

Sanction: Decision by Ofcom

Sanction: to be imposed on Star China Media Limited (SCML)

For material broadcast on CCTV News¹ on 17 January 2016 and on China Global Television Network (CGTN) on 11 February 2018²

Ofcom’s Sanction Decision against: SCML in respect of its services **CCTV News** and **CGTN** (previously TLCS000575BA/2³).

For: Breaches of the Ofcom Broadcasting Code (the “Code”)⁴:

Rule 7.1: “Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes”; and,

Rule 8.1: “Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted”.

Decision To impose a financial penalty (payable to HM Paymaster General) of **£100,000 (one hundred thousand pounds)**.

¹ CCTV News was renamed as China Global Television Network (CGTN) on 31 December 2016, and the service continued to operate under the same licence.

² [Ofcom’s Adjudication](#) published on 8 March 2021 in issue 422 of the Broadcast and On Demand Bulletin.

³ Ofcom revoked the Licence on 4 February 2021 under section 238(4) of the Communications Act 2003 and Condition 28(2)(a) of the Licence on the basis that SCML had ceased to provide the CGTN service and, in the circumstances, it was appropriate to revoke the Licence. The reasons for Ofcom’s decision are set out in the [Notice of Revocation](#).

⁴ The versions of the Code which were in force at the time of the broadcasts took effect on 1 July 2015 and 1 April 2017.

Executive Summary

1. China Global Television Network (CGTN), formerly CCTV News, was an international English-language satellite news channel. The licence for the provision of the CCTV News and CGTN service was held by Star China Media Limited (“SCML” or the “Licensee”) until 4 February 2021 when the licence was revoked. The Licensee did not hold any other broadcasting licences.
2. On 17 January 2016, CCTV News broadcast *News Desk* which reported on Mr Minhai Gui, who, after being a “fugitive” for over ten years, had apparently voluntarily returned to China to serve a two-year prison sentence for a drink driving offence. The programme included footage of Mr Gui appearing to express regret for his actions. On 11 February 2018, CGTN broadcast *The World Today* which reported on Mr Gui’s voluntary return to China in relation to the drink driving offence and on the arrest of Mr Gui in connection with a different offence. The programme included footage of Mr Gui where he described his time after he had been released from prison and prior to his arrest. He was named in the programme and his face was shown unobscured.
3. In December 2018 Mr Gui’s daughter, Ms Angela Gui, complained to Ofcom on Mr Gui’s behalf about unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programmes and the programmes as broadcast on 17 January 2016 and 11 February 2018.

Ofcom’s Adjudication

4. In [Ofcom's Adjudication](#) (“the Adjudication”) published on 8 March 2021 in issue 442 of the Broadcast and On Demand Bulletin, Ofcom found that the programmes had breached Rules 7.1 and 8.1 of the Code.
5. The Adjudication set out the reasoning as to why Ofcom upheld the complaint of unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programmes and the programmes as broadcast.
6. Ofcom put SCML on notice in the Adjudication that it considered these breaches to be serious, and that it would consider them for the imposition of a statutory sanction.

Licence revocation

7. On 4 February 2021 Ofcom revoked the Licence under section 238(4) of the Communications Act 2003 (the “2003 Act”) and Condition 28(2)(a) of the Licence on the basis that SCML had ceased to provide the CGTN service and in the circumstances it was appropriate to revoke the Licence⁵.
8. By virtue of section 346(3) of the 2003 Act, Ofcom has power to impose a penalty relating to breaches of the Code during the period in which a Licensee held a broadcasting licence, notwithstanding the fact that the Licence has been revoked⁶.

The Sanction Decision

9. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (the “Sanctions Procedures”)⁷, Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on SCML in this case. Having taken account of SCML’s representations, Ofcom has

⁵ The reasons for Ofcom’s decision are set out in the [Notice of Revocation](#).

⁶ By virtue of section 346(3) of the 2003 Act, a person’s liability to have a penalty imposed under section 237 of the 2003 Act in respect of acts or omissions of that person while a holder of a Broadcasting Act licence and to pay such penalty is not affected by that Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty.

⁷ [The Sanctions Procedures](#).

reached the decision that a sanction is warranted in this case since the breaches were serious and repeated for the reasons set out in paragraphs 50 to 59 below.

10. Following consideration of SCML's representations, Ofcom's Decision is that the appropriate and proportionate sanction is to impose a financial penalty of **£100,000 (one hundred thousand pounds)** on SCML. This paper sets out the basis for Ofcom's final Decision on the type and level of sanction to be imposed on the Licensee, taking into account all the relevant material in this case and Ofcom's Penalty Guidelines⁸.

Legal Framework

Communications Act 2003 and Broadcasting Act 1996

11. Ofcom's principal duty, set out in section 3(1) of the 2003 Act, is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure, among other matters, the application to all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both:
 - unfair treatment in programmes included in such services; and
 - unwarranted infringements of privacy resulting from activities carried on for the purposes of such services⁹.
12. Under section 107 of the Broadcasting Act 1996 (as amended) ("the 1996 Act"), Ofcom has a duty to draw up, and from time to time review, a code giving guidance as to principles to be observed, and practices to be followed, in connection with the avoidance of:
 - a) unjust or unfair treatment in programmes; or
 - b) unwarranted infringements of privacy in, or in connection with the obtaining of material included in, such programmes.
13. Further, under section 110(1) of the 1996 Act, Ofcom has a duty to consider and adjudicate on complaints which relate to either unjust or unfair treatment in programmes, or unwarranted infringements of privacy in, or in connection with the obtaining of material included in, such programmes. Such complaints are collectively referred to as "fairness complaints" by virtue of section 110(4) of the 1996 Act.
14. Reflecting Ofcom's duties under section 107 of the 1996 Act, Sections 7 and 8 of the Code set out the principles and practices drawn up by Ofcom in connection with the avoidance of unfair treatment and unwarranted infringements of privacy.
15. In performing these duties, Ofcom must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and, among other things, the need to secure that the application in the case of television and radio services of standards relating to unfair treatment in programmes and unwarranted infringements of privacy is in the manner that best guarantees an appropriate level of freedom of expression¹⁰.

Human Rights Act 1998

16. Under section 6 of the Human Rights Act 1998, as a public authority Ofcom has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human

⁸ [The Penalty Guidelines](#).

⁹ Section 3(2)(f) of the 2003 Act.

¹⁰ Sections 3(3) and 3(4)(g) of the 2003 Act.

Rights (“the Convention”). In particular, in the context of this case, Ofcom has taken account of the related rights under Articles 8 and 10 of the Convention.

17. Article 8 of the Convention provides for a right to respect for one’s “private and family life, his home and his correspondence”, subject to certain restrictions that are “in accordance with law” and “necessary in a democratic society”. Article 8(2) of the Convention states that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
18. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster’s freedom to impart and the audience’s right to receive information and ideas without interference by a public authority and regardless of frontiers (Article 10(1))¹¹. It applies not only to the content of information but also the means by transmission or reception¹². And while subject to exceptions, the need for any restriction must be established convincingly¹³. The exercise of these freedoms may be subject only to conditions and restrictions which are “prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary” (Article 10(2)). Decisions in the European Court of Human Rights make clear that there is little scope for restrictions on freedom of expression in two fields, namely political speech and on matters of public interest. Accordingly, a high level of protection of freedom of expression will normally be accorded, with the authorities having a particularly narrow margin of appreciation.
19. Ofcom must exercise its duties in the light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.
20. In Ofcom’s view, the individual’s right to privacy under Article 8 of the Convention has to be balanced against the competing right of the broadcaster and of the audience to freedom of expression under Article 10 of the Convention. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights in the individual case. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.
21. The interference with Article 10 attendant on imposing a statutory sanction in relation to findings of breaches of due impartiality requirements may, where appropriate and proportionate in the circumstances of the case, be justified by the need to achieve these legitimate aims. In order to be proportionate, any interference must be the minimum necessary to promote the legitimate objective pursued.

Remedial action and penalties

22. Under section 326 of the 2003 Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 Act must include conditions for securing observance, in connection with the provision of that service and in relation to programmes included in the service, of the code made by Ofcom under section 107 of the 1996 Act. In the case of a television

¹¹ *Lindens v Austria* (1986) 8 EHRR 407.

