

Complaint by Institute of Economic Affairs about *James O'Brien*

Type of case Fairness and Privacy

Outcome Not Upheld

Service LBC 97.3 FM

Date & time 26 February 2019
8 March 2019

Category Fairness

Summary Ofcom has not upheld this complaint about unjust or unfair treatment in the programme as broadcast.

Case summary

The programmes included comments about the Institute of Economic Affairs (“IEA”) and, in particular, about its alleged refusal to disclose the identity of those who fund it. The IEA complained that it was referred to as a “*lobby group*”, that its representatives were “not actors of good faith” or “proper experts”, and that it was an organisation of “questionable provenance, with dubious ideas and validity”. It also complained that that it was suggested that the IEA was “politically biased” and was described as “*a hard-right lobby group*”.

Ofcom found that material facts were not presented, disregarded or omitted in the programmes in a way that was unfair to the IEA. Nor did we consider, in the particular circumstances of this case, that it was necessary for the broadcaster to have provided the IEA with an appropriate and timely opportunity to respond in order to avoid unfairness to it.

Programme summaries

26 February 2019 broadcast

LBC broadcast an edition of its morning programme *James O'Brien*, a news, political debate and discussion show presented by Mr James O'Brien, which included a discussion with

Mr Peter Geoghegan, Investigations Editor for openDemocracy¹, about an article he had written about the funding of think tanks². The presenter introduced Mr Geoghegan as follows:

Presenter: *“After the break, I’m going to bring Peter Geoghegan back into the studio. Peter, as you know, has been doing sterling work in the context of the ‘dark money’ behind a lot of these so-called ‘think tanks’ that are really just lobby groups for extremely mysterious commercial interests. You have to conclude when you look at outfits like the Taxpayers Alliance, or the Institute of Economic Affairs, that until they reveal their financial backers, you just have to presume that everything they do is on the say so of the financial backers that they refuse to reveal. I’ll be happy to be corrected on that, of course, by knowing who the financial backers are and then being able to conclude that ‘oh, they’re not remotely interested in the agenda that’s pursued by the Institute of Economic Affairs and the Taxpayers Alliance’. They’re just giving them loads of money out of, kind of, I don’t know, charity? Academic interest? Altruism? But Peter’s done another sterling investigation into the ‘dark money’ that is in his words ‘winning the Brexit influencing game’ and because, what would you say, 75% to 80% of my profession, the British media, has fallen into the trap of treating these people like good faith actors, you won’t hear it reported anywhere else except here and of course on the website Peter works for: openDemocracy. He’ll be joining us after this”.*

Following a programme break, the following conversation took place between the presenter and Mr Geoghegan:

Presenter: *“Peter Geoghegan is here, the Investigations Editor for openDemocracy who wrote an article that came to my attention while I was away actually...It’s an article you wrote in response to the three Conservative MP’s who left the party last week, and they explained that a large part of their reason for doing so was the fact that the Tories had fallen into the grip of the Pro-Brexit European Research Group [“ERG”], who were in their words ‘now recklessly marching the country to the cliff edge of no deal’. That’s the beginning of your latest investigation.*

Mr Geoghegan: *Yes, myself and my colleague [name] at opendemocracy.net, we were looking at, well, where are the ideas behind the European Research Group coming from because we’ve heard a lot about the European Research Group. We don’t know much about them. We don’t even know who their membership are. We do know that there are a cadre of Conservative MPs who are very vehemently in favour of Brexit. So, what we started doing was looking at, well, who are these guys meeting?*

¹ A political website based in the UK.

² [Revealed: How dark money is winning ‘the Brexit influencing game’](#), openDemocracy.net, 21 February 2019. Issue 432 of Ofcom’s Broadcast and On Demand Bulletin 9 August 2021

Who are they talking to? And, what I noticed, and what was quite surprising, was that in the last few months, the European Research Group have put out a bunch of papers that they say are going to kind of solve all these problem with the European Union, leaving the European Union, solve the Irish border. They've been having a press conference in Westminster, they've been encouraging their fellow Conservatives to vote against Theresa May's withdrawal agreement, 'The Bill'. And, what I found is, actually, is that if you look behind them, a lot of the ideas behind the European Research Group, seem to come from one person. A guy called Shankar Singham, who's a trade advisor for the Institute of Economic Affairs, who I heard you speaking about earlier as well. A think tank, we don't know where this money, we don't know where the money to fund this think tank comes from. So, this piece was kind of laying out –

Presenter: *For the record Peter, they are officially an educational charity.*

Mr Geoghegan: *Indeed, yes, they are an educational charity. And, what I also noticed was that a number of people who are prominent in the European Research Group, like Jacob Rees-Mogg and David Davis, had attended the launch, back in September, of the Institute of Economic Affairs Brexit paper which is called 'Plan A'. And subsequently, the Charity Commission has actually really rapped the Economic Affairs, Institute of Economic Affairs, the IEA, over the knuckles on 'Plan A', and said that it breaches charitable guidelines. And, also, the presence of Jacob Rees-Mogg and others from the ERG at the launch, kind of, might make it look as if the think tank was politically biased.*

Presenter: *Well indeed, the Charity Commission issued a formal warning to the IEA over Singham's Brexit work just hours before the February press conference that argued for zero tariffs after Brexit. I know that because it's word for word what you wrote.*

Mr Geoghegan: *[Laughing] It did sound familiar, yes.*

Presenter: *[Laughing] But so what, why should we be concerned?*

Mr Geoghegan: *I think the interesting thing is that, the big question I think for us at openDemocracy.net and others, is if we don't know where the money is coming from behind these ideas. So, you know, we've seen basically in British politics, there is very little policy going on, especially around Brexit in terms of actual ideas. There is a huge hollowing out taking place. Whitehall is completely in paralysis. We know from studies that there is less and less civil service working on this. And, what's really obvious is that it's very easy for people of questionable provenance, or of ideas that are of dubious kind of validity, to get into the process.*

So, what we're hearing is people turning up on television, whether its Shanker Singham from the IEA or other politicians –

Presenter: *Well, what's his background? He used to be some sort of Washington lobbyist. What sort of interests did he lobby for in Washington?"*

The presenter and Mr Geoghegan then talked about Mr Singham's background as a Washington lobbyist and his interests there and in Republican politics. The presenter also referred to the address of the Institute of Economic Affairs:

Mr Geoghegan: *"Yes, based around the corner from there, but not on Tufton Street itself. Kind of, this world of British think tanks. And he has said that if we should leave –*

Presenter: *Educational charities.*

Mr Geoghegan: *Educational charities, my apologies – we should [leave the European Union] with no deal and we should get rid of all our tariffs and that will mean the end of the manufacturing industry, but that's ok, it can be run down, it's like the coal mining industry. So, a lot of people working in the car manufacturing industry might not be delighted their jobs will be run down.*

Presenter: *You also uncovered emails showing that Singham had personally arranged for interest groups to meet with the then Brexit Minister Steve Baker, while senior IEA staff had easy access to cabinet ministers. Something that I think that the head man over there, Mark Littlewood³, had been caught on camera boasting about?*

Mr Geoghegan: *Yeah, so there was, we've been, for quite a while, for about eighteen months on I'd say openDemocracy.net, we're doing a lot of work on looking at where the meetings are taking place between lobbyists and ministers. And, particularly Steve Baker, who was a Brexit minister, resigned over chequers, who was a chair of the ERG before that, and is now kind of on the telly, on the radio a lot from a kind of ERG perspective saying no deal is not a bad deal, it's quite a good deal. And, what was surprising was we found evidence that lobbyists, in this case Shankar Singham, were actually organising meetings for a government minister which seems quite strange. You wouldn't think that somebody who's not part of government, not a civil servant, is actually able to say as it says in those emails, you know it says 'when can you meet this group? I'll put it in the diary' you know that's the kind of access you wouldn't expect to get. And, what's surprising is it took us over a year of sending Freedom of Information requests, putting in appeals, to actually get any of this information. This information is not*

³ Director General of the Institute of Economic Affairs.
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on the public record. So, we don't really know. It's only now that we are getting some sort of sense, but we don't know what we don't know. We don't know all the sort of information that is possibly out there.

