef.org.uk/campaigning/campaigns-and-issues/manufacturing-facts-and-figures>

related to trends in data up to the year 2015. In this regard, the Licensee argued that Statement 2 was “factually accurate” and “up-to-date” in that it was based on the most recently published EEF Fact Card at the time of broadcast. However, a highly relevant contextual factor in our view was that the data from which Statement 2 was derived pre-dated the June 2016 EU Referendum.

In contrast the other statements could all be reasonably described as referring to recent economic trends within the UK:

- Statement 1 cited statistics derived from figures published on 26 September 2017 showing trends in data up until 2017/18;
- Statement 3<sup>10</sup> cited statistics derived from figures published on 28 September 2017 showing trends in data up until August 2017;
- Statement 4<sup>11</sup> cited statistics derived from figures published on 15 September 2017 showing trends in data up until July 2017; and
- Statement 5<sup>12</sup> cited statistics derived from figures published on 29 September showing trends in data up until June 2017.

Therefore, four of the five statements were based on trends in data which in part included 2017 i.e. well past the June 2016 EU Referendum. In contrast, the data behind Statement 2 showed trends only until the end of 2015 i.e. well before the EU Referendum in June 2016.

LBC argued that it would have been “reasonable for the audience to have understood that Mr Farage was listing the most recent available figures to show that the UK was entering Brexit from a position of strength”. Therefore, rather than making a “specific case solely in respect of the UK economy’s performance after the EU Referendum” the Licensee argued that Mr Farage was providing a “more general business up-date about the UK’s economy as it goes through Brexit”. We disagreed. We considered that in the absence of any clarification about the period to which his statements referred, listeners would have understood that Mr Farage was referring to the UK’s recent economic performance within the context of the ongoing political debate over Brexit, and the prospect of the latter on the UK economy since the June 2016 EU Referendum. This is because since that Referendum, Brexit and its implications for the UK had been a highly contested matter within UK politics. In particular, many of those who had argued against Brexit (and the views of Mr Farage) had argued that

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<sup>10</sup> “*interestingly, last year, UK engine production was up by 12% and 55% of those engines have been sold for export*”. This statement was derived from UK motor industry figures (see <https://www.smmmt.co.uk/2017/09/uk-engine-manufacturing-posts-double-digit-growth-august-exports-drive-demand/>).

<sup>11</sup> “*so perhaps, on that, it’s no surprise to see that overall UK exports to the rest of the world last year grew at 12%, double that of our exports to the European Union*”. This statement was derived from EU figures (see [http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc\\_151969.09.2017.pdf](http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151969.09.2017.pdf)).

<sup>12</sup> “*the ever-pessimistic Office for National Statistics have now been made to eat humble pie after their previous suggestion that business investment had stagnated. That has proved to be wrong as business investment grew in the second quarter by 2.5%*”. This statement was derived from Office for National Statistics figures (see <https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/businessinvestment/apriltojune2017revisedresults>).

the UK economy has suffered since the June 2016 EU referendum, and would continue to suffer after Brexit had finally taken place. Against this background, we considered that listeners would have interpreted Mr Farage's presentation of the various statistics in this case (i.e. as an "up-to-date, Brexit business briefings" and "up-to-date economic news" which was intended to be a response to "too much negativity from the other side") as his rebuttal to the argument that the UK economy had suffered since the June 2016 EU Referendum. As a consequence, we considered that listeners would have expected that Mr Farage, in making his argument, would have cited data showing economic performance since the June 2016 EU Referendum. However, as this was not the case in relation to Statement 2, we considered that it inaccurately presented a factual matter.

We then assessed whether the two misrepresentations (i.e. Statements 1 and 2) were materially misleading, taking into account contextual factors, such as: the nature of the misrepresentation; the editorial approach; the programme format; and importantly the potential harm or offence caused.

#### The nature of the inaccurate presentation

We took into account LBC's view that the removal of any one of the five statements from the item would have made negligible difference in the listeners' understanding of the arguments that Brexit has had positive effects on the UK economy or that the UK is entering Brexit from a position of strength". However, in our view Statements 1 and 2 together were a significant element in Mr Farage's argument. Given the emphasis being placed by Mr Farage on all the statistics in his "Brexit business briefing", we considered that the audience were likely to have relied on all the statistics as evidence that clearly supported Mr Farage's position on the positive economic effects of the EU Referendum vote for the UK. In our view, the fact that Statements 3 to 5 did not misrepresent a factual matter did not, in principle, lessen the potential effect of the misrepresentations in Statements 1 and 2.

In our view, the inaccurate presentation of Statement 1 was one of mischaracterisation. The UK was at its most competitive comparative to its own past GCI scores. However, it was wrong to state that for 2017/18 the UK was at its most competitive for a decade comparative to other countries ("making this the UK's highest ranking for the last 10 years"). In fact, according to the WEF data, the UK had been at its most competitive relative to other countries in the previous year, 2016/17.

The inaccurate presentation of Statement 2 resulted from a lack of clarification about the period to which it referred (i.e. the period up to the end of 2015) and, as discussed above, contextual factors that suggested it referred to the period after, rather than before, the EU Referendum in June 2016.

#### The editorial approach

We took into account that Statements 1 and 2 were included in an item setting out a summary of current economic statistics, which Mr Farage described as his "Brexit Business Briefing" and introduced as follows:

*"Now, a few weeks ago I promised you I would try to bring you up-to-date, Brexit business briefings, because I feel we're getting too much negativity from the other side. So here is some up-to-date, financial news that you won't have heard anywhere else".*

In our view the reference to “*up-to-date, Brexit business briefings*” and “*up-to-date, financial news*” indicated Mr Farage’s intention to present current and factual information in the context of the on-going Brexit debate.

### The programme format

We acknowledged that listeners of this phone-in programme would have been able to challenge Mr Farage on general arguments or opinions about Brexit or any other issue by contacting the programme. However, we did not consider that listeners would have been likely to challenge detailed statistics in the same way. Rather, in line with the higher trust audiences are likely to have in current affairs programming, we considered listeners would have expected to be able to rely on statistics being presented as factual matters. This would have especially been the case, given the significance of the issue of Brexit and the presentation of the information in an authoritative manner, as part of a standalone “*Brexit Business Briefing*”.

### Potential harm

In considering the potential harm that would have been caused in this case, we took into account LBC’s arguments in relation to the two previous Ofcom Decisions relating to *Justice with Jeanine Pirro*<sup>13</sup> and *Frances and Friends*<sup>14</sup>.

It said that these Decisions showed that “there is a high threshold to establish that the statements caused harm and/or offence”, adding that in both cases: there was “clearly an identified group of people [i.e. the Muslim community] harmed in tangible ways; and these programmes were broadcast at times of heightened tension due to geopolitical events. By contrast, the Licensee said that in the present case: as opposed to causing any material harm “to a community that extends beyond the listening audience”, Mr Farage’s statements were said by Ofcom to “only cause potential harm to the listening audience by providing inaccurate details to be had in debates about Brexit”; and the harm of being misinformed by potential details of the strength of the UK economy following the Brexit vote “does not come close to the substantial harm of encouraging prejudices against specific communities at times of heightened tension”.

We disagreed with LBC’s characterisation of the scope of Rule 2.2. Breaches of this rule are not confined to instances where potential harm might be caused to specific communities;

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<sup>13</sup> This current affairs programme claimed that there were dangerous areas in Paris and other French cities “called ‘no-go zones’ where apparently the French police will not go [and] Sharia laws [are] imposed”. It also claimed “So in Britain there are not just ‘no-go zones’ there are actually cities like Birmingham that are totally Muslim, where non-Muslims simply don’t go in”. Fox News later apologised for these comments which it acknowledged were inaccurate. We found that the misleading statements had the potential to cause harm to viewers by eroding their trust in current affairs programmes.

<sup>14</sup> Frances & Friends is a daily discussion programme providing analysis on religious doctrine and world events. In the programme there was a discussion on immigration into Europe, in which it was inferred that Muslim people were responsible for all rape cases in Sweden. We considered that the programme clearly misrepresented the factual position according to the evidence cited by the Licensee and the available statistics concerning rape crimes in Sweden. We found that this was materially misleading and likely to undermine the trust of viewers in such programmes and therefore to cause harm.

and/or where content is being broadcast at times of "heightened tension". Therefore, breaches of the Code that have resulted in the audience being misled have always been considered by Ofcom to be amongst the most serious that can be committed by a broadcaster, because they go to the heart of the relationship of trust between a broadcaster and its audience. It is particularly important that the content of factual programmes and current affairs programmes can be relied on by viewers and listeners, as audience trust in these programmes is likely to be higher, and breaches of that trust can result in material harm. In this case, it was particularly important that the subject was a highly controversial matter of significant national interest, Brexit.

The Licensee also cited another previous Ofcom Decision, concerning the film *An Inconvenient Truth*<sup>15</sup>. LBC said that "Ofcom ignored the fact there were some factual errors in the film and concluded it did not cause harm to viewers because it was '...unlikely to have materially altered their understanding of Anthropogenic Global Warming in a way that would have adversely affected them or society'". The Licensee also argued that "much like the arguments in the *An Inconvenient Truth* film", the audience would have appreciated that Mr Farage made the statements as a proponent of a particular political view.

We carefully considered the degree to which the inaccurate presentation of Statements 1 and 2 diverged from the overall message presented by the statistics relied on in the programme and other indicators regarding the UK's economic performance since the June 2016 EU Referendum i.e. whether the two misrepresentations would have materially misled listeners on this issue.

In our view, both statements, although presented in an inaccurate manner, were consistent with other indicators (as included in the programme) of the UK's actual economic performance since the June 2016 EU Referendum:

- Statement 1 was not, in our view, a significant misrepresentation of the statistics upon which it was based. Although Mr Farage presented the GCI data as positive economic news for the UK by reference to its GCI rank and this had dropped one place, we considered that the core of message to listeners that the GCI data was positive economic news broadly matched the UK's absolute GCI score; and
- Although, Statement 2 inaccurately presented data from 2015 as evidence of manufacturing performance since the June 2016 EU Referendum, Ofcom considered that the overall message to listeners about the performance of the UK's manufacturing sector was not inconsistent with other indicators<sup>16</sup> relevant at the time of the broadcast, including the statistics upon which Mr Farage based his other statements

Given these factors, in Ofcom's view the inaccurate presentation of Statements 1 and 2 were not significant departures from reasonable interpretations of the available data such that they were materially misleading to the audience.

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<sup>15</sup> *An Inconvenient Truth* is a factual documentary film in which the American politician and climate change campaigner Al Gore discusses the subject of global warming. It takes the form of a lecture delivered by Mr Gore, interspersed with information about the effects of climate change, in which he makes a case that urgent action to prevent global warming is needed.