¹² *Autronic v Switzerland* (1990) 12 EHRR 485.

¹³ *Steel & Morris v UK* (2005) EMLR 15.

licensable content service (“TLCS”) licence, Condition 20(5) of the licence requires the licensee to ensure that the provisions of any code made under section 107 of the 1996 Act are complied with.

23. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the 2003 Act insofar as relevant to the case. In this case, because the Licence has been revoked, the only relevant power available to Ofcom is the power to impose a financial penalty under section 237 of the 2003 Act in respect of the breaches of the Code during the period in which a Licensee held a broadcasting licence. The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and five per cent of the qualifying revenue from the licensed service for the licensee’s last complete accounting period falling within the period for which its licence has been in force.

Background – The Adjudication on Mr Gui’s complaint

24. In the Adjudication, Ofcom found that the programmes, *News Desk* and *The World Today*, broadcast by SCML on CCTV News and CGTN on 17 January 2016 and 11 February 2018 respectively, breached Rules 7.1 and 8.1 of the Code. The Adjudication set out the reasons as to why Ofcom upheld the complaint of unjust or unfair treatment and of unwarranted infringement of privacy in connection with the obtaining of material included in the programmes and in the programmes as broadcast.

News Desk

25. The Adjudication noted that the *News Desk* programme broadcast on 17 January 2016 included a report on Mr Gui’s October 2015 return to China following his 2004 conviction relating to a fatal car accident. The report said that Mr Gui had spent eleven years as a “fugitive” but had handed himself into police and was rearrested. It also said that he was “under investigation as he is also suspected of other crimes”. The programme included footage of Mr Gui, filmed by the police while he was in custody, in which he was described as a “fugitive” in a caption. In this footage, Mr Gui spoke in Mandarin and said: “I’m a fugitive. I could not go back to my country to see my parents. They were already in their eighties. My mother is seriously ill now, that really pains me. I want to see her while she’s still alive, that’s why I decided to return and turn myself in. I’m willing to take my responsibility and accept any punishment”. The programme also included further footage of Mr Gui in which he said: “Going back to my country and turning myself in was voluntary and this was not related to others. I don’t want any individuals or organisations, including the Swedish government, to get involved or intervene in this matter...”.
26. In relation to Rule 7.1 of the Code with regards to this programme, Ofcom considered that the inclusion of the footage of Mr Gui, where he appeared to speak openly about having voluntarily returned to China, would have been understood by viewers as Mr Gui willingly accepting responsibility for a serious criminal offence (i.e. a drink driving offence which resulted in the death of another person), and confessing to having been a “fugitive” following his conviction for this offence. Ofcom also considered that SCML ought to have been aware that the circumstances of Mr Gui’s return to China were in dispute and that the inclusion of such statements, without acknowledging that this was disputed by others including Mr Gui’s family¹⁴, may not have

¹⁴ For example, there were newspaper reports on this matter in 2015: [Gui Minhui: the strange disappearance of a publisher who riled China's elite, The Guardian, 8 December 2015](#); [Hong Kong bookstore disappearances shock publishing industry, BBC News, 10 November 2015](#). Ms Gui also said that in 2015, the European Parliament passed a resolution which described Mr Gui’s status as disappeared and Human Rights Watch said that Mr Gui’s departure from Thailand was a case of “enforced disappearance”. [European Parliament resolution on the case of Gui Minhui, jailed publisher in China, 23 November 2016](#); and, [China: Release Abducted Swedish Bookseller, Human Rights Watch, 17 October 2016](#).

accurately or fairly represented the facts. The programme would have therefore left viewers with the misleading impression that it was an uncontested fact that Mr Gui had returned to China voluntarily, and omitting contextual information about this had the potential to be unfair to him. The inclusion of statements about his voluntary return in the context of the report reinforced the impression that Mr Gui voluntarily accepted responsibility for his previous actions and that his apparent confession could be taken at face value. The programme therefore had the clear potential to materially and adversely affect viewers' opinions of Mr Gui.

27. Ofcom also considered that Mr Gui's informed consent had not been obtained. SCML was not present during the filming of the interview and filming had been carried out by the police. SCML was therefore not in a position to establish why Mr Gui was giving the interview nor to establish whether he was the subject of undue pressure given that the interview was carried out by those holding him in custody (i.e. the people who, if there was undue pressure being applied, might reasonably be assumed to be the ones applying it). The fact that Mr Gui was interviewed by those holding him in custody and in that interview he confessed to the offence, to being a "fugitive" who had voluntarily rejected consular assistance and voluntarily returned to China, ought to have been sufficient to create substantial doubt as to whether his purported consent was genuine.
28. Further, it did not appear to Ofcom that SCML had taken appropriate steps to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Gui. Ofcom considered that SCML presented the confession and apologies by Mr Gui as being genuine, voluntary, in his own words, and sufficient to conclude that Mr Gui accepted responsibility for his previous actions, to such an extent that he had been willing to return voluntarily to China and was willing to put on the record his rejection of any consular assistance, in circumstances where SCML had reason to doubt this. This included that the circumstances of Mr Gui's return to China were in dispute, that the interview had been carried out by the police, rather than the Licensee, and that the Licensee had neither verified that Mr Gui had given his informed consent nor established the circumstances which had led to Mr Gui agreeing to the interview with the police. Further, there was nothing included in the programme to suggest to viewers that Mr Gui was being filmed by the police in a detention centre.
29. For these reasons (as detailed further in the Adjudication), Ofcom concluded that the broadcast of this programme had resulted in unfairness to Mr Gui and that the Licensee was therefore in breach of Rule 7.1 of the Code.
30. In relation to Rule 8.1 of the Code, Ofcom considered that Mr Gui had a legitimate expectation of privacy in circumstances where he was filmed by the police at a detention centre where access to him would have been limited and was likely to be restricted, and where he disclosed highly sensitive and personal information. For the reasons set out above, Mr Gui had not provided his informed consent to being filmed nor for the footage to subsequently be included in the broadcast programmes. Ofcom acknowledged that the programme discussed matters which would have been of public interest in that the programme reported on serious issues relating to alleged criminal offences, and that it was important for the broadcaster to be able to make programmes which report on news stories with a view to imparting information about such topics to the audience. However, Ofcom did not consider that the public interest warranted the obtaining of the footage of Mr Gui in such a sensitive situation nor the broadcasting of footage of Mr Gui stating that he had voluntarily returned to China, apparently confessing to a criminal offence and rejecting consular assistance, without having taken further measures to verify the circumstances which had led to the interview and to confirm that his consent had been obtained.
31. For these reasons (as detailed further in the Adjudication), Ofcom found that the Licensee had unwarrantably infringed Mr Gui's legitimate expectation of privacy in connection with both the

obtaining of material included in the programme and in the programme as broadcast and that SCML was therefore in breach of Rule 8.1 of the Code.

