

## Heresy

<b>Type of case</b>	Broadcast Standards Complaint Assessment
<b>Outcome</b>	Not Pursued
<b>Service</b>	BBC Radio 4
<b>Date &amp; time</b>	11 June 2019, 18:30
<b>Category</b>	Generally accepted standards; Crime and Disorder
<b>Summary</b>	Ofcom received six complaints that this comedy programme contained a comment which was considered offensive and likely to incite crime. Ofcom has decided not to pursue these complaints further.

## Summary

In an episode of the comedy programme Heresy, broadcast on BBC Radio 4, the comedian Jo Brand made comments about milkshakes being thrown at politicians, suggesting battery acid could be used instead.

The BBC assessed complaints it received under the BBC First process that the comments were highly offensive and likely to incite violence. [The BBC upheld](#) the complaints about offence, but not those about incitement.

Ofcom then received six complaints which had completed the BBC First process. We carefully assessed these complaints against the Broadcasting Code, taking into account the broadcaster's and the audience's rights to freedom of expression without undue interference.

We concluded that Ms Brand's comments had clear potential to offend listeners. However, we considered a range of contextual factors, including the likely audience expectations of this well-known comedian, and long-running comedy programme, which aims to challenge generally accepted ideas through satire. We also took into account that Ms Brand immediately qualified her comments, making it clear they should not be taken seriously or acted on. For these and other reasons set out below, we have concluded that the complaints do not warrant further investigation by Ofcom.

In the interests of transparency, and due to public interest in this case and for broadcasters' information, we have decided exceptionally to publish our reasons for this assessment.

The BBC's decision in this case, published in November 2019, did not explain in detail its reasons for upholding the complaints about offence. However, following a recent Ofcom complaint assessment<sup>1</sup>, we have been engaged in constructive discussions with the BBC and welcome the positive steps it is taking to improve the transparency of its decisions on programme complaints.

## Background

### The broadcast content

On 11 June 2019, an episode of *Heresy* was broadcast, introduced by presenter Victoria Coren Mitchell, with Rufus Hound, Matt Johnson and Jo Brand as guests. The programme was recorded in the context of ongoing political debate about the UK's exit from the European Union (Brexit) and around three weeks after a politician, Nigel Farage, had a milkshake thrown over him by a member of the public. There have also been a number of acid attacks against members of the public in recent years.

The programme was introduced by Ms Coren Mitchell as follows:

*"Hello and welcome to Heresy. The show that challenges received wisdom and gatecrashes the party of lazy thinking. With me, to publish lazy thinking's address on Facebook, raid the drinks cabinet and wee on the floor are Rufus Hound, Matt Johnson and Jo Brand".*

The opening discussion on the programme focused on whether *"the Brexit debate has divided the nation"*. Ms Coren Mitchell said that 98% of the studio audience had voted that they believed Brexit had divided the nation. In line with *Heresy's* premise to challenge established beliefs, the panel of guests then explained why they believed the opposite of what the audience thought, i.e. ways in which Brexit had united the nation. For example, the panellists said that the British nation was *"united in the sense that we're so fragmented"* and *"...if we're all agreed that we're divided then we're united..."*.

The guests went on to discuss whether the nation is *"divided in our view of Parliament"* and comments were made by each of the panellists on the status of the negotiations over Brexit. For example, Ms Coren Mitchell said:

*"So how is Parliament coping with the negotiations to leave the EU? I asked a team of researchers and producers at the BBC to put together a short summary of Westminster's best thinking on Brexit over the last year".*

A range of pre-recorded animal noises was then played. Ms Coren Mitchell continued the conversation asking the following:

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<sup>1</sup> Ofcom's complaint assessment on BBC Breakfast, published in [Issue 388](#) of Ofcom's Broadcast and On Demand Bulletin on 7 October 2019.

*“Would you not say Jo, we are absolutely united in feeling we are living through a terrible time from a Parliamentary point of view?”*

Ms Brand responded as follows:

*“Well yes I would say that, but I think that’s because certain unpleasant characters are being thrown to the fore and they’re very, very easy to hate and I’m kind of thinking why bother with a milkshake when you could get some battery acid – that’s just me and it’s alright. I’m not gonna do it, it’s purely a fantasy but I think milkshakes are pathetic. I honestly do – sorry”.*

The programme then continued.