<sup>16</sup> See: <https://www.theguardian.com/business/2017/sep/01/uk-manufacturing-growth-august-pound>; and <https://www.telegraph.co.uk/business/2017/09/04/construction-industry-dips-one-year-low-new-orders-dry/>

Notwithstanding our view that the two misrepresentations were not materially misleading in this particular instance, Ofcom agreed with LBC's acknowledgement that in future "it may be helpful for listeners, who are not familiar with economic statistics, to be made aware of the dates associated with publications in such instances", as a precaution against broadcasting materially misleading content.

### Conclusion

In Ofcom's view, Mr Farage misrepresented two sets of statistics. However, for the reasons given above, we did not consider these misrepresentations to be so significant as to be materially misleading.

Our Decision was that the programme was not in breach of Rule 2.2 of the Code.

This case follows several other examples of Ofcom giving guidance to the Licensee about how this presenter has presented factual matters in programming. We are therefore requesting LBC to attend a meeting to discuss its compliance processes in this area.

### **Not in Breach of Rule 2.2**

## Broadcast Licence Conditions cases

### In Breach

#### Provision of information and failure to comply with a Direction *Gravity FM CIC (Grantham)*

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##### Introduction

Gravity FM is a community radio station licensed to provide a service for the local community in Grantham, Lincolnshire. The licence is held by Gravity FM CIC (or "the Licensee").

Each year, the Department for Digital, Culture, Media and Sport ("DCMS") provides a sum of money for a "Community Radio Fund" ("the Fund"). Ofcom is tasked with administering the Fund by making grants of money to licensed community radio stations for the purposes of assisting those stations in meeting their core operating costs<sup>1</sup>. As a community radio licensee, Gravity FM CIC is eligible to apply to Ofcom for a grant from the Fund. Decisions as to which community radio stations receive a grant are made by Ofcom's Community Radio Fund Panel ("the Panel").

In June 2016, Gravity FM CIC applied for, and was awarded, a grant by the Panel of £12,965 in the first round of funding for 2016-17. This money was to be used by the Licensee for the employment of a Sales and Business Development Officer (SBDO) for the station. Under the terms of the award, as set out in a Grant Agreement between Ofcom and the Licensee ("the Agreement"), the Licensee was required to provide Ofcom with a report on how the Fund money was used ("the Report"). The submission of the Report is an essential requirement, enabling Ofcom to check that the money has been spent in accordance with the agreed purpose and to inform DCMS.

The Agreement, signed by a representative of Gravity FM CIC, sets out that the Report is due to be submitted by the Licensee to Ofcom within eight weeks of the end of the Relevant Expenditure Period. Ofcom did not receive a completed Report or any request from the Licensee for an extension to the deadline.

When the Licensee failed to provide the information after repeated requests, Ofcom issued a Direction to the Licensee to provide the Report by a specified deadline. The Licensee failed to provide the Report by the deadline set out in the Direction.

Ofcom considered this raised potential issues under Conditions 9(1) and 15(1) in Part 2 of the Schedule to Gravity FM CIC's licence. These Conditions state, respectively:

"The Licensee shall... furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, estimates, returns, reports, notices or other information as Ofcom may require for the purposes of exercising the functions

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<sup>1</sup> Further background information about the Community Radio Fund is set out in the Community Radio Fund Guidance Note: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0009/33300/guidance-notes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0009/33300/guidance-notes.pdf)

assigned to it by or under the [Broadcasting Acts 1990 and 1996 and the Communications Act 2003] ..."; and

"The Licensee shall comply with any direction given to him by Ofcom in respect of any matter, subject or thing which direction is in the opinion of Ofcom appropriate, having regard to any duties which are or may be imposed on it, or on the Licensee by or under the [Broadcasting Acts 1990 and 1996 and the Communications Act 2003]".

We requested comments from the Licensee about how it had complied with these licence conditions.

### **Response**

Gravity FM CIC explained that the company was dealing with a number of "historic issues", both regulatory and financial, caused in part by people removing computer equipment and paper records when they left the station. The Licensee submitted that this meant the current station operators did not have all the necessary information to fulfil the reporting obligation.

The Licensee further explained that the lack of information to complete the Report in detail was due in part to the person appointed to the SBDO post failing to provide the information "[d]espite repeated requests". In addition, the Licensee said that the director who had made the original application to the Fund, and who appointed and managed the SBDO, has since resigned as a director and "has not provided the company with any paperwork in relation to this grant, other than a summary of payments made". Gravity FM CIC said that it is in the process of restructuring the station and the CIC to ensure that it can comply with its licence requirements in future.

### **Third party responses**

Ofcom considered that both the former director of Gravity FM CIC who supervised the SBDO, and the person employed in the role of SBDO, were directly affected third parties and we therefore gave them opportunity to make representations.

In response to Ofcom's Preliminary View that Gravity FM CIC was in breach of Conditions 9(1) and 15(1) of its licence, the former director of Gravity FM CIC stated that he "pass[ed] on all the information that [he] had", but that, as he "was never involved with the admin side of Gravity fm [he did] not have any copies of correspondence other than sales that I obtained". In relation to the SBDO, he said that he had kept "asking for reports on [the SBDO's] activities but other than one vague email never received answers". According to the former director, the SBDO had promised to send a full report of her activities but did not provide anything at the end of her employment.

The former SBDO said in response to Ofcom's Preliminary View that she had worked hard at the station, "not only with trying to bring sales in" but by undertaking a range of tasks, including helping to compile station records, helping to organise outside broadcasts, and by completing the annual finance report to Ofcom for 2016. The former SBDO said that while working at the station, she liaised with the former Director on sales and "helped them as much as [she] could" before deciding it was time to leave the station.

## Decision

Reflecting our duty to make grants to the licensees of community radio stations and set the terms and conditions of the grant, Ofcom must ensure that such terms and conditions are met by the recipients of any grant and that the money paid by DCMS into the Fund has been spent appropriately. The submission of the Report is vital, so Ofcom can check that the money has been spent in accordance with the agreed purpose and explain its findings to DCMS.

Under the terms of the Agreement between Ofcom and the Licensee, the Licensee is required to submit a Report to Ofcom, setting out how the money it has received has been spent. The Licensee failed to provide the Report when originally requested and subsequently failed to comply with a Direction to provide the Report by the specified date.

We note that there are differing accounts as to why the report was not provided on time as it should have been. It is not Ofcom's role, however, to make findings of fact in this regard. Rather, our role is to determine whether the Licensee has complied with the terms of its Licence. Regardless of any dispute which may have arisen amongst the relevant personnel, the Licensee must still ensure that it complies with its licence conditions.

The Licensee has since provided Ofcom with the Report, based on the records it was able to find. We also welcome the steps that Gravity FM CIC has taken to ensure future compliance. Notwithstanding these steps, however, the Licensee did not provide the Report as directed and our Decision is that Gravity FM CIC is in breach of Licence Conditions 9(1) and 15(1) of Part 2 of the Schedule to its licence.

**Breaches of Licence Conditions 9(1) and 15(1) in Part 2 of the Schedule to the community radio licence held by Gravity FM CIC (licence number CR000168BA).**

## Broadcast Fairness and Privacy cases

### Not Upheld

#### Complaint by Baroness Patricia Scotland PC QC, made on her behalf by Carter-Ruck

*The World at One, BBC Radio 4, 26 January 2017*

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#### Summary

Ofcom has not upheld this complaint made on behalf of Baroness Patricia Scotland by her legal representatives, Carter-Ruck, of unjust or unfair treatment in the programme as broadcast.

The programme featured a report about the Commonwealth Secretariat and discussed alleged concerns held by the UK Government about the way the organisation was being run by Baroness Scotland.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Baroness Scotland.
- Baroness Scotland was provided with an appropriate and timely opportunity to respond to the allegations of wrongdoing being made about her in the programme as broadcast and her position was adequately and fairly reflected.

#### Programme summary

On 26 January 2017, BBC Radio 4 broadcast an edition of its lunchtime news and current affairs programme, *The World at One*. The programme included both a news bulletin and a report about the Commonwealth Secretariat. During the report, the programme's presenter, Ms Martha Kearney, interviewed the BBC's diplomatic correspondent, Mr James Landale, and Mr Matthew Doyle, a former advisor to Baroness Scotland, and spoke about concerns allegedly held by some government officials about her leadership as Commonwealth Secretary-General<sup>1</sup>.

The presenter said at the start of the programme:

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<sup>1</sup> An online article about the Commonwealth Secretariat and Baroness Scotland's leadership was published on the BBC website on 26 January 2017, prior to the *World at One* broadcast <http://www.bbc.co.uk/news/uk-38760133>. This article was the subject of a complaint to Ofcom by Carter-Ruck on behalf of Baroness Scotland and was considered separately under the "Ofcom & BBC Arrangement relating to Online Material". [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/101892/bbc-online-arrangement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/101892/bbc-online-arrangement.pdf). Ofcom's opinion on whether the BBC observed the relevant editorial guidelines in the content of the BBC online material can be found here: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/116049/issue-5-bbc-online-complaints-bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/116049/issue-5-bbc-online-complaints-bulletin.pdf)

*"The BBC has learned that ministers have sent officials into the headquarters of the Commonwealth over concerns about the way it is being run. We'll have the details".*

The news bulletin was read out by the programme's news correspondent:

*"BBC News has learned that the government has brought in senior officials to support the Commonwealth because of continuing concerns about how the organisation is run. A report in December threatened to withdraw funding unless the Commonwealth Secretariat improved transparency and budget discipline. The Secretary-General, the Labour Peer, Lady Scotland [the complainant, Baroness Scotland], has rejected allegations of extravagant spending on her apartments in London".*

Later in the programme, the presenter introduced the report:

*"The BBC has learned that the government has drafted in senior officials to support the Commonwealth, amid continuing concerns over the way the organisation is being run. Our diplomatic correspondent, James Landale, is with me and broke the story. So, what seems to be the problem James?"*

Mr Landale said:

*"Martha, the Commonwealth is an organisation of 52 nations around the world. It's home to more than a quarter of the world's population. And yet the organisation that runs it is based here in London, and it's an organisation that is troubled. There was a government report last month that said it was underperforming, it needed urgent organisational reform, if it didn't change the government would cut its funding. The lady who runs the organisation, Secretary-General Lady Scotland, a Labour Peer, has been widely criticised in the media for allegations of extravagance over her official residence. Allegations she denies. Now, in my job, I have picked up disquiet already about this. What I have discovered is that the disquiet has now reached the government. The government is now acting to try and shore up this organisation, and it's done it by two key appointments. One is a man called Tim Hitchens, who's been appointed to be in charge of a team that's preparing for the big Commonwealth summit in London next year, he is a very senior Foreign Office official. And another man, Sir Simon Gass, who was a very senior official at the Foreign Office until recently, he's been appointed to actually work directly in the Secretariat. And the view in Whitehall is that this is the government shoring up the organisation".*