The World Today

32. In relation to *The World Today* programme broadcast on 11 February 2011, the Adjudication noted that it included a report which provided an update on Mr Gui's case. It referred to his drink driving conviction and sentence and stated that he had fled the country in 2004 and turned himself in to police in China in 2015. It also said that on his release from prison, he had signed a letter of commitment stating that he would inform authorities if he left Ningbo. The report then said that on 20 January 2018 he had left Ningbo, accompanied by two Swedish diplomats, and was intercepted and arrested by police and placed in custody. The programme reported that "*Chinese police say Gui was carrying a lot of materials concerning state secrets and was suspected of illegally providing state secrets and intelligence overseas endangering state security*". The programme also included footage of Mr Gui, which the programme said had been filmed after he had been detained, speaking to the camera in Mandarin where he described his time in Ningbo after he had been released from prison and prior to his arrest.
33. Regarding Rule 7.1 of the Code, and as set out at paragraph 28, the circumstances of Mr Gui's return to China and his detention were in dispute and we considered SCML ought to have been aware that the inclusion of such statements may not have accurately and fairly represented the facts. Ofcom also considered that the statements in the programme presented Mr Gui, at the time the footage was obtained, as actively and voluntarily cooperating with the Chinese police, and saying he had intended to remain in Ningbo in line with written commitments he had made. When the programme went on to say Mr Gui was detained in the process of leaving Ningbo with Swedish diplomats, this contrasted with the content of the interview and implied Mr Gui had reneged on statements he had voluntarily made regarding his circumstances and future intentions. Further, given the programme did not give any account of whether or not Mr Gui contested the charges against him, nor whether his response on this matter had been sought, we considered that the way the programme presented the footage of his interview, setting out his previous intentions to stay in Ningbo, and the police's account that he had been in possession of state secrets, had the clear potential to materially and adversely affect viewers' opinions of Mr Gui.
34. Ofcom also considered that insufficient steps had been taken by SCML to obtain Mr Gui's informed consent to contribute. SCML did not take any steps to inform Mr Gui as to the nature and purpose of the programme, what the programme was about, why he was being asked to contribute, when and where it would be broadcast, areas of questioning or of any contractual rights and obligations. There were also at least two police officers present during Mr Gui's interview and although Mr Gui may have said that he had asked to meet with the media, the fact that Mr Gui was speaking to the media in the presence of those holding him in custody ought to have created some doubt as to whether Mr Gui's consent was genuine and informed and whether he was making genuine, voluntary statements.
35. In addition, it did not appear to Ofcom that SCML had taken appropriate steps to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Gui. While the programme only included footage of Mr Gui as he described his time in Ningbo after he had been released from prison and prior to his arrest, and of his intention to remain in Ningbo, when taking account of the context in which the interview appeared, the programme resulted in unfairness to him. This context was provided by the statement that Mr Gui had "*turned himself in*", implying he had voluntarily returned to China, had voluntarily admitted responsibility for the drink driving offence and, further, that he had signed a letter of commitment stating he would "*continue cooperating with authorities*" and "*inform authorities if he leaves the city*". This also contrasted with the content of his interview and implied that he had

renege on statements about his circumstances and future intentions to remain in Ningbo. The presentation of this interview as voluntarily given also implied that he was, at the very least, actively cooperating with the police. The inclusion of this footage would have given viewers the clear impression that he had given informed consent to appear and was making genuine and voluntary statements about how he spent his time following his previous release from prison, when SCML had reason to doubt this.

36. For these reasons (as detailed further in the Adjudication), Ofcom concluded that the broadcast of the programme had resulted in unfairness to Mr Gui and that the Licensee was therefore in breach of Rule 7.1 of the Code.
37. In relation to Rule 8.1 of the Code, Ofcom considered that Mr Gui had a legitimate expectation of privacy in circumstances where he was filmed at a detention centre where access to him would have been limited and was likely to be restricted, and where he may be feeling vulnerable. For the reasons set out above, Mr Gui had not provided his informed consent to being filmed or for the footage to subsequently be included in the broadcast programme. Ofcom acknowledged that the programme discussed matters which would have been of public interest in that it reported on serious issues relating to alleged criminal offences, and that it was important for the broadcaster to be able to make programmes which report on news stories with a view to imparting information about such topics to the audience. However, Ofcom did not consider that the public interest warranted the filming of Mr Gui in such a sensitive situation and the information about the way in which Mr Gui had spent his time after he was released from prison was of very limited public interest and did not warrant the significant intrusion into his legitimate expectation of privacy.
38. For these reasons (as detailed further in the Adjudication), Ofcom found that SCML had unwarrantably infringed Mr Gui's legitimate expectation of privacy in connection with both the obtaining of material included in the programme and in the programme was broadcast and that SCML was therefore in breach of Rule 8.1 of the Code.
39. Ofcom stated in the Adjudication that the contraventions of Rules 7.1 and 8.1 of the Code were serious and were being considered for the imposition of a statutory sanction.

Ofcom's Preliminary View to impose a Statutory Sanction

40. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
41. Ofcom issued a preliminary view ("the Sanction Preliminary View") that we were minded to impose on SCML a statutory sanction in the form of a financial penalty. Ofcom sent a copy of the Sanction Preliminary View to the Licensee on 22 June 2021 and gave SCML the opportunity to provide written and oral representations on it. The Licensee provided its written representations to Ofcom on 12 July 2021, which are summarised in paragraphs 42 to 46 below, alongside representations which were made during the course of Ofcom's investigation of Mr Gui's complaint in response to Ofcom's preliminary view that the programmes were in breach of Rules 7.1 and 8.1 of the Code ("Ofcom's Breach Preliminary View"). The Licensee chose not to make oral representations.

The Licensee's representations

42. In its representations on Ofcom's Sanction Preliminary View, SCML stated, reiterating a point that it had made in its representations on Ofcom's Breach Preliminary View, that it was unreasonable, unfair and unjust that Ofcom decided to entertain Mr Gui's complaint which was

submitted outside of its normal 20 working days' time limit and in the absence of written authorisation from Mr Gui himself.

43. SCML said in its representations on the Breach Preliminary View, which it reaffirmed in its representations on the Sanction Preliminary View, that it did not agree that the programme constituted a breach of the Code and therefore considered a sanction would not be justified. SCML said in its representation on the Sanction Preliminary View that it considered Ofcom had wrongly concluded that the programmes presented, disregarded or omitted material facts in a way that was unfair to Mr Gui and that Mr Gui was otherwise treated unfairly. Further, SCML said that it Ofcom also wrongly concluded that the programmes breached Rule 8.1 of the Code. SCML said that it considered its right to freedom of expression, and the audience's right to receive information concerning the matters explored by the programmes, outweighed Mr Gui's right to privacy.
44. SCML noted Ofcom had considered in the Sanction Preliminary View that the alleged breaches were neither deliberate nor reckless, and had acknowledged that the broadcaster was cooperative throughout Ofcom's investigation. SCML said that, consequentially, Ofcom should not even consider imposing a statutory sanction.
45. SCML said that it noted that Ofcom had said in its Sanction Preliminary View that the central objective of imposing a penalty is deterrence. SCML said that Ofcom acknowledged in the Sanction Preliminary View that SCML itself presented no risk of non-compliance since it no longer held an Ofcom broadcasting licence. SCML submitted that Ofcom had therefore admitted that the imposition of a financial penalty against the broadcaster in this case can act only as a deterrent to other licence holders. It said that, notwithstanding this admission, Ofcom nevertheless "...considered what would be an appropriate and proportionate deterrent, if [the broadcaster] had continued to broadcast" (SCML's emphasis). SCML said that this approach was not lawfully open to Ofcom and that, in taking this approach, Ofcom had failed to conduct a proper analysis of the proportionality of interfering with the broadcaster's right to freedom of expression. SCML said that Ofcom must ask the separate and more demanding question as to whether the breaches were of sufficient seriousness to warrant the imposition of a sanction justified exclusively on the basis of a desire to deter the wider industry, which it did not do.
46. Accordingly, SCML said that it strongly opposed the imposition of a statutory sanction by Ofcom and disagreed with all of the reasons for imposing a sanction as set out in Ofcom's Sanction Preliminary View.

Ofcom's Decision on the imposition of a statutory sanction

47. We set out below Ofcom's Decision on its reasons for considering that it is appropriate to impose a statutory sanction and as to the level of sanction Ofcom considers should be imposed on SCML. In reaching its decision, Ofcom has taken into account all relevant material, including SCML's representations. In addition, Ofcom had regard to the Penalty Guidelines¹⁵.
48. We acknowledged that the Licensee had argued that as it no longer held an Ofcom licence, it presented no risk of non-compliance, and therefore Ofcom should consider whether the alleged breaches were of sufficient seriousness to warrant the imposition of a sanction justified exclusively on the basis of a desire to deter the wider industry. As made clear in Ofcom's Penalty Guidelines, the central objective of imposing a penalty is deterrence, and Ofcom will seek to set a penalty which will be sufficient to deter the relevant business from contravening regulatory requirements, and also to deter the wider industry from doing so¹⁶. Even where a broadcaster no longer holds a licence, it may be appropriate and proportionate to impose a statutory

¹⁵ The current version of [the Penalty Guidelines](#) came into force on 14 September 2017. This version of the Penalty Guidelines replaced the previous version which had come into force on 3 December 2015.

¹⁶ Penalty Guidelines, paragraph 1.4.

sanction where the former licensee has committed a breach during the period when it held a licence which is serious, deliberate, reckless or repeated, in order to provide an appropriate deterrent to wider industry against non-compliance. Otherwise, serious breaches could go unpunished, which could ultimately weaken incentives for compliance by wider industry, and therefore trust in the regulatory regime¹⁷.