Presenter: *And until we know who funds them, we can't really draw any meaningful conclusions about what might be motivating them.*

Mr Geoghegan: *Well, that's the bottom of all of this, is that a lot of these educational charities, call them think tanks if you want. They don't accept our –*

Presenter: *Hard-right lobby groups mysteriously funded by foreign billionaires? Just a theory!*

Mr Geoghegan: *We don't know, and until, you know we don't know where the IEA, for example, gets its money from. We know that they've been funded by the tobacco lobby in the past, and they've had some funding from the gambling lobby and from large, kind of, large American conservative organisations. But we don't know specifically who funds this work and in the absence of that you can't know who's motivating the work. You know if we don't have transparency on funding. So, if you've got people who are lobbyists, who don't know where the funding is coming from, they've got great access to government, they're pushing particular alliances and agendas, how are we to know? How are we to make, how is the public able to make an informed opinion about what they think people are saying?*

Presenter: *How indeed. If you would like to help fund the work that Peter and his colleagues are doing you can go to crowdfunder.co.uk/exposethedarkmoneydrivingBrexit. I'd urge you to read up on the investigations that they've already undertaken. You won't believe your eyes and then you'll turn your radio and your telly on and there will be some Herbert from the Institute of Economic Affairs popping up once again being treated with the same respect as proper experts who disclose their funding. Speaking of which I will be happy to offer a full right of reply to anybody who has just been mentioned. As long as they tell me who funds them. Peter Geoghegan from openDemocracy".*

The programme continued with no further reference to the IEA.

8 March 2019 broadcast

In a further edition of the programme, the presenter, during a discussion on the topic of the decline in the teaching of modern languages and music lessons in schools, said:

Presenter: *"...And one thing I've noticed from that curious constituency of people that I very loosely would generalise as being very, very, bad at sharing. I mean, the worst examples of it would be laughably misnamed Institute*

of Economic Affairs which is a hard-right lobby group for vested interests of big business, fossil fuels, tobacco, junk food, all of those things, but of course they can describe themselves as an educational charity because they don't reveal who funds them. The minute they reveal who funds them we can have a proper conversation about what it is they're 'shilling for and punting'. But until they do, anyone who books them for a television or a radio appearance or indeed a newspaper article is doing so with their eyes shut. We just don't know who pays their wages. Why, why are they 'shilling' for tobacco, and junk food, and fossil fuels? Maybe they mean it, or maybe they are getting paid by people who profit from tobacco, and junk food, and fossil fuels. I don't know which, but until I do know, I'm not going to risk it. So, that kind of world view often lends itself, I don't know if this applies to that particular outfit, but that world view of wealthy people need protecting from tax. Wealthy people need protecting from regulation and unwealthy people don't need protecting from anything cause we're libertarian. That world view often questions the wisdom of spending public money on things that could be described such as luxuries such as music or art or theatre, less so modern languages...".

The programme continued with no further reference to the IEA.

Summary of the complaint and broadcaster's response

Complaint

- a) The IEA complained that it was treated unjustly and unfairly in the programme broadcast on 26 February 2019, because the programme included inaccurate and unfair statements about the IEA. In particular, that:
 - i) The IEA was a "lobby group" and that its representatives were "not actors of good faith" or "proper experts", and that it was an organisation of "questionable provenance, with dubious ideas and validity". The IEA said that it was a registered educational charity and added that in 2018, the Office of the Registrar of Consultant Lobbyists ("ORCL") had found no merit in suggestions that the IEA was a "lobby group".
 - ii) The IEA was "politically biased". The IEA said that it was "non-political", "non-partisan", and that it did not receive government funding. It added that the role of a think tank was to "present and promote different ideas" and that its Director and representatives meet with ministers, MPs, policy-makers, and stakeholders of "all stripes and persuasions" who want to hear its ideas.
 - iii) The programme referred to the IEA as having received an official warning from the Charity Commission over Mr Shankar Singham's Brexit work, and then suggested that a press conference on tariffs had been organised by the IEA. The IEA said that the press conference was not an IEA event, and that it had not been involved in any way. The IEA said that Mr Singham had spoken at the event in a personal capacity.

- b) The IEA complained that it was treated unjustly and unfairly in the programme broadcast on 8 March 2019 because the programme described the IEA as “a hard-right lobby group”. The IEA reiterated that in 2018, the ORCL had found no merit in the suggestion that it was a “lobby group”.
- c) The IEA complained that it had not been given an opportunity to respond to the allegations made about it in either of the programmes as broadcast.

Broadcaster’s response

Background

LBC said that Mr O’Brien was an established presenter who was known for discussing Brexit, and that his debates had served a public interest in providing the public with an opportunity to discuss Brexit and hear all points of view. It said that on 26 February 2019, the live discussion between the presenter and Mr Geoghegan, centred upon the factual context of an investigative article written by Mr Geoghegan for openDemocracy.

The broadcaster added that on 5 February 2019, a written warning had been issued by the Charity Commission against the IEA⁴. The Commission had found that the IEA had breached its legal and regulatory requirements by publishing a report named “PLAN A+ Creating a prosperous post-Brexit UK”, and then holding an associated launch event on the same day. The broadcaster said that according to the Commission, the IEA had “call[ed] for a change in government policy” and that the PLAN A+ report had “presented one proposal for the way that Brexit should be achieved”.

LBC said that this context provided a factual basis for the discussion on 26 February 2019, which centred upon whether the outcome of Brexit was being influenced by think tanks. LBC said that the references to the IEA were broadcast in that context and were therefore made as part of a live discussion in the public interest. LBC said that it did not accept that the statements concerning the IEA made during the programmes constituted unjust or unfair treatment.

- a) In response to the specific points of complaint, LBC said the following:
 - i) LBC said that 21 days prior to the broadcast of the programme on 26 February 2019, the Charity Commission had published its official warning relating to the IEA’s report, “PLAN A+ Creating a prosperous post-Brexit UK”. As referenced above, the Charity Commission’s warning stated that the trustees of the IEA had breached charity law through the publication of the report, which the Commission found: “was not sufficiently balanced and neutral as required by law” and “sought explicitly to change government policy...which constitutes a breach of the Commission’s guidance on political activity and campaigning”.

The broadcaster said that the IEA’s associated launch event for the report was also criticised by the Commission “for including as speakers only individuals who held a particular set of views”. LBC said that it acknowledged that the Charity Commission had withdrawn its warning to the IEA on 27 June 2019, but added that this was not because the warning was not properly and lawfully issued, but because the IEA had taken sufficient remedial action to satisfy the Commission by removing the report from its website.

⁴ The Charity Commission’s warning was withdrawn on 27 June 2019 and is no longer available to view online. However, it is referenced in the article: [Right-wing thinktank breached charity law by campaigning for hard Brexit](#), The Guardian, 5 February 2019.

LBC said that it was fair and reasonable for contributors to a political debate to allow the content of a warning from an established industry regulator to inform their views regarding the IEA's apparent motivations. LBC said that the dictionary definition of "lobbying" is "a form of advocacy with the intention of influencing decisions made by the government". LBC said it was therefore not unreasonable for the presenter and his guest to suggest in the first programme that the IEA is known as a lobby group. LBC said that, in any case, on two separate occasions, and in response to the Mr Geoghegan's description of the IEA as a "think tank", the presenter had made clear that the IEA's "official" status was an "educational charity".

The broadcaster said that the complainant's position was that the ORCL had considered "suggestions" that the IEA should be considered as a lobbyist and had found "no merit in them". LBC said that between June 2018 – November 2018, ORCL investigated the IEA for "possible consultant lobbying by the IEA on behalf of E Foundation and/or its members" and found the "IEA had not met statutory criteria for consultant lobbying in this case"⁵. The broadcaster said that this finding in relation to the E-Foundation, an institute in Oklahoma which the IEA had been "working with closely to foster better US-UK trade relations", was less relevant than the Charity Commission's finding from February 2019.

- ii) LBC said that Mr Geoghegan's conclusion that IEA is "politically biased" was not without basis. The broadcaster said that, in LBC's view, the Charity Commission's Official Warning in February 2019 provided ample factual evidence for one to reasonably conclude that the IEA had a certain political inclination when it published its report on Brexit and held its associated launch event.

LBC said that the allegation of political bias was made by Mr Geoghegan in the context of his informed opinion on this launch event: "The presence of Jacob Rees-Mogg and others from the ERG at the launch, kind of, might make it look as if the think tank was politically biased". It said that Mr Geoghegan had based his comments on the IEA's political leanings on evidence obtained during his investigation for the openDemocracy article, and specifically, emails from the IEA's trade advisor, Mr Singham, in which he appeared to be "personally arranging for interest groups to meet with then Brexit minister Steve Baker".