The presenter said:

*"Is the disquiet generally about the Commonwealth or is it focused on Baroness Scotland as well?"*

Mr Landale said:

*"Well, it's focused both on her leadership, but also on the organisation. And the reason why there is concern at the moment within the government is because the Commonwealth is going to really matter. Post-Brexit the government wants to emphasise trade with countries outside of the EU, there's a big Commonwealth trade summit here in March this year, they want that to succeed, the summit next year in London, they want that to succeed. They have to make sure it takes charge of this and doesn't let it drag on".*

The presenter said:

*"What kind of reaction has there been from the Commonwealth Secretariat?"*

Mr Landale said:

*"Well, the Secretariat have put out a statement saying 'Look, you know, Lady Scotland has the backing of the 52 Commonwealth member states, they all elected her, they chose her'. They make clear that since she was appointed last April, she's got a huge agenda focusing on making sure the United Nations sustainable development goals are lived up to, making sure the climate change goals are lived up to, she's got a programme to modernise the Commonwealth Secretariat. But, just to show the scale of the concern, even the Queen has been dragged into this. Some diplomats have inferred that the fact she's not attending a particular function is somehow a sign of royal displeasure. I'm told by well-placed sources that this isn't true, that her diary's been trimmed because she's 90, and actually, you know, it's wholly incorrect to link it to the debate about the Secretariat. But, it shows you the scale of the concern that some diplomats are inferring that".*

The presenter said:

*"And a concern being expressed to you off the record about the Secretary-General?"*

Mr Landale said:

*"Yeah, I mean look, some of it I'm afraid is unrepeatable on air. But, there are concerns. Some people say she's arrogant, some people say she lacks the leadership skills for this role. Obviously, her defenders say that she has those, she's just reforming an organisation, she's ruffling feathers".*

The presenter said:

*"Thank you very much indeed, James Landale. Well, let's talk now to Matthew Doyle. He used to work for Tony Blair and was an adviser to Baroness Scotland as part of her transition team. And what was your impression about the way that the Commonwealth was being run in the Secretariat, what kind of atmosphere was it there?"*

Mr Doyle said:

*"Well, I think the Commonwealth, first of all, it should be said, is a vitally important organisation. At a time where we see so many more transnational challenges that there are, it's vital that we have strong multi-lateral organisations. And, I think the Commonwealth has sought to do that in a number of areas, whether it's its work on election monitoring, through to its work on climate change or a number of things I could list".*

The presenter said:

*"Of course, which is why it's so important that its headquarters is run properly. So, how do you think it was being run, or is being run?"*

Mr Doyle said:

*"I think what was clear from when we started last April was that there was a need for reform, it was a mandate for reform that the Secretary-General was elected on, and the first thing that she did was, as part of that reform process, undertake a huge survey of the staff that were there. And that undoubtedly threw up a number of challenges, and those are the challenges that the Secretary-General is looking now to address with the reform programme that is underway".*

The presenter said:

*"Well, if you are right, she inherited problems. But shouldn't she have got a grip of them by now? We heard from James Landale and people talking off the record about arrogance, poor leadership".*

Mr Doyle said:

*"I wouldn't agree with that, I think you've seen from day one a commitment to reform the organisation, to listen to staff, to implement their views that came out of that study last summer. Look, what's happening here is not unusual and James has slightly elided two different things. One is the reform programme that is underway. The second is the increased UK interest that there is in the Commonwealth at the moment, because of issues around Brexit, because of the trade ministers meeting that's coming up this year and because of CHOGM [Commonwealth Heads of Government Meeting] next year. It's right that the UK takes more of a role in providing officials to support those events, just as Australia is providing new officials for the Commonwealth to support the work in the run up to the next Commonwealth Games. So, there's two different things that I think are being slightly conflated here".*

The presenter said:

*"But, it does sound like the government is sufficiently concerned, that's one of the reasons it's decided that the operation needs bolstering. And there was a report from the Department for International Development talking about the Secretariat continuing to underperform".*

Mr Doyle said:

*"Yeah, and you'll know that that report covers a period entirely covered by the previous Secretary-General rather than the current one. As I say, I think the fact that the Secretary-General has sought to bring in senior officials from the UK, from other countries as part of the reform process is entirely sensible. It would be slightly odd if she wasn't looking to recruit the brightest and the best people that there are available from the 52 member states so that they can be part of delivering the change agenda that she is committed to leading. But, that is different from the work that is also being done within government in terms of supporting the big events such as the Commonwealth Heads of Government Meeting that there is next year".*

The presenter said:

*"There have been criticisms about extravagance, unnecessary public expenditure. It's been reported that you yourself were paid £15,000 a month".*

Mr Doyle said:

*"Yeah, and you've seen these sorts of stories about the official residence that there are, I think what's important on that is to recognise the fact that the official residence is redecorated every time there's a new Secretary-General in. But look, these things aren't what matters in terms of the work of the [interrupted by presenter]"*.

The presenter said:

*"And your salary?"*

Mr Doyle said:

*"Aren't what matters in terms of the work of the Commonwealth. What matters is that the Commonwealth continues to deal with those big challenges that there are around climate change, around the sustainable development goals".*

The presenter said:

*"Indeed, but just on this question about your salary, which I notice you're not answering".*

Mr Doyle said:

*"Well, the figures aren't correct, but I'm really not, you know, I really don't think that that's important. What's important is the work of the Commonwealth itself and what it's trying to do around the delivery of the sustainable development goals, the delivery of the climate change agenda, in line with the Commonwealth Charter. It's an ambitious programme of reform, it's one that the staff want and it's one that the Secretary-General is leading with the support of the member states".*

The presenter said:

*"Matthew Doyle, thank you for talking to us".*

There was no further reference to the Commonwealth Secretariat, or Baroness Scotland included in the programme.

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

Carter-Ruck complained that Baroness Scotland was treated unjustly or unfairly in the programme as broadcast because:

- a) Material facts were presented, disregarded or omitted in a way that was unfair. In particular:
  - i) the programme alleged that the government had "drafted in" senior officials in an effort to "shore up" the Commonwealth Secretariat because it was concerned about the way the organisation was being run.

Carter-Ruck said that this statement was inaccurate and that it unfairly implied that the government had lost faith in the Secretary-General's ability to run the Secretariat, which Carter-Ruck said was "simply untrue".

The BBC said that it did not agree that listeners would have been misled by these comments, or that they were unfair to Baroness Scotland. It said that the government involvement was accurately described in the programme and that the "disquiet" mentioned by Mr Landale reflected what he had been told by numerous well-placed sources.

The BBC said that, during the programme, Mr Landale had said that "*the view in Whitehall*" was that the appointments of Sir Simon Gass and Mr Tim Hitchens were the government "*shoring up the organisation*". It added that Mr Landale had stated that the concerns expressed to him were not solely about Baroness Scotland's leadership but the organisation more generally, in the light of its significance following the Brexit referendum.

The BBC said that it was a matter of record that the Foreign and Commonwealth Office ("FCO") suggested the role of acting chief operating officer, which the BBC said was "a relatively minor position for such a senior diplomat", to Sir Simon Gass, and paid his salary. The BBC said that this was confirmed by Sir Simon Gass in a telephone interview on 25 January 2017. It said that Mr Landale had been told by numerous well-placed sources that the appointment of such an experienced figure to the role should be understood to reflect concerns about the running of the organisation and that he had indeed been "drafted in" to shore up the organisation.

The BBC said that the role taken up by Mr Hitchens was also accurately described. The BBC added that it was said that he had been put in charge of a team preparing for the Commonwealth Head of Government summit ("CHOGM") in London in 2018, which the BBC said was a matter of record. The broadcaster said that government sources made it clear to Mr Landale that the appointment reflected concerns about the state of existing preparations for CHOGM, as well as the new-found importance of the summit in the context of Britain's withdrawal from the European Union.

The BBC said that the Secretariat's statement on the support enjoyed by Baroness Scotland from those she represented was reflected in the programme by Mr Landale i.e. that she had the "*backing of the 52 member states, they all elected her, they chose her*". The BBC also said that in his interview, her former communications advisor, Mr Doyle, put it that the analysis had mistakenly linked the appointments with a reform programme. The BBC added that Mr Doyle had credited the Secretary-General for recruiting "*the brightest and the best*".

The BBC said that in light of governmental intervention in the appointments of the two senior officials and the comments of well-placed sources who said this reflected concern about the organisation, the inclusion of a dissenting view and the reference to the statement offered by the Secretariat, it did not agree that there could have been any misunderstanding by listeners on these points. The BBC stated that although Baroness Scotland and her representatives may well have felt that the concerns reported on were not well-founded, it did not follow that referring to them would have mislead listeners or was unfair to her.

- ii) the programme alleged that a government report had threatened to withdraw funding to the Commonwealth Secretariat because the organisation was “underperforming” and “needed urgent organisational reform”.

Carter-Ruck said that this was misleading in that it suggested Baroness Scotland was responsible for the underperformance of the Secretariat identified in the report, when in fact the report had related to a period before Baroness Scotland had assumed office as Secretary-General.

The BBC said that the programme did not allege that a government report had threatened to withdraw funding because the organisation was underperforming. Instead, it had reported the fact that such a threat had been made<sup>2</sup>. However, the BBC said that the programme did not suggest that this report concerned the leadership of Baroness Scotland.

The BBC said that it was made clear that the concerns expressed to Mr Landale related both to the organisation generally and to the leadership of it. It said that it was not, therefore, suggested that all criticisms of the organisation reflected on the complainant, and that it did not agree that listeners would have assumed that they did. The BBC said that it was explicitly stated that Baroness Scotland had only taken up the post in April of the preceding year, a point which was discussed in the subsequent interview with Mr Doyle. The BBC said that the programme's presenter had referred to Baroness Scotland having “*inherited problems*” and that Mr Doyle had stressed that the report reflected a period prior to her appointment and that she had been elected on a mandate to reform. The broadcaster said that, in response to the observation that the Department for International Development (“DfID”) report referred to the Commonwealth “*continuing to underperform*”, Mr Doyle had said: “*And you'll know that this report covers a period entirely covered by the previous Secretary-General, rather than the current one*”.

In the circumstances, the BBC said, it was difficult to see how listeners might have been misled in the manner described in the complaint.

- iii) the programme stated that there had been criticism of financial extravagance made against Baroness Scotland in the media surrounding the refurbishment of her official residence.

Carter-Ruck said it was untrue that there had been any financial extravagance or wasteful spending on the Secretary-General's behalf. It said that, although various newspapers had made these allegations against Baroness Scotland, they were misleading and false.