49. We first considered whether the breaches were serious, deliberate, reckless or repeated and therefore warranted a statutory sanction.

Serious and repeated nature of the breaches

50. As set out above, Ofcom has a statutory duty to put in place principles and practices which are designed to protect against unjust or unfair treatment in programmes and unwarranted infringements of privacy in, or in connection with the obtaining of material included in, such programmes. We also have a duty under section 326 of the 2003 Act to include conditions in TLCS licences which ensure that licensees observe these principles and practices. Where a licensee contravenes these conditions, Ofcom has powers to impose sanctions on the licensee, including a financial penalty or the revocation of the licence. It follows that a licensee's failure to observe the principles and practices set out in the Code has the potential to be serious and may justify the imposition of a statutory sanction. Ofcom recognised that SCML's licence had been revoked by Ofcom on 4 February 2021. However, as set out above at paragraph 8, under section 346(3) of the 2003 Act the liability of the person to have a penalty imposed on them is not affected by that person's licence having ceased (for any reason) before the imposition of the penalty.
51. In general, contraventions of Rules 7.1 and 8.1 of the Code are considered serious content breaches because they have the potential to have a direct adverse impact on the rights of individuals who are either featured in, or have been directly affected by, a programme and have the potential to cause harm to individuals affected by such breaches.
52. In considering the seriousness of the breaches, we took into account SCML's representations on the Sanction Preliminary View, some of which had also been made during Ofcom's investigation of Mr Gui's complaint. Ofcom's published procedures on fairness and privacy complaints¹⁸ state that Ofcom may refuse to entertain a complaint where it has not been submitted within 20 working days of broadcast, but that Ofcom will weigh relevant factors before deciding whether or not it is appropriate to entertain a complaint submitted outside this time period. We acknowledge the Licensee's submission that the complaint was submitted more than 20 working days after the broadcast of the programmes, and related to broadcasts that took place a number of years prior to Ms Gui bringing the complaint on behalf of Mr Gui. However, at the time the programmes were broadcast, the service was licensed by Ofcom and Rules 7.1 and 8.1 of the Code still applied. Therefore, irrespective of when the programmes were broadcast, the Licensee should have fully considered whether the filming and broadcast of the footage of Mr Gui was in compliance with the Code.
53. The issue of delay and lack of written authorisation from Mr Gui in bringing the complaint to Ofcom was considered in Ofcom's decision to entertain the complaint. To summarise, in reaching a decision that it was appropriate to entertain those parts of the complaint we did, we had regard to the potential seriousness of the matters to which the complaint related. We also noted the fact that Mr Gui was not in a position to bring a complaint himself, or authorise

¹⁷ This is consistent with the policy rationale behind section 346(3) of the 2003 Act, which provides that a former licence holder may still be liable for acts or omissions while it held a broadcasting licence, as set out at footnote 6 above, as it ensures that licensees cannot avoid a financial penalty for breaches of licence conditions simply by surrendering their licence or following its revocation.

¹⁸ [Procedures for the consideration and adjudication of Fairness and Privacy Complaints](#).

another to do so, due to his imprisonment. We considered that, in the circumstances, it would have taken some time for it to become apparent both that Mr Gui was unlikely to be able to complain and that his daughter (who was not featured in the programme nor explicitly authorised) was in a position to complain instead. We also noted that Mr Gui's daughter had publicly spoken about her concerns in relation to her father and the issues, including in relation to his disappearance, and we considered that the broadcaster was or ought to have been aware of the very serious claims Ms Gui was making about matters concerning her father's arrest and imprisonment and her claims about the broadcaster's role. We weighed these factors with the additional difficulties for the broadcaster in responding to a complaint after such a period of time following the broadcast of the programmes had elapsed, and ultimately decided that it was unlikely that the significant delay in making the complaint had unduly prejudiced the broadcaster's ability to respond to the parts of the complaint that we entertained.

54. Having carefully considered the Licensee's representations made during Ofcom's investigation and in response to the Sanction Preliminary View, it is Ofcom's view the breaches in this case were serious because of the nature of the content obtained and broadcast in relation to Mr Gui and the omissions by SCML found by Ofcom in its breach findings. Specifically:

- a) As set out in paragraphs 25 to 31 in respect of the *News Desk* programme broadcast on 17 January 2016:
 - the programme included footage of Mr Gui making highly sensitive disclosures against his own interests (i.e. appearing to admit that he had voluntarily returned to China, apparently confessing to the criminal offence and rejecting consular assistance);
 - Mr Gui was detained in a detention centre when the interview took place, he was filmed by the police and the Licensee was not present during the filming;
 - there was nothing included in the programme to suggest to viewers that Mr Gui was being filmed by the police in a detention centre;
 - Mr Gui was likely to be feeling vulnerable, taking into account the environment where he was filmed as noted above, and appeared to be clearly visibly distressed during the interview;
 - SCML did not take any measures to verify the circumstances in which led to Mr Gui agreeing to be filmed; and
 - the Licensee ought to have been aware that the circumstances of Mr Gui's return to China were in dispute yet SCML failed to present facts which cast significant doubt on the circumstances of Mr Gui's return to China and whether Mr Gui's statements were made voluntarily.
- b) As set out in paragraphs 32 to 36 in respect of the *The World Today* programme broadcast on 11 February 2018:
 - Mr Gui was filmed while he was being detained in police custody;
 - Mr Gui was likely to be feeling vulnerable, taking into account the environment in which he was filmed;
 - SCML took insufficient steps to provide Mr Gui with information prior to the filming, including the nature and purpose of the programme, what the programme was about, why he was being asked to contribute, when and where it would be broadcast, areas of questioning and any contractual rights and obligations, or to ensure that Mr Gui's informed consent to the filming had been obtained; and

- the Licensee ought to have been aware that the circumstances of Mr Gui's return to China were in dispute, yet SCML failed to present facts which cast significant doubt on the circumstances of Mr Gui's return to China and whether Mr Gui's statements were made voluntarily.
55. We considered that the failure by SCML to comply with Rules 7.1 and 8.1 of the Code resulted in significant unfairness to Mr Gui and a serious unwarranted infringement of his privacy.
56. In addition to assessing the seriousness of the breaches, Ofcom also considered whether they were repeated. The Sanctions Procedures provide that a repeat breach of a relevant requirement would include "... repetition of the same or similar conduct as that which earlier contravened a requirement" in the Code. This may include repetition of the same or similar conduct in two programmes which are both found to be in breach of the same rules of the Code.
57. In this case, Ofcom found that SCML breached Rules 7.1 and 8.1 of the Code in relation to the broadcast of two programmes, broadcast two years apart, namely *News Desk* and *The World Today* on 17 January 2016 and 11 February 2018 respectively. Both programmes reported on the story of Mr Gui and included footage of Mr Gui filmed while he was in a detention centre. On both occasions, the broadcaster had failed to obtain Mr Gui's informed consent and failed to present material facts about his circumstances.
58. This case also had similarities to the circumstances of a previous Adjudication (published on 6 July 2020) in relation to the programmes *China 24* and *News Hour* broadcast in 2013 and 2014, in respect of which Ofcom found that SCML breached Rules 7.1 and 8.1 of the Code¹⁹. While we acknowledge that the Licensee would not have been on notice of the breach decision in that earlier case at the time of broadcast of the *News Desk* and the *The World Today* programmes, there were similarities between these programmes and the *China 24* and *News Hour* programmes which were found to be in breach of the same rules of the Code. Specifically:
- a) The *China 24* and *News Hour* programmes included footage of the complainant, filmed in a highly sensitive situation, apparently confessing to a criminal offence and making disclosures which were highly sensitive in nature.
 - b) Ofcom had also held that SCML had failed to obtain informed consent from the complainant and SCML presented the purported confession as being genuine and voluntary when SCML had reason to doubt this.
59. In light of the above, Ofcom's Decision is that the breaches of Rules 7.1 and 8.1 in this case represented a serious and repeated failure of compliance with the Code on the part of the Licensee, which warrants the imposition of a statutory sanction. We considered that the potential adverse impact and harm to Mr Gui was exacerbated by such serious and repeated failures.

