

**Sanction: Decision by Ofcom**

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

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**For material broadcast on China Global Television Network (CGTN) on 21 November 2019<sup>1</sup>**

**Ofcom’s Sanction Decision against:** SCML in respect of its service **CGTN** (previously TLCS000575BA/2)<sup>2</sup>.

**For:** Breaches of the Ofcom Broadcasting Code (the “Code”)<sup>3</sup>:

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)**.

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<sup>1</sup> [Ofcom’s Adjudication](#) published on 8 March 2021 in issue 422 of the Broadcast and On Demand Bulletin.

<sup>2</sup> 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](#).

<sup>3</sup> The version of the Code which was in force at the time of the broadcast took effect on 1 January 2019.

### **Executive Summary**

1. China Global Television Network (CGTN) was an international English-language satellite news channel. The licence for the provision of the CGTN service was held by Star China Media Limited ("SCML" or the "Licensee") until 4 February 2021 when the Licence was revoked. The Licensee did not hold any other broadcasting licences.
2. On 21 November 2019, CGTN broadcast the news programme, *China 24*, which reported on the release by the police in China of CCTV footage of Mr Cheng which it said showed him "*soliciting prostitutes and of his trial [i]n August*". The programme reported that Mr Cheng had claimed in a BBC interview that he had been "*tortured*" while in police detention in China and included footage of Mr Cheng, with faint audio, which it said showed that he "*acknowledged his violations of the law*". The programme also included CCTV footage of him which it said had been released by the police. Mr Cheng was named in the programme and his face was shown unobscured.
3. In November 2019, Mr Simon Cheng complained to Ofcom about unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

### **Ofcom's Adjudication**

4. In [Ofcom's Adjudication](#) ("the Adjudication") published on 8 March 2021 in issue 422 of the Broadcast and On Demand Bulletin, Ofcom found that the programme 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 programme and in the programme 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 Licence<sup>4</sup>.
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 revoked<sup>5</sup>.

### **The Sanction Decision**

9. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences (the "Sanctions Procedures")<sup>6</sup>, 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 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 45 to 49 below.

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<sup>4</sup> The reasons for Ofcom's decision are set out in the [Notice of Revocation](#).

<sup>5</sup> By virtue of section 346(3) of the 2003 Act, a person's liability to have a penalty imposed under section 237 of the 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.

<sup>6</sup> [The Sanctions Procedures](#).

10. Following consideration of the Licensee'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 Guidelines<sup>7</sup>.

### **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 services<sup>8</sup>.
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 expression<sup>9</sup>.

#### **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 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.

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<sup>7</sup> 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.

<sup>8</sup> Section 3(2)(f) of the 2003 Act.

<sup>9</sup> Sections 3(3) and 3(4)(g) of the 2003 Act.

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))<sup>10</sup>. It applies not only to the content of information but also the means by transmission or reception<sup>11</sup>. And while subject to exceptions, the need for any restriction must be established convincingly<sup>12</sup>. 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 licensable content service ("TLCS") licence, Condition 20(5) of the licence requires the licensee to

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<sup>10</sup> *Lindens v Austria* (1986) 8 EHRR 407.

<sup>11</sup> *Autronic v Switzerland* (1990) 12 EHRR 485.

<sup>12</sup> *Steel & Morris v UK* (2005) EMLR 15.

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<sup>13</sup>. 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 Cheng's complaint**