The BBC said that it was a matter of record that Baroness Scotland had been criticised in the media for financial extravagance. It said that Mr Landale had simply reported that these allegations had been made, alongside the fact that she denied them. It said that the fact that Baroness Scotland's solicitors consider these allegations as false did not make a reference to their existence misleading or unfair.

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<sup>2</sup> <http://www.globalfundadvocatesnetwork.org/wp-content/uploads/2017/10/UK-Multilateral-Development-Review-Dec2016.pdf>

The BBC said that Carter-Ruck's complaints on behalf of Baroness Scotland about the reports in the media at the time had been brought to the newspaper regulator, the Independent Press Standards Organisation ("IPSO"), whose findings were publicly available<sup>3</sup>.

The BBC said that the news report at the beginning of the programme noted that Baroness Scotland had rejected claims of extravagance. It said that Mr Doyle had also defended Baroness Scotland and the organisation against this claim. The BBC said that Mr Doyle stated that it was important to recognise the facts including that the official residence was redecorated each time there was a new Secretary-General and that such concerns did not matter when set against the important work of the Commonwealth.

- iv) the programme claimed that senior government officials had viewed the fact that the Queen would not be attending a major Commonwealth function as "*a signal of royal displeasure*" at Baroness Scotland's leadership.

Carter-Ruck said that Baroness Scotland and the Secretariat had received nothing but support and encouragement from the Palace and that to suggest otherwise was unfair. It said that the fact the programme included a denial of the allegation against Baroness Scotland from "*well-placed sources*" was not sufficient in preventing unfairness to her, because it "said nothing of the credibility of those sources or the context in which their comments were made".

The BBC said that it was not reported as fact that the non-attendance of the Queen had "reflected a palace view of the Commonwealth", but only that this is what "*some diplomats had inferred*". It said that it was made clear in the report that this claim had been entirely discounted by "*well-placed*" observers. In particular, the BBC said that Mr Landale had quoted the sources as having said that "*this isn't true, her diary has been trimmed because she's 90, it's wholly incorrect to link it to the debate about the Secretariat*".

The BBC added that the words "*well-placed*" would have given listeners to understand these sources were able to offer reliable and credible insight. It said that the absence of a more detailed analysis of these sources' credibility would not have caused listeners to discount their views. If that were the case, the BBC said that listeners would presumably have been even more inclined to discount the views complained of, which were attributed only to "*some diplomats*" with no suggestion that they were particularly well-placed or well-informed.

- v) the programme alleged that some senior diplomatic and political sources had referred to Baroness Scotland as "*arrogant*" and had expressed concerns about her leadership abilities.

Carter-Ruck said that these were grave and serious allegations of incompetence which "*constituted a strong and damaging critique*" of Baroness Scotland. It said that Mr Landale's reference to some of the allegations as being "*unrepeatable on air*" suggested their "*sensational, salacious and defamatory nature*" and implied to

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<sup>3</sup> <https://www.ipso.co.uk/rulings-and-resolution-statements/?expression=baroness+scotland&page=1&perPage=20&clauses=&publications=>

listeners that they were “so damaging and gross that they were unrepeatable in decent company”.

The BBC said that Mr Landale had accurately reported what had been said to him by well-placed sources, as well as the response provided by the Secretariat. The BBC said that it believed listeners would have fully understood the distinction between the reporting of views and assertions of fact, particularly since the report also included contrary views on the motives of those commenting and her leadership skills. In particular, the BBC said that the programme had included the following contribution from Mr Landale: *“Obviously her defenders would say she has those, she’s just reforming an organisation, she’s ruffling feathers”*.

It said that Mr Landale had reflected the statement provided, including that Baroness Scotland enjoyed the backing of the 52 member states<sup>4</sup> who had elected and chosen her, had a “huge agenda” and was focusing on making sure that UN development and climate goals were met alongside her plans for modernising the organisation. The BBC said that listeners would therefore have been entirely clear as to the Secretariat’s position.

The BBC said that Mr Doyle also gave a view, from the informed perspective of someone who had been involved in the transition team, that the criticisms reported to Mr Landale were not accurate. In particular, the BBC said Mr Doyle had made the following contribution: *“I wouldn’t agree with that. I think you’ve seen from day one a commitment to reform the organisation, to listen to staff, to implement their views that came out of that study last summer”*.

The BBC said that it did not agree that material which was not broadcast (what had been said to Mr Landale, but which he chose not to repeat on-air) would have misled the audience as to the nature of the criticisms referred to. It said that the most which might reasonably have been inferred from this was that those views were expressed in “strong terms”, which was the case.

- b) Baroness Scotland was not given an appropriate and timely opportunity to respond to the allegations made about her in the programme.

Carter-Ruck said that the BBC had waited until one hour before the programme was due to be broadcast to invite Baroness Scotland to take part in the report, and that it did not set out the specific allegations that would be made against her in the programme. It said that, had Baroness Scotland been made aware of the “defamatory nature” of the allegations, she would have offered a more robust response.

Carter-Ruck said that, because the programme included allegations specifically about her, the only person in a position to appropriately respond to them was Baroness Scotland herself and that she was not given an appropriate and timely opportunity to do so.

The BBC said that it did not agree that Baroness Scotland was not given an appropriate and timely opportunity to contribute. It said that Baroness Scotland was approached for an interview, and that her representative was aware of the matters to be discussed.

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<sup>4</sup>The Gambia re-joined the Commonwealth in February 2018, bringing the number of member states up to 53. However, at the time the programme was broadcast the number was still at 52.

The broadcaster said that Mr Landale had made the then Director of Media and PR for the Commonwealth, Professor Bernie Choudhury, aware of these matters over a series of telephone conversations in the days preceding the broadcast. It said that Mr Landale had explained the story to him in some detail, namely that it concerned senior officials being drafted in to support the Commonwealth amid concerns over the way it was run. The BBC said that Mr Landale had made clear that the criticisms which had been levelled against Baroness Scotland were strong, had come from Commonwealth as well as political sources, and were of sufficient gravity for him to consider the story worth pursuing. It said that Mr Landale was left in no doubt that it was understood that the story was serious and that it reflected concerns and criticisms of Baroness Scotland.

The BBC said that Professor Choudhury wrote in an email sent to the BBC on 29 January 2017 that:

“I concede that you spoke in general terms about the disquiet around the Secretary-General by those at the FCO and the Palace”.

It said that Carter-Ruck had subsequently maintained that this did not amount to an admission that he had been made aware of the matters to be covered, and that perhaps it had not been intended to. The BBC said that “only the Director of Media can say what he did or did not intend to admit, in an email written after the transmission of the item in question and clearly in contemplation of a complaint to Ofcom about it”. The BBC said that what he had admitted was that he had been told of “disquiet around the Secretary-General”, so it could not be maintained that he was unaware that the item would contain criticisms specific to Baroness Scotland.

The BBC said that, as well as the telephone conversations in the days preceding the broadcast, the programme makers made an effort to secure an interview on the day in question. It said that the programme makers had said the request for an interview with Baroness Scotland “was lodged at the earliest opportunity once they knew for certain the piece would run”. This was only after Professor Choudhury had provided a statement in response to the claims in the programme, “since to run the piece without this statement might have risked unfairness to Carter-Ruck’s client”. The BBC said it was not the case, as Carter-Ruck asserted in the complaint, that this was a “planned story” which would have allowed for an earlier interview bid. It said that the story had been discussed at the morning meeting, but that no work had been done on it until it had been established that the Commonwealth had offered a response which might be reflected in the programme.

The BBC said it preferred to allow interviewees as much time as possible in which to consider participation. However, the BBC considered that Professor Choudhury, having had a series of telephone conversations with Mr Landale, understood the nature of the programme and the areas to be discussed by Baroness Scotland should she consent to an interview. It said that the decision to not participate was therefore made in the knowledge of the matters which would be raised and the concerns to be explored. The BBC said that it was not clear from Carter-Ruck’s submission to Ofcom how the relatively short lead-time disadvantaged their client, or what about the request they otherwise considered not appropriate.

The BBC said that when the interview request for Baroness Scotland was declined, the programme instead booked Mr Doyle for interview. It said that Mr Doyle had been a communications advisor to Baroness Scotland's transition team and was therefore well-placed to speak to the issues – as was proven by his interview, in which he challenged criticisms of her leadership and of the organisation.

The BBC said that it did not agree that only Baroness Scotland might be in a position to respond to these criticisms. In any case, it said, she was invited to participate and she, or her representative, declined the invitation. The BBC said that the request for an interview was issued at the earliest opportunity once it was decided that the item would feature in the programme.

The BBC said that although Carter-Ruck claim that their client's representative was misled regarding the allegations in that he was told by Mr Landale that the piece would be "about policy", Mr Landale did not recollect describing the piece in these terms. It said that the point he sought to make, during the phone conversation with Professor Choudhury and Sir Simon Gass on 25 January 2017, was that the story he was pursuing was of a different order to allegations about extravagance in the refurbishment of an official residence. Also, that it would consider the "more weighty" issue of the concerns of the UK Government over the running of an important international organisation. The BBC said that Mr Landale "did not offer an assurance this piece would not refer to those earlier criticisms". It said the fact that the Professor Choudhury was aware the content would also concern criticism of Baroness Scotland was, in the BBC's view, apparent from his email acknowledging being informed of "disquiet around the Secretary-General".

### **Ofcom's Preliminary View**

Ofcom prepared a Preliminary View in this case that Baroness Scotland's complaint, made on her behalf by Carter-Ruck, should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The parties' representations are summarised below.

#### *Carter-Ruck's representations*

Carter-Ruck said that central to Baroness Scotland's complaint was that she was not given sufficient time to appear on the programme. Carter-Ruck said it considered this to be of crucial importance to both strands of the complaint because it represented, in itself, a breach of Ofcom's Broadcasting Code and because it had the effect of ensuring Baroness Scotland's views were not represented in a fair manner.

Carter-Ruck said that Ofcom was correct to conclude in its Preliminary View that significant allegations of incompetence or wrongdoing were made against Baroness Scotland. However, it considered that Ofcom was incorrect to conclude that she was given sufficient time to appear on the programme.

In its Preliminary View, Ofcom considered that the broadcaster had taken steps to make Baroness Scotland's representatives aware that there had been criticisms levelled against her in the days preceding the broadcast of the programme. Carter-Ruck said that Professor Choudhury admitted in an email after the programme was broadcast that Mr Landale "spoke in general terms about the disquiet around the Secretary-General by those at the FCO and the Palace". However, it said that there was "nothing like the kind of detail" regarding the

allegations provided by Mr Landale that would warrant Baroness Scotland later "dropping everything" to appear on the programme at one hour's notice. Rather, the general terms in which Mr Landale spoke gave no indication of the seriousness of the allegations which would be levelled against Baroness Scotland. Further, Carter-Ruck said that the BBC had inaccurately stated that there had been a "series of conversations" with Professor Choudhury and Sir Simon Gass. It said that in the two conversations before the programme was broadcast, Mr Landale at no point hinted that he wanted to speak to Baroness Scotland directly, or that the BBC wanted to interview her.