The broadcaster said that at one point during the programme, the presenter argued that it was reasonable for the public to presume that the IEA and other groups were motivated by their donors, given that the IEA does not disclose who they are. LBC said that this was a reasonable argument, based on clear underlying facts. It said that the presenter had specifically acknowledged that he would be open to change his impression of the IEA should it make known who finances it, and the its apparent motivations found to be different.

- iii) In relation to the programme's reference to the Charity Commission's warning, LBC said at no stage did the presenter or Mr Geoghegan state that the press conference was organised by the IEA, as suggested in the complaint. The broadcaster said that the presenter had said: "Well indeed, the Charity Commission issued a formal warning to the IEA over Singham's Brexit work just hours before the February press conference that argued for zero tariffs after Brexit".

⁵ [Summary of Investigation](#), Office of the Registrar of Consultant Lobbyists.

- b) In response to the complaint about the programme broadcast on 8 March 2019, LBC said that the IEA has previously been described as a “lobby group” by other media outlets due to their actions as highlighted by the Charity Commission’s Official Warning of February 2019. The broadcaster added that the IEA’s report “PLAN A+ Creating a prosperous post-Brexit UK” had called for a rejection of a close working relationship with the EU and was endorsed by prominent Brexiteers, who it said could legitimately be described as holding “hard-right views on the issue of Britain’s future relationship with Europe”.

The broadcaster said that during the programme, the presenter commented on the decline of ‘soft subjects’, such as modern languages and music lessons, in schools due to lack of funding, and the contrast between that news story and that of certain politicians calling for tax cuts. LBC said that the presenter had then moved briefly on to a tangent referencing the IEA, to pose the question of whether they are funded by big businesses in the tobacco, junk food, and fossil fuel industries, and whether this would have an effect on their published research on these issues. The broadcaster said that the presenter stated quite clearly that he was not of one opinion, but had erred on the side of caution as he did not know the full facts of how the IEA was financed:

“Why are they ‘shilling’ for tobacco, and junk food, and fossil fuels? Maybe they mean it, or maybe they are getting paid by people who profit from tobacco, and junk food, and fossil fuels. I don’t know which, but until I do know, I’m not going to risk it”.

The broadcaster referred to a newspaper article published in The Guardian in July 2018 which stated that the IEA was known to have tobacco, oil, alcohol, and gambling companies as donors⁶. Following the broadcast of the programmes, The Independent newspaper had stated in an article in May 2019 that British American Tobacco continue to fund the IEA, and that “the IEA has been an outspoken critic of public health measures for tackling smoking, obesity and harmful drinking”⁷. LBC also said that The Times newspaper had named the IEA as a “right-wing think tank”⁸ as had the British Medical Journal in an article published in May 2019⁹.

The broadcaster said that given the “foundation of reputable media which had made reference to the IEA as right-wing”, the presenter’s comments were not baseless or unfair in this instance.

- c) LBC said that the programmes were broadcast live, and therefore it would not have been appropriate to offer the IEA a right of reply prior to broadcast, given that the presenter and the programme makers were unaware of what the IEA would need to respond to until the discussion fully unfolded.

⁶ [Thinktank faces double investigation after 'cash for access' claims](#), The Guardian, 30 July 2018.

⁷ [Big tobacco secretly bankrolling anti-NHS think tank whose bosses donate thousands to Tory leadership contenders, an investigation reveals](#), The Independent, 16 May 2019.

⁸ [Institute of Economic Affairs think tank' offered access to ministers'](#), The Times, 30 July 2018.

⁹ [Think tanks should come out of the shadows](#), British Medical Journal, 15 May 2019.

The broadcaster said that the presenter had offered the IEA a right of reply at the close of the interview broadcast in the 26 February 2019 programme. It said that the presenter's added comment that the right of reply was conditional on the IEA revealing their financiers was said "tongue in cheek", and the right of reply evidently was not denied to the IEA, proving that this was not a serious material condition.

LBC said that upon receipt of a direct complaint from the IEA on 7 March 2019, it had engaged "constructively" and offered a right of reply on 14 March 2019. LBC said that the IEA did not provide it with its proposed wording for their right of reply until 29 May 2019, almost 11 weeks later. LBC said that it was then unable to respond until 10 June 2019, because the presenter was on holiday. It said that before the response was able to be discussed internally at LBC, it had received notification that the IEA had taken its complaint to Ofcom.

The broadcaster said that an edited version of the IEA's right of reply was broadcast on 2 August 2019 at 11:53; the same time in the show that the interview with Mr Geoghegan was featured in the programme broadcast on 26 February 2019. The statement was read by the presenter as follows:

"On this show, I think in February, we took a look at the Institute of Economic Affairs and the role it plays in shaping Government policy. We don't know who funds their work, so I offered them the chance to come on the show – if they told us. They didn't.

However, I am happy to make clear that the IEA maintains it is not politically biased and says it does not receive any tied funding from corporations for its research and publications. It also wants to make clear that a news conference at which one of its leading figures appeared was not organised by the IEA".

LBC said that the broadcast right of reply was accurate, fair, and covered all main points of the IEA's suggested response.

Preliminary View

Ofcom prepared a Preliminary View that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Both parties made representations, which are summarised insofar as they are relevant to the complaint entertained and considered by Ofcom, below.

Complainant's representations

The IEA said that the statements made in the programmes amounted to a set of allegations that the IEA was an "extremist organisation run by disreputable characters peddling dubious ideas, who by their doing so had committed criminal acts". The IEA said that the presenter either knew his statements to be untrue, or were contested, or, in taking reasonable care, could have established as such by giving the IEA a proper right of reply. The IEA said that Ofcom's Preliminary View was "in error" by "upholding a defence of fair comment" to parts of its complaint about the programme.

26 February 2019

“Lobby group”

The IEA said that Ofcom had made an “error of focus” in its Preliminary View, in understanding the IEA’s complaint to be simply a denial that it is a ‘lobby group’. The IEA said that the pejorative manner in which the allegation was articulated in the programmes, “clearly amounted to allegations of commercial lobbying” on behalf of others, which the IEA said was an allegation of illegality. In support of this, the IEA said that the presenter’s description of the IEA as a “*lobby group*” had been made in conjunction with the following statements:

- *“dark money behind a lot of these so-called ‘think tanks’ that are really just lobby groups for extremely mysterious commercial interests”;*
- *“Until they reveal their financial backers, you just have to presume that everything they do is on the say so of the financial backers that they refuse to reveal”;*
- *“Peter’s done another sterling investigation into the ‘dark money’ that is in his words ‘winning the Brexit influencing game’”;* and
- *“hard right lobby groups¹⁰ funded by foreign billionaires”.*

The IEA reiterated its position that in 2018, the ORCL had found “no merit” in suggestions that the IEA was a “lobby group”, and said that Ofcom’s Preliminary View “does not address the opinion of the competent authority to assess claims of illegal lobbying on the basis of undeclared funding, which is ORCL, not the Charity Commission”. The IEA said that Ofcom’s Preliminary View had “not understood the difference” between the Commission’s Warning which was “not in any way connected to allegations of commercial lobbying” made by the presenter, and which it said were matters which were the subject of the ORCL ruling. The IEA said that Ofcom’s Preliminary View gave “undue weight to the temporary position of the IEA in relation to the Charity Commission, and no weight at all to the overturning of that position”.

The IEA said that the broadcaster’s “benign” definition of ‘lobbying’, as being “a form of advocacy with the intention of influencing decisions made by the government”, was a misrepresentation. The IEA said that the presenter’s reference to “improper funding” and “‘dark money’ lobby group” would be interpreted by a reasonable listener as an allegation that the IEA were breaking lobbying law, specifically, the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (“the Act”). It added that the penalties for violation of the Act are severe and criminal charges may be brought. It said that if a person or organisation commits an offence under the Act the Registrar can impose a civil penalty of up to £7,500 or refer the matter to the Director of Public Prosecutions for potential criminal prosecution¹¹.