24. In the Adjudication, Ofcom found that the programme, *China 24*, broadcast by SCML on CGTN on 21 November 2019, breached Rules 7.1 and 8.1 of the Code. The Adjudication set out the reasons as to why Ofcom upheld the complaint made by Mr Cheng of unjust or unfair treatment and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.
25. In summary, the programme which was the subject of the Adjudication reported on the release by the police in China of CCTV footage of Mr Cheng which it said showed him "*soliciting prostitutes and of his trial [i]n August*". As the presenter introduced the story, a caption was shown which read: "*Case Cleared: Shenzhen police releases video evidence showing truth behind Simon Cheng case*". Throughout the report, various pieces of CCTV footage of Mr Cheng were shown, including footage which showed him at a reception desk in a lobby, walking down a corridor with a woman, and then both entering a doorway off the corridor. As this footage was shown, the presenter said:
- "Shenzhen police have released videos of Simon Cheng soliciting prostitutes and of his trial [i]n August. This comes after Cheng, who was a trade and investment officer at the UK consulate in Hong Kong, appeared in a BBC interview on Wednesday. He claimed he was 'tortured' while detained in the Chinese mainland. He also said he was accused of inciting political unrest in Hong Kong. However, Cheng was only detained for 15 days in Shenzhen due to soliciting of prostitutes and in accordance with Chinese law".*
26. The programme also included footage of Mr Cheng sat in a room with a pink t-shirt with "XXI" written on it. Mr Cheng was shown speaking and faint audio could be heard; however, his words were inaudible. While this footage was shown, the presenter said, "*The videos show he acknowledged his violation of the law*".
27. In relation to Rule 7.1 of the Code, Ofcom found that the programme's reference to video footage being released by the police of Mr Cheng's "*trial [i]n August*" clearly implied that Mr Cheng had been convicted of the alleged offences referred to in the programme following a criminal trial, as opposed to the correct position that he had been placed in administrative detention by police. Ofcom considered, therefore, that the inference which would be drawn by viewers was that any evidence gathered by the police, including the CCTV footage shown in the programme, had been tested in court and could therefore be relied upon to a greater extent than material that had not been tested in that way. The presentation of the CCTV footage, alongside the statements made in the programme, would have left viewers with the clear

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<sup>13</sup> By virtue of Section 346(3) of the 2003 Act, a person's liability to have a penalty imposed under section 237 of the 2003 Act in respect of acts or omissions of that person while a holder of a Broadcasting Act licence is not affected by that Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty.

impression that Mr Cheng had, as a matter of fact, solicited prostitutes, and that the CCTV videos included in the programme and referred to were evidence of this, as claimed by the police. The programme therefore had the clear potential to materially and adversely affect viewers' opinions of the complainant.

28. Ofcom also found that the inclusion of the video in the programme purporting to show Mr Cheng admitting offences, albeit with only faint audio, in conjunction with the presenter's commentary: *"The videos show he acknowledged his violation of the law,"* would have left viewers with the clear impression that Mr Cheng had voluntarily confessed to the offence of soliciting prostitutes and that the video being shown was of the voluntary confession, when there was reason to doubt this was the case.
29. Further, it did not appear to Ofcom that the Licensee 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 Cheng. While at the beginning of the report it was stated that Mr Cheng said he had been *"tortured"* while he was detained, no further context surrounding Mr Cheng's claim was provided to viewers. This reference also indicated that the Licensee was aware of Mr Cheng's claims that he had been subject to duress during his detention when it reported the story. The Licensee therefore ought to have been aware that the inclusion of the statement that Mr Cheng had *"acknowledged his violation of the law"* in the footage, as a statement of fact rather than merely as an allegation by the police and without making appropriately clear his claim that this footage had been obtained under duress, could have given viewers a misleading impression of the circumstances which had led to Mr Cheng making such statements. The Licensee was also not present during the filming of Mr Cheng and had told Ofcom that it had obtained the footage of Mr Cheng, which we understood was filmed by the police, from the social media platform page of the People's Daily newspaper. The Licensee was therefore not in a position to ascertain whether Mr Cheng had given his genuine, informed consent to the filming of the interview or whether he had consented to how that interview might subsequently be used. Ofcom considered that the Licensee presented the purported confession by Mr Cheng as being genuine, voluntary, in his own words and sufficient to conclude that Mr Cheng had committed criminal offences, in circumstances where the Licensee had significant reasons to doubt this.
30. Given the factors referenced at paragraph 29, Ofcom considered that the programme presented the footage of Mr Cheng in such a way that there was no reason for viewers to question the validity of his confession, which resulted in unfairness to Mr Cheng. The failure to present in the programme facts known to the Licensee that cast significant doubt on whether Mr Cheng's statements were made voluntarily had clear potential to be unfair to the complainant. We also considered that presenting Mr Cheng's alleged confession in this way, and in the absence of further context relating to his assertions about his treatment while in custody, tended to imply that viewers could rely on his confession and the police's evidence against him, as reported in the programme, and that his claim that he had been *"tortured"* while in police custody could be given less weight than the police's claims, which were, overall, presented as statements of fact in the programme.
31. Ofcom also found that the complainant had not been provided with an appropriate opportunity to respond to the claims made in the programme.
32. For these reasons (as detailed further in the Adjudication), Ofcom concluded that the broadcast of the programme had resulted in unfairness to Mr Cheng and that the Licensee was therefore in breach of Rule 7.1 of the Code.
33. In relation to Rule 8.1 of the Code, Ofcom considered that Mr Cheng had a legitimate expectation of privacy in the circumstances in which he was filmed in a detention centre (where access to him was limited and was likely to have been restricted and where he was likely to be