Carter-Ruck said that, while it did not state that Baroness Scotland believed her views were misrepresented in the programme, it considered that Ofcom's reliance on this point in its Preliminary View was misguided. It said that serious and personal allegations were made against Baroness Scotland in the programme which were tantamount to accusing her of "incompetence, arrogance, poor leadership and even of offending the Queen". Carter-Ruck said that the only person who could have addressed such allegations was Baroness Scotland herself. Therefore, it was immaterial whether Mr Doyle, who it said had left the Secretariat several months earlier, succeeded in adequately representing her views, as he had been approached by the BBC to offer his independent opinions and not those of Baroness Scotland.

Carter-Ruck said that, as the Secretary-General of an international organisation, Baroness Scotland's work is programmed months in advance and she therefore has some "inescapable commitments". As a result, her diary is such that media interviews require a reasonable period of time to set up. Carter-Ruck said that neither the BBC nor Ofcom would expect a high-ranking politician or chief executive to drop his or her commitments at one hour's notice to appear on any programme. To consider otherwise would be to "fundamentally misunderstand" the nature of an international intergovernmental organisation, the workload of its chief executive and her priorities.

Carter-Ruck said that the BBC's failure to give Baroness Scotland enough time to respond to the allegations also resulted in unfairness to her. It said that, in reaching its Preliminary View, Ofcom placed much weight on the contributions of Mr Doyle in representing Baroness Scotland's point of view. Carter-Ruck said that Ofcom was mistaken in doing this, as Mr Doyle was not able to present the material facts in a way that was fair to Baroness Scotland. It said that this was especially so in relation to the allegation that Sir Simon Gass had been "drafted in" by the government to "shore up" the organisation. Carter-Ruck said that Mr Doyle left the Secretariat in October 2016, three months before the arrival of Sir Simon Gass. As a result, he would not have known the circumstances behind which Sir Simon Gass came into the Secretariat and was, therefore, unable to put forward an "authoritative response" concerning the allegation.

Carter-Ruck said that the allegation that the Queen was displeased at Baroness Scotland's leadership of the Secretariat, even if it was presented as the opinion of certain diplomats, was plainly of the "utmost seriousness" and required a personal response from Baroness Scotland. It said that the same was true of the allegation that Baroness Scotland was arrogant. Carter-Ruck said that, notwithstanding the statements in defence of Baroness Scotland, it would only have been fair for the BBC to present a personal response to the allegations. Carter-Ruck said, however, that this was not possible as the specific allegations were not put to Baroness Scotland beforehand. It said that Mr Landale failed to give an accurate representation of the allegations which would be made against Baroness Scotland in his conversations with her representatives prior to the broadcast of the programme.

Carter-Ruck said that, had Mr Landale been clearer and gone into the specifics of the allegations that would be made personally against Baroness Scotland, it would have elicited a different, more robust response and public statement from her.

In conclusion, Carter-Ruck said that the BBC and Ofcom both require that when serious allegations are made against a person they are given a fair opportunity to respond. It said that Baroness Scotland was not afforded this opportunity as the BBC failed to give her sufficient time to respond and did not give proper notice or detail of the allegations to be made against her. Carter-Ruck said that it was also clear that material facts were presented in a way that was unfair to her.

#### *The BBC's representations*

The BBC said that Baroness Scotland's representatives were sufficiently aware of the nature of the criticisms and their sources to be able to make an informed decision about whether to contribute to the programme. It said it would have been open to her representatives to offer an alternative spokesperson who might address the issues, such as the Commonwealth's Director of Communications.

The BBC said that Carter-Ruck disputed there were "a series of conversations" prior to broadcast. However, the BBC correspondent noted that initial contact was by email to Sir Simon Gass on 24 January 2017, followed by two substantive telephone calls on 25 January. The BBC said that one of these was a conference call including Sir Simon Gass and Professor Choudhury lasting about twenty minutes, another with Professor Choudhury that evening. On the morning of 26 January, the BBC said that there was at least one call with Professor Choudhury discussing the nature of the Commonwealth Secretariat's statement and when it was likely to be published. It said there was also communication via email and text over the same period.

The BBC said that, in its view, the seriousness and nature of the allegations to be considered was effectively communicated. It said it was not clear why the absence of a formal interview request at this point would have led Baroness Scotland's representative to misunderstand this. The BBC said that had an interview with Baroness Scotland been offered it would have been accepted.

The BBC said that it believed Mr Doyle was well placed to comment on the matters discussed. It noted that Carter-Ruck said that Mr Doyle was unable to respond in an "authoritative" manner to the discussion on the appointments of Mr Hitchens and Sir Simon Gass. However, the BBC said Carter-Ruck did not point to any particular arguments which were missing from his account or say on what basis it did not agree with Ofcom's assessment of the robust challenge he offered. Additionally, the BBC said that Carter-Ruck did not explain why it did not agree that listeners were given sufficient information to understand that there may have been other reasons behind the appointments.

The BBC added that Carter-Ruck said that the BBC "contends" that the supposed displeasure of the Queen was presented as "the opinion of certain diplomats". The BBC said that the fact it was only that was entirely clear in the programme:

*"Some diplomats have inferred the fact that she's not attending a particular function is somehow a sign of royal displeasure. I'm told by well-placed sources that this isn't true, that her diary has been trimmed because she's 90, that actually it's wholly incorrect to*

*link it to the debate about the Secretariat. But it shows you the scale of the concern that some diplomats are inferring that”.*

The BBC said that Carter-Ruck maintained it would only have been fair to present a personal response to this and other allegations. However, it said that the opportunity to make such a response was offered and the BBC would have been “pleased to air it”.

#### Supplementary material

On receipt of the broadcaster's response, Carter-Ruck said that the BBC continued to “mischaracterise” the conversations it had with Professor Choudhury. It said that Professor Choudhury was not a recipient of an email on 24 January 2017 and that his contact with Mr Landale did not begin until 25 January 2017. Therefore, it said it was inaccurate of the BBC to state that initial contact was on 24 January 2017. In relation to the statement made by the BBC that had an interview with Baroness Scotland been offered to the BBC, it would have accepted it, Carter-Ruck said that the implication that the Secretariat should have offered Baroness Scotland for an interview without one specifically being requested was “absurd”. It said that Baroness Scotland is the head of an international organisation which is the secretariat and administrative arm for, then, 52 member states and 2.4 billion people. Carter-Ruck said it was for Mr Landale to request personal comment from Baroness Scotland in relation to the allegations made and this was not done until one hour before broadcast which, for the reasons already provided, was not a fair opportunity to respond.

Ofcom provided this further information to the BBC and asked for its response.

The BBC said that Carter-Ruck appeared to base their claim that the BBC had mischaracterised communications on the assumption that all communication was with Professor Choudhury. It said that Mr Landale confirmed that his email of 24 January 2017 was to Sir Simon Gass and it is not true to say that the BBC's description of initial contact was inaccurate.

#### **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment in 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, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript of it and both parties' written submissions and supporting documentation. Ofcom also took careful account of the representations made by the parties in response to Ofcom's Preliminary View. 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) Ofcom considered Baroness Scotland’s complaint, made on her behalf by Carter-Ruck, that she was treated unjustly or unfairly in the programme as broadcast because material facts were presented, disregarded or omitted in a way that was unfair.

Practice 7.9 states:

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

Practice 7.13 states:

“where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner”.

Ofcom’s role is to consider whether a programme has caused unfairness to an individual or organisation. In particular, we consider whether material facts have been presented, disregarded or omitted in a way that was unfair to people or organisations. This will depend on all the particular facts and circumstances of the case including the nature of the material and the context within which it was broadcast.

Ofcom considered each sub-head of complaint in turn in deciding whether Baroness Scotland was treated unfairly in the programme as broadcast.

- i) We first considered whether the programme caused unfairness to Baroness Scotland by alleging that the government had “drafted in” senior officials in an effort to “shore up” the Commonwealth Secretariat because it was concerned about the way the organisation was being run.

Carter-Ruck said that this statement was inaccurate and that it unfairly implied that the government had lost faith in the Secretary-General’s ability to run the Secretariat, which Carter-Ruck said was “simply untrue”.

Ofcom carefully listened to the programme and took particular account of the statements made by the programme’s news correspondent, its presenter and Mr Landale about the appointments of senior officials to the Commonwealth (as set out in the “Programme summary” section above). Ofcom considered that listeners would have been likely to understand from these statements that Mr Hitchens and Sir Simon Gass had been appointed by the government directly. We also took into account Mr Landale’s explanation of the appointments as having been made in an effort to “shore up” the organisation amid concerns over the way it was being run. Ofcom considered that listeners would likely have understood from this explanation that the government was potentially concerned about Baroness Scotland’s

leadership of the Secretariat. However, Ofcom also took into account that the programme included an interview with Mr Doyle during which he challenged Mr Landale's assertion that the appointments had been made by the government because it was concerned about Baroness Scotland's leadership. Mr Doyle stated that the appointments of Mr Hitchens and Sir Simon Gass were "*not unusual*" and that Mr Landale's explanation of the reasons behind them had "*slightly elided*" and "*conflated*" two different issues. Mr Doyle explained that the officials had been appointed as part of a reform programme (implemented by Baroness Scotland) which was already underway in the Secretariat and as a result of increased government interest in the Commonwealth because of issues surrounding Brexit, the trade ministers' meeting later in the year, and the Commonwealth Heads of Government Meeting in 2018.

Carter-Ruck stated in its representations on the Preliminary View that the fact Mr Doyle had left the Secretariat in October 2016 meant that he did not know the circumstances of Sir Simon Gass' appointment and was therefore unable to provide an authoritative response to Mr Landale. However, while Mr Doyle may not have been working at the Secretariat at the time of Sir Simon Gass' appointment, Carter-Ruck did not appear to raise concerns that his responses regarding the appointment had misrepresented Baroness Scotland's position. Further, Ofcom considered that Mr Doyle did provide a robust challenge during his interview on the programme to the earlier comments made by Mr Landale about Baroness Scotland. Additionally, we considered that Mr Doyle provided sufficient information to enable listeners to understand that there may have been other reasons behind the appointments of Mr Hitchens and Sir Simon Gass. We therefore did not consider the programme caused unfairness to Baroness Scotland in this respect.