The IEA said that the presenter’s implication of illegal lobbying was part of an established “smear campaign” that was “politically motivated”. It said that the article by Mr Geoghegan, which formed the basis for the discussion in the programme, was a repurposing of “prior, tested and debunked conspiracy theories”, which had originally appeared in media articles published on the website

¹⁰ The IEA in its representations quoted this as “hard right lobby group”. The programme, however, referred to “groups”.

¹¹ [s. 12 Transparency of Lobbying](#), Non-Party Campaigning and Trade Union Administration Act 2014.

Unearthed¹². The IEA said that the ORCL considered the claims set out in the Unearthed article, and as referenced above, found that the IEA had not broken lobbying law. The IEA said that Charity Commission's Official Warning was "not in any way connected to the allegations of illegal commercial lobbying made by the presenter".

The IEA said that it did not accept that the presenter's comment that, "*for the record Peter, [the IEA] are officially an educational charity*" and his comment that the IEA was an "*education charity*", provided appropriate balance. The IEA said that the presenter's comments stated a neutral fact; it said that the IEA is an education charity and the comments made by the presenter did not provide mitigation against a false allegation of illegal lobbying.

The IEA concluded that the claim of illegal lobbying amounted to an allegation of wrongdoing, the broadcast of which resulted in unfairness, particularly in the absence of representation of alternative viewpoints.

Charity Commission's Warning

The IEA said that the broadcaster had "substantially misrepresented" the Charity Commission's warning and had overstated the warning's relevance to claims made in the programme which "are nothing to do with the 'Plan A+' case".

The IEA said that the Charity Commission's warning suggested that the IEA's publication and launch of "Plan A+" had broken charity law, specifically, by being "too political" and showing "insufficient balance and neutrality". The IEA explained that "charities are allowed to be political and to campaign, but only in pursuit of their charitable objectives and in the case of education charities, they must do so with sufficient balance and neutrality, in the round". The IEA said that the Charity Commission's warning was contested on those matters, and not on the grounds of transparency of funding; it said that charities are not obliged to declare their donors and failure to disclose funding is material only to the question of a breach of lobbying law.

The IEA reiterated that the Charity Commission's warning was fully withdrawn from all government websites, including commentary such as that referenced by the broadcaster's statement in response to the complaint. The IEA added that the withdrawal of the warning was "unprecedented", and it was "wrong" for the broadcaster to suggest that the warning was "properly and lawfully issued". It further said that LBC had "materially misled Ofcom" in claiming that at the time of submitting its response to the complaint in October 2019, that the IEA "remains the subject of an ongoing regulatory compliance case examining concerns about the trustees' management and oversight of the charity's activities". The IEA said that the Commission's Regulatory Compliance Case had concluded five months earlier in June 2019.

The IEA reiterated that the presenter did not seek alternative views, and said that had the broadcaster taken reasonable steps to contact it prior to broadcast, the programme would have been able to reflect that at the time of broadcast, the IEA were contesting the Official Warning. The IEA said that the omission of a statement which reflected this resulted in unfairness. Further, the IEA said that "having refused to publish the IEA's right to reply and instead formulated their own correction in

¹² ['A leading think tank brokered access to ministers for US donors looking to influence Brexit'](#), Unearthed, 29 July 2018.

August 2019, they did not reference the withdrawal”. The IEA said that “this was not fair treatment either and added to the misrepresentation of the IEA, given at that point the withdrawal was known”.

“actors in good faith”

The IEA said that it was not “logical” for Ofcom to have come to the Preliminary View that the reference to “*good faith actors*” would have been “understood by listeners as being a criticism of the media and its treatment of particular organisations, rather than a direct allegation that the IEA, or those who represent it, were not ‘good faith actors’”. The IEA said that such criticism of the rest of the media could only have been due if the IEA and its representatives were not, in fact, good faith actors, which the IEA denied.

The IEA said that suggesting that a think tank and its spokespeople are acting in bad faith and actively seeking to obfuscate and entrap is highly likely to materially and adversely affect listeners’ opinions in a way that is unfair to it and them.

“Proper experts”

In relation to this claim, the IEA said that it was not “logical” for Ofcom to have reached the Preliminary View that the reference to not “*proper experts*” was not presented in the programme in a way that was unfair to the IEA and it disagreed with Ofcom’s reasoning on this. The IEA said that Ofcom’s Preliminary View on these points “disregards entirely the use of the pejorative term ‘*some Herbert*’ to contrast IEA spokespeople with those whom the presenter considers to be ‘*proper experts*’”. The IEA said that the term ‘Herbert’ is defined by the Oxford English Dictionary as “an undistinguished or foolish man or youth” and listeners would clearly have understood that the presenter was casting aspersions on the capability and qualities of the IEA representatives, and not on any matter relating to its funding.

The IEA said that the presenter misrepresented the qualifications and standing of the IEA’s researchers and spokespeople (details of which the IEA said are publicly available on its website and in their publications). The IEA said that the presenter “patently intended to materially and adversely affect listeners’ opinions of the IEA”, which resulted in unfairness, in the absence of any contrary view.

The IEA added that the presenter’s comparison with “*proper experts who disclose their funding*” was also misleading and omitted material information. It said that the IEA “provides a significant amount of information about funding”¹³, and names specific donors who agree to be so named. The IEA said this is “normal practice” for think tanks and charities.

“questionable provenance”

The IEA did not agree with Ofcom’s Preliminary View that Mr Geoghegan’s assertion that “*it’s very easy for people of questionable provenance, or ideas that are of dubious kind of validity, to get into the process*”, could be understood by listeners to mean “a particular class of ‘people’ who, through their personal connections, had the potential to influence Government policy”, rather than a specific claim against the IEA.

The IEA said that Ofcom’s Preliminary View did not reflect the “natural reading or understanding of the words uttered, and proceeds on a baseless and itself unfair proposition that unfair and inaccurate

¹³ ['Who Funds You FAQ'](#), The IEA.

remarks about an individual are permitted if they relate to them as a member of a class or perceived class". The IEA said that Mr Shankar Singham is named specifically in the programme as an example of a person of questionable provenance, who, it is claimed, has benefited from the perceived ease of getting into the processes of British politics. The IEA said that this misrepresents Mr Singham's qualifications and reputation.

The IEA said that "Ofcom's finding that claiming that someone belongs to a class of people who exploit their personal connection to influence policy, and failing to present any balancing viewpoint, is not only unfair, but could be read as an acceptance of the underlying claim that such a 'class' exists".

"politically biased"

The IEA said that the programme had misrepresented the facts about the "Plan A+" launch through bias and omission. The IEA said that "central to the LBC case and much of the Ofcom commentary is an assertion that assuming bias on the basis of an organisation respecting donor privacy is reasonable".

The IEA said that Mr Geoghegan was "selective with facts to suit a narrative of bias", when he referred to the presence of Jacob Rees-Mogg and "*others from the ERG*" at the Plan A+ launch event. It said that Mr Geoghegan had failed to mention that a Labour party member, who served 20 years an MP and is not a member of the ERG was on the panel. The IEA added that the programme also did not reflect that the invited audience to the Plan A+ launch included "members of the public and media inclined to anti-free market, left-wing, pro-Remain views"; it contained supporters of the Government plan and different plans, and the invitees included the presenter of the programme and other LBC hosts.

The IEA said that it submitted "substantial evidence" to the Charity Commission relating to its wider work on EU affairs, to challenge the assertion that the IEA was "politically biased". The IEA said this was "accepted" and formed part of the "basis for the withdrawal of the Official Warning. The IEA said that Ofcom's Preliminary View had failed to consider this relevant context. It added that all of this information is "publicly and easily available" and should have been reflected in the broadcasts to avoid unfairness and inaccuracy.

Donor privacy

The IEA noted LBC's position that it was "reasonable" for the presenter to argue that "*until they reveal their financial backers, you just have to presume that everything they do is on the say so of the financial backers that they refuse to reveal*". The IEA said "this far from modest assertion is undermined by a number of things, most notably the absurdity of an opinionated commentator on a commercial radio station suggesting that it is reasonable to assume commentators assert the opinions of their commercial sponsors".

The IEA said that it attracts donors "because they find [the IEA's] output attractive, insightful, or wish to support it. Almost all think tanks are in the same position, and many start up without much funding until such a time as they attract support". It added that its policy was to protect donor privacy, and therefore it left the decision to each individual funder to decide whether to disclose their support.