feeling vulnerable) and disclosed information of a highly sensitive nature. The Licensee was also clearly aware of Mr Cheng's claims that he had been subject to duress during his detention when it reported the story. As set out above, the Licensee was not present during the filming of Mr Cheng and it was not clear whether Mr Cheng's informed consent for the filming of the interview had been obtained or whether he had consented to how it might subsequently be used. Ofcom acknowledged the public interest in reporting Mr Cheng's alleged criminal behaviour and developments in the story, including Mr Cheng's interview with the BBC and the Chinese authorities' response to the substance of that interview. However, the obtaining of the footage of Mr Cheng for inclusion in the news report was a significant intrusion into his legitimate expectation of privacy given the sensitive situation in which Mr Cheng was filmed, being detained in police custody, and the highly sensitive nature of the information he disclosed (apparently confessing to a criminal offence). Further, the inclusion in the programme of the footage broadcast of Mr Cheng in a sensitive situation and purporting to show him admitting offences was a significant intrusion into his privacy. This footage was broadcast without the Licensee having taken further measures to verify the circumstances which had led to the interview and to confirm that his consent had been obtained, even though the Licensee was aware that Mr Cheng had made claims about his treatment while in police custody. For these reasons (as detailed further in the Adjudication), Ofcom found that SCML had unwarrantably infringed Mr Cheng'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.

34. 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**

35. 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.
36. 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 SCML on 22 June 2021 and gave SCML the opportunity to provide written and oral representations on it. SCML provided its written representations to Ofcom on 12 July 2021, which are summarised in paragraphs 37 to 39 below, alongside representations which were made during the course of Ofcom's investigation into Mr Cheng's complaint in response to Ofcom's preliminary view that the programme was in breach of Rules 7.1 and 8.1 of the Code ("the Breach Preliminary View"). The Licensee chose not to make oral representations.

#### **The Licensee's representations**

37. In its representations on the Breach Preliminary View, which were reiterated in its representations on Ofcom's Sanction Preliminary View, SCML said that there was no justification for Ofcom to consider that a sanction was warranted in the circumstances of this case. SCML reaffirmed its position, as argued in its response to Ofcom's Breach Preliminary View, that that the programme did not breach the Code. SCML said in its representation on the Sanction Preliminary View that it considered Ofcom to have wrongly concluded that the programme presented, disregarded or omitted material facts in a way that was unfair to Mr Cheng and that Mr Cheng was otherwise treated unfairly. Further, SCML said that Ofcom also wrongly concluded that the broadcast breached the privacy provisions 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 programme, outweighed Mr Cheng's right to privacy.