Imposition of sanction

60. In view of the factors set out above, Ofcom has decided that the breaches were serious and repeated and warranted the imposition of a statutory sanction. The following paragraphs set out the sanctions that we have decided to impose.
61. As set out in paragraph 23 above, Ofcom has powers to impose a statutory sanction on TLCS licensees under sections 236 to 239 of the 2003 Act. Because SCML's licence has been revoked by Ofcom, only the power to impose a financial penalty under section 237 of the 2003 Act is available to Ofcom in this case.

¹⁹ [Ofcom's Adjudication](#) published on 6 July 2020 in issue 406 of Ofcom's Broadcast and On Demand Bulletin, Complaint by Mr Peter Humphrey about *China 24 and News Hour*.

62. The maximum financial penalty which may be imposed on SCML in this case is whichever is the greater of £250,000 and 5 per cent of the qualifying revenue²⁰ from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force. Based on the most recent data available about SCML's qualifying revenue, the maximum penalty that Ofcom could impose in this case is £250,000.
63. Ofcom's Penalty Guidelines state (in paragraph 1.11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty".
64. Ofcom's Decision is that notwithstanding the revocation of SCML's licence, a financial penalty is appropriate and proportionate to reflect the serious and repeated nature of the Code breaches and to act as an effective deterrent against non-compliance with the Code for other licensees.

Factors taken into account in determining the amount of a penalty

65. In considering the appropriate amount of a financial penalty for the Code breaches in this case, Ofcom took account of the specific relevant factors set out at paragraph 1.12 of the Penalty Guidelines as set out below.

The seriousness and duration of the contravention

66. For the reasons set out in paragraphs 50 to 59 above, Ofcom regards the breaches in this case as serious and repeated. As a licensee, SCML was responsible for ensuring that the material it broadcast complied with Section 7 of the Code to avoid the unjust or unfair treatment of individuals in programmes and with Section 8 to avoid unwarranted infringements of privacy. We considered that the programmes resulted in serious unfairness to Mr Gui and gave rise to a serious unwarranted infringement of Mr Gui's legitimate expectation of privacy.
67. SCML said in response to the Breach Preliminary View that the footage of Mr Gui included in the *News Desk* programme had been provided by the police and it was therefore not present during the filming of Mr Gui. In such circumstances, and in light of the sensitive nature of the footage, it is reasonable to expect a responsible broadcaster would take steps to satisfy itself that the content was compliant with Sections 7 and 8 of the Code. SCML also failed to take sufficient steps to ensure that material facts (which it was aware of at the time of broadcast) had not been presented, disregarded or omitted from the programme in a way that was unfair to Mr Gui. In particular, in both broadcasts, SCML presented Mr Gui as having voluntarily returned to China. SCML also obtained and broadcast material which presented Mr Gui as making voluntary statements about his responsibility for a criminal offence in the *News Desk* programme, and regarding how he spent his time following his release from prison in the *The World Today* programme, which relied heavily on footage of him making these statements while he was being detained. It was self-evident that the programmes contained sensitive footage of Mr Gui and that it had the potential to seriously and adversely affect Mr Gui.
68. The Adjudication related to material broadcast on 17 January 2016 and 11 February 2018. Ofcom has taken into consideration that similar, serious compliance errors were made in relation to the two programmes which were broadcast two years apart.

²⁰ Qualifying revenue consists of all payments received, or due to be received, either by the licensee or by any person "connected" to that licensee, for the inclusion of advertisements or programmes in the licensed service, or in respect of charges made for the reception of programmes included in that service. It also includes any sponsorship monies received in relation to the inclusion of programmes in the licensed service.

The degree of harm, whether actual or potential, caused by the contravention, including any increased cost incurred by consumers or other market participants

69. We considered that the degree of harm caused to the complainant was very serious. The programmes were found to be unjust or unfair to the complainant in that it would have given viewers the clear impression that he had given informed consent to appear and was making genuine, voluntary statements on the basis of which it was safe to conclude that his return to China and admission of responsibility for a drink driving offence were both voluntary, when this may not have been the case, and, in respect of the *The World Today* programme, that he had reneged on statements he had voluntarily made regarding his circumstances and future intentions. The programmes were also found to have been a serious infringement of Mr Gui's legitimate expectation of privacy. We also considered the potential adverse impact and harm to Mr Gui was heightened by the fact the breaches occurred across two programmes.
70. We noted in the Adjudication that, in relation to the *News Desk* programme, it was not necessary for Ofcom to determine whether legal avenues existed in 2016 for Mr Gui to potentially overturn the conviction or sentence²¹, nor whether the broadcast deprived him of those opportunities. However, the inclusion of footage of Mr Gui accepting responsibility for the offence and confessing to having been a "fugitive" would still have had an impact on Mr Gui's personal reputation.
71. Similarly, in relation to the *The World Today* programme, we noted in the Adjudication that it was not necessary for Ofcom to determine whether the broadcast of the programme could in fact have deprived Mr Gui of a fair trial in relation to allegedly being in possession of state secrets. However, for the reasons set out above we considered that the impact of broadcasting the story on Mr Gui's personal reputation alone was such that the broadcaster should have taken reasonable steps to ensure that unjust and unfair treatment was avoided.

Any gain (financial or otherwise) made by the regulated body in breach (or any connected body) as a result of the contravention

72. We have no evidence to suggest that SCML made any financial or other gain from these breaches of the Code.

Whether in all the circumstances appropriate steps had been taken by the regulated body to prevent the contravention.

73. We considered that in obtaining the footage of Mr Gui filmed by the police in the case of the *News Desk* programme on 17 January 2016, SCML did not itself take any steps to ascertain the circumstances in which Mr Gui had been filmed in order to satisfy itself that Mr Gui had been informed about the nature and purpose of the programme, or why he had been asked to contribute or that he had been provided with any other information listed in Practice 7.3 of the Code. On that basis, it did not appear to Ofcom that the broadcaster had taken sufficient steps to obtain Mr Gui's informed consent to the filming or the broadcast of the footage, nor taken any steps to verify whether such consent had been obtained. We considered this to be a serious failure of compliance.
74. In deciding to obtain and broadcast the footage of Mr Gui in the case of the *The World Today* programme on 11 February 2018, SCML did not itself take any steps to inform Mr Gui about the nature and purpose of the programme, why he had been asked to contribute or that he had been provided with any other information listed in Practice 7.3. It did not, therefore, appear to Ofcom that the Licensee had taken sufficient steps to obtain Mr Gui's informed consent to contribute to the programme, nor taken any steps to verify whether such consent had been

²¹ The *News Desk* programme was broadcast after Mr Gui's conviction.

obtained. As with the programme broadcast on 17 January 2016, we considered this to be a serious failure of compliance.

75. In addition, Ofcom had significant concerns that SCML presented the confession and statements by Mr Gui in the *News Desk* programme in such a way that would have led viewers to believe that Mr Gui had accepted responsibility for a criminal offence and had returned to China voluntarily to serve a custodial sentence he had received in relation to that offence in circumstances where SCML had cause to doubt this was so. In relation to the *The World Today* programme, we also had significant concerns about the way the presentation of the footage of Mr Gui in the programme as broadcast would have given viewers the clear impression that he had given informed consent to appear and was making genuine and voluntary statements about how he had spent his time in Ningbo following his release from prison in circumstances where SCML had substantial grounds to doubt this.
76. In both cases, Ofcom considered that there were particular features of the footage that should have led the broadcaster to make further enquiries before deciding to include it in the programme in the way that it did. This included the fact that the interviews with Mr Gui were filmed by, or carried out in the presence of, those holding Mr Gui in custody which ought to have created some doubt as to whether Mr Gui's consent was genuine and informed and whether he was making genuine, voluntary statements. Moreover, as noted at paragraph 26 above, the broadcaster was either aware or ought to have been aware, as argued by Ms Gui in her representations on Ofcom's Breach Preliminary View, that the circumstances of Mr Gui's return to China were disputed, but nevertheless the programmes had stated that he had returned to China voluntarily without making clear that the circumstances of his return were disputed.
77. Taking into account the matters above, we therefore considered that this was evidence of seriously inadequate compliance processes for ensuring that individuals are not subject to unjust or unfair treatment or unwarranted infringements of privacy.

The extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur

78. We had no evidence to suggest that these contraventions were deliberate or that senior managers at SCML knew that the contraventions would occur. However, for the reasons explained at paragraphs 73 to 77 above, we considered that there was a failure by SCML to take appropriate steps in light of its regulatory obligations towards Mr Gui under Sections 7 and 8 of the Code and that this was indicative of seriously inadequate compliance procedures. We considered whether or not this amounts to recklessness.
79. We had regard to the fact that the evidence apparently relied upon by the broadcaster as demonstrating informed consent was very significantly short of what could have been considered appropriate in the circumstances. We had regard to the fact that SCML had obtained the footage of Mr Gui included in the *News Desk* programme from the police and was therefore not present during their filming of him. It was, therefore, unable to ascertain whether Mr Gui had given his informed consent. In relation to the *The World Today* programme, we noted the SCML had relied on the fact it and other media outlets had been invited to film Mr Gui and had not taken any steps to independently inform Mr Gui of the matters included in Practice 7.3 so as to obtain his informed consent. Moreover, as noted at paragraph 76 above, the broadcaster was either aware or ought to have been aware, as argued by Ms Gui in her representations on Ofcom's Breach Preliminary View, that the circumstances of Mr Gui's return to China were disputed, but nevertheless the programmes had stated that he had returned to China voluntarily without making clear that the circumstances of his return were disputed. In both cases, therefore, SCML had taken insufficient steps to ensure compliance with Rule 7.1 of the Code.

80. We considered that the Licensee also ought to have also considered the likelihood that Mr Gui may have had a legitimate expectation of privacy in circumstances where he was filmed while in a detention centre and, in the case of the *News Desk* programme, disclosing highly sensitive information, and that the broadcaster's and audience's rights under Article 10 of the Convention did not outweigh the significant intrusion into Mr Gui's privacy in the circumstances. Mr Gui was also named in both programmes and his face was shown unobscured. Despite this, the Licensee does not appear to have taken appropriate steps in order to ensure compliance with Rule 8.1 of the Code.
81. On balance, whilst we considered that these represented material compliance errors in the Licensee's approach to compliance with Rules 7.1 and 8.1 in the circumstances of this case, we did not consider there was evidence to conclude that these amounted to recklessness as to whether a contravention was occurring or would occur.

Whether the contravention in question continued, or timely and effective steps were taken to end it, once the regulated body became aware of it.

82. It appears that SCML only became aware of the potentially serious issue raised by these particular programmes following Ms Gui's complaint on behalf of Mr Gui to Ofcom.
83. In its representations as set out in the previous SCML sanction decision relating to a breach of the fairness and privacy rules in the Code²², SCML provided information to Ofcom that its compliance processes had significantly changed. The Licensee said that since 2016, when the service was renamed, the service had changed and evolved considerably, including in relation to its editorial staff, production and practices, as well as its compliance and regulatory efforts and that it ran a continuous programme of training for its staff in compliance and regulatory issues. The Licensee also said (prior to Ofcom's decision to revoke the licence) that it had also taken careful note of Ofcom's views on broadcasting pre-trial confessions and that it did not intend to broadcast such material in the UK other than in exceptional circumstances where it was confident that it was justifiable in the public interest and would be compliant with the Code. The Licensee also provided Ofcom with specific information about its compliance processes and the steps it had taken to enhance these since Ofcom's investigation into Mr Humphrey's complaint and its Adjudication²³. In particular, the Licensee told Ofcom that their enhanced processes included referring all pre-trial confession footage that it may consider broadcasting for further scrutiny by the geographical Head of the production centre, who could then refer the matter to the channel's Global Editorial Board, or for external specialist advice, as well as delivering specific training in this area.
84. In Ofcom's view, the above information suggested that the Licensee had taken some steps to put in place measures which might have helped to prevent further breaches of this nature from happening again. Despite putting these measures in place, the Licensee's amended compliance procedures were unable to prevent similar breaches from occurring in this case, and in respect of the broadcast of a programme on 21 November 2019, which Ofcom also found to be in breach of Rules 7.1 and 8.1 of the Code in very similar circumstances²⁴. Ofcom was not satisfied that the further steps taken since its Adjudication of Mr Humphrey's complaint would have been sufficient to prevent further breaches from occurring. This was in particular because we were concerned that the Licensee continued to maintain, most recently in its representations in response to Ofcom's Sanction Preliminary View, that it considered the programmes were not in breach and had also told Ofcom, in its representations in relation to the previous sanction, that

²² [Sanction Decision: Star China Media Limited.](#)

²³ See paragraph 48 of [Sanction Decision: Star China Media Limited.](#)

²⁴ [Ofcom's Adjudication](#) published on 8 March 2021 in issue 422 of the Broadcast and On Demand Bulletin, *Complaint by Mr Simon Cheng about China 24.*

it would consider broadcasting pre-trial confession footage in future, albeit only in exceptional circumstances where it was confident that it would comply with the Code.

Any steps taken for remedying the consequences of the contravention

85. There is no evidence that SCML has taken any action to remedy the adverse consequences for Mr Gui resulting from their contraventions.

Whether the regulated body in breach has a history of contraventions (repeated contraventions may lead to significantly increased penalties).

86. SCML held an Ofcom Licence from 2011²⁵ until it was revoked by Ofcom on 4 February 2021²⁶. Aside from the breaches now being considered for statutory sanction, Ofcom has found SCML to have committed breaches of Rules 7.1 and 8.1 the Code on two separate occasions. The first breach finding related to the obtaining and broadcast of footage of Mr Humphrey in two programmes broadcast in 2013 and 2014, which is referred to at paragraph 58 above²⁷. In relation to this breach finding, Ofcom imposed a sanction of £100,000²⁸. The second breach finding (which was published on the same date as the Adjudication in this case) related to the obtaining and broadcast of footage of Mr Cheng in a programme broadcast in November 2019, which is referred to at paragraph 84 above²⁹. This breach finding is being separately considered for the imposition of a statutory sanction.

87. Ofcom has found the Licensee in breach of Rules contained within Section 5 of the Code on two separate occasions. The first of these breach findings related to four news items reporting on pro-democracy demonstrations which took place in Hong Kong at the end of September 2014 and early October 2014, which in 2015 were found by Ofcom to have breached due impartiality Rules 5.1, 5.11 and 5.12 of the Code³⁰. The second breach finding related to five news items reporting on protests which were ongoing in Hong Kong during August 2019 and November 2019, which in May 2020 were found by Ofcom's Executive to be in serious breach of Rules 5.1, 5.11 and 5.12 of the Code³¹. Ofcom imposed a sanction of £125,000 in respect of this case³².

The extent to which the regulated body in breach has cooperated with our investigation.

88. In Ofcom's view, the Licensee has been generally cooperative in that it has engaged with the investigation. For example, it provided full representations in response to Ofcom's Entertainment Decision and Preliminary View on the complaint.

Precedent

89. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases. Each case is decided on its own facts. In reaching our Decision in this instance Ofcom has considered these previous cases and to the extent we consider them relevant, we have taken them into account.

90. Ofcom considered a number of previous decisions in which financial penalties had been imposed for breaches of Rules 7.1 and 8.1 of the Code. Some of these decisions are now over five years old and were decided under the previous Penalty Guidelines. Ofcom's new Penalty Guidelines

²⁵ The service started broadcasting in 2003, although up until 2011 the Licence was held by Satellite Television Region Ltd.

²⁶ See footnote 3.

²⁷ [Ofcom's Adjudication](#) published on 6 July 2020 in issue 406 of Ofcom's Broadcast Bulletin, *Complaint by Mr Peter Humphrey about China 24 and News Hour*.

²⁸ [Ofcom's Sanction Decision](#) (fairness and privacy) published on 8 March 2021.

²⁹ See footnote 23.

³⁰ [Ofcom's Decision](#) published on 16 February 2015 in issue 273 of Ofcom's Broadcast and On Demand Bulletin.

³¹ [Ofcom's Decision](#) published on 26 May 2020 in issue 403 of Ofcom's Broadcast and On Demand Bulletin.

