



Complaint by Mr James Watt and BrewDog PLC, about *Disclosure: The Truth about BrewDog*

Type of case	Fairness and Privacy
Outcome	Not Upheld
Service	BBC 1 Scotland
Date & time	24 January 2022, 19:00
Category	Fairness and Privacy
Summary	Ofcom has not upheld this complaint about unjust or unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.

Case summary

The programme examined BrewDog PLC’s (“BrewDog”) marketing strategy and commercial practices in the context of claims about its corporate culture. The programme included accounts given by former BrewDog employees who spoke about their experiences of alleged personal misconduct by BrewDog’s CEO, Mr James Watt. The programme also included allegations about Mr Watt’s personal investments.

A complaint was made to Ofcom that BrewDog and Mr Watt (“the complainants”) were treated unjustly or unfairly in the programme as broadcast, and that Mr Watt’s privacy was unwarrantably infringed in both the obtaining and broadcast of material included in the programme relating to his personal investments.

Ofcom’s decision is that material facts were not presented, disregarded or omitted in a way that was unfair to the complainants, that they had an appropriate and timely opportunity to respond to the allegations made in the programme, and that their response was fairly reflected in the programme.

Ofcom also considered that Mr Watt had a legitimate expectation of privacy with regard to the obtaining and subsequent broadcast of material concerning Mr Watt's personal investments. However, Mr Watt's legitimate expectation of privacy did not, on balance, outweigh the broadcaster's right to freedom of expression and the public interest in obtaining and including the material in the programme. Therefore, there was no unwarranted infringement of Mr Watt's privacy in connection with the obtaining and subsequent broadcast of the material included in the programme.

Programme summary

On 24 January 2022, BBC 1 Scotland broadcast an edition of the documentary programme, *Disclosure*, entitled *The Truth about BrewDog*. The programme looked at BrewDog's marketing strategy and commercial practices in the context of claims about its corporate culture. The programme included accounts given by former BrewDog employees who spoke about their experiences of Mr Watt's alleged personal misconduct.

Early in the programme, reference to the complainants' marketing strategy was made. The reporter said:

"Nothing has set BrewDog apart more than its eye-catching marketing campaigns... The company's marketing mayhem is the brainchild of CEO James Watt... His bold ideas have made BrewDog impossible to ignore... If you want an insight into the mind of [Mr Watt], his book's a good place to start...it also says, though, that if you want to grow a brand like BrewDog, you've got to be open and honest because, according to this [Mr Watt's book], 'everything is marketing', and audiences are savvy, and they're quick to smell the marketing BS. With that in mind, we thought we'd put BrewDog's marketing to the test. Just how open and honest has the company been over the years?"

The programme went on to explain the "story" of how BrewDog was established, before focussing in detail on some of the company's marketing campaigns. First, the programme looked at the campaign for the "Speedbird100" beer. A clip from a video for Speedbird100, captioned "*BrewDog and British Airways Speedbird100 – Vimeo*" was shown, and the reporter said:

"...Is there a smell around some of the company's greatest marketing hits? Take this one, for example. In 2019, they brewed a beer at 30,000 feet".

The programme then included footage of Mr Watt and another of BrewDog's founders, Mr Martin Dickie, addressing a crowd of people, who were all holding glasses of Speedbird100. Mr Dickie said: "*What you have in your glass is the first ever beer made on an aeroplane [crowd cheers]*". The footage ended and the clip from the Speedbird100 video was repeated. The reporter continued:

"Or did they? We've spoken to one of the people who actually made that beer, who told us that this was all a stunt, and that the beer had in fact been brewed in Ellon. BrewDog deny this".

The programme looked at other marketing campaigns, relating to an employee of the month and another of BrewDog's beers, before going on to examine the "*Beer For All campaign*". A short clip from the campaign was shown, captioned "*BrewDog – Beer For All ad – YouTube*". As the reporter spoke, a video of an aeroplane flying, captioned "*NetJets – Instagram*" was shown.

Reporter: *“[BrewDog] say sustainability is their priority, and they’re now the world’s first carbon-negative brewery. They’ve raised millions from crowdfunding to install a biogas unit, and other planet-saving measures at their facility in Ellon. All while James [Mr Watt] charged the company up to £4,000 an hour to fly around on a private jet. Did you know, by the way, a private jet flight is ten times more carbon-intensive than a normal flight? But who’s counting”.*

A clip from a video captioned “BrewDog Forest – YouTube” was shown, which included footage of Mr Watt and Mr Dickie walking through an area of the Scottish Highlands, as Mr Watt’s voiceover said: *“It just hit us like an absolute sledgehammer, this blindingly stark realisation that we weren’t doing nearly, nearly enough...We are causing this carbon to go in the air, so we want to take responsibility, we want to own this, and we want to fix it ourselves”.* The clip ended and the reporter said:

“[BrewDog’s] flagship sustainability plan is planting trees. They’ve called it the ‘Lost Forest’, and look, their website says right here they’ll plant a tree there for every pack of ‘Lost Lager’ sold”.

The programme included a screenshot of a webpage with an image of a can of Lost Lager and area of land with a sign which read “BrewDog Forest. Coming soon”. Under the image was the following text: *“For every pack of Lost Lager you buy (and drink), BrewDog will plant a tree in the Lost Forest, a 9,308-acre plot of land in the Highlands. It’s here we’re embarking on one of the biggest reforestation and peatland restoration projects the UK has ever seen. By drinking this beer, you’re having a positive impact on the planet!”.* Footage of the reporter at the Kinrara Estate in Scotland, interspersed with aerial footage of the Estate, was included:

Reporter: *“Now I’ve bought quite a bit of Lost Lager in the last six months, so I’m looking forward to seeing the forest that I’ve helped to pay for. And here it is, the Kinrara Estate, home to the Lost Forest, or, at least, it will be a forest once BrewDog start planting trees here. There’s a reason why there aren’t many trees here yet – BrewDog aren’t planning to pay for them with their own cash. Last year we were contacted by an anonymous source inside the Scottish Government. They wanted us to know that BrewDog had recently submitted a grant application to pay for the planting of trees here at the Lost Forest. The application is for up to £1.3 million to cover the cost of phase one of their tree-planting plan. BrewDog say they’ve spent £10 million on buying the land. Now, let’s be clear, planting trees is a great idea and great for the environment, but it doesn’t look like it’ll be paid for by BrewDog from the sales of Lost Lager”.*

An interview with the reporter and Mr Victor Clements, *“adviser and campaigner on native woodlands in Scotland”* was included and the following exchange took place:

Mr Clements: *“Anyone planting trees in Scotland will apply to the Forestry Grant Scheme. I don’t think anybody objects to using public money for*

planting woodlands but, you know, if you want to allocate credit for it then actually, you know, we are paying for that.

Reporter: *We, the taxpayer?*

Mr Clements: *Correct, yeah. There's a lot of presentation in these things, isn't there? Maybe the PR department is spending a bit too much".*

The interview ended and the reporter said: *"Because, remember, whether it's taking on Elvis or saving the planet, everything is marketing. Even if it has an occasional whiff of BS".* The reporter went on to read out BrewDog's response to the allegations, which was also summarised in the captions:

"BrewDog have told us 'The Forestry Grant Scheme is open for anyone to apply', and 'anticipates that 1.1 million trees will be planted in the Lost Forest'. The company says it has always been clear they're 'planting trees in two locations', and BrewDog has a 'dedicated area' where trees are planted in an Eden Forest Project in Madagascar.

Harmless marketing fun or not, the gimmicks and the punk, stick it to the man attitude, have been hugely successful in creating a legion of BrewDog fans. James Watt and Martin Dickie have harnessed that fanbase loyalty to help grow the company beyond what was thought possible".

The programme then looked at BrewDog's "Equity For Punks Crowdfunder" ("EFP"), which the reporter explained had launched in 2009 and gave consumers the chance to invest in the company. Later in the segment, the reporter stated that *"less than two years after dropping fat cats on the City of London, BrewDog sold nearly a quarter of the company to private equity firm, TSG, for more than £200 million".* The programme included an interview with an individual whose investment was *"sitting at 15-times return from what was purchased"* following the TSG sale, the reporter then continued:

"...James [Mr Watt] and Martin did pretty well out of it [i.e. the TSG sale] too. While the punks can only sell a fraction of their shares on special trading days, the anti-fat cat co-founders sold a pile of theirs to TSG and raked in nearly £100 million between them".

The reporter went on to explain that BrewDog subsequently began *"another crowdfunder"*, and that *"the majority"* of EFP's had signed up since the TSG deal, before going on to look at the shares purchased in more detail:

"I wonder how many [EFP investors] paid close attention to bullet point three in the 'Risks' section, which warns: [the following was shown in screen and read in quickly] 'in the event that the Company's entire capital is returned to shareholders or if the Company is wound up, the C Shareholders will be entitled to a sum equal to the greater of (a) that which they would receive were all shares in the Company to rank pari passu and (b) their subscription price plus an 18% compound annual return on that subscription price for the period from issue to the point at which capital was returned'. Wait, what?"

An interview with Mr Nick Hyett from the “Investment Analyst Wealth Club” was included. The following exchange took place:

Mr Hyett: *“So, what happened when TSG bought in is a new type of share was created called C-class shares, and these had special rights that don’t apply to the other shareholders. These C shares are entitled to make a guaranteed return of 18% a year...*

If the TSG 18% a year growth isn’t delivered by the BrewDog share price then they will receive a larger chunk of the business. So that money is going to come from other shareholders.

Reporter: *Equity Punks.*

Mr Hyett: *And the founders. But Equity Punks, yes”.*

The interview ended and the reporter said:

“If the company were to float tomorrow, it would need to be valued at around £2 billion for most [EFP’s] to see a return...BrewDog says they’re committed to floating the company and, the longer they wait, the more TSG is owed. The more TSG is owed, the more they’ll have to grow. But with plans to open 30 new bars this year, anything is possible.

So, just to sum up, James Watt and Martin Dickie sold nearly a quarter of the company to TSG, effectively guaranteeing their investment over Equity Punks investments like mine, made nearly £100 million between them in the process, and six months later launched another round of crowdfunding asking their loyal fans for yet more money. Now, there’s nothing wrong with that, I guess, it’s just good business. And as for my investment? I’ll still get a beer on my birthday.

BrewDog say that, in setting its most recent valuation, they’ve taken advice from two of the world’s most prestigious investment banks, and they say last year they received an investment proposal valuing the company at £1.8 billion”.

The programme then went on to examine Mr Watt’s personal investments. The reporter said:

“Since the TSG deal, James Watt’s personal business empire has expanded. Now, we found out about some investments that James Watt would probably rather be kept quiet. For example, in 2017 he invested more than £2 million in a hedge fund in the Cayman Islands, one of the world’s most secretive offshore tax havens. But here’s another that will really take your breath away. First, a bit of context. We’ve heard all about how James feels about Big Beer companies. In fact, James Watt has taken aim at other craft brewers for ‘selling out’ to the corporate giants BrewDog stands against.

Here, in 2015, he tells the world his bars would no longer stock Lagunitas after they were bought out by Heineken. In 2018 he punished Beavertown Craft Brewery for selling a stake of their company to Heineken”.

As the reporter spoke, screenshots of social media posts by Mr Watt were shown which confirmed that BrewDog would no longer be selling either of the beers referred to. The reporter continued:

“Well, get a load of this. We found out that in 2017 James Watt bought shares worth half a million pounds in that insipid corporate giant, the scourge of the craft beer industry that he claims to despise, Heineken. You weren’t expecting that, were you?”.

An interview with Mr Rob MacKay, who was identified in the programme as “one of the founding members” of PWP (i.e. “Punks With Purpose”), was shown during which the following exchange took place:

Reporter: *“Would it surprise you to know that James Watt is a shareholder in Heineken?”*

Mr MacKay: *Yes, that’s genuinely astonishing. I did not know that, no.*

Reporter: *To the tune of at least £500,000 worth of shares, is part of James Watt’s private portfolio.*

Mr MacKay: *Oh, yeah, you’ve got me there. No, I didn’t know that.*

Reporter: *Does it matter though? It’s his own money, he’s allowed to invest in whoever he wants. Does it matter?”*

Mr MacKay: *None of those things do matter unless that’s what you’re growing your business off the back of. So, if you say that ‘we fundamentally disagree with the principles of multinational macro lager breweries’, and you build a community around you, and hundreds of thousands of people invest in you and what you believe, you’ve got to live that like every day, in everything you do that should be reflected”.*

At the end of the interview, the reporter said: *“James Watt has told us his ‘tax arrangements are entirely legal and legitimate’ and he pays tax on all income ‘both overseas and in the UK’. He didn’t respond to our Heineken discovery”.*

The programme moved on to look at an alleged “toxic work culture” at BrewDog and included interviews with former employees who spoke about their experiences of working at BrewDog, including “regular misogyny”, “discriminatory practices” and “summary dismissals”, and referred to an open letter to the company and Mr Watt written by a group of former employees, “Punks with Purpose” (“PWP”), which, in addition to the above, detailed allegations of “bullying” and “lying”. Towards the end of the segment, the programme focussed on an “all-staff survey” carried out in 2019. The reporter said:

“None of it should’ve come as a surprise. This wasn’t the first time BrewDog staff had raised concerns. We found out that in 2019, BrewDog carried out an all-staff survey to try and gauge staff morale. These are the findings, and they’re not good. Staff felt there was a lack of consideration for their wellbeing and mental health. When head office staff were asked if they’d recommend BrewDog as a place to work, it scored minus 54. This survey should have been a wake-up call for

the company, but we've been told that the results were not shared with staff and the conclusions were not acted on.

BrewDog said it took culture issues raised in the Punks with Purpose letter 'extremely seriously', and James Watt offered a 'full and frank apology'. The company took 'immediate actions', including launching an 'ethics hotline', a 'salary review', and an 'independent culture review'. The review highlighted the need to 'do more to support staff' and has led to measures designed to 'improve leadership'.

The programme went on to examine the opening of several bars in the US. During the programme segment, the reporter explained that, due to delays in construction, the brewery in the US “wasn't yet operational”, and that “for the first few months, all of the BrewDog beer that was being sold in here had to come from Scotland”. The reporter stated that shipping beer to the US “has to be approved by agents from a branch of the US Treasury” and that “any unusual ingredients in the beer, such as flavourings or extracts, have to be declared”. The reporter said that this was “causing issues” at the BrewDog brewery in Scotland, and that: “staff knew some beers...used certain extracts that weren't at the time approved in the States. They say that senior management pressured them to flout rules and get the beer to the US in time, no matter what”. Statements from anonymous BrewDog employees about extracts not being declared were included, the reporter continued:

“Our evidence reveals BrewDog withheld the information. These are the documents [images of the alleged documents are shown] for 'Elvis Juice' and 'Jet Black Heart' submitted to the US Alcohol and Tobacco Trade Bureau, the TTB. They show no extracts were declared”.

An interview with Mr Battle Martin, a “former TTB agent” was shown, in which Mr Martin confirmed that “if those extracts were being added to that product, a formula should've been submitted by the importer” and that it “looks like” the beers were illegally shipped to the USA. At the end of the interview the reporter said:

“So, the Elvis Juice and Jet Black Heart sold at the company's AGM in September 2016 and at the flagship DogTap bar for four months in 2017 were shipped illegally from the UK... But I guess it is pretty punk. And like James [Mr Watt] says in his book: 'Treat rules, regulations and bureaucrats with the callous indifference they deserve. The consequences of not getting permission are almost never as bad as you think'.

The TTB has told us it couldn't comment on specifics, but said there is a three-year statute of limitation for offences, and that enforcement action could not have been taken against BrewDog in any case because they're a foreign company. Instead, it's the domestic importer whose license would have been on the line”.

The programme included an interview with Mr Daniel Shelton, who was introduced by the reporter as “BrewDog's importer in September 2016”.

Reporter: *“Can you confirm whether these extracts were declared to your company?”*

Mr Shelton: *Certainly weren't. We believed what we were told, and we weren't told what was actually going on.*

Reporter: *You submitted this form in good faith, but it turns out that they deceived you and you submitted false information to a US government agency. How do you feel about that?*

Mr Shelton: *Well, obviously I'm unhappy about that. I would be angry about that, especially if it leads to any real investigation".*

The interview ended and the reporter said:

"Last week, James Watt said he regretted they had taken 'shortcuts' in the importation process. He said there had been 'technical inaccuracies' in their paperwork, and that they had 'self-reported' the issues to the TTB. BrewDog added it had 'never sought to evade tax' and had never used 'illegal ingredients' in their beer".

The final part of the programme looked at allegations of personal misconduct made against Mr Watt by former BrewDog employees. At the start of the final segment the reporter said:

"BrewDog say they're working hard to change the culture of the company. They've introduced a new workplace code, which says it wants staff to feel comfortable and safe at work. But we've been told that, in the very recent past, some BrewDog staff have felt anything but, and the allegations centre on the captain of the ship himself, James Watt".

An interview with Ms Meg Herman, a former employee, was shown. The reporter explained that Ms Herman had told the programme about *"something she said she saw in 2017 at the DogTap in Canal Winchester"*, and the following conversation took place:

Ms Herman: *"We were off shift and James [Mr Watt] was in town, and a couple of us were sitting around the firepit. He was very flirtatious with an employee at that point, and he ends up going up to the roof with her. No one on staff that was downstairs felt comfortable with it. I think it is so unprofessional.*

Reporter: *A private life is someone's private life.*

Ms Herman: *The thing is, he brought it into his business. He could've gone anywhere else, but he didn't. He did it at the brewery, and that is a power trip".*

The reporter's voiceover said: *"BrewDog sacked Meg Herman for theft in 2019. She says she'd taken a six-pack of damaged beer and says there was an understanding staff were allowed to drink unsellable stock".* The interview continued and included the following exchange:

Reporter: *"Won't BrewDog say, 'She's dishonest, this is her getting her own back at BrewDog'?"*

Ms Herman: *They're going to say whatever they want to say about me. I honestly think that they looked for any reason to get rid of me because they did not like that, I started questioning things".*

At the end of the interview, the reporter said: *"James Watt told us that he has 'never been on the roof' of the DogTap either 'on his own' or 'accompanied by anyone'".* The reporter went on to

explain that Ms Herman's was *"not the only story we've heard from former staff about James Watt taking a woman to the roof of a BrewDog building"*. The programme then included an interview with another former employee, Mr Haydyn Beer:

Mr Beer: *"There was one time that he came in with two women. It was later in the night, he came right up to the bar, had me pour them drinks. They were already drunk when they came in. Eventually, he left with one of those two women to go up to the entrance to, like, a roof bar area and then proceeded to kiss this lady while her friend was just downstairs waiting.*

Reporter: *He was making out upstairs?*

Mr Beer: *Yeah, he was making out with her.*

Reporter: *And how do you know that he was making out with this woman upstairs if you were downstairs?*

Mr Beer: *Well, he was on camera.*

Reporter: *You and other members of staff saw the CEO of BrewDog in the roof bar making out with a drunk customer?*

Mr Beer: *Yeah, not, like, in the roof bar itself, but on the roof area.*

Reporter: *In the roof terrace?*

Mr Beer: *Yeah, exactly. With a drunk customer that he brought in, that was already inebriated when they showed up. Sometimes it did feel as though he treated coming to the US as his vacations. He would check on the bars... but it did feel kind of sometimes like he'd just do whatever he wanted to in the US".*

The interview ended, followed by another interview with former employee Mr Nathan Quick, who the programme said was also at the bar when the alleged incident took place:

Mr Quick: *"I saw this through the video camera with my own eyes. He was on the rooftop kissing, with his hand up the shirt of this young lady. It wasn't uncommon for us to have the perception that that was going on, but for us to physically see it on the camera was something else.*

Reporter: *What did you think of this, Nathan?*

Mr Quick: *Inappropriate.*

Reporter: *Can I tell you that James Watt has emphatically denied ever having any sexual encounter on a roof?*

Mr Quick: *Well, I would say it was a lie, unless he considers the rooftop patio not technically a roof. But, I would say that that was a boldfaced lie".*

The interview with Mr Quick ended and the reporter said:

"James Watt said 'at no time' did he have a 'sexual encounter' on the 'roof terrace' of the Franklinton bar. His lawyer says they have a statement from the 'only party' that could have been present, and she says she 'did visit the roof'

briefly with him but was not intoxicated and says, 'absolutely no sexual encounter' took place".