38. SCML noted that Ofcom had considered in the Sanction Preliminary View that the alleged breaches were neither deliberate nor reckless and had also acknowledged that the broadcaster had been cooperative throughout Ofcom's investigation process in relation to Mr Cheng's complaint. SCML said that, consequentially, Ofcom should not consider imposing a statutory sanction.
39. SCML 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 can act only as a deterrent to other licence holders. SCML said that, notwithstanding this admission, Ofcom "considered what would be an appropriate and proportionate deterrent, if [the broadcaster] had continued to broadcast" [emphasis added by SCML]. 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 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, which it did not do.

#### **Ofcom's Decision on the imposition of a statutory sanction**

40. 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 Guidelines<sup>14</sup>.
41. 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 the 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 so<sup>15</sup>. Even where a broadcaster no longer holds a licence, it may be appropriate and proportionate to impose a statutory 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 regime<sup>16</sup>.
42. 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**

43. 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

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<sup>14</sup> 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.

<sup>15</sup> Penalty Guidelines, paragraph 1.4.

<sup>16</sup> 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.

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.

44. 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.
45. We carefully considered SCML's representations in response to the Sanction Preliminary View, some of which had been made during Ofcom's investigation into Mr Cheng's complaint. However, in Ofcom's view, the breaches in this case were serious. This is because of the nature of the content filmed and broadcast in relation to Mr Cheng and the omissions by SCML found by Ofcom in its breach findings. Specifically:
  - a) The presentation of the CCTV footage, alongside the statements made in the programme, left viewers with the clear impression that Mr Cheng had, as a matter of fact, solicited prostitutes, when no finding of fact had been made against Mr Cheng;
  - b) The programme included footage of Mr Cheng which purported to show him making highly sensitive disclosures against his own interests (apparently confessing to a criminal offence);
  - c) Mr Cheng 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;
  - d) Mr Cheng was likely to be feeling vulnerable, taking into account the environment where he was filmed, as noted above;
  - e) SCML did not take any measures to verify the circumstances in which Mr Cheng had been filmed nor did it make any enquiries about the provenance of the footage;
  - f) SCML had not obtained Mr Cheng's informed consent to contribute to the programme nor had it taken any steps to verify whether such consent had been obtained;
  - g) SCML failed to present facts which it knew at the time of broadcast, which cast significant doubt on whether Mr Cheng's purported confession was made voluntarily, for example, SCML was aware of Mr Cheng's claims that he had been subject to duress during his detention; and
  - h) As a result of these failures, SCML failed to exercise reasonable care to ensure that material facts in relation to the footage were not presented, omitted or disregarded in a way that was unfair to Mr Cheng.
46. 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 Cheng and a serious and unwarranted infringement of his privacy.
47. 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 includes "... 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.

48. In [Issue 378](#) of the Ofcom Broadcast and On Demand Bulletin (published on 13 May 2019), Ofcom announced its investigation into the programmes *China 24* and *News Hour*<sup>17</sup> and *The World Today* and *News Desk*<sup>18</sup>. In [Issues 406](#) (published on 6 July 2020) and [422](#) (published on 8 March 2021) of Ofcom’s Broadcast and On Demand Bulletin respectively, Ofcom also found that SCML breached Rules 7.1 and 8.1 of the Code in relation to those programmes. While we acknowledged that the Licensee would not have been on notice of the breach decisions in those earlier cases at the time of broadcast of this *China 24* programme (which was broadcast on 21 November 2019), in Ofcom’s view there were similarities between these two previous breach decisions and the circumstances of this case. Specifically:
- a) The *China 24*, *News Hour*, and *News Desk* programmes also included footage of the complainants apparently confessing to criminal offences and making disclosures which were highly sensitive in nature.
  - b) SCML presented the purported confessions as being genuine and voluntary when SCML had reason to doubt this.
  - c) In relation to the breach decision concerning the programme *The World Today*<sup>19</sup>, Ofcom considered that the broadcaster had not taken sufficient steps to establish whether informed consent had been obtained from the complainant at the time the footage was obtained.