³² [Ofcom's Sanction Decision](#) (due impartiality) published on 8 March 2021.

place greater emphasis on deterrence. Ofcom considered the relevance of these past precedents to the circumstances of the breaches at issue and, where relevant, took it into account in deciding on the level of penalty which would be proportionate in the circumstances. For the reasons set out below, Ofcom considers that there are certain similarities in the nature of the cases discussed below which mean they are of relevance to the current case. However, we note that, as set out in the Penalty Guidelines, Ofcom may depart from precedent cases depending on the facts and the context of the current case. In particular, we will not regard the amounts of previously imposed penalties as placing a lower or upper threshold on the amount of any penalty. We will set higher penalties if we consider that appropriate to ensure effective enforcement against the contraventions under consideration and to deter future breaches.

91. Ofcom considered that the two previous decisions against Abu Dhabi Media Company PJSC (“ADMC”)³³, in each of which Ofcom imposed penalties of £125,000 on the licensee, £250,000 in total, shared some similarities to this case. This is because they involved the broadcast of sensitive material about the complainants without their consent, where there were reasons to doubt that the statements made by the complainants were genuine and made voluntarily. The first case concerned a programme which reported on allegations that the Qatari Security Service was creating fake social media accounts and websites and using them to “slander” the UAE. The programme alleged that Mr Al-Hammadi, a Qatari intelligence officer, was involved, and it included footage of Mr Al-Hammadi speaking about himself and his role and alleged involvement in crimes against the UAE. The second breach decision against ADMC concerned a programme which reported on Qatar’s alleged support for the Muslim Brotherhood, which the programme described as a terrorist organisation, and included footage of Dr Al-Jaidah discussing his alleged involvement in terrorist activities.
92. Ofcom found that showing the apparent willingness of the complainants to make highly sensitive disclosures against their own interests should have resulted in the licensee making enquiries about the provenance of the footage. In the first case, this included investigating the extent to which the complainant’s statements were consistent with other public statements Mr Al-Hammadi had made and taking steps to satisfy itself that his informed consent had been obtained. In the second case, Ofcom found that the licensee was aware that Dr Al-Jaidah had complained about mistreatment while he was under investigation by the Emirati authorities, and the circumstances under which his confession had been obtained, but had failed to make reasonable enquiries to ensure that material facts had not been presented, disregarded or omitted from the programme in a way that was unfair to Dr Al-Jaidah. In both cases, Ofcom found that the licensee had failed to take any steps to satisfy itself that the complainants’ informed consent to the filming and broadcast had been obtained.
93. Ofcom considered the previous decision against SCML³⁴, in which Ofcom imposed a penalty of £100,000 on the licensee for breaches of Rules 7.1 and 8.1, also shared a number of similar features to this case. The sanction related to two programmes. The first programme, broadcast in 2013, reported on the arrest of the complainant, Mr Humphrey, and included footage of him appearing to confess to a criminal offence. A follow up programme, broadcast in 2014, reported on the complainant’s subsequent indictment and included footage of him apologising for having committed the offence.
94. Ofcom found that the footage had been filmed and broadcast without consent and that the broadcaster presented the confession and apologies by Mr Humphrey as being genuine, voluntary, in his own words and sufficient to conclude (in advance of trial) that Mr Humphrey

³³ [6 May 2021, Abu Dhabi Media Company PJSC sanction decision](#); and, [6 May 2021, Abu Dhabi Media Company PJSC sanction decision](#).

³⁴ [8 March 2021, Star China Media Limited sanction decision](#).

had committed criminal offences, in circumstances where the licensee had cause to doubt this. This case also involved the omission of material facts which denied viewers important contextual information about the circumstances of the interviews and, as in the present case, Ofcom found that the licensee had inadequate compliance procedures to prevent the contraventions and that the breaches represented a serious and repeated failure of compliance on the part of the licensee during this period in that the same or similar serious compliance errors were involved in the broadcast of both programmes. Ofcom found that there was no evidence that the breaches were deliberate or reckless and took account of information from the Licensee about action it had taken since Ofcom's investigation to enhance its compliance processes.

95. Ofcom considered that two previous decisions (Al Arabiya News Channel FZ-LLC ("Al Arabiya News")³⁵ and Press TV Limited ("Press TV")³⁶) in which Ofcom had imposed financial penalties for breaches of Rules 7.1 and 8.1 shared a number of similar features to this case. This is because they involved the broadcast of sensitive material about the complainants without their consent. The Al Arabiya News case included an interview with Mr Mashaima, filmed while he was in prison, in which he made confessions in relation to the circumstances which had led to his arrest and conviction, which Mr Mashaima said had been obtained under torture. Furthermore, the two cases were similar to that of *The World Today* programme in that they involved footage that had been filmed by the broadcaster (or in the case of Al Arabiya News by a stringer, on behalf of the broadcaster, using the broadcaster's equipment) in a sensitive environment and where the broadcaster was aware, or ought to have been aware, of the complainant's circumstances, although both these cases related to footage broadcast in one programme, rather than in two programmes broadcast nearly two years apart as in this case. The Al Arabiya News and Press TV cases also involved the omission of material facts which denied viewers important contextual information about the circumstances of the interviews. For example, Ofcom considered that it should have been clear to Press TV that Mr Bahari was giving an interview under duress and to which he did not consent. As in this case, Ofcom also considered that the Press TV and Al Arabiya News breaches had resulted from inadequate compliance procedures or compliance failures. The Al Arabiya News case was also similar in nature to the present case in that it involved the complainant discussing matters of a highly sensitive nature, i.e. apparently confessing to a criminal offence.
96. However, we noted that there were also differences in the circumstances of the Press TV and Al Arabiya News cases. For example, the footage in the *News Desk* programme in the present case was filmed by the police, as opposed to by the broadcaster (or by a stringer, on behalf of the broadcaster, using the broadcaster's equipment) as it had been in the cases of Press TV and Al Arabiya News respectively. Furthermore, in the Press TV case, Ofcom considered that an aggravating factor was that the broadcaster had failed to accept Ofcom's findings and had been unwilling to recognise its obligations as an Ofcom licensee to comply with the Code and had also broadcast two further programmes following the publication of Ofcom's Adjudication, which Ofcom considered represented a continuance of their contravening behaviour. Ofcom also considered the breach in the Press TV case to be deliberate as well as serious. However, Ofcom also took into account that the Press TV precedent had not been decided under Ofcom's current Penalty Guidelines, which place greater emphasis on deterrence. In the Al Arabiya News case, Ofcom had found the licensee had acted recklessly, whereas in this case Ofcom has not found the breaches to have been reckless.

³⁵ [25 January 2018, Al Arabiya News Channel FZ-LLC sanction decision.](#)

³⁶ [1 December 2011, Press TV Limited sanction decision.](#)

97. We considered that the British Broadcasting Corporation (BBC)³⁷ and Kiss FM Radio Limited (“Kiss FM”)³⁸ cases shared certain similar features to this case, albeit to a more limited extent, in that they involved, respectively, the issue of disclosing information in the programme that was highly personal about the complainants without informed consent and, particularly in the second case, absence of adequate compliance systems. However, we acknowledged that there were distinct differences between the BBC and Kiss FM cases, and the present case. The BBC and Kiss FM cases concerned comedy/entertainment radio programmes where the material was broadcast as a consequence of serious misjudgements. The present case concerns two news programmes that had the potential to result in serious adverse harm to Mr Gui as a result of serious compliance errors.