The reporter went on to explain that the programme had *"spoken to more than a dozen BrewDog USA staff"* who told the programme that *"they felt uncomfortable with how James Watt acted around women in BrewDog bars"*. Footage from interviews with former employees, Ms Katelynn Ising and Ms Jackie English, were included, in which they spoke about Mr Watt allegedly taking groups of women for private tours:

Ms Ising: *"Sometimes there would be one woman, sometimes there would be a gaggle of women. They were always intoxicated, they were in their twenties usually, they were very pretty. And he would say he was taking them on a private tour of the brewery. You're the owner of a company, we're looking to you to set the standard. You know, he's setting that standard for us and it's not a good example.*

Ms English: *"There were three separate nights that I can think of, spread out throughout the time that I was there, where I was closing and I did see him come into the building with a girl, a young female, you know, cute little blondes, and he would take them into the brewery to give them a tour or whatever. Yeah, it was just odd, a bit uncomfortable.*

Reporter: *It made you feel uncomfortable?*

Ms English: *It did make me feel uncomfortable.*

Reporter: *Do you think it's appropriate?*

Ms English: *No. Especially not walking them in front of your employees, like, you're showing your employees that you can do whatever you want because of who you are and who your name is. That's how it felt a lot of times".*

The interview ended and the reporter said:

"James Watt denies the allegation. He says he regularly takes 'both women and men' on evening tours of the brewery and it's 'not true' they are intoxicated. His lawyer says a claim 'made by an employee' in 2021 was investigated by an external HR service and was 'not substantiated'.

James Watt's alleged behaviour around women was a talking point amongst managers across a number of BrewDog bars. Dani Campbell joined the company as the manager of its Indianapolis bar when it opened in 2019. At her first manager's meeting she says she was told to 'watch out for James Watt'".

The programme then included an interview with Ms Campbell and the following conversation took place:

Ms Campbell: *"We were all in a room getting ready before James showed up where we all got to meet him, and one of the managers just glossed over, like, 'Hey, these are the plans for the day', and he said, 'Also, you're*

James's type so if he walks into a room you should leave the room, don't be in a room alone with him', and then just went on going about the regular plans for the event.

Reporter: *What did you think when you heard that?*

Ms Campbell: *That that's kind of a messed-up thing to put on an employee. But, also, I was super new there and just said, 'Okay'.*

Reporter: *And this piece of advice, then, did it stick with you?*

Ms Campbell: *100%, yeah, that definitely stuck with me. So, before he came into town, I gave my staff kind of a quick chat and just said, 'Hey, these are rumours we have heard, if you don't feel comfortable working when he's here, let me know. If I'm not on the schedule, I will be here within 20 minutes and I will do my best to be stuck to his side while he is here'.*

Reporter: *So, you were effectively coaching your staff on how to handle James Watt in terms of any potential inappropriate behaviour?*

Ms Campbell: *Correct".*

The interview ended and the reporter said: *"More than a dozen staff have told us that female workers would be advised on how to act when James Watt was in town".* Further footage from the interview with Ms Ising was then included:

Ms Ising: *"We would make a point to warn new girls and warn the hosts, like, 'Hey, just so you know, James Watt's coming to town. Just kind of like leave after your shift, don't really hang around. Don't always do your hair and makeup that day', like, 'Don't catch his attention'.*

Reporter: *And you did that?*

Ms Ising: *Oh, definitely, we all did".*

The footage ended and the reporter explained that *"Some managers say they took extra steps to help female staff who felt uncomfortable when James Watt was around".* Footage was then included from an interview with another former employee, Mr Dylan Gray:

"I would schedule certain female staff around him so they would not be there. I would schedule a lot more men at nights when he was there. I would sit at the bar, behind the bar with female staff so they wouldn't feel uncomfortable, they had another male presence there, so it wasn't just James. To them, they just don't even want him to be there".

The reporter's voiceover said: *"Dylan, who worked at the Franklinton bar for three years, said there was one woman James Watt had been paying special attention to".* The interview footage continued:

Mr Gray: *"We'd be sitting at, like, let's say, at this end of the bar or whatever, and he would be just staring. I mean, just, like, staring. I mean, staring at an employee over and over again, every time you visit, asking if she's working.*

Reporter: *And she would ask you not to work on the days that James was going to be there?*

Mr Gray: *If I could avoid it, I would try. If I knew he was coming and she was working I would be up there with her or made sure another staffer, whether it was a man or a woman, was with her because I knew she would feel uncomfortable.*

...

Reporter: *You didn't feel you could speak out about it then?*

Mr Gray: *I would've been canned long ago".*

The footage ended and the reporter said:

"We make no allegations of criminality with women against James Watt. But bar managers claiming they had to shield their staff from their CEO is a serious claim. I needed to get this woman's side of the story. I spoke to her on the phone, she asked us not to use her name".

A recording of a phone call between the reporter and the anonymous woman was played:

Woman: *"He [Mr Watt] was a starrer, he liked to stare. He would try to make conversation with me, which is fine, I mean, no big deal. At one point, he took my Instagram and posted on it and followed himself on it, so then I started kind of getting a little bit more of an uncomfortable vibe.*

Reporter: *You were being singled out for more attention than the others.*

Woman: *Yeah.*

Reporter: *And how did this make you feel?*

Woman: *Just uncomfortable. I just wanted to leave, not really deal with it. With a customer, for example, you can tell them no or you can cut them off of their alcohol, or you can even escalate it to a manager who would kick them out. What do you do when that's your boss, like, the head of the company? You can't really tell them no or cut them off. You feel a little bit powerless".*

The recording ended, and the reporter said:

"Mr Watt says at no time has he given unwelcome attention to any female bartender. His lawyer said, following inquiries by BrewDog, none of the managers interviewed had any knowledge of staff attempting to swap shifts to avoid Mr Watt".

The reporter explained that *"each of the people we've met so far has left BrewDog, but we've also spoken to current staff. Some say they're afraid to speak for fear of losing their jobs".* The programme then went on to include an interview with a current BrewDog employee, Ms Kayla McGuire, who the programme said *"works in the brewery in Ohio"*:

Ms McGuire: *"I don't think that leaders should be able to intimidate their staff. I don't think anyone should have to go to work and be afraid of what's*

going to happen to them, especially not in an industry that should be joyful and fun and creative. Beer is for everybody, and it has to be everybody not just the people who are in charge.

Reporter: *What would you say to people who might say these are, you know, disgruntled ex-employees? What would you say to that point?*

Ms McGuire: *I would wonder why so many of us are disgruntled employees or ex-employees. I would say if you're not seeing any evidence, you haven't asked the right people or looked hard enough. Those allegations have made many of us uncomfortable, myself included.*

Reporter: *What has made you decide to do this then, Kayla?*

Ms McGuire: *I love my job, I love the people that I work with, and no matter what I want the people that I work with to have a safe place to work”.*

The interview with Ms McGuire ended, and the reporter said:

“Since we’ve been here in the US there’s been a real groundswell of people wanting to come forward. More and more former and current staff members have sought us out to tell us their experiences at BrewDog, in particular women, who’ve told us about how James Watt made them feel unsafe at work, uncomfortable, that he’d abused his position of power. All of these things raise really serious questions for James Watt.

James Watt declined to be interviewed.

BrewDog chairman, Allan Leighton, said he’d been ‘provided with assurances’ by Mr Watt the allegations were not accurate and based in rumour and misinformation. He added: ‘James has committed to making improvements to his management style.’

As BrewDog reaches a critical point in its expansion, there are questions over whether James Watt remains the right person to captain the ship”.

The programme concluded with further footage from the interviews with Mr Gray, Ms Ising and Ms English, who spoke about their hopes and concerns for the future of BrewDog, namely that the allegations included in the programme “*actually cause some sort of internal change*”. Ms Ising also stated that “*it needs to come to light that it is a façade and there is someone in charge there who is abusing his power and shouldn’t be leading that place*”.

The programme ended.

Summary of the complaint and broadcaster’s response

Complaint

Unjust or unfair treatment

BrewDog and Mr Watt complained to Ofcom, through their legal representatives – Carter Ruck solicitors, that they were both treated unjustly or unfairly in the programme as broadcast because

the programme misrepresented, disregarded, and omitted material facts in a way that resulted in unfairness to them. In particular:

a) Allegations about BrewDog's commercial practices and corporate culture

- i) The programme left viewers with the misleading impression that the complainants had reneged on their promise to consumers by not planting a tree in the "Lost Forest" for every pack of Lost Lager sold, and that the reason why the complainants had not planted any trees in the Lost Forest was because they were not paying for them with their own money.

This was misleading because:

- The "Buy One Get One Tree" offer did not relate to trees planted in the "Lost Forest" in the Kinrara Estate, but rather to trees in a dedicated area within the Eden Project Forest in Madagascar. The BBC had falsely connected the "Lost Lager incentive" and the "Lost Forest", when in fact these were two separate initiatives.
 - The position was that "all trees [would] be planted in the Lost Forest, once the necessary forestry planning permissions are finalised", and that planting before this would be a breach of planning regulations.
 - The complainants had "already invested £10 million into the project" which required "a further £5 million" to complete, and that the complainants had "applied for a government grant to support the project of £1.2 million, being a very small proportion of the overall cost".
- ii) The programme had included an image of "an erroneous...webpage created by...our clients' trade team". This website could not be accessed by consumers and the actual Lost Lager page for consumers had correctly stated the true position at all times. The programme had therefore falsely presented a past version of an inaccessible trade website which was briefly incorrect, and promptly corrected, as what the complainants were saying to the public.
- iii) The programme alleged inaccurately that it was misleading for Mr Dickie to state in relation to the Speedbird 100 beer: "What you have in your glass is the first ever beer made on an aeroplane". This statement was factually accurate. No purchaser of the beer would actually expect that it had been brewed in an airborne aircraft. It said that the BBC's allegation was therefore unfair.
- iv) The programme included inaccuracies regarding the "Equity for Punks" ("EFPs") share scheme, whereby participants have the opportunity to buy and sell shares in BrewDog. In particular:
- The programme inaccurately alleged that those who had participated in the EFPs share scheme could "only sell a fraction of their shares on special trading days" while "the...co-founders sold a pile of theirs to TSG¹ and raked in nearly £100 million between them". All EFPs were invited to participate in the TSG deal and were entitled to sell their shares at the same price at which the co-founders had sold theirs. It's also the case that EFPs may sell 100% of their shares on trading days and/or on the "BrewDog Shares" website at any time.

¹ TSG Consumer Partners LLC, a private equity firm, acquired a minority stake in BrewDog PLC in 2017.

- The wording of the allegation in the programme also implied inaccurately that the co-founders sold more shares than was permitted for EFPs. This was unfair because on average they had “sold around the same proportion...that punks were entitled to sell”.
 - The programme inaccurately alleged that Mr Watt and Mr Dickie sold “nearly a quarter of the company to TSG effectively guaranteeing their investment over EFPs investments”. However, Mr Watt and Mr Dickie’s shares rank exactly the same as EFPs shares and that there was no guarantee of their shares over EFPs shares.
- v) The programme inaccurately suggested that the domestic importer’s licence “would have been on the line” as a result of BrewDog not declaring the use of certain extracts that were not approved in the US, in some products that were being shipped from Scotland to the US. The importer’s licence would never have been in any jeopardy as it would need to wilfully violate the conditions of the Tax and Trade Bureau² (“the TTB”) permit in order to face revocation, and the importer had no personal knowledge of the extracts not having been declared and “could not therefore wilfully violate these provisions”.
- vi) The programme included misleading information about an “all-staff survey” carried out by BrewDog in 2019. In particular:
- The programme referenced the “Net Promoter Score” for BrewDog head office staff as being minus 54. This figure was not determinative of the overall score, which was minus 19, and, given in the immediately preceding voiceover the reporter had referenced “an all-staff survey”, it was misleading to focus on the headline figure from one particular department within the organisation which amounted to only 23.9% of BrewDog’s employees.
 - The programme alleged that the “results [of the survey] were not shared with staff and the conclusions were not acted upon”. This was inaccurate and would have left viewers with the impression that BrewDog did not act as a responsible employer. The true position was that, as a consequence of the survey, a strategy was implemented to review key themes by department, resulting in a number of “well-documented outcomes”.

b) Allegations about Mr Watt’s personal investments and conduct

- i) The programme included inaccurate information regarding Mr Watt’s personal investments, in particular:
- The programme suggested inaccurately that, at the time of broadcast, Mr Watt held Heineken shares “of a value of at least £500,000”. This was not the case, nor has it been the case for a considerable period of time.
 - The programme implied inaccurately that Mr Watt was engaged in “tax avoidance/evasions”. The programme referred to the Cayman Islands as “one of the world’s most secretive offshore tax havens” with the implication of wrongdoing reinforced by the suggestion that this was an investment “that James Watt would probably rather be kept quiet”.

² The Alcohol and Tobacco Tax and Trade Bureau is a department of the US Treasury which regulates and collects taxes on trade and imports of alcohol, tobacco, and firearms within the US.

ii) The programme included inaccurate and/or misleading allegations of “personal misconduct” and inappropriate behaviour against Mr Watt. In particular:

- The programme alleged inaccurately that Mr Watt had a “sexual encounter on the roof terrace of the Franklinton bar”. Mr Watt held a “signed witness statement from the only party Mr Watt could have been present with [at the bar]” and she had confirmed that: she was not a customer; it was a prearranged date; she did briefly visit the roof terrace with Mr Watt, but no sexual encounter took place; and she was not intoxicated and drove herself home that evening.
- The programme alleged inaccurately that Mr Watt would give groups of young women, who “were always intoxicated”, private tours of the brewery. While it is correct that Mr Watt regularly took tours of the brewery with both men and women, those participating were not intoxicated. This allegation had also previously been fully investigated by an independent company; the claims were found to be unsubstantiated, and no further action was warranted.
- The programme included claims made by two former employees, Mr Dylan Gray, and another anonymous individual, who claimed that Mr Gray would “schedule certain female staff around [Mr Watt] so they would not be there” and “schedule more men at nights when [Mr Watt] was there an employee to avoid Mr Watt”. These claims were misleading and inaccurate because, during the only period which Mr Gray was scheduling shifts for the anonymous individual, Mr Watt was demonstrably “never in the USA”. Further, analysis of staff schedules, the accounts of the general managers of the two bars that Mr Gray worked at, and other aggregated third-party payroll data confirms there is no evidence to substantiate Mr Gray’s claims. Mr Watt did not deny attending the Franklinton bar when Mr Gray and the anonymous staff member were present, but that the programme had placed an unwholesome interpretation upon Mr Watt observing the activity of a member of staff.
- The programme included an interview with a former employee, Ms Dani Campbell, who claimed that at her first managers’ meeting she was told “to watch out for James Watt” and “You’re [Mr Watt’s] type so...don’t be in a room alone with him”. These statements were untrue because five managers present at the meeting have since confirmed that this did not happen.

iii) The programme gave viewers the misleading impression that the allegations of personal misconduct against Mr Watt made by former employees in the programme, as set out at head ii) above, were from the recent past and therefore “relevant to the current culture of the company”. The alleged incidents are all said to have occurred some years ago, and the programme did not quote any current BrewDog employee regarding the allegations against Mr Watt of misconduct towards women.

c) Omission of material

i) The BBC had failed to draw viewers’ attention to information relating to the sources relied upon for some of the allegations regarding Mr Watt which gave a misleading impression of their reliability. In particular, the programme did not draw viewers’ attention to the fact that there was a well-documented pre-existing relationship between a number of the sources for the allegations against Mr Watt. The complainants said that many of the sources were ex-employees who “have an axe to grind” and that they appeared to have been recruited for

the programme by Ms Charlotte Cook, a former employee with a “readily-discoverable history of personal antipathy towards Mr Watt”. The complainants said that, if their accounts were broadcast, information on this point should have been put to the viewer in order to properly weigh their accounts.

ii) The programme disregarded contrary submissions regarding Mr Watt and BrewDog. In particular:

- The programme did not include any details of published comments by Mr Neil Fletcher, “a private individual who runs brewdogshares.com”, who had been critical of the BBC’s approach to gathering information relating to BrewDog’s shares for inclusion in the programme, and generally supportive of the complainants.
- Regarding the allegations that the domestic importer’s license was “on the line”, the programme did not include the comments of former TTB Senior Counsel Tom Niekamp, which stated that the BBC’s proposed position was a “monumental overreach at best”.
- The programme did not include any information on the “Wiser Report”³ into the culture present at BrewDog, which presented a radically different picture to that presented by the programme’s contributors.
- The programme did not refer to any of the publicly available data from other surveys which placed BrewDog “among the top 100 companies to work for in the UK”, including in 2017 “at the time of several of the alleged incidents the programme deployed to suggest problems with [BrewDog’s] culture”.

d) Opportunity to respond

- The complainants were not given an appropriate and timely opportunity to respond to the allegations made against them in the programme. The BBC consistently provided the complainants with short deadlines and the information provided by the broadcaster to the complainants for comment was incomplete and inadequate. The BBC failed to adequately particularise the allegations as set out at heads a) and b) above regarding BrewDog and Mr Watt, despite repeated requests.
- The complainants’ views were not represented fairly in the programme. At various points, the programme failed to provide the factual background [set out by the complainants in their response] which would have been necessary to explain the full position. Although the programme did refer “sparingly” to the complainants’ denials, it failed to represent the complainants’ response to the allegations fairly.

Unwarranted infringement of privacy

e) Mr James Watt’s privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme and in the programme as broadcast because information regarding Mr Watt’s private investments was broadcast without his consent. The BBC broadcast private and confidential information that had been unlawfully obtained with “no justification”. The BBC were informed that Mr Watt is subject to and pays UK tax on all incomes and gains both

³ The complainants said that the Wiser Report was conducted by an independent third party commissioned by BrewDog to “gather data and understand the culture...and assist with a roadmap for improving that culture”.

overseas and in the UK and that there was no public interest in the publication of information which had been obtained in breach of express duties of confidence or otherwise unlawfully, and in circumstances where there was no question of any illegality in Mr Watt's conduct.

Broadcaster's response

a) Allegations about BrewDog's commercial practices and corporate culture

- i) The BBC denied that the programme had made misleading claims in relation to BrewDog's commitment to plant trees at the Lost Forest site that led to unfairness to the complainant.
- The BBC said that the programme's claim that BrewDog said it would plant a tree in the Lost Forest for every pack of Lost Lager sold was supported by evidence from numerous sources, including the complainant's own sales and publicity material. It said that the programme makers were aware that the complainant also ran a promotion pledging to plant trees in a forest in Madagascar but that this was not referred to in the programme, rather, the programme segment sought to draw attention to BrewDog's failure to deliver on a separate and specific pledge to plant trees in its Lost Forest. The broadcaster's supplementary information included as part of its response to the complaint included Twitter posts from Mr Watt and BrewDog respectively which stated that Lost Lager "helps plant trees in our [BrewDog's] new forest" and "We'll [BrewDog] plant a tree in our forest for every 4-pack claimed". While the former appeared to have been deleted, the latter included a video presented by Mr Watt in which he stated, "Lost Lager...helps us plant trees in our own forest", and which featured an image of a can of Lost Lager with the wording "The Lost Forest in Scottish Highlands is our big reforestation plan to help create a carbon clean planet"⁴. The BBC said that the only reasonable inference to be drawn was that sales of Lost Lager would result in BrewDog planting trees in its Lost Forest in Scotland.