Further, while the publication of Ofcom’s Adjudications on these complaints post-dated the broadcast of this programme, at the time of the broadcast of the programme on 21 November 2019, the Licensee was aware that Ofcom had launched an investigation into these other programmes which contained a number of similarities, as described above. In view of these similarities, Ofcom therefore considered that the breach of Rules 7.1 and 8.1 of the Code in this case were repeated.

49. In light of the above, Ofcom has decided that the breaches of Rules 7.1 and 8.1 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.

### **Imposition of sanction**

50. 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 sanction that we have decided to impose.
51. As set out in paragraphs 22 and 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.

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<sup>17</sup> Complaint by Mr Peter Humphrey about *China 24*, *CCTV News*, 28 August 2013 and *News Hour*, *CCTV News*, 14 July 2014.

<sup>18</sup> Complaint by Mr Gui Minhui made on his behalf by Ms Angela Gui, about *News Desk*, *CCTV News*, 17 January 2016 and *The World Today*, *CGTN*, 11 February 2018.

<sup>19</sup> See footnote 18.

52. 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 revenue<sup>20</sup> 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.
53. 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".
54. 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**

55. 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*

56. Ofcom regards the breaches in this case as serious and repeated for the reasons set out in paragraphs 45 to 49 above. 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 Cheng and gave rise to a serious unwarranted infringement of Mr Cheng's legitimate expectation of privacy.
57. SCML said that it had obtained the footage of Mr Cheng from the social media platform page of the People's Daily newspaper and was therefore not present during the filming of Mr Cheng. In light of the circumstances in which SCML received the footage and the sensitive nature of its content, it is reasonable to expect that a responsible broadcaster would take steps to satisfy itself that the content was compliant with Sections 7 and 8 of the Code. SCML failed to take sufficient steps to: verify the circumstances in which Mr Cheng had been filmed even though it was aware of his claims that he had been the subject of duress; obtain Mr Cheng's informed consent to the broadcast of the footage or ensure that, or verify whether, his consent to the filming had been obtained; or give Mr Cheng the opportunity to comment on the allegations in the programme before broadcast or make reasonable 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 Cheng.
58. Notwithstanding SCML's position made in response to Ofcom's Entertainment Decision and reiterated in its representations on the Breach Preliminary View<sup>21</sup> that the footage of Mr Cheng was shown briefly (approximately 55 seconds), Ofcom considered that the inclusion of the footage, accompanied by statements that the footage showed Mr Cheng soliciting prostitutes (which we considered were presented as statements of fact) and that he had acknowledged his

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<sup>20</sup> 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.

<sup>21</sup> These representations are set out in full in [Ofcom's Adjudication](#).

violation of the law, would have given viewers the clear impression that Mr Cheng had, as a matter of fact, solicited prostitutes, and that he had made genuine and voluntary statements during his police interview confessing to having done so. This had the clear potential materially and adversely to affect viewers' opinions of him.

The degree of harm, whether actual or potential, caused by the contravention

59. We considered that the degree of harm caused to the complainant was very serious. The inclusion of the footage of Mr Cheng in conjunction with the statement that it showed he had "acknowledged his violation of the law", had the potential to be very harmful to Mr Cheng since it would have given viewers the impression that he had voluntarily acknowledged that he had committed a criminal offence by soliciting prostitutes. We considered that SCML failed to verify that Mr Cheng had given informed consent to the filming; to make adequate enquiries as to the circumstances in which the footage was filmed by the police; and to ensure material information was not presented, omitted or disregarded in a way that was unfair to Mr Cheng. Consequently, the programme had significant potential to materially and adversely affect viewers' opinions of Mr Cheng in a way that was unfair and resulted in an unwarranted infringement of his privacy.
60. For these reasons, Ofcom has decided that the contraventions had the clear potential to cause serious harm to the complainant.

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

61. 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.