### The BBC’s investigation

According to its [published finding](#), the BBC ECU received 20 complaints about Ms Brand’s comments about milkshakes and battery acid in the programme.

In line with its policy to issue public responses on its website “to significant complaints of wide audience concern”, on 14 June 2019, three days after the broadcast, the BBC published a [response](#) to these complaints, which said:

“Heresy is a long-running comedy programme where, as the title implies and as our listeners know, panellists often say things which are deliberately provocative and go against societal norms but are not intended to be taken seriously. We carefully considered the programme before broadcast. It was never intended to encourage or condone violence, and it does not do so, but we have noted the strong reaction to it. Comedy will always push boundaries and will continue to do so, but on this occasion we have decided to edit the programme. We regret any offence we have caused.”

The BBC then investigated the complaints under its Editorial Guidelines. These Guidelines incorporate the specific obligations of the Ofcom Broadcasting Code, as well as covering the BBC’s journalistic best practice and other requirements for its staff, programmes and non-broadcast activities. The BBC considered these complaints specifically under its Editorial Guidelines for Harm and Offence.

On 28 November 2019, following the completion of the BBC complaints process, the BBC ECU published [a summary of its finding](#) to partially uphold the complaints. It found that the programme had breached the BBC’s requirement in its Editorial Guidelines for content to meet generally accepted standards, but did not uphold the aspects of the complaints about incitement of violence. This summary said:

“In view of Ms Brand’s immediate disavowal and the context of the programme’s wider message in favour of more civility in political discourse, the ECU did not consider the joke likely to incite violence, but accepted that, against the background of a significant problem with acid attacks, it was capable of causing offence beyond what was editorially

justified, and therefore should have been edited out before transmission.”

### The complaints to Ofcom

Ofcom then received six complaints about Jo Brand’s comments on milkshakes and battery acid, as set out above. The complainants said that Ms Brand’s comments were both highly offensive and, in their view, likely to incite serious crime.

In line with [our published procedures](#)<sup>2</sup>, following the provision of the BBC’s final response to the complainants, we assessed whether the programme raised any issues warranting investigation under Ofcom’s Broadcasting Code.

### Our Assessment

We assessed the programme against the following Code rules:

Rule 3.1: “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services or BBC On Demand Programme Service (ODPS)<sup>3</sup>.”

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”.

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

#### Rule 3.1

When considering whether a programme raises potential issues under Rule 3.1, we are required to assess the likelihood of it encouraging or inciting the commission of crime or leading to disorder. We consider all the relevant circumstances, including the nature and purpose of the content, its editorial context and its likely effects.

In this case, we took into account that *Heresy* is an established comedy talk show broadcast on BBC Radio 4 since 2003, which is described to audiences as “the show which dares to commit heresy”. The editorial premise of this programme is to discuss challenging ideas, through comedy, that may differ from the generally accepted consensus.

The programme began with the following introduction by the presenter, which contained information to draw listeners’ attention to the comic nature of the content to be featured in the programme:

*“Hello and welcome to Heresy – the show that challenges received wisdom and gatecrashes the party of lazy thinking. With me, to publish*

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<sup>2</sup> Ofcom’s Procedures for investigating breaches of content standards on BBC broadcasting services and BBC on demand programme services.

<sup>3</sup> BBC iPlayer is one example of an ODPS.

*lazy thinking's address on Facebook, raid the drinks cabinet and wee on the floor are Rufus Hound, Matt Johnson and Jo Brand....".*

We also considered the status of Ms Brand – a comedian well-known for her acerbic and satirical style and a regular on comedy panel shows. We took into account that Ms Brand clarified her comments by immediately adding *"I'm not going to do it, it's pure fantasy but I think milkshakes are pathetic, I really do"*. In doing so, we considered Ms Brand made explicitly clear that she was making a joke and was not suggesting that her remarks should be taken seriously or as a call to action by listeners.

Given the particular context of Ms Brand's comments, as part of a comedy talk show commenting satirically on recent topical events, we concluded that they were unlikely to encourage or incite the commission of a crime.