The supplementary information provided by the BBC also included sales pages for Lost Lager from online retailers, which included the text "for every pack, we plant a tree in the BrewDog Lost Forest". The broadcaster also provided images of packaging on multi-packs of Lost Lager available in supermarkets which it said made the direct link between the beer and the Lost Forest by carrying the wording "Drink Lost Lager. Plant the Lost Forest". The BBC also pointed to coverage of the launch of Lost Lager in the trade press, which it said repeated BrewDog's claim that it would plant a tree in its forest in Scotland for every multi-pack of Lost Lager sold⁵. The broadcaster's supplementary information also included a link to a page on the BrewDog website selling a Lost Forest t-shirt, with the page text stating "Lost Lager...has its own dedicated forest. A 9,308-acre plot of land where we'll embark on one of the largest reforestation projects the UK has ever seen"⁶. The BBC said that this clearly linked Lost Lager and the Lost Forest and that, while [the complainants] may seek to claim that BrewDog did not intend to give the impression a tree would be planted in its Lost Forest for every sale of Lost Lager, the evidence showed

⁴ "[Tweet](#)" by BrewDog published 9 January 2021.

⁵ '[BrewDog puts Planet first](#)', Scottish Local Retailer, 30 March 2021.

⁶ [Lost Forest t-shirt](#).

that was precisely the claim made in its sales and promotional material since the beer was launched in January 2021. The BBC said that the complainant had subsequently changed its promotion, which now says that Lost Lager will lead to trees being planted in a forest in Madagascar; it maintained that the evidence showed that this was not always the case. It said that the programme accurately set out the pledge made by the complainants when Lost Lager was launched, and that it also reflected the fact that BrewDog had since changed its policy.

- The BBC denied that viewers were given a misleading impression about one of the reasons why no trees had yet been planted by BrewDog in the Lost Forest. It said that the programme explained planting trees was a central element of BrewDog's public commitment to sustainability, but noted that it has so far failed to plant any in the Lost Forest despite its Lost Lager pledge. It said that the programme examined the company's public commitments and offered one explanation as to why, after 12 months, no trees had been planted. The BBC said that there was a clear public interest in putting BrewDog's public commitment to sustainability and carbon-capture into context, and explaining to viewers that BrewDog would not be meeting the cost of the trees it says it is committed to planting in the Lost Forest. The broadcaster said that while the programme explained that the cost would actually be met by taxpayers through a grant from Scottish Forestry⁷, it did not allege any wrong-doing on the part of BrewDog, and that Mr Clements, the advisor on native woodlands, explained in the programme that it was usual to apply for a grant to plant woodland trees. Rather, the programme drew attention to an important aspect of its reforestation plan, which the complainant had preferred not to publicise.

The BBC said that, from the material included in the supplementary information as set out above, consumers would reasonably have understood BrewDog was committed to spending money made from the sales of Lost Lager on planting trees in the Lost Forest, and that BrewDog now confirms it has no such intention. It said that, in its correspondence of 10 January 2022, the programme makers had asked the complainants how much they planned to spend on planting trees in phase one of the Lost Forest project, and that the complainants did not respond to this question. The BBC also said that the programme was updated following further information being provided by BrewDog after the original programme had aired, and that the version available on iPlayer was edited to reflect that the complainants had said a reason for the delay in planting trees in the Lost Forest was the need to wait for planning permission.

- ii) The BBC said that the evidence cited above in response to head a) i) clearly indicated that the launch of Lost Lager in January 2021 specifically linked sales of the beer to the planting of trees in BrewDog's Lost Forest in Scotland. It said that the image of a relevant BrewDog web page which was included in the programme was found using a simple Google search in December 2021 and was taken from the company's main website. The BBC said that the page had subsequently been taken down, however, the broadcaster provided Ofcom with copies of archived pages of the BrewDog website, which it said showed that the page was accessible by the public in June 2021 and clearly stated "For every pack of Lost Lager you buy (and drink), BrewDog will plant a tree in the Lost Forest, a 9,308 acre plot of land in the

⁷ Scottish Forestry is the Scottish Government agency responsible for forestry policy.

Highlands...". The BBC said that there appeared to be no truth in the assertion made by [the complainants] after the programme was broadcast that the web page shown was an "erroneous Lost Lager webpage created by a member of our client's trade team and used for trade purposes". It reiterated that the page was published on BrewDog's usual public website and was accessible in June 2021 through to January 2022. The BBC said that the page used language aimed at customers rather than retailers (i.e. "For every pack of Lost Lager you buy (and drink)"), and included a link to a page where you could buy Lost Lager. It said that the wording made a direct link between sales of Lost Lager and the planting of trees in the Lost Forest, which was a fundamental element of the launch and promotion of the product in 2021.

The BBC acknowledged that BrewDog had launched a separate "Buy One Get One Tree" initiative in February 2021 in partnership with the Eden project and its forest in Madagascar, but that the initial campaign and promotional material released to the media in relation to the campaign made no mention of Lost Lager. It said that this initiative may have run alongside the specific Lost Lager/Lost Forest campaign, however, there was overwhelming evidence that BrewDog had led customers to believe it would plant trees in the Lost Forest in the Scottish Highlands if they bought cans of Lost Lager. The broadcaster said that it was therefore duly accurate and fair to report the claims made by BrewDog linking sales of Lost Lager to tree planting in the Lost Forest, which were widely featured on BrewDog's website, its sales and marketing material, and in information it provided to the trade press.

- iii) The BBC said that the programme illustrated BrewDog's innovative marketing strategy and viewers would have been aware that the examples of this included in the programme were illustrative of BrewDog's bold, provocative, and inventive approach to public relations and brand recognition, even if, as stated in the programme, there is an "*occasional whiff of BS*" to some of the company's marketing strategies and efforts to raise brand awareness. The BBC said that the reference to the campaign run with British Airways to mark the airline's centenary in 2019 was a further example of high profile, hyperbolic marketing. It provided Ofcom with a link to BrewDog's promotional video⁸ of the attempt to "brew" a beer on a plane, which it said reflected the company's trademark irreverent tone and was clearly presented as a PR stunt rather than a genuine claim to have brewed an alcoholic drink at altitude. The BBC highlighted Mr Watt's statement in the promotional video, he said: "To kind of give you a perspective, this [brewing beer on the plane] is either one of the finest achievements in human history or a poorly conceived marketing gimmick by two companies that should know better. Maybe it's somewhere between the two". The broadcaster said that there was therefore no reasonable basis for the complainants to argue that it was unfair to BrewDog for the programme to describe Mr Dickie's statement: "What you have in your glass is the first ever beer made on an aeroplane" as a marketing stunt.

The BBC said that it had obtained testimony from sources in the production of the beer, that it was brewed at the company's brewery in Ellon, and that it would be impossible to brew beer in a kettle as shown in the promotional video. It said that the most that can be said was that the beer served at the launch event (as shown in the clip included in the programme) was a commercially produced drink based on the same ingredients used in the unfermented beer started on the British Airways plane. It added that BrewDog's promotional video

⁸ [How to Brew Beer on a Plane.](#)

confirms this, saying “the boys [Mr Watt and Mr Dickie] phone their recipe to the brewery in Scotland. It’s a 50 hour walk from Cardiff to London and so the brewery had plenty of time to ready a batch of Speedbird 100 to share with their British Airway’s family back at...Heathrow”. The BBC said that it was duly accurate to present BrewDog’s claim to have brewed Speedbird 100 as “*all a stunt*” and state “*the beer had in fact been brewed in Ellon*”. It said that viewers would have understood it was included in the programme as another example of the marketing strategy used by the company.

- iv) The BBC said that the programme explained how BrewDog had launched a number of fundraising schemes and harnessed the loyalty of its customers to raise money and grow its business in rapid fashion. It said that the programme went on to explain that BrewDog is no longer solely owned by its founders and its EFPs, and that in 2017 the board sold 22% of the business to TSG, a private equity firm, for £213 million. The BBC said that this was despite Mr Watt previously criticising other independent breweries who had sold significant percentages of their company to external investors. It said that the BrewDog website page which explained the deal to shareholders described it as a way to “create early shareholder liquidity”, but that the opportunity for Mr Watt and Mr Dickie to create liquidity was, however, in contrast to the restrictions placed on EFPs.
- The BBC said that Brewdog had complained that it was inaccurate and unfair for the programme to have said that EFPs could “*only sell a fraction of their shares on special trading days*” compared to Mr Watt and Mr Dickie. It provided Ofcom with a link to a BrewDog webpage and said that the evidence from BrewDog’s own announcement of the deal with TSG clearly states individual EFPs were limited to selling a total of 40 shares⁹. The BBC said that it accepted that it would have been clearer if the programme had explicitly stated the restriction on EFPs selling their shares applied to the deal with TSG and the special trading opportunity subsequently offered to EFPs, which would have avoided the possibility viewers may have assumed there were trading restrictions placed on EFPs at other times. It said that the intention was to highlight the huge disparity between the opportunity for Mr Watt and Mr Dickie to sell shares to TSG, and the opportunity for EFPs to do so. The broadcaster said that Mr Watt and Mr Dickie were able to sell as many shares as they wished, up to a total of 10 million between all Class A shareholders¹⁰, and that they made around £50 million each by selling around 18% of their stake in BrewDog to TSG. It added that EFPs were limited to selling a maximum of 40 shares, which at the sale price of £13.18 meant the most they could make was £527.20.

The broadcaster said that, in the event viewers were given the impression EFPs were restricted to selling shares in general, rather than just at the time of the TSG deal, it did not believe that this would have led to any unfairness to the complainant. It said that the audience would have understood from the context, and from the sequence which followed, that the unique terms of the sale to TSG allowed Mr Watt and Mr Dickie to make millions and put the investment of EFPs at risk. The BBC said that (as explained in detail in relation to the final bullet below) under the terms of the deal, TSG is

⁹ An Announcement From #PunkAGM2017.

¹⁰ Ofcom understood Class A shares to refer to those held by Mr Watt, Mr Dickie and three other board members.

guaranteed an annual 18% return until the company is sold or floated, and the investment analysts in the programme explained how this could have a negative impact on the shareholdings of EFPs. The BBC said that this made it clear that even if there was no general restriction on the ability of EFPs to sell their shares, the actions of BrewDog's board meant the existing shares held by EFPs could be significantly devalued as a result of the deal with TSG. It said that, as the programme explained, the company has to deliver growth of at least 18% per annum to give TSG the return on its investment which is guaranteed, and that if this growth is not achieved, TSG will get a larger share of the company when it is floated and, as a consequence, the shares held by EFPs will be worth less.

The BBC said that an amendment was made to the repeat of the programme on 23 February 2022 and the version on iPlayer to remove the possibility of viewers being left with a misleading impression about the general rights of EFPs. It said the programme now says: "Whilst the Punks could only sell a maximum of 40 shares to TSG, the anti-fat cat co-founders sold a pile of theirs, and raked in nearly £100 million between them".

- In relation to the complaint that the wording of the allegation in the programme also implied inaccurately that the co-founders sold more shares than was permitted for EFPs and was unfair because on average they had sold around the same proportion that EFPs were entitled to sell, the BBC said that, before the TSG sale, there were two separate classes of share in BrewDog; Mr Watt, Mr Dickie and the other board members held "Class A" shares and all EFPs held "Class B" shares. It said that, on the day of the TSG deal, the company's board passed a resolution which allowed for the conversion of up to 10 million Class A shares into new "Class C" shares. The BBC said that Class C shares had special terms guaranteeing an annual 18% return until the company is sold or floated, and that this meant that on the day of the TSG deal Class A shareholders (such as Mr Dickie and Mr Watt) could sell their shares to TSG, but Class B shareholders could not. The BBC said that, as explained above, EFPs were subsequently given the opportunity to sell a maximum of 40 shares to TSG and that this was announced at the company's AGM, a week after the deal with TSG had been signed and after Mr Watt and Mr Dickie had sold around £100 million worth of shares. It said that the deal for Class B shareholders meant the most any individual EFPs could make was £527.20, no matter how many shares they had in the business.
- In relation to the complaint that the programme inaccurately alleged that Mr Watt and Mr Dickie sold "nearly a quarter of the company to TSG effectively guaranteeing their investment over EFPs investments", the BBC said that TSG owned 22% of the shares in BrewDog following the deal agreed in 2017. It said that the shares it owned, Class C shares, were a new class created specifically for its investment and that only TSG owned such shares. It said that, as explained above, these shares have special terms that guarantee an 18% compound annual return on their original investment up to the point the company is sold or floats on the stock market. The BBC said that this meant that the shares sold to TSG by BrewDog were more valuable than the Class B shares sold to EFPs because of the guaranteed preferential return. It said that this was explained to viewers in the programme by the presenter and two investment analysts (as set out in detail in the "Programme summary" section). The BBC said that it was clear from the reporter's summary at the end of the relevant programme segment that it was TSG's investment which was "effectively" guaranteed over that of EFPs because they held Class C shares

guaranteeing 18% compound annual return on their original investment, and that the longer BrewDog waits before floating on the stock exchange, the more TSG will be owed, whereas EFPs had no such guarantee.

The BBC said that the complainants asserted that viewers would have been misled into thinking Mr Watt and Mr Dickie had done something to guarantee their investment over that of EFPs. The BBC said that it did not believe this was likely when the wording is judged in the context of the programme and the full account of the sale to TSG taken into account. It said that the comparison was clearly between TSG's investment in preferential Class C shares with a guaranteed return and the Class B shares of EFPs.

- v) The BBC said that the programme had evidence BrewDog exported its Elvis Juice and Jet Black Heart beer to the United States in 2016/17 despite knowing it contained extracts and ingredients which were not, at the time, approved in the USA. It said that the programme makers spoke to members of staff who confirmed this and who said they were pressured into flouting the rules to ensure the beer was available in the company's DogTap bar in Ohio. It said that the members of staff told the programme the relevant documents submitted to the US TTB did not declare the presence of the unapproved extracts, and that the evidence therefore indicated that the beer was shipped from the UK to America despite containing ingredients which were not approved. It said that this was not denied in the right of reply response sent by BrewDog's solicitors to the BBC dated 17 January 2022, which said (broadcaster's emphasis): "At no point was any extract used in any beer which is not currently approved in the US...On a few occasions there were some technical inaccuracies on the paperwork". The BBC said that in a document sent to it on 22 January 2022, BrewDog's solicitors said formal TTB approvals to use the extracts in question "were in the process of being obtained in 2016/2017" and "the absence of their disclosure on the keg labels sent to Columbus for the [BrewDog] AGM has already been self-reported". The broadcaster provided Ofcom with a link to a LinkedIn post by Mr Watt in January 2022, in which he appeared to admit that "we took some shortcuts to get the beer to America on time and we made some mistakes with the paperwork on the first few shipments". It said that in the post Mr Watt also confirmed that there were "oversights in labelling and paperwork".

The BBC said that it also interviewed former TTB labelling specialist, Mr Martin, who verified the broadcaster's interpretation of the extensive data analysis it conducted into the labelling allegations. It said that Mr Martin also provided his professional opinion that BrewDog had lied on the relevant paperwork in order to get their products labelled. The BBC said that the purpose of the relevant sequence was to demonstrate key elements of the way BrewDog was run, and that it showed management put staff under pressure to do what they were told even when this involved knowingly disregarding regulations. The BBC said that it showed BrewDog was willing to flout rules and regulations in order to achieve its business objectives and knowingly misled the US importer of the beer without apparent regard to any potential consequences for that importer. It said that the question of whether the importer's licence was "on the line" was entirely secondary to the point made by the programme.

The broadcaster said that the programme explained "*enforcement action could not have been taken against BrewDog in any case because they're a foreign company*" and so it was the US importer who was potentially at risk over the non-disclosure of unapproved extracts. It said that importing beer to the US requires approval from the TTB and it is the responsibility of the importer to apply for such approval and provide details of any unusual

flavourings or extracts. The BBC said that this was the context in which the programme said, *“it’s the domestic importer whose licence would have been on the line”*. It said that, in the programme, the importer confirmed this to be the case and said that he was deceived by BrewDog and unwittingly submitted false information to TTB. The BBC said that, if there was any doubt on this point, the application from the importer submitted to the TTB in 2016 to import Elvis Juice (a copy of which was provided to Ofcom by the BBC) showed the importer had to certify everything submitted was true *“under the penalties of perjury”*. It said that, in addition, the communications director for the TTB provided a statement to the BBC by email on 19 October 2021 in which he said that *“Importers risk action against their permit”*. The BBC said that the statement from the TTB and wording of its form would indicate that it was incorrect for the complainants to assert the importer’s licence was not placed in jeopardy. It said that there can be no unfairness to BrewDog in drawing attention to the fact it was the importer who faced the possibility of enforcement action because of BrewDog’s non-disclosure.

The BBC said that BrewDog’s position was included in the programme (as set out in detail in the *“Programme summary”*) and that the facts were clear in that BrewDog had admitted it submitted incorrect paperwork to export beer to America knowing approval for extracts in the beer had, at the time, not been granted. The broadcaster said that viewers would not have been misled in any way which would have led to unfairness to Brewdog.

- vi) The BBC said that the programme referred to the staff survey conducted on behalf of BrewDog in 2019 to demonstrate the company was aware of employees concerns long before the publication of the Punks With Purpose (*“PWP”*) letter in 2021, and that the results of the survey indicated widespread dissatisfaction among staff.
- The BBC said that it did not believe that there was any unfairness to BrewDog in the way the results of the survey were presented. It said that the reporter gave an accurate summary, making it clear the survey was open to all members of staff and the minus 54 rating applied to those working at the company’s head office. It said that the programme showed a close-up of *“key themes”* from the survey, and that the reporter highlighted one which said, *“lack of consideration for wellbeing and mental health”*. The BBC said that the image on screen showed a summary of the survey and an overall Net Promoter Score of minus 19 to the question *“how likely are you to recommend BrewDog as a good place to work?”*, and that the reporter had highlighted the score from the largest staff group, i.e. those working at head office.
- The broadcaster said that it was editorially justified to highlight the negative rating from those working at the company’s head office since they made up 41.5% of the total number of respondents. It said that the survey demonstrated staff at head office had significant concerns about their working environment, and that the reporter gave an accurate summary of the survey’s findings. Accordingly, there was no unfairness to BrewDog.
- The BBC said that the programme maker set out its understanding of the 2019 staff survey in the questions sent to BrewDog on 10 January 2022, in which the programme makers stated that *“We have been told that [survey results] were not shared with the staff, and its conclusions not acted upon by the executive committee”*. The BBC said that this was based on confidential conversations with senior BrewDog insiders who had direct experience of the survey and how it was handled, who confirmed the survey

results were not filtered down to wider staff in bars and the brewery, and that the HR policies which were announced were already in train and not implemented as a result of the survey.

The BBC said that the two “right of reply” responses provided by BrewDog on 17 and 22 January did not address questions about the 2019 survey and that instead, BrewDog’s solicitors had provided links to website pages related to actions taken following the independent review carried out by Wiser, which was commissioned after the PWP letter and published in December 2021. The broadcaster said that BrewDog’s solicitors only responded to the issue of the 2019 staff survey in its letter to the broadcaster of 21 February 2022, after the programme had been broadcast. It said that, in the letter, the solicitors referred to “a strategy” being implemented to review key themes by department as a result of the survey and provided the broadcaster of details of actions taken. The BBC said that this information was available to BrewDog prior to the broadcast of the programme, but that it chose not to provide it to the BBC despite being given specific details of the 2019 survey the programme intended to reference. The BBC said that it had subsequently edited the programme to reflect the new information provided, and that the version of the programme available on the iPlayer now reflected BrewDog’s position that “the head office score was not representative, that the company wide score was minus 19, and as a result a raft of improvements was introduced”¹¹. It said that this demonstrated the programme maker’s commitment to fairness, accuracy, and responsible journalism.

b) Allegations about Mr Watt’s personal investments and conduct

- i) Referring to the complaint that the programme included inaccurate information regarding Mr Watt’s personal investments, the BBC responded as follows:
- In relation to the complaint that the programme suggested inaccurately that, at the time of broadcast, Mr Watt held shares “of a value of at least £500,000”, the BBC said that the purpose of this section of the programme was to illustrate a double standard on the part of Mr Watt. It said that the rapid growth and success of BrewDog had been due in no small part to the image it had created of a “punk” business, revolutionising the world of brewing and challenging mainstream beer brands. It said that this approach was illustrated throughout the programme including, for example, in a clip from a BrewDog promotional video in which Mr Watt was shown blowing up bottles of beers, including Heineken. It said that this was summarised by the reporter who said, “*attacking the big, mainstream beer companies became [BrewDog’s] mission*”. The BBC said that there was, therefore, clear editorial justification for highlighting the obvious inconsistency in Mr Watt’s behaviour. It said that the programme explained how Mr Watt had announced that BrewDog would no longer stock Lagunitas and Beavertown after they were bought out and sold a stake of their company to Heineken respectively, before going on to state that in 2017 Mr Watt had purchased shares worth half a million pounds in Heineken (as set out in detail in the “Programme summary”).