The IEA said that as an educational charity that believes in individual freedom and the right to privacy, if someone wants to keep their donation private, that wish should be respected¹⁴.

The IEA said that it was not a reasonable position for the presenter to assume an agenda, good or bad, based on an absence of evidence, and reiterated that the presenter's assumption of political bias based on donor privacy was "wilful misrepresentation" and warranted a right of reply.

8 March 2019

"a hard-right lobby group"

The IEA said that the presenter's allegation, that it was a "*hard-right lobby group*", was a "significant allegation of extremism" which deserved a right of reply given that it was "not addressed" in the right of reply statement broadcast on 9 August 2019. The IEA said that the dictionary definition of "hard-right" is "the extreme right wing"¹⁵, and "noting or relating to the extreme right wing; extremely conservative"¹⁶. The IEA added that the term "hard right" are typically positions associated with racist and nationalist parties and is terminology used by the Government's Prevent strategy for the monitoring of groups engaged with terrorism.

The IEA disputed the broadcaster's representations that the "Plan A+" report "could legitimately be described as holding hard-right views on the issue of Britain's future relationship with Europe". The IEA said that as noted above, the report was "endorsed and challenged" at a launch by a wide range of people who hold differing political opinions.

The IEA referred to an article published on the website, Wired-gov.net¹⁷. The IEA said that this article provided a "neutral overview of the contents of Plan A+", and referred to it as "concerned with quite detailed options for future trade policy ("unilateral, bilateral, plurilateral and multilateral pillars") including those that would 'maximise its chances of a good agreement with the EU'. Or to ensure "that we have a better framework for negotiations with the EU". The IEA said that it describes itself as follows:

"The IEA is a free market think tank. Our emphasis on economic freedom, the positive role of markets, and the protection of civil liberties, is consistent with a wide range of political positions, including no position at all. Free-market ideas have been used by groups who would self-identify as left, centre or right. This becomes less apparent when national politics are particularly polarised, but it does not change the commitment of the IEA to support ideas, not parties"¹⁸.

The IEA said that it did not agree with Ofcom's Preliminary View that listeners would have understood the reference to "*hard right*" to refer to the political and economic interests of the organisations

¹⁴ See footnote 13.

¹⁵ See [Definition of 'hard right'](#), Collins dictionary.

¹⁶ '[hard right](#)', dictionary.com.

¹⁷ [IEA Report – Plan A+: Creating a prosperous post-Brexit U.K.](#), Wired-gov.net, 25 September 2018.

¹⁸ See footnote 13.

which the presenter speculated funded the IEA's work or that the IEA represented, rather than necessarily indicating a position which the IEA held on the political spectrum. The IEA said that it is not "logical" to assert that a reference to 'hard right lobby groups' in a piece where the groups are clearly identified as think tanks, actually refers to the commercial interests. The IEA said that guilt by association with extremism cannot amount to fair treatment of the IEA.

Right of reply

The IEA said that the presenter could have sought the IEA's comment on Mr Geoghegan's article prior to broadcast, for example, the presenter could have offered to interview the Director General of the IEA or reviewed public information available at the time, such as the Official Warning by the Charity Commission "being overturned". The IEA said that instead the broadcaster "ignored the case and editorialised upon a disputed and inadequate statement" and broadcast a right of reply statement on 9 August 2018, which "repeated [the presenter's] original, discriminatory, and likely illegal terms".

The IEA said that the broadcaster enforced a "corporate policy of no-platforming organisations and commentators" on the basis of the presenter's "political assessment of their suitability", and therefore "adequate corrections become impossible". The IEA said that such a "corporate policy" raises serious questions of discrimination on the basis of belief (Article 14 Human Rights Act) amounting to a chilling effect on freedom of expression (Article 10 Human Rights Act), rights that underpin the Broadcasting Code generally, and whose breach amounts specifically to unfair and unjust treatment.

The IEA said that it strongly disagreed with the broadcaster's statement that "It would not have been appropriate to offer the IEA a right of reply before the programme was broadcast on 26 February 2019, given that the presenter and the programme makers were unaware of what the IEA would need to respond to until the discussion fully unfolded during the live interview."

The IEA said that the short article published on the openDemocracy website, upon which the programme's discussion was partly based, mentioned the IEA 39 times. Further, the Charity Commission's Official Warning related entirely to the IEA, not the ERG or other matters mentioned in the article written by Mr Geoghegan. Accordingly, as both sources of the discussion in the programme contained "significant criticisms" of the IEA, the IEA said that the broadcaster knew the IEA would wish to have its alternative point of view represented.

The IEA said that it strongly disagreed with the broadcaster's statement that the presenter's comment that the right of reply is conditional on the IEA revealing their financiers was "tongue in cheek". The IEA said that a defence of humour does not survive a test of truth. It added that the presenter made clear that he will only offer a right to reply to organisations that "confirm to his policy", as set out above. The IEA said, "We invite Ofcom to consider whether it wishes to endorse a corporate policy of discrimination on the basis of belief, by a regulated broadcaster, creating a chilling effect restriction on free expression, by accepting a defence of humour, that is demonstrably untrue versus hard evidence it is real, was enforced, and is still endorsed by the broadcaster".

The IEA said that the statement made by the presenter on 2 August 2019 was inadequate when compared to the statement it requested to be broadcast. It said that the broadcast statement did not address the "central charge of a false allegation of illegal lobbying", nor did it provide commentary on the "ORCL ruling, false allegations of shilling and false allegations that the IEA only 'purports certain analysis and views because we are paid to'". The IEA said that the reference in the right of reply

statement to “political bias” was inadequate compared to what was requested. The IEA added that the broadcaster had offered no explanation as to the differences between its statement, and the statement broadcast by the presenter on 2 August 2019.

The IEA said that by the time LBC broadcast its correction the Charity Commission had withdrawn its Official Warning. The IEA said that in claiming the warning was central to their justification for allegations made by the presenter, it follows that a further comment on this matter should be added to the right to reply, and a new right to reply may now be required in light of the material facts now known.

Broadcaster’s representations

LBC said that it “unequivocally” stood behind its initial submission in response to the complaint and “whole heartedly” agreed with Ofcom’s Preliminary View that the IEA’s complaint should not be upheld, for the reasons previously stated.

The broadcaster said that “the level of evidence produced in our initial response to Ofcom regarding how others view the IEA provides plenty of reasons, context and justification as to the presenter’s personal views and opinion back in February 2019 which is the base of this complaint”. The broadcaster quoted extracts from further articles which it said demonstrated why the presenter’s views were fair:

“The news that the IEA accepts money from businesses aiming to further their commercial interests raises questions regarding assurances the IEA made to the Charity Commission in 2016 regarding its impartiality... Commenting on the investigation Jane Mayer, award winning journalist and author of the book *Dark Money*, said: “These days it’s hard to distinguish some of these think tanks from corporate lobbyists”¹⁹.

“In a special edition of the Friday Surgery we take a critical look at a right-wing organisation: the Institute of Economic Affairs...What we do know is that the IEA has taken tens of thousands of pounds from big tobacco firms and has issued position statements against public health measures on tobacco such as plain packaging and taxation. The IEA also accepts funding from the US through the ‘American Friends of the IEA’, which exists solely to funnel money to the IEA in London”²⁰.

“Right-wing think tank the Institute of Economic Affairs (IEA) has been issued with a formal warning over breaches of charity law following the publication of a Brexit report....This risked “the public perception that

¹⁹ [Revealed: BP and gambling interests fund secretive free market think tank](#), Unearthed, 30 July 2018.

²⁰ [Let’s expose the ‘Institute of Economic Affairs’](#), National Health Action Party, 12 January 2018.

the IEA is politically biased and has a political viewpoint on a key government policy,” the Charity Commission said.”²¹

The broadcaster said that it was “entirely false” for the IEA to suggest that LBC had “materially misled Ofcom in their statement” in relation to the ongoing nature of the inquiry being undertaken by the Charity Commission. LBC said that the Charity Commission’s report into the IEA stated explicitly:

“The IEA remains subject to an ongoing regulatory compliance case examining concerns about the trustees’ management and oversight of the charity’s activities”.

The broadcaster added that the Commission’s report can still be found and read via an archived link, which it provided to Ofcom²².

Right of reply

LBC said that it did not accept the IEA’s representations that it “ignored the case and editorialised upon a disputed and inadequate statement” nor did it accept the IEA’s position that the presenter “repeated his original, discriminatory, and likely illegal terms for a proper right to reply”.