- ii) We also considered the complaint that the programme alleged that a government report had threatened to withdraw funding to the Commonwealth Secretariat because the organisation was "*underperforming*" and "*needed urgent organisational reform*".

Carter-Ruck said that this was misleading in that it suggested Baroness Scotland was responsible for the underperformance of the Secretariat identified in the report, when in fact the report had related to a period before Baroness Scotland had assumed office as Secretary-General.

Ofcom took into account that the programme had said: "*a report in December threatened to withdraw funding unless the Commonwealth Secretariat improved transparency and budget discipline*". We considered Mr Landale's explanation that the Commonwealth Secretariat was a "*troubled*" organisation and that there had been "*...a government report last month that said it was underperforming, it needed urgent organisational reform, if it didn't change the government would cut its funding*". Mr Landale also summarised the Secretariat's statement saying that Baroness Scotland had the backing of the 52 member states which made clear that she was appointed the previous April.

We also considered that during the interview with Mr Doyle on the programme it was explained that Baroness Scotland had "*inherited problems*" when she was appointed Secretary General. Further, we considered that during the interview Mr Doyle emphasised the fact that the report by the DfID covered "*a period entirely*

*covered by the previous Secretary-General rather than the current one*". In Ofcom's view, Mr Doyle's statement made clear to listeners that the report related to a period of time before Baroness Scotland had assumed office as Secretary-General. We therefore considered that it was made clear in the programme that Baroness Scotland was not responsible for the problems of underperformance at the Commonwealth Office to which the DfID report related. We therefore did not consider that the way in which this material was presented in the programme caused any unfairness to Baroness Scotland.

- iii) We next considered Carter Ruck's complaint that the programme stated that there had been criticism of financial extravagance made against Baroness Scotland in the media surrounding the refurbishment of her official residence.

Carter-Ruck said it was untrue that there had been any financial extravagance or wasteful spending on the Secretary-General's behalf. It said that, although various newspapers had made these allegations against Baroness Scotland, they were misleading and false.

Ofcom took into account that the programme said that Baroness Scotland had *"been widely criticised in the media for allegations of extravagance over her official residence"*. This was immediately followed by the statement *"Allegations she denies"*.

Ofcom took into account the BBC's submission that the fact Baroness Scotland had been previously criticised in media reports for financial extravagance was a "matter of record" and that Mr Landale had "simply reported that these allegations had been made".

We considered that listeners were likely to have understood from Mr Landale's comment that claims of financial extravagance by Baroness Scotland had been made. Additionally, Ofcom considered that Mr Landale made clear that Baroness Scotland had denied the allegations previously made against her in this respect.

We also took into account the fact that the programme included a statement from Mr Doyle in defence of Baroness Scotland's position with regard to the allegations made about her in the media. In the statement, Mr Doyle stressed the importance of recognising that it was normal practice for the official residence to be redecorated each time a new Secretary-General was appointed.

We therefore considered that the programme made clear that Baroness Scotland had denied the allegations made against her and that it included a defence of her position in this regard from Mr Doyle. We did not consider that the way in which this material was presented in the programme caused any unfairness to Baroness Scotland.

- iv) Ofcom also considered whether the programme caused unfairness to Baroness Scotland because it claimed that senior government officials had viewed the fact that the Queen would not be attending a major Commonwealth function as *"a signal of royal displeasure"* at Baroness Scotland's leadership.

Carter-Ruck said that Baroness Scotland and the Secretariat had received nothing but support and encouragement from the Palace and that to suggest otherwise was unfair. It said that the fact the programme included a denial of the allegation against Baroness Scotland from "*well-placed sources*" was not sufficient in preventing unfairness to her, because it "said nothing of the credibility of those sources or the context in which their comments were made".

We took into account Carter-Ruck's concern that the "*well-placed sources*" speaking to Mr Landale in defence of Baroness Scotland were not further identified in the programme. However, neither the sources quoted as having made the allegation against her to Mr Landale nor the sources quoted as having spoken to him in her defence were specifically identified. Therefore, Ofcom did not consider it likely that listeners would have called into question the credibility of the statements in Baroness Scotland's defence because the sources providing them remained anonymous.

Ofcom recognised that Carter-Ruck considered that the suggestion that Baroness Scotland had received anything but support and encouragement from the Palace was unfair. However, we considered that the language used by Mr Landale was unlikely to have led listeners to consider it was a matter of fact that the Queen's absence was a sign of royal displeasure, but rather that this was how "*some diplomats*" had interpreted it. We took into account Carter-Ruck's representations in which it stated that, even if this was the case, the allegation was "plainly of the utmost seriousness that it required a personal response" from Baroness Scotland. However, Ofcom considered that the programme provided sufficient information for listeners to understand that there were other possible reasons for the Queen's absence which were nothing to do with concerns over Baroness Scotland's leadership. We did not consider, therefore, that the inclusion of this statement caused unfairness to Baroness Scotland.

- v) Ofcom next considered whether the programme caused unfairness to Baroness Scotland because it alleged that some senior diplomatic and political sources had referred to Baroness Scotland as "*arrogant*" and had expressed concerns about her leadership abilities.

Carter-Ruck said that these were grave and serious allegations of incompetence which "*constituted a strong and damaging critique*" of Baroness Scotland. It said that Mr Landale's reference to some of the allegations as being "*unrepeatable on air*" suggested their "sensational, salacious and defamatory nature" and implied to listeners that they were "so damaging and gross that they were unrepeatable in decent company".

Ofcom took into account that Mr Landale's comments in the programme about Baroness Scotland (as set out in the "Programme summary" section above) included personal statements about her character and leadership abilities, including the suggestion that she was "*arrogant*" and lacked the leadership skills for the role of Secretary-General. We further considered that Mr Landale's description of some of the concerns expressed to him "*off the record*" about Baroness Scotland as being "*unrepeatable on air*" suggested that they were potentially serious in nature.

However, the programme also included a number of statements from sources speaking in defence of Baroness Scotland's leadership abilities. We also considered that the sources quoted by Mr Landale in defence of Baroness Scotland explained that the concerns surrounding her leadership skills had been expressed because she was "*just reforming an organisation, she's ruffling feathers*". This was emphasised further during the subsequent interview on the programme with Mr Doyle, who explained that Baroness Scotland had recently implemented a programme of reform within the organisation which had thrown up "*a number of challenges*". Mr Doyle went on to speak in support of Baroness Scotland's leadership abilities, stating that she had displayed in her position as Secretary-General "*a commitment to reform the organisation, to listen to staff, to implement their views*".

We took into account Carter-Ruck's representations on the Preliminary View that this allegation against Baroness Scotland was of the utmost seriousness and that it would only have been fair for the BBC to present a personal response from her in the programme. However, Ofcom considered that the inclusion of statements defending Baroness Scotland's position with regard to the concerns highlighted by Mr Landale, and in support of her leadership abilities, meant that the programme did not cause unfairness to Baroness Scotland in this respect.

Taking account of the circumstances, and for the reasons set out above, Ofcom did not consider that material facts were presented, disregarded or omitted in a way that was unfair to Baroness Scotland. Therefore, Ofcom considered that Baroness Scotland was not treated unfairly in the programme in this respect.

- b) We next considered the complaint that Baroness Scotland was not given an appropriate and timely opportunity to respond to the allegations made about her in the programme.

Practice 7.11 states:

"If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond".

As noted above, Practice 7.13 states:

"Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner".

Carter-Ruck said that the BBC had waited until one hour before the programme was due to be broadcast to invite Baroness Scotland to take part in the report, and that it did not set out the specific allegations that would be made against her in the programme. It said that, had Baroness Scotland been made aware of the "*defamatory nature*" of the allegations, she would have offered a more robust response.

Carter-Ruck said that, because the programme included allegations specifically about her, the only person in a position to appropriately respond to them was Baroness Scotland herself and that she was not given an appropriate and timely opportunity to do so.

In considering this aspect of the complaint, we first considered whether the statements made about Baroness Scotland in the programme amounted to significant allegations of wrongdoing or incompetence. As set out in detail in the "Programme summary" section above, the programme included claims that the government was concerned about Baroness Scotland's running of the Commonwealth Secretariat, and that "*some people*" said she was "*arrogant*" and that she lacked the leadership skills necessary for her role as Secretary-General. Ofcom considered that this constituted a significant allegation of wrongdoing or incompetence and that, in accordance with Practice 7.11, the programme makers needed to offer Baroness Scotland an appropriate and timely opportunity to respond to it in order to avoid unfairness.

Ofcom considered the BBC's submission that Mr Landale had first made Baroness Scotland's representatives, including Sir Simon Gass and Professor Choudhury, the then Director of Media and PR for the Commonwealth, aware of the story over a series of telephone conversations in the days preceding the broadcast. Additionally, Mr Landale had made clear during the conversations that the criticisms which had been levelled against Baroness Scotland were "strong" and of "sufficient gravity" for him to consider the story worth pursuing. The BBC also submitted that the Professor Choudhury's understanding was acknowledged in an email he sent to the BBC on 29 January 2017 in which he stated: "I concede that you spoke in general terms about the disquiet around the Secretary-General by those at the FCO and the Palace". The BBC said that, in addition to the statement secured from Professor Choudhury in response to the allegations, a request for an interview with Baroness Scotland herself was lodged at the earliest opportunity once it was certain that the item would go ahead. The BBC explained that its request for an interview with Baroness Scotland was declined and that it therefore requested an interview from Mr Doyle, who had been a communications adviser to Baroness Scotland's transition team and was therefore well placed to speak about the issues. Ofcom also took into account Carter-Ruck's representations, in which it stated that the "general terms" in which Mr Landale had spoken to Baroness Scotland's representatives gave no indication of the seriousness of the allegations which would be levelled against her. It also said that in the conversations that took place before the programme was broadcast Mr Landale at no point hinted that he wanted to speak to Baroness Scotland directly, or that the BBC wanted to interview her.

Ofcom's guidance on Practice 7.11 explains that "an individual or organisation needs to be given sufficient information concerning the arguments and evidence to be included in the programme to enable them to respond properly." Ofcom recognised that the level of detail in which the allegations against Baroness Scotland were described by Mr Landale during his conversations with her representatives in the days preceding the broadcast of the programme is a matter which is disputed by the parties. Nevertheless, we considered it was clear that the broadcaster had taken steps to make Baroness Scotland's representatives aware that there had been criticisms levelled against her in the days preceding the broadcast of the programme.