The broadcaster said that the programme makers had invited Mr Watt to respond to the fact he had bought shares in Heineken in its letter of 10 January 2022, and that BrewDog’s solicitors failed to address this point in its response dated 17 January, or in

¹¹ Ofcom understands that the programme is no longer available on the BBC iPlayer.

the further response sent on 22 January. It said that the programme makers possessed multiple documents which prove the level of investment had been £500,000 and Mr Watt had yet to confirm exactly when he disposed of the entirety of his Heineken shareholding as claimed by the complainants in their complaint to Ofcom. The BBC said that the programme included an interview with Mr MacKay, who worked for BrewDog between 2013 and 2018, in which he explained why he considered the Heineken share ownership was relevant. It said the programme then reflected the response to this point provided by BrewDog's solicitors, namely that Mr Watt's tax arrangements "*are entirely legal and legitimate*", he pays tax on all income "*both overseas and in the UK*", and reflected that Mr Watt did not respond to the programme's "*Heineken discovery*" (as set out in detail in the "Programme summary").

The BBC said that, after the programme had revealed the share ownership, Mr Watt had readily confessed to buying shares in Heineken and acknowledged he had been mistaken to do so. It said that this was something he could have explained to the BBC prior to broadcast. The BBC provided Ofcom with a link to the Diary of a CEO podcast, in which Mr Watt stated that purchasing shares in Heineken was "the most stupid thing that I've ever done...if I could go back and change a single thing that would be very high on the list, just because of how at odds it sits with our values and how we do things at the company...but I did it, I owned shares in Heineken". The broadcaster said that there could be no unfairness to Mr Watt in highlighting a double standard which he himself had subsequently admitted was an error of judgement on his part and entirely out of keeping with the publicly stated ethos of his company. It said that the programme now includes the additional information, which it said could have been provided before the initial broadcast, reflecting Mr Watt's position that "he also told us he no longer holds the Heineken shares".

- In relation to the complaint that the programme implied inaccurately that Mr Watt was engaged in "tax avoidance", the BBC said that the programme makers had evidence that Mr Watt had invested a significant amount of his personal wealth in investments funds based in the tax haven of the Cayman Islands and that this was reflected in the programme (as set out in the "Programme summary"). It said that there was a public interest justification in including this information in the programme. The BBC said that the programme did not refer to Mr Watt's personal financial arrangements in order to raise the question of tax avoidance, but to highlight the apparent double standards of a businessman who promoted an anti-corporate ethos and plays on the anti-establishment values of his company, but whose personal investments run counter to the principles he publicly promotes. It said that Mr Watt had frequently pitched BrewDog as a company which seeks to "tear down the system", and so there was a clear public interest in ensuring those who have invested in it were made aware he placed some of the money he received from BrewDog into a fund run from one of the world's most secretive tax havens.
- ii) The BBC said that it was in the public interest to publish claims about Mr Watt's personal behaviour towards staff and customers, particularly women. It said that Mr Watt was one of Scotland's highest profile businessmen, has been awarded the MBE and is regularly held up by groups and individuals as a shining example of a Scottish business success story. It said that Mr Watt is the public face of BrewDog and has consistently used his personal profile to promote his business and, by extension, his own reputation. It said that, however, multiple

witnesses have alleged that Mr Watt has frequently abused his position of power and has behaved in a way which, ordinarily, would not be tolerated in the workplace.

The BBC said that it spoke to more than 20 former and current staff members who separately and specifically said female employees at BrewDog raised concerns about Mr Watt's behaviour. It said that many said they felt uncomfortable in his presence and did not wish to be alone with him, and that these concerns were reinforced by further, separate allegations that Mr Watt behaved inappropriately towards staff and engaged in inappropriate conduct of a sexual nature on BrewDog premises. The broadcaster said that many of those it had spoken to said female colleagues were given informal coaching about how to stay safe when Mr Watt was around, and that BrewDog managers had told the BBC that they felt powerless to challenge Mr Watt about his behaviour and believed they ran the risk of being sacked if they did so. The BBC said that Mr Watt's behaviour created a workplace culture and environment which many employees regarded as inappropriate and unacceptable. It said this was in stark contrast to Mr Watt's own publicly stated position that the culture of a company is dependent on the integrity of its leaders.

The BBC said that the decision to include contributions from employees who described their first-hand experiences of dealing with Mr Watt and raised their concerns about his behaviour was, therefore, justified in the public interest. It said that the contributors were offering their personal recollection of events in which they were directly involved or witnessed, and that the audience would have judged what the contributors said accordingly. It added that the contributors' recollections confirmed a pattern of behaviour over time by Mr Watt which went beyond an isolated incidents and which cannot reasonably be dismissed as motivated solely by individual animosity or grievance. The broadcaster went on to address the specific points of complaint as follows:

- In response to the complaint that the programme alleged inaccurately that Mr Watt had a "sexual encounter on the roof terrace of the Franklinton bar", the BBC said that the programme had included an interview with Mr Beer, a BrewDog USA employee between 2017 and 2021. It said that Mr Beer had recalled seeing Mr Watt "making out" with a woman on the roof terrace of the bar on a security monitor in 2018 and in Mr Beer's opinion the woman was "*already inebriated when they showed up*". It said that the programme also included an interview with Mr Quick, an employee at the same bar between 2018 and 2021, and that Mr Quick confirmed what Mr Beer described. It said that both participants had confirmed to the BBC that they were prepared to provide sworn testimony to this effect. The BBC said that the programme went on to set out Mr Watt's response to the allegations made by Mr Beer and Mr Quick that he denied any sexual encounter had taken place. It said that the programme had therefore accurately and fairly reflected Mr Watt's response to the allegation, and had set out the complainant's version of events, including his specific response to the claims about sexual conduct and inebriation.
- In response to the complaint that the programme alleged inaccurately that Mr Watt would give groups of young women, who were "always intoxicated", private tours of the brewery, the BBC said that the programme included contributions from two former employees of BrewDog USA who recalled Mr Watt inviting women on private tours of the DogTap brewery in Canal Winchester. The BBC said that it had obtained further corroboration from other witnesses, including a current employee, Ms McGuire, who

spoke to the same behaviour. It said that both on-screen contributors, Ms Ising and Ms English (who worked for the company between 2019 and 2021 and 2020 and 2021 respectively), said they considered Mr Watt's conduct on company premises to be inappropriate for the head of the business. The BBC said that viewers would have understood the two women considered the behaviour they said they witnessed to be inappropriate, and that viewers were also provided with Mr Watt's response, including his assertion that he regularly gave tours of his breweries to both men and women, and the fact a complaint raised by a member of staff was dismissed after an investigation by an external company. It said that the programme therefore ensured that Mr Watt's response was represented in a fair, appropriate, and accurate manner, and that viewers would have been aware staff and Mr Watt held different versions of events and would have judged the content of the programme accordingly.

The broadcaster said it was worth noting that neither Ms Ising nor Ms English was told an external investigation was being carried out into their concerns, and that if a complaint of this nature was investigated by an external HR company it seemed likely that it was made by a different employee.

- In response to the complaint that the programme included misleading and inaccurate claims that Mr Gray would “schedule certain female staff around [Mr Watt] so they would not be there” and “schedule more men at nights when [Mr Watt] was there”, the BBC said that the programme makers spoke to more than 20 former members of staff from different BrewDog USA bars who raised concerns about Mr Watt's behaviour towards women in his bars, including female employees. The BBC said that the former staff members said female colleagues were frequently advised how to act and how to dress when Mr Watt was on the premises to try and avoid attracting his attention. It said that the programme makers spoke to other employees who said that Mr Watt blurred the lines between his professional and personal life and believed his behaviour towards female workers was inappropriate. It said that, in this context, the programme included a contribution from Mr Gray, a former duty manager at the Franklinton bar who said he was aware of the impact Mr Watt's behaviour had on some female employees. It said that Mr Gray said he was aware of the impact Mr Watt's behaviour had on some female employees and that he would try to schedule more men on duty in the bar if Mr Watt was present and try to take some female staff off the rota, including one female colleague in particular who was “subjected to special attention”. It said that the programme included a contribution from the woman in question who confirmed Mr Watt's behaviour towards her did make her feel “*uncomfortable*” and explained that the fact the person responsible was the head of the company made it difficult for her to speak out or raise her concerns.

The BBC said that Mr Watt was entitled to disregard the anonymous woman's feelings and dismiss her perception of his behaviour, and that the complainants were entitled to take the view that the woman had “placed an unwholesome interpretation upon Mr Watt observing the activity of a member of staff”. It said that the programme included Mr Watt's response to her claims to ensure his version of events was accurately reflected and that this met the requirement to treat him fairly. The BBC added that it noted that, in his interview with “The Diary of a CEO” podcast, Mr Watt admitted he had behaved in precisely the way described in the programme and now accepts he may lack empathy and have trouble reading social cues. It said that the interviewer in the podcast

referred to the BBC programme and Mr Watt agreed that “I definitely need to do better on empathy, one hundred percent”, and also acknowledged he had previously ignored constructive feedback about his behaviour: “I did what I did with a lot of feedback which was chose to ignore it and just keep going. It’s only when you stop and pause and reflect a little bit that you look at feedback in a slightly different way”. The BBC said that, in an interview given to the Sunday Times published on 10 April 2022, Mr Watt was quoted as saying “I fully accept that I’ve been too intense, too demanding as a manager. At times I miss the social cues that would enable me to kind of review the situation...”. The BBC reiterated that Mr Watt admitted to having a sexual relationship with a member of staff in the US in the interview and that it was also well known by staff that Mr Watt had dated an employee, and staff had told the programme maker this contributed to their discomfort when he spent time staring at female employees.

The BBC said that, in the complaint, it was said that subsequent inquiries by BrewDog USA indicated that there was no discernible change in the number of men and women scheduled to work when Mr Watt was known to be visiting bars in the US. The BBC said that this missed the point of what Mr Gray said in the programme, and the point viewers would have understood he was making. It said that Mr Gray talked about his intentions to support his colleagues and his disappointment about not being able to do more. The BBC said that Mr Gray’s evidence was that he would attempt to increase the number of men working on the days Mr Watt was in town, not that he would schedule more men than women on those shifts, the gender breakdown of staff rendering that impossible. It said that viewers would, therefore, have understood the significant and relevant point was some managers were aware of the effect Mr Watt’s behaviour had on female workers, even if he was unaware, and tried to protect their colleagues accordingly. The broadcaster said that this was confirmed to the programme makers by other former employees, and that it had statements from no fewer than five former or current employees that Mr Gray was working on rotas during this time. It said that the complainant’s claim that Mr Gray was not doing rotas when Mr Watt was in the USA was demonstrably false.

- In response to the complaint that the programme featured an interview with a former employee, Ms Campbell, who made untrue statements that at her first managers’ meeting she was told “to watch out for James Watt” and “You’re [Mr Watt’s] type so...don’t be in a room alone with him”, the BBC reiterated that the programme makers had spoken to more than 20 former members of staff from different BrewDog USA bars who said female employees were frequently advised by colleagues how to act and how to dress when Mr Watt was on the premises. It said that Ms Campbell was one former employee who said she attended a meeting where a more experienced manager suggested she should not allow herself to be alone in a room with Mr Watt. The BBC said that it obtained testimony from another manager who attended the meeting with Ms Campbell verifying her account. It said that Ms Campbell said she subsequently gave similar advice to her staff and that the BBC had obtained statements from members of Ms Campbell’s team who confirmed this to be the case. The BBC said that it believed this lent credibility to Ms Campbell’s recollection of the meeting and justified her contribution to the programme.

The BBC said that Ms Campbell’s contribution was clearly presented as her own recollection of what happened at a particular meeting, and that her concerns about Mr

Watt's behaviour were shared by others who featured in the programme and by people interviewed by the programme makers during the course of the investigation. It said that viewers would have judged her contribution in that context and drawn their own conclusions about whether she was telling the truth, and that they would have assessed what she said alongside the denials made by BrewDog. The BBC said that the inclusion of BrewDog's response that Mr Watt "*says at no time has he given unwelcome attention to any female bartender*" ensured that there was no unfairness to the company or to Mr Watt.

- iii) The BBC said that the programme included numerous contributors who expressed concerns about Mr Watt's behaviour towards female members of staff and that, in every case, the date of the incident was specifically mentioned by the reporter, or a graphic appeared on screen which set out the period in which the relevant individual had worked for BrewDog. It said that this ensured viewers were aware of when the events which were described took place.

The BBC said that the programme was broadcast in January 2022 and that the evidence showed the vast majority of those who expressed concern about Mr Watt's behaviour towards female staff were working for BrewDog USA up to and including 2021. It said that they therefore had recent, first-hand experience of the company culture and Mr Watt's behaviour. The broadcaster said that the majority of incidents which were mentioned all took place within the last three to four years and were recalled by staff who had left the company within the previous calendar year. It said that the allegations they made were, therefore, entirely relevant to the current culture of the company and how it had chosen to respond to employee concerns. The BBC said that, if any of those who contributed to the programme had noticed a significant change in culture or Mr Watt's behaviour, or believed the company had successfully addressed their concerns, it was reasonable to assume that they would have made this clear to the programme makers or decided there was no need to speak out publicly. The BBC said that it could not, therefore, be said that viewers were misled about the dates of the events described and it followed that the programme was not unfair to BrewDog or Mr Watt in this regard.

The BBC said that it was incorrect for the complainants to assert that the programme makers did not speak to or include contributions from current employees, and that the programme made it clear it had spoken to current employees about Mr Watt and noted "*some say they are afraid to speak for fear of losing their jobs*". It said that news of the BBC investigation prompted at least seven people to come forward while the programme makers were in the US and that more have come forward since this programme was broadcast, which was reflected by the reporter who said "*since we've been here in the US there's been a real groundswell of people wanting to come forward*", including "*former and current staff members...in particular women who've told us about how James Watt made them feel unsafe at work, uncomfortable, that he'd abused his position of power*". It said that the programme also included a contribution from Ms McGuire, who was a current employee (as set out in detail in the "Programme summary"). The BBC said that the complainants' rejection of the allegations was reflected in the programme and, as a result, viewers would have been in no doubt about their position. It said that this ensured the programme was fair to BrewDog and Mr Watt.

c) Omission of material

- i) The BBC said that the programme makers began their investigation into BrewDog following the publication of the PWP letter in June 2021, and that the programme explained the concerns of the group and the support it had subsequently attracted. It said that this ensured viewers were aware that there was a group of former employees who had begun a co-ordinated, public campaign to raise awareness of serious issues within the company. It added that the programme noted that the letter prompted hundreds of people unconnected to the original campaign to come forward and add their names to those concerned about the culture at BrewDog. The BBC said that, however, the programme did not rely on a small handful of former BrewDog employees to substantiate the allegations it made about the complainants. It said that the programme makers separately spoke to around a hundred current and former members of staff and heard first-hand experiences of people based in numerous locations who expressed concerns about the workplace culture at BrewDog and conduct of Mr Watt. The BBC said that all contributors included in the programme were found by the programme makers using standard journalistic practices and their testimonies were fact-checked and corroborated. It said that there was a clear public interest in reporting testimony which established a pattern of behaviour in numerous BrewDog offices, breweries, and bars over an extended period of time both in the UK and USA. The BBC said that the public interest was reinforced by Mr Watt's subsequent admission to much of the behaviour reported.

In relation to the complainant's specific reference to Ms Charlotte Cook in the complaint, the BBC said that Ms Cook worked for BrewDog between 2012-2014 and was one of the signatories of the PWP letter. It said that, however, it could confirm that Ms Cook "did not provide a single contributor" to the programme, and that there was no basis for the complainant's assertion that the broadcaster had sub-contracted locating sources for the programme to Ms Cook. The BBC said that, in the programme, Ms Cook made no reference to Mr Watt, and her contribution was limited to outlining the regular misogyny she experienced while working in the company's brewery.

In response to the complaint that many of the programme's sources were ex-employees with "an axe to grind", the BBC said that it believed the recollections of so many people who raised concerns about so many different issues could not be dismissed as being motivated solely by individual animosity or grievance. It said that the programme makers gave careful consideration to the possible motivation of each contributor and took account of the reason why they left the company before deciding whether to use their contribution, and whether it was appropriate or necessary to set out the particular circumstance of each contributor. It said that, for example, in the case of Ms Herman who was dismissed for theft, that the reporter put this (i.e. the nature of her dismissal) to the contributor and included her response. The broadcaster said that the viewer was therefore given sufficient information to judge Ms Herman's credibility and was aware of the circumstances in which she left the company.

- ii) The BBC submitted that Ofcom has always acknowledged that it is a matter of legitimate editorial discretion for programme makers to decide how to cover a particular story and the selection of contributors, so long as the broadcast programme meets the requirements of the Broadcasting Code ("the Code"). The BBC said that it had demonstrated in its responses to the heads of complaint that the programme avoided any unjust or unfair treatment of the

complainants. It said that the allegations contained in the programme were specifically about BrewDog and Mr Watt and so it was appropriate and editorially justified to include their responses as the parties directly involved, rather than the views of third parties such as Mr Fletcher or Mr Niekamp.

The broadcaster said that Mr Niekamp was entitled to his view that the BBC's position was "a monumental overreach at best", although it noted that it had no way of knowing what information Mr Niekamp was given on which to reach such a conclusion. It said that, however, the programme makers took the editorially justified decision to rely on a first-hand interview with someone who had been a leading expert at the TTB on labelling (i.e. Mr Martin) rather than include the second-hand views of a third party. It said that Mr Martin verified the BBC's understanding of the import paperwork and said in his professional opinion that BrewDog lied on the forms it submitted. The BBC added that, as set out in its response to a) v) above, the programme treated BrewDog fairly by accurately reporting its response to the allegation. It also said that the programme maker had "made several attempts" to invite Mr Fletcher to participate in the BBC's output, but that he had declined to do so.

d) Opportunity to respond

- i) The BBC said that it had confirmed it was making a documentary about BrewDog to the company's PR firm on 16 November 2021, and that a request to interview Mr Watt was made and the broad outline of the areas for discussion were sent by email on 27 November 2021. It said that this included: BrewDog's unique funding and ownership model; the company's finances and the potential IPO¹²; the claims of a toxic work culture at BrewDog made by former staff, and Mr Watt's management and behaviour towards BrewDog staff. The BBC said that, in light of the allegations made in the PWP letter, Mr Watt's acknowledgement of failings after it was published, and the company's decision to commission an independent review into its management culture, the complainants can have been in little doubt as to the broad scope of the programme and the issues it intended to address.

The broadcaster said that, in an email of 14 December 2021, it had confirmed that BrewDog would be given the opportunity to provide a written "right of reply" if Mr Watt decided not to be interviewed, and that it subsequently sent BrewDog an email on 5 January 2022 in which it said it intended to broadcast its documentary "near the end of January". It said that a detailed list of 29 "questions, points and allegations" the programme makers wished to put to the complainants were sent by email on 10 January 2022 and a response requested by 19 January 2022, giving the complainants eight working days to provide a written reply. The BBC said that it believed that this was an adequate and appropriate timeframe bearing in mind none of the concerns raised would have come as a surprise to the complainants and the allegations were set out in sufficient detail to allow the company to offer an informed response.