62. We considered that in obtaining the footage of Mr Cheng from the social media platform of a third party, SCML did not itself take any steps to ascertain the circumstances in which Mr Cheng had been filmed in order to satisfy itself that Mr Cheng 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 ensure Mr Cheng's informed consent to the filming or the broadcast of the footage had been obtained, nor taken any steps to verify whether such consent had been obtained. We considered this to be a serious failure of compliance.
63. In addition, Ofcom had significant concerns that SCML had presented the confession by Mr Cheng in such a way that would have led viewers to believe that there was no reason to question the validity of his confession, and that his claim that he had been "tortured" while in police custody could be given less weight than the police's claims, which were, overall, presented as statements of fact in the programme. We considered this particularly concerning in circumstances where SCML had reason to doubt that Mr Cheng had made these statements voluntarily. In particular, Ofcom considered that there were particular features of the footage that should have led the broadcaster to make further enquiries about it before deciding to include it in the programme in the way that they did.
64. The circumstances included the apparent willingness on the part of Mr Cheng to make highly sensitive disclosures against his own interests. They also included, as argued in Mr Cheng's representations on Ofcom's Breach Preliminary View on his complaint, that the Licensee would have been aware that significant parts of the police's story were disputed. In particular, Mr Cheng noted that in the BBC interview he had indicated that he was held in solitary confinement,

as well as making a claim that he was tortured. As referenced in the Adjudication<sup>22</sup>, the Licensee provided Ofcom with a website link which included excerpts of Mr Cheng's interview with the BBC during which he clearly claimed that he told police: "You don't need to torture me. I will say anything you want me to say". The Licensee also told Ofcom that it knew the video clip of Mr Cheng, which it had obtained from a social media platform, had been filmed by the police whilst Mr Cheng was in a detention centre, and therefore in a vulnerable position.

65. However, despite these circumstances, SCML did not make adequate enquiries as to the circumstances in which the footage was obtained. Whilst the broadcast acknowledged Mr Cheng's claim made in a BBC interview that he had been "tortured", the programme did not refer to material facts that called into question the reliability of Mr Cheng's confession. The broadcaster also considered it unnecessary to give Mr Cheng an opportunity to respond to the programme in advance of broadcast and did not do so.
66. Taking into account the matters referred to above, we therefore considered 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. This was particularly so, in circumstances where the breaches had occurred following similar, serious compliance issues which the Licensee was aware were being investigated by Ofcom, and which ultimately led to breach decisions in respect of programmes broadcast in 2013 and 2014 and 2016 and 2018, as discussed at paragraphs 48 and 49 above.

*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*

67. We have no evidence that these contraventions were deliberate or that senior managers at SCML knew that the contraventions would occur. However, for the reasons set out at paragraphs 62 to 66 above, we considered that there was a failure by SCML to take appropriate steps in light of its regulatory obligations towards Mr Cheng under Sections 7 and 8 of the Code and that this was indicative of seriously inadequate compliance procedures. We considered whether or not this amounted to recklessness.
68. We had regard to the fact that similar, serious compliance issues were being investigated which ultimately led to breach decisions in respect of programmes broadcast in 2013 and 2014 and 2016 and 2018, as discussed at paragraphs 48 and 49 above. At the time of the broadcast on 21 November 2019, SCML was aware Ofcom was investigating these matters, so SCML was aware of the nature of the compliance issues involved, albeit we acknowledged that Ofcom had not reached its final decisions on these cases at the time the programme was broadcast. We are concerned by the Licensee's failure to put in place adequate compliance procedures to prevent repeated contraventions from occurring, particularly in light of the ongoing investigations at that time. However, we acknowledge that, prior to a decision being issued, a licensee does not know whether Ofcom will conclude that there has been a breach and is not aware of our detailed assessment of any compliance shortcomings.
69. We also had regard to the fact that SCML had obtained the footage of Mr Cheng from the social media platform page of the People's Daily newspaper and was therefore not present during the filming of Mr Cheng by the police. It was therefore unable to ascertain whether Mr Cheng had given his informed consent, particularly where the disclosures made by him were sensitive, contrary to the requirements of Rule 7.1 of the Code. In our view, a reasonably prudent licensee should also have turned its mind to the possibility that Mr Cheng may have had a legitimate expectation of privacy, in circumstances in which he was being filmed by the police in a