The size and turnover of the regulated body when considering the deterrent effect of any penalty

98. As set out in our Penalty Guidelines, the central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. While SCML does not present a risk of non-compliance since Ofcom has revoked its licence, Ofcom is also concerned to ensure that enforcement of the Code acts as a wider deterrent to the industry against future non-compliance with the Code.
99. As noted above, SCML argued in its representations on Ofcom’s Sanction Preliminary View that, in circumstances where SCML’s licence had been revoked, it was not lawful for Ofcom to consider what an appropriate deterrent would be on SCML, if the broadcaster had continued to broadcast. SCML argued that it is necessary for Ofcom to consider why the breaches are of sufficient seriousness to warrant the imposition of a sanction “justified exclusively on the basis of a desire to deter the wider industry”.
100. For the reasons set out in paragraphs 54 to 64 above, Ofcom has decided that a financial penalty is appropriate and proportionate to reflect the serious and repeated nature of the Code breaches and to act as an effective deterrent against non-compliance with the Code for other licensees.
101. Having decided that a financial penalty was appropriate and proportionate to reflect the serious and repeated nature of the Code breaches, in order to determine what *level* of penalty would act as an appropriate deterrent against non-compliance by broadcasters generally, Ofcom has considered what level of penalty would be an appropriate and proportionate deterrent in respect of SCML, had SCML continued to hold a licence and to broadcast. In doing so, Ofcom has taken into account SCML’s size and turnover, and broadcasters’ and audiences’ rights to freedom of expression under Article 10 of the Convention. This is in order to ensure that the level of the penalty will achieve appropriate deterrence against future non-compliance by broadcasters generally by appropriately and proportionately reflecting the specific circumstances of this particular case, including SCML’s size and turnover, and the nature and seriousness of the particular breaches.
102. In reaching its Decision on the imposition and level of a sanction in this case, Ofcom has taken account SCML’s qualifying revenue for the last accounting period for which information is available.
103. For all the reasons set out above, Ofcom considers it is proportionate to impose a financial penalty on the Licensee of £100,000 (one hundred thousand pounds).

Decision

³⁷ [3 April 2009, The British Broadcasting Corporation.](#)

³⁸ [20 June 2006, Kiss FM.](#)

104. In order to achieve Ofcom's central objective of deterrence, we have carefully considered the nature and level of statutory sanction that should be imposed. In doing so, we have taken account of SCML's representations, the particular seriousness of the breaches, SCML's size and financial position, SCML's compliance record, and relevant precedent cases. We have also had regard to the revocation of the Licence and the need to ensure that enforcement against serious breaches of the Code acts as a wider deterrent against future breaches by broadcasters in general. We have also had regard to our legal duties, as set out above, including the need to ensure that any sanction we impose is proportionate, consistent and targeted only at cases where action is needed.

105. Having regard to all the factors referred to above, Ofcom considers that the most appropriate and proportionate sanction would be to impose a financial penalty of **£100,000 (one hundred thousand pounds)** (payable to HM Paymaster General).

Ofcom

26 August 2021

ANNEX 1: PRECEDENTS

Previous sanctions relating to breaches of Rules 7.1 and 8.1

Sanction Decision	Sanction	Nature of Sanction
6 May 2021, Abu Dhabi Media Company ("ADMC")³⁹	£125,000 financial penalty	The programme reported on allegations that the Qatari Security Service was creating fake social media accounts and websites and using them to "slander" the UAE. The programme alleged that Mr Al-Hammadi, a Qatari intelligence officer, was involved, and it included footage of Mr Al-Hammadi speaking about himself and his role and alleged involvement in crimes against the UAE. Ofcom found that the footage had been filmed and broadcast without consent and that the broadcaster presented the confession by Mr Hammadi as being and sufficient to conclude that there was no reason to question its validity or the validity of his conviction, in circumstances where the licensee had cause to doubt this was so. Ofcom found that the footage showing the apparent willingness of Mr Al-Hammadi to make highly sensitive disclosures against his own interests should have resulted in the licensee making enquiries about the provenance of the footage, including the extent to which Mr Al-Hammadi's confession was consistent with other public statements he had made and taking steps to satisfy itself that his informed consent had been obtained.
6 May 2021, AMDC⁴⁰	£125,000 financial penalty	The programme reported on Qatar's alleged support for the Muslim Brotherhood, which the programme described as a terrorist organisation, and included footage of Dr Al-Jaidah discussing his alleged involvement in terrorist activities. Ofcom found that the footage had been filmed and broadcast without consent and that the broadcaster had presented Dr Al-Jaidah's confession as voluntary and genuine and sufficient to conclude that he was a leader and funder of a terrorist organisation, when it had reason to doubt that this was so. Ofcom found that the licensee had failed to take any action to verify the circumstances in which Dr Al-Jaidah had been filmed and whether his informed consent had been obtained. Ofcom also found that in this case, the licensee was aware that Dr Al-Jaidah had complained about mistreatment while he was under investigation by the Emirati authorities, and the circumstances under which his confession had been obtained, but had failed to make reasonable enquiries to ensure that material facts had not been presented, disregarded or omitted from the programme in a way that was unfair to Dr Al-Jaidah.
8 March 2021, Star China Media Limited ("SCML")	£100,000 financial penalty	The sanction related to two programmes. The first programme, broadcast in 2013, reported on the arrest of the complainant, Mr Humphrey, and included footage of him appearing to confess to a criminal

³⁹ [6 May 2021, Abu Dhabi Media Company PJSC.](#)

⁴⁰ [6 May 2021, Abu Dhabi Media Company PJSC.](#)

		offence. A follow up programme, broadcast in 2014, reported on the complainant's subsequent indictment and included footage of him apologising for having committed the offence.
25 January 2018, Al Arabiya News Channel⁴¹	£120,000 financial penalty; direction to broadcast a statement of Ofcom's findings and not to repeat the material found in breach again.	The programme reported on an attempt made in February and March 2011, by a number of people including the complainant, Mr Hassan Mashaima, to change the governing regime in Bahrain from a Kingdom to a Republic. It included an interview with Mr Mashaima, filmed while he was in prison awaiting a retrial, as he explained the circumstances which had led to his arrest and conviction. The interview included Mr Mashaima making confessions as to his participation in certain activities. Only approximately three months prior to the date on which Al Arabiya News said the footage was filmed, an official Bharani Commission of Inquiry had found that similar such confessions had been obtained from individuals, including Mr Mashaima, under torture. During Mr Mashaima's subsequent retrial and appeal, he maintained that his conviction should be overturned, as confessions had been obtained from him under torture. The audience's perception of Mr Mashaima was therefore likely to have been severely detrimentally compromised by the omission of this important contextual information. Ofcom considered that it would have been clear that the filming and broadcast of this interview constituted an unwarranted infringement of privacy because Mr Mashaima was discussing matters of a highly sensitive and confidential nature (particularly given that his retrial and appeal were still pending), it appeared that he was filmed in a private room within the prison in which he was being detained and his consent had not been obtained.
1 December 2011, Press TV⁴²	£100,000 financial penalty; direction to broadcast a statement of Ofcom's findings and not to repeat the material found in breach again.	This case concerned the broadcast of interview footage of Mr Maziar Bahari in which he said he had sent a report about the attack against the Basij base in Tehran, Iran, to <i>Channel 4 News</i> and to <i>Newsweek</i> magazine. Viewers were not informed that the interview of Mr Bahari had taken place while he was being detained in prison which we considered had the potential to affect the way in which viewers regarded the news report and the inferences which they drew from the report in relation to Mr Bahari. Ofcom considered that he was filmed in circumstances in which it should have been clear to Press TV that he was giving an interview under duress and to which he did not consent. It should also have been clear that the broadcast of this interview constituted an unwarranted infringement of his privacy because of the lack of consent and highly sensitive nature of the footage.

⁴¹ [25 January 2018, Al Arabiya News.](#)

⁴² [1 December 2011, Press TV.](#)

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<p>3 April 2009, BBC⁴³</p>	<p>£80,000 financial penalty; direction to broadcast a statement of Ofcom's findings.</p>	<p>The case concerned two editions of <i>Russell Brand</i> in which offensive references were made to the actor Andrew Sachs and to his granddaughter, Georgina Bailie, which resulted in their privacy being unwarrantably infringed. Ofcom considered that the nature of the information disclosed in the programme was highly personal, intimate and sensitive in which the complainants were clearly identifiable which led to infringements of privacy of the most serious nature.</p>
<p>20 June 2006, Kiss FM⁴⁴</p>	<p>£75,000 financial penalty</p>	<p>In relation to the breach of Rule 8.1, the presenter of the programme telephoned a member of the public (the complainant, who wished to remain anonymous) who had inadvertently left his telephone number on the presenter's voicemail, believing it to be his Human Resources ("HR") officer's voicemail. The complainant had called his HR officer in the hope of discussing redeployment opportunities in the company following his redundancy. The presenter then returned the complainant's call posing as the HR officer. The telephone call was recorded and broadcast without consent.</p>

⁴³ [3 April 2009, BBC.](#)

⁴⁴ [20 June 2006, Kiss FM.](#)