The BBC said that a further round of correspondence occurred from 18 January 2022 in which the programme makers asked for clarification on some of the complainant's responses and gave more information on other points they had raised previously. It said that

¹² "Initial Public Offering", referring to the process of offering shares of a private company to the public in a new stock issuance for the first time.

further information was provided about the allegations regarding Mr Watt's behaviour in the USA in an email of 20 January 2022, and that BrewDog's solicitors sent a response on 22 January 2022. The BBC said that it believed that the allegations about Mr Watt's personal behaviour were made in sufficient detail to allow him to offer an informed response, and that this was borne out by the fact that Mr Watt provided a detailed response to a number of the allegations made about him. The broadcaster said that it took the decision not to name specific sources because of a genuine concern some contributors could be intimidated by Mr Watt or the company into withdrawing their consent to take part in the programme. It said that the programme makers were aware some contributors felt vulnerable and were "afraid of Mr Watt's wealth and power". The BBC provided Ofcom with a link to an online article which it said reported on posts by Mr Watt on the PWP forum allegedly appearing to threaten the BBC's contributors ahead of broadcast a week before the programme was transmitted¹³.

The BBC said that the complainant's had confirmed to Ofcom that the solicitors who were acting on BrewDog's behalf prior to broadcast were "able to provide detailed response, including...for-publication Appendix A of information provided on 22 January 2022". The broadcaster said that it accepted that the complainants may have preferred the BBC to provide more detail of the concerns it raised, but that the evidence indicated they were fully aware of the issue and had been for many months. It reiterated that the complainants were given sufficient information to provide an appropriate response and were given sufficient time to provide an informed, written reply.

The BBC added that, as referred to in its response to the other heads of complaint above, the programme was edited and updated following receipt of additional information provided by BrewDog after transmission. It said that this demonstrated the programme makers' willingness to ensure the information in the programme was duly accurate and reflected the response from BrewDog to claims and allegations made about it. The BBC also submitted that the information which was provided by BrewDog after the original broadcast was available to the company beforehand and could have been provided in the right of reply correspondence.

- ii) The BBC said that it had repeatedly demonstrated in its response to the complaint that the allegations made about the complainants were based on sound evidence and put to them with sufficient information to provide an informed response. It said that the programme makers fairly represented the substance of the complainants' response but took account of the fact that Ofcom recognises it is not normally necessary to reproduce a response in its entirety. The BBC said that, in the complaint, Carter-Ruck claimed the programme "failed to represent the substance" of the complainants' responses to various issues but had not specified the issues it had in mind.

e) Privacy

- The BBC said that the decision to obtain and broadcast information about some of Mr Watt's personal investments was warranted in the public interest. It said that, as set out in its response to the fairness complaint, Mr Watt is the public face of BrewDog and had consistently used his personal profile to promote his business and, by extension, his own reputation as a "maverick in the industry". The BBC said that the editorial justification for

¹³ BrewDog boss accused of trying to [intimidate ex-staff](#), Guardian, 21 January 2022.

reporting Mr Watt's ownership of a significant number of shares in Heineken and his decision to invest more than £2 million in a hedge fund in the Cayman Islands was to highlight the appearance of double standards on the part of a high-profile businessman who consistently promotes an "anti-corporate ethos" and plays on the anti-establishment values of his company. It said that Mr Watt's personal investments ran counter to the principles he publicly promotes.

The BBC said that the programme did not suggest that Mr Watt was guilty of any wrongdoing, and that it set out his response to the allegations regarding his private investments that his *"tax arrangements are entirely legal and legitimate" and he pays tax on all income "both overseas and in the UK"*. The BBC reiterated its submission that, since the broadcast of the programme, Mr Watt had publicly admitted his decision to buy shares in Heineken was "the most stupid thing that I've done" (as set out in detail at head b) i) above), and that Mr Watt could not possibly claim there was unwarranted infringement of privacy in light of his very public admission he made a serious error of judgement.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that BrewDog and Mr Watt's complaint should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View, and both parties chose to do so which, insofar as they are relevant to the complaint entertained and considered by Ofcom, are summarised below.

Representations from the complainants on Ofcom's Preliminary View

The complainants said that they disagreed with the entirety of Ofcom's findings in its Preliminary View, however they said its representations focused on the most significant issues.

Allegations about Mr Watt's personal investments and conduct

The complainants said that they disagreed with Ofcom's Preliminary View regarding what was stated in the programme about Mr Watt's investments, however they did not wish to make further representations on these points.

In regard to Ofcom's conclusions about the allegations against Mr Watt of personal misconduct and inappropriate behaviour, the complainants disagreed with Ofcom's statement that "even if some of the statements complained about were inaccurate (and we have not come to a conclusion either way as to the truth of the allegations), the allegations of the former employees were... not presented as unequivocal statements of fact, but rather as their own personal recollections and opinions of Mr Watt's behaviour". The complainants said it was clear that the allegations made by former employees were not opinions, but categorical allegations of fact as to what Mr Watt did, and that viewers would have understood these to be factual allegations. The complainants said that, for example, it was not possible to assert that an allegation that Mr Watt had taken an intoxicated woman to "a roof bar area", was "on the rooftop kissing, with his hand up the shirt of this young lady" and that the incident had been seen by employees "through the video camera" was a statement of opinion rather than a statement of fact.

The complainants said that, in relation to the allegation that Mr Gray would schedule "certain female staff around [Mr Watt] so they would not be there" and "more men at nights when he was there", this was also an allegation of fact. The complainants said that they disagreed with the BBC's argument, which appeared to have been accepted by Ofcom that Mr Gray was saying he had "tried

to” schedule more men than women as this is not what he had said in the programme. The complainants said that what Mr Gray had asserted in the programme was a factual allegation, not what he had hoped or attempted to do. They reiterated that this was a false claim, as demonstrated by the information it had provided Ofcom previously, namely that Mr Gray was not in charge of scheduling on the days Mr Watt was visiting, and on these days there were more women than men working.

In its representations, the complainants quoted a number of questions asked by the reporter and comments made by him in narration; they said that it was evident from what was said about the allegations editorially they were allegations of fact. The complainants added that they had not overlooked the denials included within this part of the programme, but said that these inclusions did not make any difference to the question of the factual nature of the allegations. They said that the allegations made by the various sources were presented in the programme as first-hand facts of wrongdoing. The complainants said that in these circumstances the reliability of the sources of factual claims was critical and a matter the BBC should have investigated with the utmost care. They said that even if the BBC considered the allegations sufficiently credible to be included; something it disagreed with, information relevant to the sources’ credibility should have been disclosed to the audience.

The complainants said that in any event, Mr Watt should have been afforded a full opportunity to comment and to provide information in response to detailed information about his accusers and the serious accusations levelled at him. They said that this was not the case.

The complainants further noted that the BBC sought to rely on Mr Watt’s interview on ‘Diary of a CEO’ in support of its reporting, which was broadcast after the programme. They said that the BBC could not seek to rely on material post-broadcast as a way of justification for decisions it made pre-broadcast and that there was nothing in what Mr Watt had discussed in his interview that touched upon the serious allegations included in the programme.

Omission of material

The complainants said that the BBC had been informed that many of the programme’s contributors had left BrewDog in circumstances where they had failed to fulfil their contractual obligations. They said that, therefore, they should not have been presented as reliable sources, and their suitability as contributors should have been questioned by the BBC. The complainants provided information regarding a number of the contributors, which it said had not been included in the programme, save for reference to a previous employee’s theft which it considered was presented in a misleading way. The complainants said that despite its best efforts at warning the BBC about the unreliability and doubtful motives of the programme’s probable sources, no precise or proper detail could be given because no names were disclosed to them before transmission of the programme. The complainants reiterated that the omission of these details, which it considered would have put the credibility of the sources in a different light, led to unfairness to Mr Watt.

The complainants said that the BBC referred to having spoken to “more than 20 former members of staff from BrewDog USA bars who raised concerns about Mr Watt’s behaviour”, but that they had not indicated when these former employees worked at BrewDog. They also added that the BBC did not appear to have spoken to, or included in the programme, other employees or ex-employees positive experiences of BrewDog and Mr Watt. The complainants said that they had good grounds to be doubtful about what the BBC claimed about its sources and provided Ofcom with a newspaper article which referred to an individual who it says was “a source with a clear ‘axe to grind’ and who

as a proven fraudster should plainly not be relied upon". They said that the BBC initially denied speaking to this individual, but later admitted it had.

The complainants said that prior to transmission, the BBC had been made aware of a statement from an independent consultancy firm that had examined the company over five months, who said: "there are always ex-employees that have left the business and feel mistreated or unjustly defeated. That being said, this has been the most extreme case we've seen of a small group of former employees on a mission to cause damage to a brand". They said that the contributors were all drawn from this group, and reiterated their concern that the BBC saw no unfairness in relying on these sources, and that Ofcom considered in its Preliminary View that there was no unfairness in this regard.

Opportunity to respond

The complainants said that no proper opportunity to respond to the allegations was given. They said that the BBC did not seek to give Mr Watt any real chance to address the allegations, save for the inclusion of denials, which it considered viewers would regard as routine.

In regard to Ofcom's statement in its Preliminary View that "while we recognised that the BBC did not provide details of the individuals who had made the allegations of inappropriate behaviour against Mr Watt, or the dates and locations in which the incidents were alleged to have taken place, we considered that the subject matter of the programme and the nature of the claims that had been made by the contributors were set out clearly and in detail in the BBC's correspondence with the complainant's solicitors", the complainants said that this did not stand up to scrutiny. They said that Mr Watt should have been afforded the opportunity to establish, if he was in the relevant bar on the relevant date of the alleged incidents, which in one case he was not. The complainants reiterated that no names were provided to Mr Watt by the BBC prior to broadcast, nor was a single date provided, save for two references to 2017. They said that given this, the BBC provided nothing that would have properly allowed Mr Watt to refute the allegations with demonstrable fact, which they considered he now had done.

The complainants said that since all but one of the contributors of the allegations about Mr Watt was shown and named in the programme, and the other was identifiable by her voice, there could not have been any intention to protect the identity of a source. The complainants submitted that the BBC did not wish to allow facts to get in the way of allegations, and that it knew, or suspected that the allegations were unlikely to stand up to examination.

In conclusion, the complainants submitted that the BBC was motivated by a desire to maintain its attacks on Mr Watt in a manner that was not the product of dispassionate and objective journalism. They said that the basis for the programme, the assembly of its 'facts', and its inadequate efforts made to establish the other side of the story and the truth, were infected by a pre-disposition against them.

Representations from the BBC on Ofcom's Preliminary View

The broadcaster agreed with Ofcom's Preliminary View to not uphold Mr Watt and BrewDog's complaint of unjust or unfair treatment and unwarranted infringement of privacy.

Allegations about Mr Watt's personal conduct

In regard to the complainants' submission in their representations that the comments from contributors were presented in the programme as "allegations of fact as to what Mr Watt did", the broadcaster said that it accepted that Ofcom was not in a position to come to a conclusion as to the truth of the allegations, but it submitted that allegations included in the programme were based on first-hand accounts from credible sources. The BBC said that all the recollections and opinions expressed by contributors were corroborated by other reliable sources and it believed it was reasonable to reflect such testimony in the programme. The broadcaster said that viewers would have understood that they were hearing an individual's recollection or understanding of events and would have judged what they heard accordingly. The BBC reiterated that the programme makers carried out appropriate checks on each individual allegation, which included conducting extensive interviews with contributors, checking their individual stories, and ensuring all significant and serious allegations were corroborated by other independent sources and witnesses, and/or corroborated by documented evidence. The broadcaster also reiterated that the programme did not rely solely on the evidence of those who featured in the programme, and that the programme makers spoke to more than a hundred current and former employees to establish a pattern of behaviour by Mr Watt over an extended period of time.

Information about contributors

In regard to the complainants' comment that the programme makers should have given Mr Watt "detailed information about his accusers and the serious accusations levelled at him", the broadcaster said that it is not BBC policy to necessarily provide those who are the subject of its programmes with the full details of contributors who have made allegations about them. The BBC said that the requirement was to set out the nature of any allegations in sufficient detail to enable an informed response, and welcomed Ofcom's decision in its Preliminary View that the approach taken by the programme makers gave the complainant an appropriate and timely opportunity to respond to the issues examined in the programme. It also reiterated that the decision not to provide specific details of those making the allegations was taken after giving due consideration to their well-being and safety and to reduce the possibility contributors could be intimidated ahead of broadcast. The broadcaster also reiterated that an article alleged that Mr Watt had posted on an internal BrewDog forum ahead of broadcast warning contributors the BBC could not protect their anonymity and suggested a court could order the BBC to name former staff who contributed to the programme. The BBC also added that subsequent to broadcast, Mr Watt provided further justification for the BBC's approach, by threatening Mr Gray with punitive action unless he withdrew his comments.

Credibility of contributors

The broadcaster said that, in its representations on Ofcom's Preliminary View, the complainants sought to undermine the credibility and reliability of the programme's contributors. The BBC said that Mr Watt was entitled to dismiss the opinion and recollections of the numerous BrewDog employees who raised concerns about his personal conduct, however it said it questioned the relevance of much of the information the complainants provided about the contributors, and the

accuracy of this information. The broadcaster reiterated that the allegations made by the woman who remained anonymous in the programme were supported by corroborative statements. It also noted that in regard to the alleged incident on the roof terrace, Mr Quick's recollection of the incident was supported by another former employee, Haydyn Beer, about whose credibility the complainant appeared to have no issue.

In regard to the broadcaster's statement that it questioned the accuracy of some of the information provided by the complainants about the contributors, by way of example, it said it considered the complainant misunderstood and misrepresented what Mr Gray said he did in practice regarding the scheduling of staff members. The BBC said that Mr Gray was not claiming, as the complainants appeared to believe, that he tried to schedule more male members of staff than female when Mr Watt was expected in the bar. Rather, he tried to schedule more male staff members than would normally be present.

The broadcaster noted that the complainants submitted that they had good grounds to be doubtful about what the BBC claimed about its sources, and they had referred to a newspaper article about an individual they described as a "proven fraudster". In regard to this, the BBC said that the complainants had misrepresented the facts when it said that it had initially denied speaking to this individual but had later admitted it had. It said that this individual was not a source for any of the claims or allegations made in the programme, nor were they used to corroborate any such allegations. The broadcaster said that at no point did the programme makers deny having spoken to this individual, and the programme makers had decided not to include any information about the individual in the programme.

Representations from the complainants on the BBC's response to Ofcom's Preliminary View

Allegations about Mr Watt's personal conduct

The complainants said that it appeared from the BBC's representations on the Preliminary View that it agreed that statements made about Mr Watt's personal conduct were fact as opposed to opinion; it said that one cannot "corroborate" an opinion. It said that on this basis, Ofcom should revise its view that the statements were expressions of opinion.

Information about contributors

The complainants said that it was nonsensical for the BBC to suggest that it withheld the names of contributors in the interests of their welfare, knowing that they would appear in the programme. BrewDog and Mr Watt said that if contributors are not going to be anonymous, there is no good reason to withhold their details when offering an opportunity to comment before broadcast. They said this was particularly the case where, as it was here, the identities are critical to pre-broadcast fact checking and to observation about circumstance, motive and reliability.

Credibility of contributors

The complainants said that the BBC had not said anything substantive in relation to the information it supplied about the organised attacks on BrewDog and Mr Watt by the group of "embittered ex-employees". The complainants said that the points they had made about the circumstances of each contributor and the fact of their collusion was not answered by the BBC. The complainants reiterated that the contributors operated as a group and were therefore not independent of each other and that they had reason to give false accounts and provide bogus corroboration, which was to damage BrewDog and Mr Watt. The complainants reiterated that the BBC did not address the

question of a connection between its contributors and the evidence of collusion, nor did it give them a proper opportunity for their accounts to be commented on.

Broadcaster's response to further representations provided by the complainants

Allegations about Mr Watt's personal conduct

The broadcaster said that the complainant's assertion that it appeared that the BBC agreed that the statements made about Mr Watt's personal conduct were fact as opposed to opinion was a misrepresentation of the BBC's position. The BBC reiterated that in its original representations on the Preliminary View it had acknowledged that Ofcom was not in a position to come to a conclusion as to the truth of the allegations and that this referred to the allegations made by the various contributors to the programme. The broadcaster said that it had explained that the views expressed by the contributors were based on their first-hand recollection of events and those recollections were supported by other reliable sources. The BBC reiterated that the programme makers carried out appropriate checks on each allegation, and there was a clear editorial justification for reporting the contributors' accounts involving Mr Watt and for fairly and accurately reporting Mr Watt's response.

Information about contributors

The BBC acknowledged that the complainants suggested there was "no good reason" to withhold the names of contributors to the programme when giving them an appropriate and timely right of reply. The broadcaster said that it disagreed and considered that the evidence showed the programme makers' decision was entirely justified. The broadcaster reiterated that the decision to withhold the identity of contributors was to protect them from the kind of intimidatory behaviour they suffered after their identities became known. By way of example, the BBC reiterated that Mr Gray had been threatened with legal action unless he retracted the claims made in the programme, and that Mr Watt had warned contributors that the BBC could not protect their anonymity. The broadcaster said that the programme makers had taken account of the concerns raised by contributors who said they had reason to believe BrewDog would attempt to intimidate them into withdrawing their consent to take part in the programme.

The broadcaster repeated that the programme makers provided appropriately detailed information about the allegations to the complainants and gave BrewDog an appropriate opportunity to respond to concerns and claims, and that the company's written response was accurately and fairly reflected in the programme. The BBC also noted that the Preliminary View found that the BBC had met its obligations in this regard.

Credibility of contributors

In response to the complainants' claim that the contributors operated as a group and had reason to give false accounts and provide bogus corroboration, the BBC said that the evidence provided in its previous statements suggested otherwise. The broadcaster reiterated that the programme makers spoke to more than 100 former and current staff at BrewDog, more than 20 of which spoke specifically about Mr Watt's behaviour and personal conduct. It said that many of them did not know each other and worked in different locations and countries. The BBC said that the programme makers took careful steps to ensure each contributor was sourced and interviewed independently, and the evidence did not support the allegation of "collusion" among those who contributed or that they "operated as a group".

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme and transcript of it, and both parties' written submissions and supporting material, including representations made by the complainants and the broadcaster in response to Ofcom's Preliminary View. After careful consideration of the representations, we considered that the points raised did not materially affect the outcome of Ofcom's Preliminary View to not uphold the complaint.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the "Code"⁴. In addition to this Rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected, by programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

Unjust or Unfair Treatment

Ofcom began by considering the complaint that Mr Watt and BrewDog were both treated unjustly or unfairly in the programme as broadcast because the programme misrepresented, disregarded, and omitted material facts in a way that resulted in unfairness to them. In considering heads a), b) c) and d) below, Ofcom had particular regard to the following Code practices:

Practice 7.9 states:

"Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation..."

Practice 7.11 states:

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

Practice 7.13 states:

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

a) Allegations about BrewDog’s commercial practices and corporate culture

In this case, from the information provided to Ofcom by both parties, it was clear that the allegations included in the programme, which were the subject of the complaint, related to matters that were the subject of ongoing dispute between BrewDog and Mr Watt and the BBC. It is important to note that Ofcom’s role is not to determine the factual accuracy (or otherwise) of statements made in the programme. Our role in this case was solely to consider whether the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to the complainants. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case, including, for example, the seriousness of any allegations made against them and the context in which such allegations are made.

- i) We first considered the complaint that the programme left viewers with the misleading impression that the complainants had reneged on their promise to consumers by not planting a tree in the “Lost Forest” for every pack of Lost Lager sold, and that the reason why the complainants had not planted any trees in the Lost Forest was because they were not paying for them with their own money.

In assessing this head of complaint, Ofcom began by considering whether the material complained of had the potential to materially and adversely affect viewers’ opinions of BrewDog in a way that was unfair. We considered the nature of the material included in the programme, as set out in detail in the “Programme summary” and took into account that the programme included an examination of some of the company’s marketing campaigns and its approach to public relations. We noted that the reporter said:

“[BrewDog’s] flagship sustainability plan is planting trees. They’ve called it the ‘Lost Forest’...their website says they’ll plant a tree there for every pack of ‘Lost Lager’ sold”.