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<sup>22</sup> See footnote 1.

detention centre and making statements of a highly sensitive nature, and that the broadcaster's and audience's rights under Article 10 of the Convention did not outweigh the significant intrusion into Mr Cheng's privacy in the circumstances. As such, the Licensee took insufficient steps in order to ensure compliance with Rule 8.1 of the Code.

70. On balance, whilst we were concerned about the serious compliance errors, particularly in light of the Licensee being on notice of investigations of similar matters by the time of the broadcast (albeit no decisions had been issued on these), we do 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

71. It appears that SCML only became aware of the potentially serious issues raised by this particular programme following Mr Cheng's complaint to Ofcom.
72. In its representations as set out in the previous SCML sanction decision relating to a breach of the fairness and privacy rules in the Code<sup>23</sup> (as referred to at paragraphs 82 and 83 below), 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 in the UK such material 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 Adjudication<sup>24</sup>. 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.
73. 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 serious breaches from occurring in this case. 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, including in its representations in response to Ofcom's Sanction Preliminary View, that it considered the programme was not in breach, and had also told Ofcom in its representations in relation to the previous sanction that 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

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

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<sup>23</sup> [Ofcom's Sanction Decision](#) published on 8 March 2021.

<sup>24</sup> See paragraph 48 of [Ofcom's Sanction Decision](#) published on 8 March 2021.

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

75. SCML held an Ofcom Licence from 2011<sup>25</sup> until it was revoked by Ofcom on 4 February 2021<sup>26</sup>. Aside from the breaches now being considered for statutory sanction, Ofcom has found the Licensee to have committed breaches of Rules 7.1 and 8.1 the Code, prior to the breaches now being considered for statutory sanction, on two separate occasions. The first breach finding related to the obtaining and broadcast of footage of Mr Humphrey in programmes broadcast in 2013 and 2014, which is referred to at paragraph 48 above<sup>27</sup>. In relation to this breach finding, Ofcom imposed in a sanction of £100,000<sup>28</sup>. 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 Gui in programmes broadcast in 2016 and 2018, which is referred to at paragraph 48 above<sup>29</sup>. This breach finding is being separately considered for the imposition of a statutory sanction.
76. 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 taking place in Hong Kong which took place 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 Code<sup>30</sup>. The second breach findings 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 Code<sup>31</sup>. Ofcom imposed a sanction of £125,000 in respect of this case.

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

77. 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**

78. 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.
79. 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<sup>32</sup>. Some of these decisions are now over five years old and were decided under the previous Penalty Guidelines<sup>33</sup>. Ofcom's new Penalty Guidelines 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

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

<sup>26</sup> See footnote 2.

<sup>27</sup> See footnote 17.

<sup>28</sup> [Ofcom's Sanction Decision](#) published on 8 March 2021.

<sup>29</sup> See footnote 18.

<sup>30</sup> [Ofcom's Decision](#) published on 16 February 2015 in issue 273 of Ofcom's Broadcast Bulletin.

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

<sup>32</sup> See Annex 1.

<sup>33</sup> See footnote 14.

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.

80. Ofcom considered that the two previous decisions against Abu Dhabi Media Company PJSC (“ADMC”),<sup>34</sup> 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.
81. 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.
82. The previous decision against SCML, 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.
83. 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 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 this 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 that there was no evidence that the breaches

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<sup>34</sup> [6 May 2021, Abu Dhabi Media Company PJSC Sanction Decision](#) and, [6 May 2021, Abu Dhabi Media Company PJSC Sanction Decision](#).