The broadcaster said that the relevant points the IEA provided LBC were included in the statement read out on air by the presenter on 9 August 2019. LBC said that as it had previously noted, it took the IEA over 2 months to provide its proposed wording. LBC said that it had the “right to decide the style of any statements broadcast and retains the editorial control over its output”. It added that the IEA’s position that LBC’s statement was “inadequate” and included “illegal terms” and which “ignored the case” was “entirely fabricated”. The broadcaster said that there was no mention of ‘the case’ in any of the wording provided by the IEA (including any reference to the IEA “contesting the Official Warning”), therefore, to suggest that LBC ignored “the case” was incorrect as the IEA’s own wording was the basis for the statement broadcast.

The broadcaster “strongly denied” the IEA’s position that LBC “enforces a corporate policy of no platforming organisations and commentators on the basis of the presenter’s political assessment of their suitability”. It denied “discriminating” against guests and said that all sides of the debate are included in its programming. LBC added that on 12 March 2019 Mr Shankar Singham was invited as a guest and conducted a “lengthy interview” which set out his and the IEA’s position on the issue of Brexit.

The broadcaster said that while the Official Warning was withdrawn (as acknowledged in its submission on the complaint), it understood that these other concerns were still ongoing. The broadcaster added that the report was updated on 10 July 2019 but there was nothing within the updates that led LBC to conclude all aspects of the report were therefore unfounded; just that the Official Warning had been withdrawn.

²¹ [Right-wing think tank Institute of Economic Affairs issued with formal warning after Brexit report ‘breached charity law’](#), independent.co.uk, 5 February 2019.

²² [Press release: \(Official Warning Withdrawn\): Charitable think tank warned over breaches of charity law](#), The Charity Commission, 5 February 2019.
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Decision

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

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme, and both parties' written submissions, as well as their representations on Ofcom's Preliminary View. After careful consideration, however, 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 Ofcom's Broadcasting Code ("the Code"). In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

In considering heads a) and b) of the complaint, Ofcom had regard to Practice 7.9 which 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...".

Ofcom's role is 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 IEA. 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.

26 February 2019 broadcast

- a) Ofcom first considered the IEA's complaint that it was treated unjustly or unfairly in the programme as broadcast on 29 February 2019 because:
 - i) The programme said that the IEA was a "lobby group" and that its representatives were "not actors of good faith" or "proper experts", and that it was an organisation of "questionable provenance, with dubious ideas and validity". The IEA said that it was a registered educational

charity and added that in 2018, the Office of the Registrar of Consultant Lobbyists (“ORCL”) had found no merit in suggestions that the IEA was a “lobby group”.

In considering this complaint, Ofcom took into account the context in which the presenter and his guest’s claims had been made:

- from the news articles provided to Ofcom by the broadcaster (and footnoted above) it was apparent that, at the time of broadcast, the IEA had been the subject of a written warning issued by the Charity Commission concerning its report: “PLAN A+ Creating a prosperous post-Brexit UK”. The Charity Commission’s warning had stated explicitly that the publication of this report “risked the public perception that the IEA is politically biased and has a political viewpoint opposed to the Government’s current Brexit policy”, and that it had further identified that by holding a launch event for its PLAN A+ report “in the public spotlight”, the IEA had been “engaging in campaigning and lobbying activity that is not sufficiently connected to its educational purposes”;
- the investigation carried out by openDemocracy into the funding of ‘think tanks’ had referred to the apparent lack of transparency regarding the IEA’s funding, and the possible influence of such ‘think tanks’ on the Government’s Brexit policy; and
- from the news articles provided to Ofcom by the broadcaster (and footnoted above), it was apparent that, at the time of broadcast, the IEA had been the subject of criticism for its decision not to routinely declare its donors.

We took into consideration the IEA’s submissions, as reiterated in its representations on Ofcom’s Preliminary View, that the Charity Commission’s warning did not provide justification for the claims made in the programme, as the Commission had withdrawn its Official Warning in June 2019. However, Ofcom recognised that the withdrawal of the Official Warning had taken place several months after the first (and second) programme which is the subject of this complaint had been broadcast.

We also recognised the rights of the presenter and his guest to discuss the Charity Commission’s concerns about the IEA, which remained at the time the two programmes were broadcast in February and March 2019, and the public interest in the broadcasting of such matters of interest to viewers. Further, we recognised that the presenter and his guest were also entitled to express their own impression of the IEA in the above context. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to people or organisations.

We therefore turned to consider the specific comments made by the presenter and his guest in the programmes.

“Lobby groups”

We first considered the IEA’s complaint that it was referred to as a “*lobby group*” in the programme. We took into consideration the IEA’s representations on Ofcom’s Preliminary View that the presenter’s comments in this regard “clearly amounted to allegations of commercial lobbying” on behalf of others, which the IEA said was an allegation of illegality. We noted that the IEA had not advanced this meaning in its original complaint to Ofcom.

Rather, its position as set out in the complaint entertained and considered by Ofcom was that it was a registered educational charity and that in 2018, the Office of the Registrar of Consultant Lobbyists (“ORCL”) had found no merit in suggestions that the IEA was a “lobby group”.

In considering this aspect of the complaint, we had regard to what specifically was presented about the IEA in the programme. As set out in the “Programme summary”, the presenter said during the introduction:

“...Peter [Geoghegan], as you know, has been doing sterling work in the context of the ‘dark money’ behind a lot of these so-called ‘think tanks’ that are really just lobby groups for extremely mysterious commercial interests. You have to conclude when you look at outfits like the Taxpayers Alliance, or the Institute of Economic Affairs, that until they reveal their financial backers, you just have to presume that everything they do is on the say so of the financial backers that they refuse to reveal. I’ll be happy to be corrected on that, of course, by knowing who the financial backers are...”

We carefully considered the context in which the statements had been made, namely, the presenter and his guest’s discussion of the outcome of the investigation by opendemocracy.net, which claimed that “documents obtained by openDemocracy show in new detail the depth of the personal and professional connections between the IEA and the ERG and senior government ministers”²³. During the discussion, the presenter also made reference to Mr Singham, who was described by Mr Geoghegan as “a trade advisor” for the IEA and spoke about his background as a Washington “lobbyist”. In this regard, Mr Geoghegan referred to the work openDemocracy was doing on “looking at where the meetings are taking place between lobbyists and ministers” and, in doing so, referred to Mr Singham as a “lobbyist”. The presenter had also explained that the openDemocracy investigation had found emails which it said showed that Mr Singham had “personally arranged for interest groups to meet with the then Brexit Minister Steve Baker”. Towards the end of the programme, the presenter interrupted Mr Geoghegan and made reference to “educational charities” as being “hard-right lobby groups funded by foreign billionaires? Just a theory!”.

We took into account that the presenter and Mr Geoghegan did not refer to the IEA solely during the programme, and that they had spoken in general terms about ‘think tanks’ who do not reveal their financial backers. However, the IEA was cited as an example of these ‘think tanks’ in the programme, and so the references to “lobby groups” and other comments made during in the programme were likely to be understood by listeners as being relevant to the IEA (as well as the other organisations specifically referred to). In this regard, we took into account that the focus of the programme’s comments about the IEA was its apparent failure or unwillingness to disclose who funds its work, and the work of individuals associated with the IEA such as Mr Singham, and that “until we know who funds them we can’t really draw any meaningful conclusions about what might be motivating them”.

²³ See footnote 2.

Having carefully considered the content of the programme, we took the view that listeners were likely to have understood from these comments that, given the IEA's reported activities in influencing the debate around Brexit, there were questions that the presenter considered should be answered regarding the IEA's funders, and further, there were concerns that the public was unable to access information as to who might be influencing the IEA's work (as well as the work of other organisations referred to), until their funders were revealed. In our view, it would have been clear to listeners that:

- the openDemocracy investigations into the apparent lack of transparency concerning the IEA's funders, in addition to the Charity Commission's warning, provided the basis for the presenter (and Mr Geoghegan) to question whether the IEA's actions, namely its decision to publish its "Plan A+" paper concerning Brexit policy, reflected its registered status as an educational charity;
- the description of the IEA as a "lobby group" was not presented in the discussion as a categorical statement of fact; and
- taking into consideration the IEA's representations on Ofcom's Preliminary View, as set out above, at no point did the programme state that that the IEA's activities met the statutory criteria for consultant lobbying, or that such activities were criminal and broke lobbying law. Rather, the reference to the IEA as a "lobby group" was presented as the presenter's own personal impression of the IEA, and a conclusion which he had drawn based on the apparent discrepancy which the presenter and his guest believed existed between the IEA's (and other 'think tanks' such as the Taxpayers Alliance) output and activities and its registered status as an educational charity, in addition to the IEA's apparent failure to disclose its funders.