We took into account that the programme included examples of BrewDog’s promotional material relating to the Lost Forest (see “Programme summary” above), and the reporter later stated:

“...the Kinrara Estate, home to the Lost Forest, or, at least, it will be a forest once BrewDog start planting trees here. There’s a reason why there aren’t many trees here yet – BrewDog aren’t planning to pay for them with their own cash. Last year we were contacted by an anonymous source inside the Scottish Government. They wanted us to know that BrewDog had recently submitted a grant application to pay for the planting of trees here at the Lost Forest. The application is for up to £1.3 million to cover the cost of phase one of their tree-planting plan... let’s be clear, planting trees is a great idea and great for the environment, but it doesn’t look like it’ll be paid for by BrewDog from the sales of Lost Lager”.

Further, Mr Clements said that BrewDog had applied to use public money and that “if you want to allocate credit for it [planting trees] then actually...we [i.e. the taxpayer] are paying

for that”, and commented “There’s a lot of presentation in these things...Maybe the PR department is spending a bit too much”.

Having carefully examined this part of the programme in its entirety, we considered that, regardless of the accuracy of the statements in question, it was unlikely in our view that (taken either individually or collectively) they would have materially and adversely affected viewers’ perception of the complainants in a way that was unfair.

In reaching this conclusion, we took into account that the complainants did not dispute the programme’s claim that no trees had been planted in the Lost Forest, or that they had applied for a grant from the Scottish Government. Rather, the complainants submitted that the programme resulted in unfairness because the BBC had connected the Lost Lager incentive to the Lost Forest when, in fact, this was a separate tree planting scheme in Madagascar, and the grant comprised only a very small proportion of the overall cost. We also took into account that the comments about the Lost Forest campaign were made in the context of a programme segment discussing BrewDog’s “eye-catching marketing campaigns” against a backdrop of examining how “open and honest” the company has been with them over the years and the extent to which some of their campaigns, such as the Lost Forest, “had an occasional whiff of BS”.

In Ofcom’s view, it would have likely been sufficiently clear to viewers that BrewDog had two separate tree planting schemes and had already invested a significant amount of its own money in the Lost Forest, with the grant being a comparatively small proportion of the total cost. In particular, we considered that the complainants were given the opportunity to respond to the concerns raised in the programme, and as a summary of their response was reflected in the programme (as set out in detail at head d)). In particular, the programme included BrewDog’s position that it was planting trees in the Lost Forest and a location in Madagascar was reflected by the reporter, who said “The company says it has always been clear they’re ‘planting trees in two locations’, and BrewDog has a ‘dedicated area’ where trees are planted in an ‘Eden Forest Project in Madagascar’”. The programme also reflected the complainants’ response that they had “spent £10 million on buying the land” and that “The Forestry Grant Scheme is open for anyone to apply’, and ‘anticipates that 1.1 million trees will be planted in the Lost Forest’”.

Taking these factors into account, we considered that overall, viewers were provided with sufficient information and context to draw their own conclusions about the allegations.

Therefore, taking the above factors into account, Ofcom considered that, in the circumstances, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to BrewDog in this respect.

- ii) We next considered the complaint that the complainants were treated unfairly in the programme as broadcast because it had falsely presented a past version of an inaccessible trade website regarding the Lost Forest initiative as what the complainants were saying to the public.

We acknowledged that the webpage had since been removed. However, on the balance of evidence available to the BBC prior to the broadcast of the programme, we considered that it was not unreasonable for the programme to have presented the image as demonstrating that the complainants had appeared to link the sales of Lost Lager and planting of trees in

the Lost Forest. We noted, having carefully examined the supplementary material provided by the BBC, which included a copy of the full image of the webpage used in the programme, that it appeared the webpage featured in the programme had been publicly accessible for a substantial period of time prior to the broadcast of the programme. In particular, we took into account the broadcaster's submission that the webpage URL demonstrated that the image used in the programme was taken from BrewDog's public facing website, and that archival evidence indicated that the webpage had been available from at least June 2021 to January 2022.

We considered that the use of the image in the programme as broadcast did not result in material facts being presented in a way that was unfair to the complainant.

- iii) It was complained that the programme was unfair to the complainants because it alleged, inaccurately, that it was misleading for Mr Dickie to have stated in relation to the Speedbird 100 beer: "What you have in your glass is the first ever beer made on an aeroplane".

Ofcom understood BrewDog's complaint to be that Mr Dickie's statement was factually accurate, and that the beer available at the Speedbird 100 launch event had been "made on an aeroplane".

We began by considering what the programme said about Mr Dickie's claim. As set out in the Programme summary, the programme reporter introduced the Speedbird 100 marketing campaign by stating "*...Is there a smell around some of the company's greatest marketing hits? Take this one, for example. In 2019 they [BrewDog] brewed a beer at 30,000 feet*". The programme included a clip from a Speedbird 100 marketing video in which Mr Watt and Mr Dickie appeared to be combining ingredients to brew beer while on an aeroplane. This was followed by footage of Mr Dickie addressing a crowd of people, who were all holding glasses of Speedbird 100. Mr Dickie said: "*What you have in your glass is the first ever beer made on an aeroplane*". We noted that the reporter questioned this, "*Or did they?*", before going on to explain that the programme had spoken to someone who had "*actually made that beer, who told us that this was all a stunt, and that the beer had in fact been brewed in Ellon*".

We recognised that the parties disagreed about the accuracy of Mr Dickie's statement. As stated above, Ofcom's role is not to make findings of fact in relation to the allegations made in the programme, only whether the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to the complainants.

We took into account the BBC's submissions that the campaign was a further example of the company's high profile, hyperbolic marketing, and that viewers were likely to have understood that it was included in the programme as such. In this regard, we considered that the reference to the Speedbird 100 campaign as being a "*stunt*" and the reporter's suggestion that Mr Dickie's statement was inaccurate were made in the context of a programme segment focusing on BrewDog's unique and irreverent approach to marketing, for which the company appeared to be well known. This was highlighted by the reporter, who said: "*Nothing has set BrewDog apart more than its eye-catching marketing campaigns...The company's marketing mayhem is the brainchild of CEO James Watt...His bold ideas have made BrewDog hard to ignore*".

We also noted that the programme did not state, as a matter of fact, that Mr Dickie's statement was wrong. Rather, the reporter reflected that the programme had spoken to someone who claimed to have been involved with making the beer, and that individual had

provided a differing account. In this regard, we considered that the individual's comments were clearly attributed to them, and viewers would have understood their comments to be their own personal opinion.

Taking these factors into account, we considered that, overall, viewers were provided with sufficient information and context to draw their own conclusions about the allegations. In reaching this conclusion, we noted that the complainants were given the opportunity to respond to the concerns raised in the programme, and that a summary of their response was reflected in the programme (as set out in detail at head d)). In particular, the programme included BrewDog's position, reflected by the reporter, who said "*BrewDog deny this [i.e. that the campaign was a stunt and the beer was brewed in Ellon]*". In Ofcom's view, therefore, the programme was unlikely to adversely affect viewers' perceptions of the complainants in a way that resulted in unfairness to them.

In addition, we also had regard to the fact that, in the complaint, the complainants acknowledged that "No purchaser of the beer would actually expect that it had been brewed in an airborne aircraft".

Therefore, for the reasons set out above, it was Ofcom's view that, in the circumstances, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to BrewDog in this respect.

- iv) Carter-Ruck said that the programme was unfair to the complainants because it included inaccuracies regarding the "Equity for Punks" ("EFPs") share scheme, whereby participants have the opportunity to buy and sell shares in BrewDog. Ofcom considered each point of complaint in turn (set out under each bullet point).
- The programme inaccurately alleged that those who had participated in the EFPs share scheme could "*only sell a fraction of their shares on special trading days*" while "*the...co-founders sold a pile of theirs to TSG¹⁴ and raked in nearly £100 million between them*".

Ofcom understood the complaint to be that this statement was inaccurate because all EFPs were invited to participate in the TSG deal and were entitled to sell their shares at the same price at which the co-founders had sold theirs. We considered that at no stage was it claimed that EFPs were not able to participate in the selling of shares to TSG, nor that the sale price of the individual shares held by EFPs was lower than that of those sold by the co-founders. We therefore considered that there was no unfairness to the complainants in the programme as broadcast in this regard.

We acknowledged that the programme did state that EFPs were only able to sell "*a fraction of their shares on special trading days*", and that Mr Watt and BrewDog claimed, through their solicitors, that this was inaccurate because no such restrictions applied. We also recognised that, in its response to the complaint, the BBC had accepted that the programme could have made clearer¹⁴ that this claim referred to restrictions that applied to EFPs in relation to the TSG deal, rather than general restrictions. In Ofcom's view, the statement was made in the context of a discussion about the nature of the TSG deal specifically and the comparatively larger number of shares BrewDog co-founders were able to sell versus EFPs. Therefore, while there was potential for the programme to have given some viewers the impression that the restrictions outlined applied to EFPs at all

¹⁴ TSG Consumer Partners LLC, a private equity firm, acquired a minority stake in BrewDog PLC in 2017.

times, taking into account the context in which the statement was included in the programme, we considered that it was likely to have been sufficiently clear to viewers that the programme was referring to the specific trading opportunity arising from the TSG deal. Taking these factors into account, we considered that the reporter's comments were unlikely to have resulted in unfairness to the complainants in this regard.

- The wording of the allegation in the programme also implied inaccurately that the co-founders sold more shares than was permitted for EFPs. This was unfair because on average they had "sold around the same proportion...that punks were entitled to sell".

As set out above, and in detail in the "Programme summary", the programme's reporter stated that EFPs were only able to sell a "*fraction*" of their shares as part of the TSG deal while Mr Dickie and Mr Watt "*sold a pile of theirs...and raked in nearly £100 million between them*".

We took into account the BBC's submission that Mr Watt and Mr Dickie were able to sell as many shares as they wished to TSG, up to a total of ten million between all BrewDog board members, making around £50 million each by selling around 18% of their stake in the company. We also noted the BBC's statement that EFPs were subsequently limited to selling a maximum of 40 shares meaning the most they could make was £527.20. Ofcom understood from the supplementary material provided by the BBC that these restrictions were confirmed by BrewDog in an article publicly available on its website¹⁵. We considered the context in which the reporter's comment was made – which was in an attempt to highlight the potential disparity between the opportunity for Mr Watt and the BrewDog founders to sell shares to TSG versus the opportunity given to EFPs. We recognised the complainants' argument that on average, Mr Watt and Mr Dickie had sold around the same *proportion* of their shares as EFPs were entitled to sell. However, it appeared to Ofcom that the co-founders had been able to sell a significant number of shares for substantially more profit than EFPs, and that the 10 million share limit between the five BrewDog board members was more than the 40 permitted to EFPs (as demonstrated by the information provided by the broadcaster set out above).

Therefore, while the proportion of shares relative to overall investment may have been similar, Ofcom considered that it was not unfair for the programme to have reflected that Mr Watt and Mr Dickie sold "*a pile*" of their shares compared to the EFPs "*fraction*". We acknowledged that the wording, and in particular use of the term "*fraction*" could have been clearer, nevertheless we considered that, overall, viewers were likely to have understood that the reporter was attempting to highlight the potential disparity in the returns Mr Watt and the co-founders were able to achieve on their investment, and the returns available to EFPs. Therefore, taking the factors above into account, we considered that, overall, there was no unfairness to the complainants in this regard.

- The programme inaccurately alleged that Mr Watt and Mr Dickie sold "nearly a quarter of the company to TSG effectively guaranteeing their investment over EFPs investments". However, Mr Watt's and Mr Dickie's shares rank exactly the same as EFPs shares and that there was no guarantee of their shares over EFPs shares.

¹⁵ See footnote 9.

Ofcom understood the complaint to be that the statement in question would have given viewers the impression that Mr Watt and Mr Dickie had guaranteed their own investment over the investments of EFPs, and that this was misleading because Mr Watt and Mr Dickie's shares ranked exactly the same as EFPs.

In considering whether the statement resulted in unfairness to the complainants we noted that the reporter made the statement in the context of a programme segment dealing specifically with the sale of shares to TSG, and in an attempt to "sum up" the information that had been included regarding the potential value of TSG's shares versus shares belonging to EFP's. We took into account that the relevant programme segment explained the reasons for the TSG deal (i.e. to enable Mr Watt and Mr Dickie to further expand the business whilst retaining "control"), as well as the nature of the deal and possible impact on EFPs. In particular, it was explained that TSG had bought a new type of share that "are entitled to make a guaranteed return of 18% a year" and that, if this growth was not delivered, TSG would receive a "larger chunk of the business" at the expense of "other shareholders" including "the founders (i.e. Mr Watt and Mr Dickie)" and EFPs (as set out in detail in the "Programme summary").

In Ofcom's view, viewers were likely to have understood from this that it was TSG that had a "guaranteed return" at the possible expense of both EFPs and Mr Watt and Mr Dickie (which we noted that the complainants did not dispute as being inaccurate). In any case, even if the reporter's statement had given some viewers the impression that Mr Watt and Mr Dickie had also sought to guarantee their personal investments over those of EFPs, we did not consider that this was likely to have resulted in unfairness to the complainants.

In reaching this view we took into account that, in addition to the contextual factors set out above, the programme did not state as fact that Mr Watt and Mr Dickie were guilty of any wrongdoing in relation to the TSG deal. Rather, the reporter observed that "There's nothing wrong with that [i.e. the TSG deal], I guess, it's just good business". The programme also did not claim that it would be impossible for EFPs to see a return on their investment, stating that "with plans to open 30 new bars this year, anything is possible". Further, we considered that the programme had reflected the complainants' position that "they're committed to floating the company" and that "last year they received an investment proposal valuing the company at £1.8 billion".

Taking these factors into account, we considered that, on balance the programme had provided sufficient contextual information, as set out above, regarding the motivations behind the TSG deal and the potential impact on EFPs to enable viewers to reach their own conclusions about the terms of the deal and the extent to which Mr Watt and Mr Dickie had put EFPs at a disadvantage.

In reaching this view, we noted that the complainants did not dispute that the deal with TSG had the potential to guarantee the latter's investment over that of EFPs.

Therefore, Ofcom found that there was no unfairness to the complainants in this respect.

- v) We next considered the complaint that the programme inaccurately suggested that the domestic importer's licence "would have been on the line" as a result of BrewDog not declaring the use of certain extracts that were not approved in the US, in some products that were being shipped from Scotland to the US.

Ofcom began by considering whether the comments complained of had the potential to materially and adversely affect viewers' opinions of the complainants in a way that was unfair. We considered the nature of the material included in the programme as set out in detail in the "Programme summary". In particular, we took into account that the reporter said that:

"The TTB has told us it couldn't comment on specifics, but said there is a three-year statute of limitation for offences, and that enforcement action could not have been taken against BrewDog in any case because they're a foreign company. Instead, it's the domestic importer whose license would have been on the line".

We took into account that the reporter's statement was made in the context of a programme segment examining operational concerns and alleged culture issues at BrewDog, including an alleged incident where staff claimed they had been "pressured" to "flout rules" regarding the declaration of flavouring extracts, resulting in products being "illegally" shipped to the US (as detailed in the "Programme summary").

In Ofcom's view, the claimed illegal shipping of products to the US was the main thrust of the programme's allegation against the complainants in this regard and, therefore, even if the statement complained of regarding potential risk to the domestic importer's license was inaccurate (and we have not come to a conclusion either way as to the truth of the allegation), this did not alter the nature of the key allegation made in the programme as set out above. Having viewed the relevant programme segment in its entirety alongside considering the complaint, we did not consider that this key allegation was dealt with in the programme in a way that was unfair to BrewDog.

In reaching this conclusion, we took into account that the programme explained that its source for the allegations were "staff" from BrewDog's brewery in Ellon who spoke to the programme anonymously. We considered that the staff members' claims that they had been pressured into flouting rules to "get the beer to the US in time" were presented as their views based on their experiences, and that it therefore would likely have been clear to viewers that their accounts were their own personal opinions on the matter. Similarly, while the programme also included the accounts of Mr Martin that it "looks like" the beers were illegally shipped to the US, and Mr Shelton who confirmed that the extracts were not declared to his company, we considered that their comments were presented as their own personal opinion and not material fact. We recognised that the programme had presented images of documents which it said had been submitted to the TTB as "evidence" revealing that "BrewDog withheld the information [i.e. declaration of extracts]" and therefore shipped the products illegally. However, we considered that the statement from the TTB in response to being provided with said documents (as set out above) made clear that it was unable to "comment on specifics", and that while enforcement action against the domestic importer was raised as a theoretical possibility, no such action had been undertaken.

We also considered that the complainants were given the opportunity to respond to the key allegation raised in the programme (as set out in detail at head d)), and that a summary of their response was reflected in the programme (as set out in detail at head e)). In doing so, we noted that the complainants had not denied that the extracts identified by the programme in the products shipped to the US were undeclared. The programme included a

response from Mr Watt saying that he “regretted” taking “shortcuts” in the importation process and admitted that there had been “technical inaccuracies” in the company’s paperwork which had been “self-reported” to TTB. The programme also reflected BrewDog’s response that it had “never sought to evade tax” and “never used illegal ingredients” in its beer.

Taking these factors into account, Ofcom considered that viewers were provided with sufficient information to understand the allegations against the complainants regarding the shipping of products to the USA in their full context, and would therefore have been able to reach their own conclusions about the operational and working culture concerns raised by the programme. Given our view that this key allegation was not dealt with in a way that was unfair to the complainant in the programme, we did not consider that any alleged inaccuracy regarding the extent to which enforcement action could be taken against the domestic importer was likely to have materially or adversely affected viewers’ opinions of the complainants in a way that was unfair to them.

Ofcom found that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded, or omitted in a way that was unfair to BrewDog in the circumstances.

- vi) We next considered the complaint that the programme included misleading information about an “all-staff survey” carried out by BrewDog in 2019.

We took into account that the 2019 survey results were discussed in the context of a programme segment examining allegations of a “toxic work culture” at BrewDog and the PWP letter which detailed allegations of “bullying” and “lying” (as set out in detail in the “Programme summary”). The complainant submitted that the programme was unfair in this regard because:

- it focussed on the 2019 survey’s “Net Promoter Score” (“NPS”) for BrewDog head office staff (minus 54), which the complainants said was not determinative of the overall score for the company (i.e. minus 19).
- it alleged, inaccurately, that the results of the survey were not shared with staff and conclusions were not acted upon.

We first considered whether the comments complained of had the potential to materially and adversely affect viewers’ opinions of the complainants in a way that was unfair. As set out in detail in the Programme summary, the reporter said:

“...in 2019 BrewDog carried out an all-staff survey to try and gauge staff morale. These are the findings, and they’re not good. Staff felt there was a lack of consideration for their wellbeing and mental health. When head office staff were asked if they’d recommend BrewDog as a place to work, it scored minus 54. This survey should have been a wake-up call for the company, but we’ve been told that the results were not shared with staff and the conclusions were not acted on”.

With regards to the complaint that the programme focussed on the NPS score of minus 54 from BrewDog head office staff, we noted the complainant did not dispute the accuracy of this figure. While the complainant may have preferred the programme to have focused on

the company's overall NPS score, in Ofcom's view, decisions over how to approach a particular subject are an editorial matter for the broadcaster and programme makers, providing that the content otherwise complies with the Code.

We considered that viewers were likely to have understood from the statements above that BrewDog staff had expressed concerns and scored the company negatively in the 2019 survey and that the complainants had disregarded concerns raised by the survey about the wellbeing and mental health of staff. This had the potential to amount to a significant allegation of wrongdoing that could materially and adversely affect viewers' opinions of the complainants.

We therefore went on to consider whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded, or omitted a way that was unfair to the complainants. With regard to the specific inaccuracies the complainants said were misleading, we did not consider this to be relevant to our assessment of fairness. This was because we did not consider that the points raised altered the nature of the key allegation made in the programme (i.e. that both former and current BrewDog employees alleged a toxic work culture existed at the company) or how viewers would have perceived the complainants. We did not consider that this key allegation was dealt with in the programme in a way that was unfair to BrewDog for the following reasons:

- As the reporter spoke about the 2019 survey, the programme included a graphic of the NPS from BrewDog's survey, displaying some of the results. The graphic included the text *"How likely are you to recommend BrewDog as a good place to work? Overall nps rating: [minus] 19"*. In Ofcom's view, this made it sufficiently clear that the minus 54 score was specifically from head office staff in response to a particular question about whether they would recommend BrewDog as a place to work.
- The programme stated that the programme makers had *"been told"* that the survey results had not been shared or acted on. We considered that it would therefore likely have been clear to viewers that this was the opinion of BrewDog staff, rather than something the programme had been able to establish as fact.