In conclusion, it is our view that this programme did not raise issues warranting investigation under Rule 3.1 of the Code.

### **Rule 2.3**

Under Rule 2.3 of the Code, material which has the potential to offend may be broadcast, as long as its inclusion in a programme is justified by the context.

We first assessed whether the material had the potential to cause offence. We took into account that the comment made by Ms Brand, *"why bother with a milkshake when you could get some battery acid?"*, when taken in isolation and at face value, could be understood to mean that protestors might consider throwing battery acid at politicians, rather than milkshakes.

Acid attacks are clearly extremely serious criminal offences, and their increase has been a cause for concern in recent years. We were also very mindful of the backdrop of divisive and sometimes hostile political discourse against which these comments were made. Therefore, we considered that this content had clear potential to cause offence to listeners.

We then considered whether the potential offence was justified by the context. The Code makes clear that context includes a number of factors, such as: the service the material is broadcast on; the editorial content of the programme; likely audience expectations; and the extent to which the nature of the content can be brought to the attention of the potential audience, for example by giving information.

As described above, we considered that the comments made by Ms Brand, a well-known comedian, were made in the very specific context of a long-running BBC Radio 4 comedy programme that clearly sets out to challenge generally accepted ideas. There is a long tradition of comedians using controversial or sensitive subjects as the basis for comedy, which listeners would have been particularly likely to expect in a programme such as *Heresy*. Taking into account broadcasters' and audiences' rights to freedom of expression, we consider that there should be significant room for creative freedom and challenging material in comedy programmes.

In our view, the programme's comedy panel show format, and title *Heresy*, were clear indicators to listeners of the potentially challenging content that was likely to be included in it. This was also made clear to audiences at the outset of the programme in the presenter's introduction (*"Hello and*

*welcome to Heresy – the show that challenges received wisdom and gatecrashes the party of lazy thinking...”).*

We took into account that a discussion about politics being divisive preceded the comments in question, and that all three panellists were therefore using this topic as the basis of their comedy. Within this specific context, and in light of recent incidents involving milkshakes being thrown at politicians, we considered that the comments were likely to be within listeners’ expectations for this programme – which, by its nature, challenges accepted societal views through provocative comedy.

We considered these contextual factors carefully, and the fact that Ms Brand immediately clarified her comments and made clear that they were not intended to be taken seriously. It is our view that, while the comments were clearly capable of causing potential offence, this content would have been within listeners’ expectations for a comedy programme of this nature on BBC Radio 4, and the potential offence was justified by the context.

We therefore considered that the programme did not raise issues warranting further investigation under the Code.

In its [decision](#) published on 28 November 2019, the BBC partially upheld the complaints on the basis that the programme “was capable of causing offence beyond what was editorially justified” and the content therefore “should have been edited out before transmission”.

Issues of offence and generally accepted standards involve finely balanced judgments. Taking into account that *Heresy* is a programme which challenges accepted societal views through provocative comedy, and that listeners would have understood Ms Brand’s comments were not intended to be taken seriously, we considered that the potential offence was justified by the editorial context.

#### **Assessment outcome: Not pursued**

#### **Transparency around BBC decisions**

The BBC’s decision on *Heresy* did not contain any further reasoning to explain why it considered that any potential offence caused went beyond what was editorially justified.

In a recent Ofcom [complaint assessment](#) on an episode of *BBC Breakfast* involving comments by presenters Naga Munchetty and Dan Walker, we expressed concern about the lack of transparency around the BBC complaints process. In that case, the BBC ECU had not published the full reasoning for its partially upheld finding. We said that, given the importance of transparency for public confidence in the operation and effectiveness of the BBC’s complaints process, we intended to address the BBC’s lack of transparency as a matter of urgency.

We have since engaged in constructive discussions with the BBC about these issues. The BBC did not publish detailed reasons in its decision to uphold the complaints about offence in the case of *Heresy*. However, we took into account that its decision in this case was published soon after the *BBC Breakfast* case.

Importantly, the BBC is taking positive steps to address the transparency of its published decisions on complaints.

We welcome this action and will continue to work with the BBC as it further considers ways to improve transparency around the BBC complaints process.