We also took into account Carter-Ruck's concern that the BBC had invited Baroness Scotland to take part in the programme just one hour before it was due to broadcast. Carter-Ruck submitted that as a head of a major organization, it was "wholly unreasonable" to expect Baroness Scotland "to drop everything, when she has considerable prior work commitments, and appear on air". Carter-Ruck reiterated in its representations on the Preliminary View that as Secretary-General of an international organisation, Baroness Scotland's work is programmed months in advance and she

therefore has some “inescapable commitments”. As a result, her diary is such that media interviews require a reasonable time period to set up. Ofcom recognised that Baroness Scotland is a high profile public figure. However, we considered it was not unreasonable for the BBC to expect that she may be able to appear in person on the programme (whether it be in the studio or by telephone) at short notice particularly given the earlier contact with her representatives. We recognised that one hour was a tight timeframe, however we took into account that this opportunity to respond was given to Baroness Scotland and that her representatives had not cited any specific circumstances which made the one-hour timeframe untenable, and so unfair. Given the above, Ofcom considered that Baroness Scotland had been provided with an appropriate and timely opportunity to respond to claims made about her in the programme, in accordance with Practice 7.11.

Ofcom recognised the fact that significant allegations were made against Baroness Scotland in the programme. However, having had the offer of an on-air interview with Baroness Scotland declined, the programme instead included the statements provided by Baroness Scotland's representatives as well as an interview with Mr Doyle, who responded to the allegations in her defence. We considered Carter-Ruck's representations on the Preliminary View, in which it stated that it was “immaterial” whether Mr Doyle had succeeded in adequately representing Baroness Scotland's views because he had been approached to offer his own independent opinions and not those of Baroness Scotland. However, we took into account that Carter-Ruck did not appear to raise concerns that responses given by Mr Doyle in defence of Baroness Scotland had misrepresented her, or her position, in any way in the programme. Therefore, Ofcom was satisfied that, in accordance with Practice 7.13, the broadcaster had adequately and fairly reflected Baroness Scotland's position in regard to the allegations about her included in the programme.

Taking all these factors into account, Ofcom considered that there was no unfairness to Baroness Scotland in this respect.

**Ofcom has not upheld Baroness Scotland's complaint, made on her behalf by Carter-Ruck, of unjust or unfair treatment in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 25 June and 8 July 2018 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

<b>Programme</b>	<b>Service</b>	<b>Transmission date</b>	<b>Categories</b>
One Night with My Ex	Channel 5	02/01/2018	Generally accepted standards

For more information about how Ofcom conducts investigations about content standards on television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 25 June and 8 July 2018 because they did not raise issues warranting investigation.

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

Programme	Service	Transmission Date	Categories	Number of complaints
Ben Fogle: Great African Migration	5Select	26/06/2018	Animal welfare	1
Jeeto Khelo Pakistan	ARY Family	01/06/2018	Product placement	1
Robot Trains	Cartoonito	04/06/2018	Violence	1
Ninja Warrior	Challenge	25/06/2018	Animal welfare	1
24 Hours in Police Custody	Channel 4	11/06/2018	Crime and disorder	1
Ackley Bridge	Channel 4	04/07/2018	Sexual material	1
Bake Off: The Professionals	Channel 4	17/06/2018	Sexual material	1
Channel 4 News	Channel 4	01/06/2018	Due impartiality/bias	1
Channel ident	Channel 4	30/06/2018	Generally accepted standards	1
Ramsay's Kitchen Nightmares USA	Channel 4	25/06/2018	Offensive language	1
Seven Psychopaths	Channel 4	02/06/2018	Sexual orientation discrimination/offence	1
Supershoppers	Channel 4	21/06/2018	Gender discrimination/offence	1
The Big Narstie Show	Channel 4	29/06/2018	Race discrimination/offence	1
The Big Narstie Show (trailer)	Channel 4	22/06/2018	Race discrimination/offence	1
The Big Narstie Show (trailer)	Channel 4	23/06/2018	Generally accepted standards	1
The Big Narstie Show (trailer)	Channel 4	25/06/2018	Race discrimination/offence	1
The Big Narstie Show (trailer)	Channel 4	26/06/2018	Race discrimination/offence	1
The Big Narstie Show (trailer)	Channel 4	27/06/2018	Race discrimination/offence	1
The Big Narstie Show (trailer)	Channel 4	28/06/2018	Race discrimination/offence	1
The Big Narstie Show (trailer)	Channel 4	29/06/2018	Race discrimination/offence	2

Programme	Service	Transmission Date	Categories	Number of complaints
The Big Narstie Show (trailer)	Channel 4	Various	Race discrimination/offence	1
The Last Leg	Channel 4	23/06/2018	Generally accepted standards	2
The Last Leg	Channel 4	29/06/2018	Generally accepted standards	1
Titanic	Channel 4	30/06/2018	Nudity	2
Before They Were Stars	Channel 5	29/06/2018	Generally accepted standards	1
Fights, Camera, Action	Channel 5	25/06/2018	Gender discrimination/offence	1
Fights, Camera, Action	Channel 5	25/06/2018	Generally accepted standards	4
Forty-One Dogs in a Three-Bed Semi	Channel 5	24/06/2018	Animal welfare	1
The Wright Stuff	Channel 5	07/06/2018	Generally accepted standards	2
The Wright Stuff	Channel 5	14/06/2018	Race discrimination/offence	1
When Live News Goes Horribly Wrong	Channel 5	08/04/2018	Materially misleading	1
City Beat Breakfast	City Beat Preston	06/06/2018	Competitions	1
Summer with Dave	Dave	01/07/2018	Generally accepted standards	1
Would I Lie to You	Dave	26/06/2018	Transgender discrimination/offence	1
Hollyoaks	E4	01/06/2018	Generally accepted standards	1
The Big Narstie Show (trailer)	E4	28/06/2018	Generally accepted standards	1
Men in Black	Film4	19/06/2018	Offensive language	1
Fast & Furious 6	Film4 +1	26/06/2018	Offensive language	1
The Breakfast Show	Gaydio FM	18/06/2018	Sexual material	1
Jo & Sparky	Gem 106	20/06/2018	Competitions	1
Heart Breakfast with James and Becky	Heart Kent	18/06/2018	Commercial communications on radio	1
Forged in Fire	History	30/06/2018	Offensive language	1
Charity Appeal by Muslim Aid	Islam Channel	31/05/2018	Charity appeals	1
Coronation Street	ITV	06/06/2018	Race discrimination/offence	1
Coronation Street	ITV	25/06/2018	Materially misleading	1
Coronation Street	ITV	26/06/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Coronation Street	ITV	29/06/2018	Race discrimination/offence	1
Coronation Street	ITV	02/07/2018	Generally accepted standards	5
Eat Yourself Healthy? Tonight	ITV	14/06/2018	Harm	1
Emmerdale	ITV	12/06/2018	Crime and disorder	1
Emmerdale	ITV	26/06/2018	Generally accepted standards	1
Emmerdale	ITV	29/06/2018	Violence	1
Good Evening Britain	ITV	28/06/2018	Due impartiality/bias	2
Good Evening Britain	ITV	28/06/2018	Generally accepted standards	1
Good Evening Britain	ITV	28/06/2018	Offensive language	5
Good Morning Britain	ITV	23/04/2018	Generally accepted standards	1
Good Morning Britain	ITV	01/06/2018	Gender discrimination/offence	1
Good Morning Britain	ITV	05/06/2018	Offensive language	2
Good Morning Britain	ITV	11/06/2018	Disability discrimination/offence	1
Good Morning Britain	ITV	19/06/2018	Generally accepted standards	1
Good Morning Britain	ITV	20/06/2018	Generally accepted standards	7
Good Morning Britain	ITV	20/06/2018	Race discrimination/offence	1
Good Morning Britain	ITV	21/06/2018	Sexual material	1
Good Morning Britain	ITV	25/06/2018	Generally accepted standards	4
Good Morning Britain	ITV	26/06/2018	Generally accepted standards	1
Good Morning Britain	ITV	27/06/2018	Generally accepted standards	19
Good Morning Britain	ITV	28/06/2018	Generally accepted standards	14
How to Spend it Well: House and Garden	ITV	05/06/2018	Materially misleading	1
ITV News	ITV	17/06/2018	Due impartiality/bias	1
ITV News	ITV	23/06/2018	Due impartiality/bias	2
ITV News	ITV	02/07/2018	Due impartiality/bias	1
Keith Lemon: Coming in America (trailer)	ITV	25/06/2018	Sexual material	1
Live International Football	ITV	07/06/2018	Advertising placement	1

Programme	Service	Transmission Date	Categories	Number of complaints
Loose Women	ITV	19/06/2018	Gender discrimination/offence	1
Loose Women	ITV	26/06/2018	Generally accepted standards	1
Loose Women	ITV	29/06/2018	Sexual material	1
Loose Women	ITV	03/07/2018	Generally accepted standards	4
Lorraine	ITV	29/06/2018	Race discrimination/offence	1
Midsomer Murders	ITV	19/05/2018	Dangerous behaviour	1
The Jeremy Kyle Show	ITV	29/06/2018	Generally accepted standards	1
This Morning	ITV	21/06/2018	Sexual material	1
This Time Next Year	ITV	10/04/2018	Disability discrimination/offence	1
Trevor McDonald: Return to South Africa	ITV	19/06/2018	Due impartiality/bias	1
Trevor McDonald: Return to South Africa	ITV	19/06/2018	Materially misleading	2
Trevor McDonald: Return to South Africa	ITV	19/06/2018	Race discrimination/offence	1
Unforgotten (trailer)	ITV	28/06/2018	Scheduling	1
World Cup Live: England v Belgium	ITV	28/06/2018	Sexual orientation discrimination/offence	1
World Cup Live: Germany vs Sweden	ITV	23/06/2018	Generally accepted standards	1
World Cup Live: Iran v Spain	ITV	20/06/2018	Race discrimination/offence	5
World Cup Live: Iran v Spain	ITV	20/06/2018	Violence	5
World Cup Live: Poland v Columbia	ITV	24/06/2018	Generally accepted standards	1
World Cup Live: Poland v Senegal	ITV	19/06/2018	Race discrimination/offence	1
Love Island	ITV 2	02/07/2018	Generally accepted standards	1
Family Guy	ITV2	03/07/2018	Generally accepted standards	2
Love Island	ITV2	03/06/2018	Generally accepted standards	1
Love Island	ITV2	19/06/2018	Generally accepted standards	31
Love Island	ITV2	20/06/2018	Generally accepted standards	13
Love Island	ITV2	20/06/2018	Sexual orientation discrimination/offence	2