In addition to the above, we considered that the complainant had been given the opportunity to respond to the concerns raised in the programme and a summary of their response was reflected in the programme (as set out in detail at head d) below). In particular, the programme reflected BrewDog's statement that it *"took culture issues raised in the PWP letter 'extremely seriously'"* and that Mr Watt had *"offered a 'full and frank apology'"*. The programme also included BrewDog's response that it had taken immediate action including *"launching an ethics hotline, a salary review, and an independent culture review...which has led to measures designed to improve leadership"*. We therefore considered that viewers were likely to have understood that the complainants' position was that they had acted on the concerns raised by PWP and put in place measures to remedy the concerns about its workplace culture. We recognised that the programme did not refer to the *"strategy"* which the complainants submitted had been implemented specifically in response to the 2019 survey results however, having carefully considered the pre-broadcast correspondence between the parties, it appeared to Ofcom that the complainants had not included this information in either of their right of reply responses provided to the BBC on 17 and 22 January 2022. Further, we noted that, when a response was provided on behalf of the complainants to the issues raised by the 2019 survey in a letter to the BBC dated 21

February 2022, the version of the programme available on the BBC iPlayer was subsequently amended by the broadcaster to reflect their response that *“BrewDog said this head office score was not representative, that the company wide score was minus 19, and as a result a raft of improvements was introduced”*.

On balance, Ofcom considered that the information provided to viewers about the results of the 2019 survey and any perceived inaction on the complainants’ behalf was unlikely to have materially or adversely affected viewers’ opinions of the complainants in a way that was unfair to them. We considered that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded, or omitted in a way that was unfair to BrewDog in the circumstances.

b) Allegations about Mr Watt’s personal investments and conduct

- i) The complainant submitted that the programme resulted in unfairness to Mr Watt because it included inaccurate information regarding his personal investments. Ofcom considered each point of complaint in turn.
- The complainant submitted that the programme suggested inaccurately that, at the time of broadcast, Mr Watt held Heineken shares “of a value of at least £500,000”. It said that this was not the case, nor had it been for a considerable period of time.

We considered what programme presented about Mr Watt’s alleged investment in Heineken. We noted that the reporter said:

“...in 2017 James Watt bought shares worth half a million pounds in that insipid corporate giant, the scourge of the craft beer industry that he claims to despise, Heineken... at least £500,000 worth of shares is part of James Watt’s private portfolio”.

We noted that the comments were included in a programme segment attempting to highlight an alleged contrast between the corporate ethos portrayed by Mr Watt and what Mr Watt practiced in relation to his personal finances and investments. We considered that viewers were likely to have understood from this that the programme was suggesting that, by purchasing shares in Heineken, Mr Watt had acted hypocritically in relation to his publicised corporate values. Ofcom is not a fact finder and, having viewed the relevant programme segment in its entirety, we considered that, even if the specific statement complained about was inaccurate (and we have not come to a conclusion on this either way), this key allegation was not dealt with in a way that was unfair to Mr Watt in the programme.

In reaching this view, we noted that the complainant did not dispute the claim that Mr Watt had purchased shares in Heineken in 2017, nor the value of the shares as disclosed by the programme. We also took into account that the reporter questioned the significance of Mr Watt’s investment, stating in the interview with Mr MacKay *“Does it matter though? It’s his own money, he’s allowed to invest in whoever he wants. Does it matter?”*. We acknowledged that Mr MacKay disagreed with this, saying that *“... if you say that, ‘we fundamentally disagree with the principles of multinational macro lager breweries’... and hundreds of thousands of people invest in you and what you believe, you’ve got to live that every day...”*. However, we considered that Mr MacKay’s comments were presented as his own personal opinion on Mr Watt’s investments, and

that the programme had identified Mr MacKay as “*one of the founding members*” of PWP (i.e. the group of former employees who had made allegations of a toxic workplace culture at BrewDog) and viewers were therefore likely to have understood that he was commenting on the allegations in his capacity as such.

Taking these factors into account, we considered that the programme had provided viewers with sufficient information to understand the personal investments Mr Watt had made and draw their own conclusions about the extent to which they were consistent with his public facing corporate stance. In Ofcom’s view, therefore, the statement complained of was unlikely to have materially affected viewers’ opinions of Mr Watt in a way that was unfair to him. In particular, we did not consider that any inaccuracy relating to the length of time for which Mr Watt held the shares altered the nature of the key allegation made in the programme (i.e. that Mr Watt had purchased shares in Heineken despite having taken a corporate stance against “*big mainstream beer companies*”) or how viewers would have perceived Mr Watt.

In addition to the above, we also had regard to the correspondence between the parties (copies of which were provided to Ofcom). On 10 January 2022 (which was 14 days before the programme was broadcast), the programme makers had written to the complainants setting out allegations they intended to include in the programme. They explained that they had obtained evidence that “from around 2018”, Mr Watt had owned £500,000 of shares in Heineken, and asked the complainants whether this “appears hypocritical...contrary to the ethos of BrewDog”. Ofcom noted that the complainants did not respond to this allegation in any of the subsequent pre-broadcast correspondence. Therefore, notwithstanding our view that the reporter’s statement was unlikely to have materially affected viewers’ opinions of Mr Watt as to the nature of the behaviour of which he was accused in a way that was unfair to him, we considered that there could be no unfairness in the omission of material that was not provided to the BBC and in circumstances where the nature of the allegation had been put to the complainants prior to broadcast and they had been given an adequate amount of time in which to respond (as set out in detail at heads d) and e) below).

- The complainant submitted that the programme implied, inaccurately, that Mr Watt was engaged in “tax avoidance/evasions”.

We noted at the outset that it was not disputed by the complainant that Mr Watt had invested in a “*hedge fund in the Cayman Islands*”. Having carefully viewed the relevant programme material, we did not consider that the reporter’s comments about the complainant’s investment was likely to have materially or adversely affected viewers’ opinions of Mr Watt in a way that was unfair to him.

In reaching this view, we took into account that the programme did not state, as fact, that Mr Watt was engaged in “tax avoidance/evasions”. We recognised that the reporter said that Mr Watt had invested “*more than £2million in a hedge fund in the Cayman Islands, one of the world’s most secretive tax havens*” and referred to this as an example of “*some investments that James Watt would probably rather be kept quiet*”. However, we considered that, while the term “tax haven” may sometimes be used negatively, it is not intrinsically linked to illegal and/or illegitimate activity. In particular, we considered that the allegations about Mr Watt’s personal investments were included in a programme segment seeking to draw viewers’ attention to perceived inconsistencies

between these and Mr Watt's "anti-corporate" and "anti-establishment ethos" at BrewDog. In this context, we considered that, while the programme may have given viewers the understanding that Mr Watt had behaved hypocritically in this regard, this did not equate to an explicit allegation of wrongdoing relating to tax avoidance/evasions.

Further, even if the programme had left viewers with the impression that Mr Watt was engaged in such behaviour, we considered that the complainant had been given the opportunity to respond to the allegation raised in the programme and a summary of their response was reflected in the programme (as set out in detail at heads d) and e) below). In particular, the programme reflected that "*James Watt has told us his 'tax arrangements are entirely legal and legitimate' and he pays tax on all income 'both overseas and in the UK'*". In our view, therefore, it was likely to have been sufficiently clear to viewers that the complainant had robustly denied any such wrongdoing. Taking the above factors into account, we considered that, on balance the programme had provided sufficient information to enable viewers to reach their own conclusions about Mr Watt's investments and the extent to which they were relevant to the complainant's corporate stance.

For all the reasons set out above, we did not consider that the presentation of the programme's allegations in relation to Mr Watt's offshore investments was likely to materially and adversely affect viewers' opinions of him in a way that was unfair.

- ii) We next considered the complaint that the programme was unfair to Mr Watt because it included inaccurate and/or misleading allegations of "personal misconduct" and inappropriate behaviour on his part.

It was clear to Ofcom from the information submitted by the complainant and the BBC, and reiterated in the parties' representations, that they disagreed about the veracity of allegations put forward by former BrewDog employees.

Ofcom began by considering whether the allegations made by former BrewDog employees about Mr Watt's behaviour complained of had to potential to materially and adversely affect viewers' opinions of him in a way that was unfair. We considered the nature of the material included in the programme as set out in detail in the "Programme summary". In particular, we took into account that the programme included allegations from former employees that:

- Mr Watt had taken an intoxicated woman to "*a roof bar area*", was "*on the rooftop kissing, with his hand up the shirt of this young lady*" and that the incident had been seen by employees "*through the video camera*";
- Mr Watt would give groups of women who were "*always intoxicated*" private tours of the brewery;
- Some managers took extra steps to "*help female staff who felt uncomfortable when James Watt was around*". In particular, Mr Gray, would schedule "*certain female staff around [Mr Watt] so they would not be there*" and "*more men at nights when he was there*"; and
- Ms Campbell was told at her first manager's meeting "*Watch out for James Watt*" and "*You're [Mr Watt's] type so...don't be in a room alone with him*".

We considered that viewers were likely to have understood from the former employees' accounts regarding the allegations above that Mr Watt may have been involved in a number

of instances of inappropriate behaviour with female customers and employees. In Ofcom's view, this had the potential to amount to a significant allegation of wrongdoing which could materially and adversely affect viewers' opinions of Mr Watt.

Having viewed the programme in its entirety alongside considering the individual elements of the complaint, we considered that, even if some of the statements complained about were inaccurate (and we have not come to a conclusion either way as to the truth of the allegations), the allegations of the former employees were not dealt with in a way that was unfair to Mr Watt in the programme.

In reaching this conclusion we took into account that the allegations by former employees that were the subject of the complaint were not presented in the programme as unequivocal statements of fact, but rather as their own personal recollections and experiences of Mr Watt's behaviour. We took into account the complainants' submission in their representations that they considered the allegations were not opinions, but categorical allegations of fact as to what Mr Watt did, and that they considered viewers would have understood these to be factual allegations. However, we noted that the contributors were shown providing their first-hand testimony of events which they said had taken place, and we took the view that viewers would have understood therefore that the purpose of their contributions was to express their views on the working culture at BrewDog and the conduct of Mr Watt as CEO, which they were entitled to do, based on their own experiences of Mr Watt as former employees. Further, the programme made clear that the individuals who gave interviews making allegations of inappropriate behaviour by Mr Watt were no longer associated with the company and, in Ofcom's view, viewers were likely to have understood that they would therefore be commenting on their experiences from a particular perspective. In addition, the programme did not allege that Mr Watt had been proven to be involved in any inappropriate conduct with female customers or members of staff and did not allege that he had been investigated in connection with, charged with or convicted of any criminal offences. In addition, the reporter clearly stated that, while the allegations from former staff were "serious" claims, *"we make no allegation of criminality with women against James Watt"*.

We acknowledged Mr Watt's submission, reiterated in his representations on the Preliminary View, that he had not been afforded a full opportunity to comment and provide a response to the serious accusations levelled at him due to a lack of detail. However, Ofcom considered that Mr Watt was given the opportunity to respond to the concerns raised in the programme, and a summary of his response was reflected in the programme (as detailed below at head d)). In particular, the programme included responses to each allegation from Mr Watt's solicitors, namely:

- that *"'at no time' did [Mr Watt] have a 'sexual encounter' on the 'roof terrace' of the Franklinton bar"* and that *"his lawyer" was in possession of a statement from the woman in question who said that "she 'did visit the roof' briefly with him but was not intoxicated and says, 'absolutely no sexual encounter took place'"*.
- that Mr Watt *"denies the allegation"* that he had taken groups of intoxicated women on brewery tours and says *"he regularly takes 'both women and men' on evening tours of the brewery and it's 'not true' they are intoxicated"* that a claim *"made by an employee"* in 2021 in relation to Mr Watt giving the alleged tours was *"investigated by an external HR service and was 'not substantiated'"*.

- that Mr Watt said, *“at no time has he given unwelcome attention to any female bartender”* and that *“following inquiries by BrewDog, none of the managers interviewed had any knowledge of staff attempting to swap shifts to avoid Mr Watt”*.

In addition, the programme also reflected a response from BrewDog Chairman, Allan Leighton, that he had *“been ‘provided with assurances’ from Mr Watt”* that the allegations were *“not accurate and based in rumour and misinformation”*, and that Mr Watt was *“committed to making improvements to his management style”*. Taking these factors into account we considered that it would likely have been clear to viewers that Mr Watt had robustly challenged the claims made by former members of staff in the programme, and that his position was to refute any allegations of personal misconduct and/or inappropriate behaviour in this regard.

Given the above, Ofcom considered that viewers would have been able to reach their own conclusions on the allegations and, in the particular circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Watt in this respect.

- iii) We went on to consider the complaint that the programme gave viewers the misleading impression that the allegations of personal misconduct against Mr Watt were relevant to the current culture of the company and, specifically that it did not quote any current BrewDog employee regarding the allegations against Mr Watt of misconduct towards women. Having carefully watched the relevant programme segment, in Ofcom’s view, the allegations made by the individual contributors featured in the programme were not presented in a way that resulted in unfairness to Mr Watt in this regard.

In reaching this conclusion, we considered that, as set out at head b) ii) above, the programme made clear that all the individuals who gave interviews making allegations of alleged inappropriate behaviour by Mr Watt, with the exception of Ms McGuire, were former BrewDog employees no longer employed by the company. In particular, the captions at the start of each interviewee’s contribution stated when that person’s employment with BrewDog had started and ended and, prior to the interview with Ms McGuire, the reporter clearly stated, *“each of the people we’ve met so far has left BrewDog”*. In addition, we noted that, at the start of the relevant programme segment, the reporter referred to the allegations being from *“the very recent past”*. We considered that the reporter’s statement made clear that the allegations related to *“past”* experiences. We therefore considered that, overall, it would likely have been clear to viewers that the majority of the individuals featured were *“ex-employees”* and that viewers were provided with sufficient information to understand the timeframes during which the alleged incidents were said to have taken place. Taking the above into account, we considered that the viewers were provided with sufficient information to understand the allegations against Mr Watt in their full context, and the extent to which they were relevant to the company’s current culture.

The complainant submitted, and reiterated in its representations on the Preliminary View, that the programme did not quote any current employee regarding the allegations against Mr Watt. Given the programme did include an interview with Ms McGuire, who was a current employee, and explained that *“more and more former and current staff members have sought us out...in particular women who’ve told us about how James Watt made them feel unsafe at work, uncomfortable, that he’d abused his position of power”*, Ofcom understood the complainant to be referring to the programme not having quoted any

current employee who took a counterview to those interviewed. While we recognised that Mr Watt may have liked further information and/or viewpoints included in the programme to explain his view of the allegations about his behaviour, it is an editorial decision for the broadcaster and programme makers as to what is or is not included in a programme, provided that the programme complies with the Code and does not cause unfairness. In this case, for the reasons outlined at b) ii) above, we did not consider that the way in which the former employee's allegations were dealt with in the programme as broadcast was unfair to Mr Watt.

Therefore, Ofcom found that there was no unfairness to Mr Watt in this regard.

c) Omission of material

- i) The complainant submitted, and reiterated in his representations on the Preliminary View, that the BBC had failed to draw viewers' attention to information relating to the sources relied upon for some of the allegations regarding Mr Watt which gave a misleading impression of their reliability. In particular that: there was a well-documented pre-existing relationship between a number of the sources for the allegations; many of the sources were ex-employees who "have an axe to grind"; and the participants appeared to have been recruited for the programme by Ms Charlotte Cook, a former employee with a "readily-discoverable history of personal antipathy towards Mr Watt".

We acknowledged the supplementary information regarding the former BrewDog employees (provided by the complainants' legal representatives and restated in the complainant's representations on the Preliminary View) which included details of alleged pre-existing relationships between the programme's participants and circumstances in which their employment came to an end. We noted that the complainant said this information ought to have been broadcast in order to allow the viewer to "properly weigh" the former employees' accounts, and the omission of which the complainants alleged gave viewers a misleading impression of the relevant contributors' reliability. However, it is important to note from the outset that the approach a broadcaster takes in the selection of material it includes, or does not include, in a programme, or how they present individual contributions, is an editorial decision for the broadcaster to make, provided that it complies with the Code.

As set out in detail in relation to head b), we considered that the programme made clear that all the individuals who gave interviews making allegations of alleged inappropriate behaviour by Mr Watt, except for Ms McGuire, were former employees, no longer associated with the company, and would be commenting on their experiences in that context. Viewers were also likely to have understood that the former employees' views on BrewDog and Mr Watt were their own. As detailed at head b) and below at d), we also considered that Mr Watt was given the opportunity to respond to the concerns raised in the programme and that a summary of his response was reflected in the programme. We therefore considered that, in the circumstances, the programme had provided viewers with sufficient context about the status of the interviewees and, as such, the omission of the material from the programme highlighted in the complaint was, in our view, not likely to have led viewers to draw a materially adverse impression of Mr Watt in a way that was unfair to him (any more than if it had been included).

We therefore considered that there was no unfairness to the complainants in this respect.

- ii) We next turned to the complaint that the programme disregarded contrary submissions regarding Mr Watt and BrewDog.

We noted the complainants' submission that the programme did not include information which it felt was more supportive of the complainants, and which it said they had been provided to the BBC prior to broadcast. In particular, the programme omitted to include:

- the comments of former TTB Senior Counsel, Mr Niekamp, made to the complainants after they had forwarded the BBC's allegations to him, that the BBC's proposed position that the domestic importer's license was "on the line" was a "monumental overreach at best".
- published comments from Mr Fletcher which were critical of the BBC's approach to gathering information relating to BrewDog's shares for inclusion in the programme, and generally supportive of the complainants.
- reference to the "Wiser Report" into BrewDog's culture, which the complainants said presented a radically different picture to that presented by the programme's contributors.
- reference to publicly available data from other surveys which places BrewDog among the top 100 companies to work for in the UK. The complainants said this included in 2017, the time several of the alleged incidents the programme used to "suggest problems with BrewDog's culture" took place.

As set out at head c) i) above, Ofcom takes the view that decisions relating to the selection of material for use in a programme is an editorial matter for the broadcaster and programme makers, provided that it complies with the Code. For the reasons set out at heads a) iv), v) and vi) and b) ii) above, we did not consider that the allegations regarding BrewDog's alleged illegal shipping of products to the US, the EFPs share scheme and TSG deal, the presence of a "toxic work culture", and linked incidents involving Mr Watt were dealt with in the programme in a way that was unfair to the complainants. In particular (and as further detailed below at d)), in our view, the complainants were given the opportunity to respond to the concerns raised in the programme, and a summary of their response was adequately reflected in the programme. Therefore, in the circumstances of this case, while we recognised that the complainants may have preferred the programme include specific information that they deemed to be more supportive of them, in the above context, we did not consider it was necessary for the programme to have done so in order to avoid unfairness to BrewDog and Mr Watt.

d) Opportunity to respond

- i) Ofcom next considered the complaint that BrewDog and Mr Watt were not given an appropriate and timely opportunity to respond to the allegations made against them in the programme. In doing so, we had particular regard to Practice 7.11 of the Code, as set out above.

The complainant submitted that the BBC provided consistently short deadlines and failed to adequately particularise the allegations set out at heads a) and b) of the complaint. We therefore limited our consideration of this aspect of the complaint to whether the complainants had been given an appropriate and timely opportunity to respond to the claims relevant to these heads in particular, rather than considering whether the

complainants had been given an appropriate opportunity to respond to the claims made in the programme as a whole.