We considered that the presenter's claims about the IEA and its activities was clearly presented in the programme as being his own personal impressions, based on the outcome of investigations which had been carried out by openDemocracy and conclusions drawn by the Charity Commission in its Official Warning, which had explicitly stated that the IEA had been "engaging in campaigning and lobbying activity". We also took into account that the presenter had made clear that he would be willing to change the impression which he held of the IEA, should its funders be identified. Ofcom also acknowledged that on two separate occasions, the presenter had made clear that the IEA was "officially" known as an "educational charity"; a description which was also acknowledged by Mr Geoghegan. We also considered that listeners would have understood that the references to "lobbyists" were specific to Mr Singham, rather than being a claim about all representatives of the IEA.

We recognised that towards the end of the interview with Mr Geoghegan, the presenter had quipped about a "theory" that educational charities such as the IEA could be "hard right lobby groups funded by foreign billionaires". However, we considered that the presenter spoke in general terms, rather than specifically about the IEA in this regard, and that in any case, given the overall context in which this comment was said, listeners would have understood that the

presenter's comment was generalised remark about such educational charities who have not been transparent about their funding, rather than making a statement of fact about them.

Taking these factors into consideration, it was Ofcom's view that it would have been clear to listeners that the presenter's (and guest's) comments about the IEA represented their personal views and opinions based on investigations carried out by openDemocracy and the Charity Commission. Therefore, Ofcom considered that the references to "lobby groups" in the programme were unlikely to have materially and adversely affected listeners' opinions of the IEA in a way that was unfair to it.

"actors in good faith"

We next considered the IEA's complaint that it was unfair for the presenter to have implied that those who work for the IEA are not "*good faith actors*". As set out in the Programme summary" above, the presenter said:

"...But Peter's [of openDemocracy.net] done another sterling investigation into the 'dark money' that is in his words 'winning the Brexit influencing game' and because, what would you say, 75% to 80% of my profession, the British media, has fallen into the trap of treating these people like good faith actors, you won't hear it reported anywhere else except here and of course on the website Peter works for..."

We took into consideration the IEA's representations on Ofcom's Preliminary View that such criticism of the rest of the media could only have been due if the IEA and its representatives were not, in fact, good faith actors. We acknowledged that the suggestion those who work for the IEA were not, in fact, "*good faith actors*", could have the potential to materially and adversely affect viewers' opinions of the IEA in a way that was unfair.

However, we considered that in the particular context in which the presenter's statement was made, the presenter's comment would have been understood by listeners as being a criticism of certain areas of the media and their apparent failure to scrutinise in their reporting particular organisations or individuals which the presenter considered were deserved of greater scrutiny, rather than a direct allegation that the IEA, or those who represent it, were not, in fact, "*good faith actors*".

To the extent that the programme implied otherwise, we considered that this statement was clearly presented in the context of the presenter's general criticism of organisations that he perceived to be influencing the Brexit debate but were not being transparent about their funding. In our view, listeners would have understood from the discussion that the openDemocracy investigations into the apparent lack of transparency concerning the IEA's funders was the basis for the presenter (and Mr Geoghegan) to question the motivations of those associated with the IEA. In that context, the presenter had expressed scepticism that such organisations, or those who represented it, were acting in 'good faith', given his view that it was not possible to reach a definitive conclusion about why they were seeking to influence the Brexit debate, when the sources of their funding remained unknown.

Taking these factors into account, and the complainant's representations on Ofcom's Preliminary View, Ofcom considered that the way this comment was presented in the programme was unlikely to have materially and adversely affected listeners' opinions of the IEA in a way that was unfair to it.

“Proper experts”

We next considered the IEA's complaint, reiterated in its representations on Ofcom's Preliminary View, that it was unfair for the presenter to have implied that its representatives were not “*proper experts*”. We acknowledged that there existed the potential for listeners to draw an adverse inference about the IEA, given the presenter's particular criticism of its representatives.

However, in considering this element of the complaint, we took into consideration the context in which this statement was made. As set out in the “Programme summary”, the presenter had remarked at the end of the interview with Mr Geoghegan:

“If you would like to help fund the work that Peter and his colleagues are doing you can go to crowdfunder.co.uk/exposethedarkmoneydrivingBrexit. I'd urge you to read up on the investigations that they've already undertaken. You won't believe your eyes and then you'll turn your radio and your telly on and there will be some Herbert from the Institute of Economic Affairs popping up once again being treated with the same respect as proper experts who disclose their funding”.

While we acknowledged that the presenter expressed a degree of scepticism towards the IEA and those who work for it, and also taking into consideration the IEA's representations on Ofcom's Preliminary View concerning the presenter's use of the word “*Herbert*”, we did not consider listeners would have regarded this brief remark as being a statement of fact that those who represent the IEA are not “*proper experts*”. Rather, in our view, listeners would have understood that the presenter was expressing his own view that the views of such individuals should be treated with caution, in circumstances where their sources of funding (and therefore those individuals and organisations capable of influencing their work), remained unknown.

We also considered that the presenter's reference to “*proper experts*” was clearly framed in the context of his earlier criticism of the treatment by some parts of the British media to those associated with the IEA (and other organisations). We recognised, as highlighted by the IEA in its representations on Ofcom's Preliminary View, that these comments may have been understood by the IEA to amount to a claim that its representatives did not have the requisite qualifications or standing that might be required to express an authoritative view on the issue of Brexit. However, we took the view that this comment would have conveyed to listeners the presenter's view, based on investigations which had been carried out by openDemocracy, that he considered a distinction should be drawn between “*experts*” associated with organisations that disclose their funding, and “*experts*” who are associated with organisations that do not. This was presented to listeners in the context of the presenter's wider argument, set out on

several occasions in the programme, that it was not possible to reach a definitive conclusion about why the IEA were seeking to influence the Brexit debate, when the sources of their funding remained unknown. Taking these factors into account, Ofcom considered that the way in which this comment was presented in the programme would not have materially and adversely affected listeners opinions of the IEA so as to result in unfairness.

“questionable provenance”

We then turned, finally, to consider the IEA’s complaint, as reiterated in its representations on Ofcom’s Preliminary View, that it was portrayed in the programme as an organisation with “questionable provenance, with dubious ideas and validity”. As set out above, Mr Geoghegan had stated:

“...if we don’t know where the money is coming from behind these ideas. So, you know, we’ve seen basically in British politics, there is very little policy going on, especially around Brexit in terms of actual ideas. There is a huge hollowing out taking place. Whitehall is completely in paralysis. We know from studies that there is less and less civil service working on [Brexit policy]. And, what’s really obvious is that it’s very easy for people of questionable provenance, or of ideas that are of dubious kind of validity, to get into the process. So, what we’re hearing is people turning up on television, whether its Shanker Singham from the IEA or other politicians – ”

We took into account the reference to “people of questionable provenance, or of ideas that are of dubious kinds of validity” was made in the context of a discussion about the apparent lack of transparency in the funding of organisations who contribute towards policy discussions. We took into account that Mr Geoghegan signalled clearly to listeners that it was his view that there was less policy making taking place within the Civil Service in relation to matters such as Brexit, which enabled other “people” to become involved in that process. While we recognised that the person who was named by Mr Geoghegan was a representative of the IEA, i.e. Mr Singham, Mr Geoghegan had also referred to “other politicians”. Taking this into account, we did not consider that listeners would have understood Mr Geoghegan to be making a specific claim against the IEA, but was rather making a comment directed towards a particular class of “people” who, through their personal connections, had the potential to influence Government policy without, in Mr Geoghegan’s view, appropriate levels of transparency, one of whom Mr Geoghegan had named.

Taking all of the above into account, we considered that the inclusion in the programme of the comments complained of did not result in unfairness to the IEA.