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.

84. Ofcom considered that two previous decisions (Al Arabiya News Channel FZ-LLC ("Al Arabiya News")<sup>35</sup> and Press TV Limited ("Press TV")<sup>36</sup> 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. 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.
85. However, we noted that there were also differences in the circumstances of the Press TV and Al Arabiya News cases. For example, 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.
86. We considered that the British Broadcasting Corporation (BBC)<sup>37</sup> and Kiss FM Radio Limited ("Kiss FM")<sup>38</sup> cases shared certain similar features to this case, albeit to a more limited extent, in that they involved, respectively, the issue 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 a news programme that had the potential to result in serious adverse harm to Mr Cheng as a result of serious compliance errors.

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

87. 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

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<sup>35</sup> [25 January 2018, Al Arabiya News Channel FZ-LLC Sanction Decision.](#)

<sup>36</sup> [1 December 2011, Press TV Limited Sanction Decision.](#)

<sup>37</sup> [3 April 2009, BBC Sanction Decision.](#)

<sup>38</sup> [20 June 2006, Kiss FM Sanction Decision.](#)

to ensure that enforcement of the Code acts as a wider deterrent to the industry against future non-compliance with the Code.

88. 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".
89. For the reasons set out in paragraphs 56 to 60 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.
90. 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.
91. In reaching this Decision on the imposition and level of a sanction in this case, Ofcom has taken account of SCML's qualifying revenue for its most recent accounting period for which information is available.
92. For all the reasons set out above, Ofcom considers it is proportionate to impose a financial penalty on SCML of **£100,000** (one hundred thousand pounds).

### **Decision**

93. 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 the particular seriousness of the breaches in this case. In particular, Ofcom was concerned that the breaches had occurred following similar, serious compliance issues which the Licensee was aware were being investigated by Ofcom, and which ultimately led to breach decisions as discussed at paragraphs 48 and 49 above. The repeated nature of the breaches, in our view, compounded the seriousness of the breaches in this case. We have also taken account of SCML's representations, 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.
94. Having regard to all the factors referred to above, Ofcom considers that an appropriate and proportionate sanction would be to impose a financial penalty of **£100,000** (payable to HM Paymaster General).

**Ofcom**

## ANNEX 1: PRECEDENTS

*Previous sanctions relating to breaches of Rules 7.1 and 8.1*

<b>Sanction Decision</b>	<b>Sanction</b>	<b>Nature of Sanction</b>
<b>6 May 2021, Abu Dhabi Media Company ("ADMC")<sup>39</sup></b>	£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.
<b>6 May 2021, AMDC</b>	£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.
<b>8 March 2021, Star China Media Limited ("SCML")</b>	£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

<sup>39</sup> [6 May 2021 AMDC Sanction Decision.](#)

		<p>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. 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 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.</p>
<p><b>25 January 2018, Al Arabiya News Channel<sup>40</sup></b></p>	<p>£120,000 financial penalty; direction to broadcast a statement of Ofcom's findings and not to repeat the material found in breach again.</p>	<p>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.</p>
<p><b>1 December 2011, Press TV<sup>41</sup></b></p>	<p>£100,000 financial penalty; direction to broadcast a statement of Ofcom's findings and not</p>	<p>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</p>

<sup>40</sup> [25 January 2018, Al Arabiya News Sanction Decision.](#)

<sup>41</sup> [1 December 2011, Press TV Sanctions Decision.](#)

	to repeat the material found in breach again.	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.
<b>3 April 2009, BBC<sup>42</sup></b>	£80,000 financial penalty; direction to broadcast a statement of Ofcom's findings.	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.
<b>20 June 2006, Kiss FM<sup>43</sup></b>	£75,000 financial penalty	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.

<sup>42</sup> [3 April 2009, BBC Sanction Decision.](#)

<sup>43</sup> [20 June 2006, Kiss FM Sanction Decision.](#)