On 16 November 2021, the BBC wrote to the complainants' PR firm confirming that they were making a documentary about BrewDog. This was followed by further correspondence on 27 November 2021 in which the BBC provided further information about the allegations they wanted to discuss with Mr Watt in the programme. Ofcom understands that Mr Watt chose not to participate in the programme. The programme makers subsequently wrote to the complainants' PR firm on 10 January 2022, outlining the allegations that it intended to include in the programme, and then engaged in ongoing correspondence with the complainants' legal representatives prior to the programme's broadcast on 24 January 2022. Given this is when the programme's allegations were first set out in detail, we have focused on this latter chain of correspondence for the purposes of our assessment. In Ofcom's view, the key allegations in the programme were explained to the complainants from the outset, and they were repeatedly asked to provide a response. In reaching this conclusion, Ofcom took into account the chain of correspondence (which was provided to Ofcom by both parties) between the BBC and the complainants, a summary of which follows below:

10 January 2022

Ofcom considered that the correspondence of 10 January 2022 set out in detail to the complainants the allegations which would be presented in the programme and to which a response was requested. This included the allegations that:

- BrewDog had planted "none, or very few" trees in the Lost Forest in Scotland, contrary to the Lost Lager marketing campaign.
- Due to the Scottish Forestry Grant scheme, "all, or nearly all" of the trees to be planted in the Lost Forest will have been paid for by the Scottish taxpayer.
- The Speedbird100 beer was brewed in Ellon, not on an airplane.
- In order for recent EFPs to break even or make money on their investment "an extraordinary level of growth or profit would be required", and TSG shares have "preferential status".
- From around 2018, Mr Watt owned shares in Heineken up to £500,000, contrary to the "punk" ethos of BrewDog.
- Mr Watt has invested more than £2million into investment funds in the "tax haven" of the Cayman Islands.
- BrewDog "deliberately misled" US importing companies and the TTB in order to obtain "TTB labels" for Elvis Juice and Jet Black Heart beers in 2016/17.
- In the 2019 all staff survey, head office staff scored the company minus 54 on how likely they were to recommend BrewDog as a place to work. The results of the survey were not shared with staff and its conclusions were not acted on.

We considered that the correspondence also set out that the BBC had spoken to multiple male and female former employees at BrewDog USA, who alleged that Mr Watt behaved inappropriately with female staff and "regularly" with female customers. This included the allegations that:

- Mr Watt, "on a number of occasions", took females up on to the roof at DogTap for "sexual encounters".

- A number of senior bar staff would attempt to schedule certain female bar staff around Mr Watt because they felt uncomfortable or unsafe. Including a specific example where one female employee had asked not to work when Mr Watt was visiting.
- “Young, good looking” female bartenders were being “prepared” by more experienced staff on how to behave when Mr Watt visited bars, including being told “not to look pretty”, “don’t be alone with him” and “you’re just his type, so be careful”.

The BBC requested the complainants’ response by 19 January 2022, and stated that the company’s position would be fairly reflected in the programme.

17 January 2022

The complainants’ solicitors responded on behalf of the complainants with two separate responses. One document, which we considered contained detailed responses to the allegations set out in the 10 January 2022, it said was “not produced for the purpose of broadcast”. We noted that the complainants’ ‘for broadcast’ response set out the complainants’ position that the allegations relating to the Lost Forest and Speedbird100 were factually incorrect. The complainants’ solicitors said they had provided “correct factual answers” in a separate document that was not for broadcast, and that the allegations in question therefore ought not to be included in the programme. In relation to the allegations of inappropriate behaviour against Mr Watt, the complainants’ solicitors said that these were extremely serious and, to the extent that they allege criminal behaviour, were denied in full. The complainants’ solicitors requested that the complainants be provided with further details of the individuals who had made the allegations, the dates, and locations in which the incidents were alleged to have taken place and what was meant by the terms “inappropriate” or “sexually inappropriate” behaviour to enable them to respond fully. The complainants’ solicitors told the BBC that the complainants’ position was that the allegations had come from disgruntled former employees who had an “axe to grind”, and that the evidence put forward by such individuals should not be considered sound or corroborated. The complainants’ solicitors told the BBC that it had not provided any ‘for broadcast’ response to the allegations relating to Mr Watt’s personal investments because they were not matters of public record and there was no public interest in disclosing this information.

18 January 2022

The BBC wrote to the complainants to further clarify BrewDog and Mr Watt’s position on the allegations relating to SpeedBird100. The correspondence also explained the BBC’s position that the complainants had been provided with “adequate specification” of the allegations of personal misconduct against Mr Watt, and that the BBC was not obliged to discuss the sources of its information. The programme makers did, however, confirm that the BBC had received testimony that Mr Watt engaged in a sexual encounter with a young woman on in the roof terrace at the Franklinton bar “around summer 2018” and that the incident, in which Mr Watt was allegedly seen “kissing the young woman for a number of minutes” and “with his hand up [her] shirt”, was witnessed by staff on CCTV. The complainants’ response to these additional points was requested by midday on 19 January 2022.

Further correspondence passed between the parties, and the complainant’s solicitors reiterated Mr Watt’s denial of the allegations and continued to ask the broadcaster to further particularise the allegations of personal misconduct; the BBC said that it could not provide this information. The complainants’ solicitors stated that they held statements from

three witnesses present that confirmed a different version of events to that set out by the BBC and its sources, and that the broadcast of any allegations inferring that Mr Watt was a sexual predator or had behaved criminally would “require” the complainants to bring court proceedings against the BBC.

20 January 2022

The complainants were offered a further opportunity to provide a response for broadcast. The BBC set out the allegations regarding Mr Watt’s alleged inappropriate behaviour which had been included in its previous correspondence of 10 and 18 January 2022 (Although we noted that these included more detail and the BBC said that this iteration of the allegations therefore “superseded” those set out in the previous emails). The BBC also put the additional allegations to the complainants’ solicitors that:

- One eyewitness had claimed that Mr Watt’s denial of ever having a sexual encounter on a roof was a lie.
- Mr Watt would take women, who were intoxicated, on late night tours of the brewery.
- Two managers had alleged that Mr Watt would stare at a particular female bartender and repeatedly ask for her to serve him, leading to them taking steps to schedule her around Mr Watt.

The BBC requested a response by 1pm 21 January 2022 and, after no response was received, wrote to the complainants’ solicitors again on 22 January 2022, setting out the above allegations again and seeking confirmation as to whether the complainants wished to make any further comment.

22 January 2022

The complainants’ solicitors responded stating that, given the BBC said that the previous allegations were superseded by those set out in the 20 January email, the BBC’s deadline was neither realistic nor fair. The complainants’ solicitors reiterated that the allegations were lacking in any proper particularisation and that the BBC’s understanding was “wrong”. The complainants’ solicitors nevertheless said that the complainants would be making “further detailed comment” which they would “require” to be reflected in the programme. The BBC replied to the complainants’ solicitors the same day to clarify that the allegations in its most recent email regarding Mr Watt’s behaviour were the same as those contained in the 10 and 18 January correspondence and explained that the 20 January email was intended to provide the complainants with “more condensed information in relation to what [we] plan to broadcast”. The complainants’ solicitors then sent a further email providing the BBC with the complainants detailed response to the allegations to be included in the broadcast, which Ofcom understood was the same as the information originally included as part of the “not for publication” response contained in the 10 January 2022. We noted that this response included the complainants’ position on the claims set out in head a) and b) of the complaint, with the exception of those relating to Mr Watt’s alleged inappropriate behaviour.

23 January 2022

The BBC wrote to the complainants’ solicitors requesting the complainants’ response to the allegations of inappropriate behaviour against Mr Watt. The complainants’ solicitors responded the same day, providing the further response requested which they said the complainants required to be properly reflected in the broadcast. The complainants’ solicitors

reiterated that the BBC had not particularised the additional claims and stated the complainants' position that:

- Mr Watt denied that he had ever been on the roof terrace of the Franklinton Bar. The complainants' solicitors said that they held witness statements from the woman in question and the manager of BrewDog Franklinton which confirmed Mr Watt's version of events.
- Mr Watt denied giving unwelcome attention to any female bartender, and that these claims had been investigated and found to be without substance.
- allegations that managers rescheduled shifts were false and was not corroborated by the data available to the complainants.
- The allegation that female staff were coached on how to protect themselves from Mr Watt was untrue.

After carefully examining all of the correspondence, as set out above, it was our view that the complainants were provided with an appropriate and timely opportunity to respond to the issues examined in the programme. In particular, while we recognised that the BBC did not provide details of the people who had made the allegations of inappropriate behaviour against Mr Watt, or the dates and locations in which the incidents were alleged to have taken place, we considered that the subject matter of the programme and the nature of the claims which had been made by the contributors were set out clearly and in detail in the BBC's correspondence with the complainants' solicitors. We acknowledged that the complainants said in their representations on Ofcom's Preliminary View that they disagreed with this and said that Mr Watt should have been afforded the opportunity to establish, if he was in the relevant bar on the relevant date of the allegations, which in one case he was not. However, we did not consider that the omission of this information prevented the complainant from responding to the overall allegations. We also considered that the BBC were clear from the outset that the complainants had an opportunity to provide a statement setting out their position and the complainants were able to provide a number of detailed responses, through their solicitors, throughout the correspondence with the broadcaster. Taking these factors into account, we did not consider that the complainants were disadvantaged in any way by the BBC's decision not to further particularise the allegations as requested. We also took into account that the allegations set out in heads a) and b) of the complaint were put to the complainants 10 working days before the programme was broadcast, and that the complainants had responded in detail, through their solicitors, to each subsequent email sent by the BBC. This included detailed responses to the specific allegations about Mr Watt's behaviour.

Given all the above factors, we considered that the complainants had been provided with an appropriate and timely opportunity to respond to the claims made about them in the programme and that there was no unfairness to BrewDog and Mr Watt in this respect.

- ii) We considered the complaint that BrewDog and Mr Watt's response was not fairly reflected in the programme. In doing so, Ofcom had particular regard to Practice 7.13 of the Code, as set out above.

We took into account the 'for broadcast' responses provided by the complainant's solicitors, which they made a number of requests to be "properly" reflected in the programme, and what was included as the complainants' response in the programme as broadcast (as set out

in the “Programme summary”). We recognised that the responses provided by the complainants were not reflected in full and were instead summarised.

Ofcom takes the view that broadcasters are not required to include a right of reply response in full; it is a matter of editorial discretion as to what material is or is not included in programmes, subject to the requirement on broadcasters to ensure that they comply with the Code. We therefore considered whether the extracts from the complainants’ responses fairly represented their position.

We took into account how the complainants’ responses in relation to the relevant allegations were included in the programme as follows:

In relation to the allegations regarding the planting and funding of trees in the Lost Forest, the programme said:

“BrewDog say that’ve spent £10 million on buying the land”.

“BrewDog have told us, ‘The Forestry Grant Scheme is open for anyone to apply, and anticipates that 1.1m trees will be planted in the Lost Forest’. The company says it has always been clear they’re ‘planting trees in two locations’”.

“BrewDog has a ‘dedicated area’ where trees are planted in an ‘Eden Forest Project in Madagascar’”.

In relation to the allegations regarding the Speedbird100 marketing promotion, the programme said:

“We’ve spoken to one of the people who actually made that beer, who told us that this was all a stunt, and that the beer had in fact been brewed in Ellon. BrewDog deny this”.

In relation to the allegations regarding the EFP share scheme, the programme said:

“[BrewDog] say that in setting its most recent valuation, they’ve taken advice from two of the world’s most prestigious investment banks. And they say last year they received an investment proposal valuing the company at £1.8 billion”.

In relation to the allegations regarding the domestic importer’s licence and non-declaration of extracts to the TTB, the programme said:

“James Watt said he regretted they had taken ‘shortcuts’ in the importation process. He said there had been ‘technical inaccuracies’ in their paperwork, and that they had ‘self-reported’ the issues to the TTB. BrewDog added it had ‘never sought to evade tax’ and had never used ‘illegal ingredients’ in their beer”.

In relation to the allegations regarding the 2019 all-staff survey results and “toxic” work culture at BrewDog, the programme said:

“BrewDog said it took culture issues raised in the Punks With Purpose letter ‘extremely seriously’ and James Watt offered a ‘full and frank apology’. The

company took ‘immediate actions’, including launching an ‘ethics hotline’, a ‘salary review’, and an ‘independent culture review’. The review highlighted the need to ‘do more to support staff’ and has led to measures designed to ‘improve leadership’.

“BrewDog says they’re working hard to change the culture of the company. They’ve introduced a new workplace code which says it wants staff to feel comfortable and safe at work”.

In relation to the allegations regarding Mr Watt’s personal investments in Heineken and a fund in the Cayman Islands, the programme said:

“James Watt has told us his ‘tax arrangements are entirely legal and legitimate’ and he pays tax on all income ‘both overseas and in the UK’. He didn’t respond to our Heineken discovery”.

In relation to the allegations of inappropriate behaviour against Mr Watt, the programme said:

“James Watt told us that he has ‘never been on the roof’ of the DogTap either ‘on his own’ or ‘accompanied by anyone’”.

“...James Watt has emphatically denied ever having any sexual encounter on a roof...”.

“James Watt said ‘at no time’ did he have a ‘sexual encounter’ on the ‘roof terrace’ of the Franklinton bar. His lawyer says they have a statement from the ‘only party’ that could have been present and she says she ‘did visit the roof’ briefly with him but was not intoxicated and says ‘absolutely no sexual encounter’ took place”.

“James Watt denies the allegation [that he took groups of young women who were “intoxicated” on brewery tours]. He says he regularly takes ‘both men and women’ on evening tours of the brewery and it’s ‘not true’ they are intoxicated. His lawyer says a claim ‘made by an employee’ in 2021 was investigated by an external HR service and was ‘not substantiated’”.

“Mr Watt says at no time has he given unwelcome attention to any bartender. His lawyer said following investigations by BrewDog, none of the managers interviewed had any knowledge of staff attempting to swap shifts to avoid Mr Watt”.

“BrewDog chairman Allan Leighton said he’s been ‘provided with assurances’ from Mr Watt the allegations were not accurate and based in rumour and misinformation. He added ‘James has committed to making improvements to his management style’”.

The complaint submitted that the programme referred “sparingly” to the complainants’ “denials”. However, as set out above there is no obligation for the broadcaster to replicate responses in full, and we considered that the information included in the programme

captured the general positions set out in the complainants' detailed responses to the allegations.

Taking these factors into account, we considered that the summarised response was an accurate and fair reflection of the complainants' response to the allegations, i.e. that they had challenged and/or denied the allegations made about BrewDog's commercial practices and corporate culture, and of personal misconduct against Mr Watt, and that viewers would have understood the complainants' position was to refute the claims made in the programme. Although the complainants may have preferred that the programme include more "factual background information", which they felt was necessary to explain the full position, we did not consider it necessary for the programme to have included any further detail in order to avoid unfairness to BrewDog and Mr Watt. In particular, we considered that viewers were provided with sufficient information to enable them to reach their own view about the various allegations put forward.

Ofcom found therefore that there was no unfairness to BrewDog and Mr Watt in this regard.

Unwarranted Infringement of Privacy

- e) Ofcom finally considered the complaint that Mr Watt's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme, and in the programme as broadcast because information regarding Mr Watt's private investments was obtained and broadcast without his consent. The complainant said that the information had been "unlawfully obtained" with no justification and that, as the BBC had been informed prior to broadcast that Mr Watt "pays UK tax on all incomes and gains both overseas and abroad", there was no public interest in the inclusion of the information, particularly where there was no question of any illegality.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression and the audience's right to receive ideas and information without undue interference. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Broadcasting Code ("the Code"), which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

Section Eight (Privacy) of the Code also sets out "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1. A failure to follow these practices will only constitute a breach where it results in an infringement of privacy that is unwarranted in the circumstances.

In considering this complaint, Ofcom had regard to the following Code practices:

Practice 8.5: "Any infringement of privacy in the making of a programme should be with the person's and/or the organisation's consent or be otherwise warranted".

Practice 8.6: “If the broadcast of the programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted”.

Ofcom first assessed the extent to which Mr Watt had a legitimate expectation of privacy in relation to the information, both obtained and subsequently broadcast, that he had at one point owned shares in Heineken, and that he had invested more than £2 million in a hedge fund in the Cayman Islands.

The Code’s statement on the meaning of “legitimate expectation of privacy” makes clear that such an expectation:

“...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is already in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...”.

As set out in the “Programme summary” above, the programme said that “...in 2017, [Mr Watt] invested more than £2 million in a hedge fund in the Cayman Islands, one of the world’s most secretive off-shore tax havens”, and that also in 2017, Mr Watt had “bought shares worth half a million pounds...[in] Heineken”. No further information relating to these topics was disclosed in the programme.

In response to this head of complaint, the BBC submitted that “the decision to obtain and broadcast information about some of Mr Watt’s personal investments was warranted in the public interest”. Although the broadcaster did not elaborate further on the circumstances in which the programme makers came into possession of the information in question, Ofcom understood from the BBC’s submission that it did not dispute that Mr Watt had an expectation of privacy in relation to the obtaining and subsequent broadcast of this information in the programme. Nor was it disputed that this information had been obtained and then broadcast in the programme without Mr Watt’s consent. We noted that the complainant said in the complaint to Ofcom that the information had been obtained “unlawfully”. While it is not Ofcom’s role to make a determination on this claim, it appeared to us, based on the parties’ submission so far in this case, that the information was not publicly known at the time it was obtained, or at the time of broadcast.

Ofcom acknowledged that Mr Watt was the co-founder and CEO of a large international company, and a business figure in the public eye. However, like any other individual, Mr Watt may expect a degree of privacy in relation to information about his personal financial investments. We understood from the parties’ submissions that the information included in the programme had not been made public before the programme was broadcast, though Mr Watt had decided to comment on his position on having bought shares in Heineken as “the most stupid thing that I’ve done” after the programme had been broadcast. Therefore, given the above, Ofcom considered that Mr Watt had a legitimate expectation of privacy in relation to the obtaining and subsequent broadcast of information about some of his personal financial investments without his consent.

Ofcom next turned to the question whether or not the infringement of Mr Watt's privacy was warranted both in the obtaining of the material included in the programme and in the programme as broadcast.

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

Ofcom carefully balanced the comparative weight of Mr Watt's right to privacy with regard to the obtaining and subsequent broadcast of the information relating to his some of his personal investments with the broadcaster's right to freedom of expression in the particular circumstances of the programme.

Ofcom recognised the importance of the broadcaster's right to freedom of expression in its selection of what material to use in the programme, provided that it would not lead to an unwarranted infringement of an individual's privacy. We took into account the broadcaster's submission that the editorial justification for obtaining and including the information regarding Mr Watt's personal financial investments was to highlight, what the broadcaster said, was the appearance of "double standards" by Mr Watt, who had publicly promoted an "anti-corporate ethos", but had invested large sums into Heineken shares and off-shore investment funds, which appeared contrary to the "principles [Mr Watt] publicly promotes". We acknowledged the complainant's position that there was "no public interest in the inclusion of the information, particularly where there was no question of any illegality". However, we took into account the context in which the information was included in the programme was that the reporter was illustrating what the programme said to be "double standards" of Mr Watt, whose company's rapid growth and success had been in part owing to it "revolutionising the world of brewing and challenging mainstream beer brands", and the "anti-establishment values of his company". This part of the programme did not suggest any "illegality" on the part of Mr Watt in relation to these activities.

In weighing up the competing rights of the parties, we considered that the obtaining and inclusion in the programme of these two aspects of Mr Watt's personal investments did not represent a significant intrusion into his privacy. We took the view that while the information related to his personal financial investments, we did not consider that this information was particularly sensitive given that it related more to his professional and business reputation, rather than his private and family life.

Taking all the above factors into account, Ofcom considered that, on balance, and in the particular circumstances of this case, the infringement of Mr Watt's privacy was not of such a nature or gravity as to outweigh the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without undue interference. Ofcom's view, therefore, was that the infringement of Mr Watt's legitimate expectation of privacy in connection with the obtaining of this material, and its inclusion in the programme as broadcast, was warranted in the particular circumstances of this case.

Ofcom's decision, therefore, is that there was no unwarranted infringement of Mr Watt's privacy in connection with the obtaining of the material included in the programme, or in the programme as broadcast.

Ofcom has not upheld Mr Watt and BrewDog's complaint 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.