- ii) We next considered the IEA’s complaint that the programme had suggested unfairly that it was “politically biased”. We took into account the IEA’s position that it was a “non-political”, “non-partisan” registered educational charity, and that it did not receive government funding. As set out in the “Programme summary” section above, during the discussion Mr Geoghegan had explained that the IEA had hosted an event in September for the launch of its “Plan A” paper concerning Brexit policy and that a number of “people who are prominent in the

European Research Group, like Jacob Rees-Mogg and David Davis had attended". Mr Geoghegan then said that the Charity Commission:

"has actually really rapped...the IEA, over the knuckles on 'Plan A', and said that it breaches charity guidelines. And, also, the presence of Jacob Rees-Mogg and others from the ERG at the launch, kind of, might make it look as if the think tank was politically biased".

Again, in considering this element of the IEA's complaint, we took into account all the relevant context. From the news article provided by the broadcaster (and footnoted above), we took into account that the Charity Commission had stated explicitly in its warning to the IEA that "by inviting only those who held a particular set of views" to the launch event of its "Plan A+" paper, the IEA had "risked the public perception" that it was "politically biased". We also took into consideration the IEA's representations on Ofcom's Preliminary View that Mr Geoghegan had failed to mention that a Labour party member, who served 20 years an MP and is not a member of the ERG was on the panel at the launch event. However, we took into account that in making the claim about the IEA, Mr Geoghegan had specifically linked his comment to the Charity Commission's official warning to the IEA in relation to this matter, which had specifically cited concerns over political affiliations of the individuals involved in the event and their stance on Brexit policy. We therefore considered that it would have been clear to listeners that Mr Geoghegan was providing a summary of the Charity Commission's warning to the IEA in relation to this specific event and in particular, the Charity Commission's view on the possible perception that the attendance of certain named individuals at the event "might" have given people. In this context, we did not consider that the omission of other named individuals who were in attendance would have resulted in unfairness to the IEA.

We also considered that it would have been clear to listeners that this claim regarding the potential perception of political bias of the IEA was related solely to this particular event and the associated "Plan A+" paper, rather than that Mr Geoghegan was making a statement of fact that the IEA was, in general, institutionally politically biased. Therefore, taking these factors into account, we did not consider that the inclusion in the programme of the comments complained about resulted in unfairness to the IEA.

- iii) Ofcom considered the IEA's complaint that the programme had suggested that a press conference on tariffs had been organised by the IEA when the press conference was not an IEA event and it had not been involved in any way.

As set out in the "Programme summary" section above, Mr Geoghegan had said:

"The Charity Commission has actually really rapped the Economic Affairs, Institute of Economic Affairs, the IEA, over the knuckles on 'Plan A', and said that it breaches charitable guidelines. And, also, the presence of Jacob Rees-Mogg and others from the ERG at the launch, kind of, might make it look as if the think tank was politically biased".

The presenter had continued:

“Well indeed, the Charity Commission issued a formal warning to the IEA over Singham’s Brexit work just hours before the February press conference that argued for zero tariffs after Brexit”

We considered that the presenter and his guest had drawn a distinction in their discussion between the ‘Plan A+’ launch event, which was hosted by the IEA, and the *“February press conference that argued for zero tariffs after Brexit”*. We considered that at no stage during the programme was it claimed by the presenter or Mr Geoghegan that this press conference had been organised by the IEA. Nor did we consider that this was implied. In our view, the presenter had simply set out two events, i.e. the Charity Commission’s warning in respect of the IEA’s launch event, and the subsequent February press conference, in chronological order. We also considered that listeners would have understood that the reference to the press conference was relevant to discussions about the potential influence the IEA’s Brexit paper “Plan A+” may have had on this press conference, rather than that it had been organised by the IEA.

Taking these factors into account the above, we did not consider that there was any unfairness to the IEA in this regard.

For all the reasons given above in relation to this head of complaint, Ofcom considered that, 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 the IEA.

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- b) Ofcom considered the complaint that the IEA was treated unjustly or unfairly in the programme as broadcast because it had been described as “a hard-right lobby group”.

We took into consideration the IEA’s representations on Ofcom’s Preliminary View that the presenter’s description of the IEA as *“a hard-right lobby group”* amounted to an allegation that the IEA was an “extremist organisation” which *“had committed criminal acts”*. The IEA said that the term *“hard right”* is commonly used by the Government’s Prevent strategy for the monitoring of groups engaged with terrorism. However, we noted that at no point did the programme state that the IEA were affiliated to an extremist or terrorist organisation or supported such activities. In our view, the programme did not suggest that the IEA was an extremist organisation committing criminal acts. Rather, as set out in the “Programme summary” above, the reference was made in the context of a discussion about the decline in modern language and music lessons in schools, The presenter had described the IEA as *“a hard-right lobby group for vested interests of big business, fossil fuels, tobacco, junk food, all of those things”*, and had then said *“but, of course, they can describe themselves as an educational charity because they don’t reveal who funds them”*. The presenter then went on to speculate on the types of organisations that may fund the IEA’s work:

“the minute they reveal who funds them we can have a proper conversation about what it is they’re ‘shilling for and punting’”; and

*“why are they ‘shilling’ for tobacco, and junk food and fossil fuels?
Maybe they mean it or maybe they are getting paid by people who profit
from tobacco, and junk food and fossil fuels. I don’t know which, but
until I do know I’m not going to risk it”.*

As set out in the news articles provided to Ofcom by the broadcaster (and footnoted above), both at the time of broadcast, and after, the complainant had been described by other media as a “lobby group”. Ofcom took into consideration the broadcaster’s comments on the commercial interests of the big businesses which have been reported as funding the charity’s work; “tobacco, junk food and fossil fuel industries”. In that context, Ofcom took the view that listeners would have understood the reference to “*hard right*” to refer to the political and economic interests of the organisations which the presenter had speculated might fund the IEA’s work or that the IEA represented, rather than necessarily indicating a position which the IEA held on the political spectrum. We do not consider that listeners would have understood “*hard right lobby group*” in this context to mean that the IEA was “*an extremist organisation committing criminal acts*”. We also took into account that the presenter made clear that he was not actually aware of the funding of the IEA and that the IEA described itself as an educational charity. We therefore considered that in the particular circumstances in which the comment was made, we did not consider that it would have been likely to have materially and adversely affected viewers opinions of it in a way that was unfair.

We therefore took the view that, 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 the IEA.

- c) Ofcom next considered the IEA’s complaint that it was not provided with an appropriate or timely opportunity to respond to the allegations made in the programmes.

In considering this aspect of the complaint, Ofcom had particular regard to Practice 7.11 which 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”.

We did not accept the broadcaster’s submission that as the programmes were broadcast live, it would not have been appropriate to offer the IEA a right of reply prior to broadcast, given that the presenter and the programme makers were unaware of what the IEA would need to respond to until the discussion fully unfolded. We took note of the IEA’s representations on Ofcom’s Preliminary View that openDemocracy website upon which the programme’s discussion was partly based, mentioned the IEA 39 times and further, the Charity Commission’s Official Warning related entirely to the IEA, not the ERG or other matters mentioned in the article written by Mr Geoghegan.

We acknowledged the broadcaster’s response which addressed the extent to which it had provided the IEA with an opportunity to respond. In particular, the broadcaster said that the

presenter had offered the IEA a right of reply at the end of the programme broadcast on the 26 February 2019. The presenter had said, *“I will be happy to offer a full right of reply to anybody who has just been mentioned. As long as they tell me who funds them”*. We took into consideration the broadcaster’s position that the presenter’s added comment that the right of reply was conditional on the IEA revealing their financiers was said “tongue in cheek”, and the right of reply evidently was not denied to the IEA, proving that this was not a serious material condition. In our view, the presenter’s statement made at the conclusion of the programme would have been understood by listeners to mean that the IEA had not been approached for comment on the allegations contained in the programme.

However, given our view (as set out in heads a) and b) above) that the comments made about the IEA in the programmes did not result in unfairness to the IEA, we considered that the programmes did not contain allegations of specific wrongdoing or incompetence or make any other significant allegations about the IEA. Therefore, in these circumstances, we did not consider that there was a requirement for the broadcaster to have provided the IEA with an appropriate and timely opportunity to respond to the comments relating to the IEA made in the programmes in order to avoid unfairness to it.

Ofcom has not upheld the Institute of Economic Affairs’ complaint of unjust or unfair treatment in the programme as broadcast.