Programme	Service	Transmission Date	Categories	Number of complaints
Love Island	ITV2	25/06/2018	Generally accepted standards	1
Love Island	ITV2	26/06/2018	Offensive language	2
Love Island	ITV2	27/06/2018	Generally accepted standards	1
Love Island	ITV2	28/06/2018	Race discrimination/offence	1
Love Island	ITV2	29/06/2018	Generally accepted standards	5
Love Island	ITV2	30/06/2018	Generally accepted standards	4
Love Island	ITV2	01/07/2018	Generally accepted standards	2,644
Love Island	ITV2	02/07/2018	Generally accepted standards	3
Love Island	ITV2	03/07/2018	Generally accepted standards	2
Love Island	ITV2	04/07/2018	Gender discrimination/offence	1
Love Island	ITV2	04/07/2018	Generally accepted standards	3
Love island	ITV2	05/07/2018	Voting	1
Love Island: Aftersun	ITV2	17/06/2018	Sexual material	1
The Jeremy Kyle Show	ITV2	11/06/2018	Generally accepted standards	1
River Monsters	ITV4	30/06/2018	Materially misleading	1
World Cup Live: Australia v Peru	ITV4	26/06/2018	Generally accepted standards	1
Botched	Kanal 11 (Sweden)	15/06/2018	Gender discrimination/offence	1
Botched	Kanal 11 (Sweden)	16/06/2018	Gender discrimination/offence	1
Botched	Kanal 11 (Sweden)	22/06/2018	Gender discrimination/offence	1
Botched	Kanal 11 (Sweden)	24/06/2018	Gender discrimination/offence	1
Sommaren med släkten	Kanal 5 (Sweden)	03/06/2018	Generally accepted standards	1
Wahlgrens Värld	Kanal 5 (Sweden)	03/05/2018	Sponsorship	1
James O'Brien	LBC 97.3 FM	13/06/2018	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	02/07/2018	Generally accepted standards	1
Shelagh Fogarty	LBC 97.3 FM	18/06/2018	Due impartiality/bias	1
Haqaiq	Link FM 97.3	03/05/2018	Elections/Referendums	1
Car S.O.S	National Geographic	28/06/2018	Offensive language	1

Programme	Service	Transmission Date	Categories	Number of complaints
House	Pick	22/06/2018	Violence	1
Traffic and travel reports	Q97.2 FM	26/06/2018	Materially misleading	1
Ewen & Cat	Radio Borders	01/07/2018	Race discrimination/offence	1
Going Underground	RT	26/04/2018	Due impartiality/bias	1
Going Underground	RT	23/05/2018	Materially misleading	1
Headline News	RT	20/04/2018	Due accuracy	1
Headline News	RT	02/05/2018	Due impartiality/bias	1
News	RT	04/05/2018	Due impartiality/bias	1
RT News	RT	14/04/2018	Other	1
Sam Delaney's News Thing	RT	09/06/2018	Due impartiality/bias	1
Sam Delaney's News Thing	RT	09/06/2018	Offensive language	1
Sputnik	RT	26/05/2018	Due impartiality/bias	1
The Alex Salmond Show	RT	05/04/2018	Due impartiality/bias	1
Worlds Apart with Oksana Boyko	RT	24/05/2018	Due impartiality/bias	1
Signal Breakfast Show	Signal 1	08/06/2018	Competitions	1
Sky News	Sky News	17/06/2018	Due impartiality/bias	1
Sky News	Sky News	19/06/2018	Generally accepted standards	1
Sky News	Sky News	23/06/2018	Due impartiality/bias	1
Sky News	Sky News	27/06/2018	Due accuracy	1
Sky News Live	Sky News	06/06/2018	Generally accepted standards	1
Sunrise	Sky News	18/06/2018	Due accuracy	1
Sunrise	Sky News	19/06/2018	Generally accepted standards	1
Sunrise	Sky News	22/06/2018	Generally accepted standards	1
S.W.A.T. (trailer)	Sky Sports	23/06/2018	Offensive language	1
International Rugby Union: South Africa v Engalnd	Sky Sports Main Event	09/06/2018	Advertising/editorial distinction	1
Hawaii Five O	Sky1	03/06/2018	Disability discrimination/offence	1
Isle of White Festival: Travis	Sky1	24/06/2018	Gender discrimination/offence	1
8pm Movies	Sony Max	04/06/2018	Sponsorship credits	1
STV News	STV	05/07/2018	Nudity	1
Alan Brazil Sports Breakfast Show	Talksport	02/07/2018	Race discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
World Cup coverage (trailer)	Talksport	02/07/2018	Race discrimination/offence	1
World Cup Football: Russia v Spain	Talksport	01/07/2018	Offensive language	1
X-Men: Days of Future Past	TV3 (Sweden)	17/06/2018	Advertising placement	1
Party Political Broadcast by the Scottish National Party	Various	01/03/2018	Materially misleading	1
Programme trailers	Various	Various	Scheduling	1
Programming	Various	Various	Religious/Beliefs discrimination/offence	1
Snog, Marry, Avoid	VH1	02/06/2018	Transgender discrimination/offence	1
Black Ops: Crisis in Malaya	Yesterday	17/05/2018	Materially misleading	1

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

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

Programme	Service	Transmission Date	Categories	Number of complaints
BBC Breakfast	BBC 1	30/01/2018	Due accuracy	1
BBC News	BBC 1	07/06/2018	Due impartiality/bias	1
Question Time	BBC 1	14/12/2017	Due impartiality/bias	1
Question Time	BBC 1	Various	Due impartiality/bias	2
Daily Politics	BBC 2	28/02/2018	Due impartiality/bias	1
Daily Politics	BBC 2	01/03/2018	Due impartiality/bias	1
Newsnight	BBC 2	15/03/2018	Due impartiality/bias	9
BBC News	BBC channels	01/04/2018	Due impartiality/bias	1
BBC News	BBC News Channel	20/06/2017	Other	1
Dateline London	BBC News Channel	05/05/2018	Due impartiality/bias	1
Newswatch	BBC News Channel	16/03/2018	Due impartiality/bias	1
Drivetime	BBC Radio 2	Various	Other	1

Programme	Service	Transmission Date	Categories	Number of complaints
Any Questions	BBC Radio 4	Various	Due impartiality/bias	1
The Food Programme	BBC Radio 4	29/10/2017	Race discrimination/offence	1
Today	BBC Radio 4	05/04/2018	Due impartiality/bias	1
5 Live Breakfast: Your Call	BBC Radio 5 Live	03/01/2018	Due impartiality/bias	1

For more information about how Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf)

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

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 25 June and 8 July 2018 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories
ITV Broadcasting Limited	ITV	Television Access Services
The York Channel CIC	That's York	Programming Commitments (local TV)

For more information about how Ofcom assesses complaints about broadcast licences, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/31942/general-procedures.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf)

### Complaints assessed under the Procedures for investigating breaches of rules for On Demand programme services

Service provider	Categories	Number of complaints
n/a	BBC iPlayer	Television Access Services

n/a	ITV Hub	Television Access Services
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For more information about how Ofcom assesses complaints about on demand services, go to: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/74499/procedures-investigating-breaches.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf)

## Complaints outside of remit

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

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

Programme	Service	Transmission Date	Categories	Number of complaints
Rakuten TV	4000	n/a	Other	1
n/a	Filmstruck	n/a	Access services	2
Advertisement	Ideal World	27/06/2018	Teleshopping	1
Advertisement	ITV	27/06/2018	Advertising content	1
Advertisement	ITV	30/06/2018	Advertising content	1
Advertisements	ITV	28/06/2018	Advertising content	2
Advertisements	ITV	03/07/2018	Advertising content	6
World Cup Live	ITV	n/a	Outside of remit	1
World Cup Live: England vs Belgium	ITV	28/06/2018	Outside of remit	1
Advertisement	ITV2	25/06/2018	Advertising content	1
Advertisement	ITV2	01/07/2018	Advertising content	2
Advertisements	ITV2	02/07/2018	Advertising content	1
Love Island	ITV2	26/06/2018	Outside of remit	1
Love Island	ITV2	29/06/2018	Outside of remit	1
Love Island	ITV2	30/06/2018	Outside of remit	1
Love Island	ITV2	03/07/2018	Outside of remit	1
Love Island	ITV2	04/07/2018	Outside of remit	1
Teleshopping	Jewellery Maker Channel	03/07/2018	Teleshopping	1
Breaking News	Kanal 5 (Sweden)	24/04/2018	Outside of remit	1
Kronofogden knacker på	Kanal 5 (Sweden)	02/05/2018	Outside of remit	1
Programming	Kanal 5 (Sweden)	04/05/2018	Outside of remit	1
Advertisement	n/a	20/06/2018	Advertising content	1
Advertisement	n/a	30/06/2018	Advertising content	1
Cooking on High	Netflix	24/06/2018	Drugs, smoking, solvents or alcohol	1
Cooking on High	Netflix	27/06/2018	Drugs, smoking, solvents or alcohol	1
World Cup Live: Germany vs Sweden	STV	23/06/2018	Outside of remit	1
Land of the Last	TV3 (Sweden)	22/06/2018	Outside of remit	1
Advertisement	YourTV	21/06/2018	Advertising content	1

For more information about how Ofcom assesses complaints about television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

## BBC First

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

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

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

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

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC 1	26/03/2018	Due impartiality/bias	1
BBC News	BBC 1	23/06/2018	Due impartiality/bias	2
BBC News	BBC 1	26/06/2018	Due impartiality/bias	1
Casualty	BBC 1	23/06/2018	Violence	1
EastEnders	BBC 1	15/06/2018	Crime and disorder	1
EastEnders	BBC 1	22/06/2018	Materially misleading	1
Our Girl	BBC 1	04/07/2018	Religious/Beliefs discrimination/offence	1
Question Time	BBC 1	15/06/2018	Due impartiality/bias	1
The Andrew Marr Show	BBC 1	16/06/2018	Religious/Beliefs discrimination/offence	1
The Andrew Marr Show	BBC 1	17/06/2018	Religious/Beliefs discrimination/offence	1
Mock the Week	BBC 2	28/06/2018	Offensive language	1
Springwatch	BBC 2	20/06/2018	Other	1
Chris Mann Show	BBC Cambridge	25/06/2018	Commercial communications on radio	1
BBC News	BBC Channels	23/06/2018	Due impartiality/bias	1
Newsround	BBC iPlayer	11/06/2018	Offensive language	1
BBC News	BBC News Channel	23/06/2018	Due impartiality/bias	2
BBC News	BBC Radio 1	24/06/2018	Due impartiality/bias	1
Programming	BBC Radio 1	04/07/2018	Sexual material	1
Do You Know	CBeebies	05/07/2018	Sexual material	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 25 June and 8 July 2018.

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

Programme	Service	Transmission date
Formula E	Channel 5	10/06/2018
Programming	Heart Extra	16/06/2018
Good Morning Britain	ITV	08/06/2018
Ferne McCann: First Time Mum	ITVBe	09/05/2018
Programming	Link FM 97.3	03/05/2018
Shomoyer Sathe	NTV	23/04/2018