

Sanction: Decision by Ofcom

Sanction: to be imposed on Autonomous Non-Profit Organisation (ANO) TV Novosti

For material broadcast on RT between 17 March and 26 April 2018¹

**Ofcom's Decision
of Sanction against:**

Autonomous Non-Profit Organisation (ANO) TV Novosti ("TV Novosti" or the "Licensee") in respect of its service RT (TLCS000881BA/2).²

For:

Breaches of the Ofcom Broadcasting Code (the "Code")³ in respect of:

Rule 5.1: "News, in whatever form must be reported with due accuracy and presented with due impartiality";

Rule 5.11: "...due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service...in each programme or in clearly linked and timely programmes"; and

Rule 5.12: "In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented".

Decision:

To impose a financial penalty (payable to HM Paymaster General) of £200,000; and

To direct the Licensee to broadcast a statement of Ofcom's findings in a form and on date(s) to be determined by Ofcom.

¹ See Broadcast and On Demand Bulletin 369 for the material broadcast on RT and found in breach of Ofcom's Broadcasting Code ("the Code"), https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131159/Issue-369-Broadcast-and-On-Demand-Bulletin.pdf.

² We understand that, as well as being broadcast on satellite under this television licensable content service (TLCS) licence, the RT service is also broadcast on digital terrestrial television under licence number DTPS000072BA/5. For the purposes of this sanctions process, we are proceeding on the basis of RT's TLCS licence ("the Licence").

³ The version of the Code which was in force at the time of the broadcast took effect on 3 April 2017: https://www.ofcom.org.uk/_data/assets/pdf_file/0005/100103/broadcast-code-april-2017.pdf

Executive Summary

1. RT is a global news and current affairs channel produced in Russia and funded by the Federal Agency for Press and Media Communications of the Russian Federation. The channel is made for UK audiences, providing a Russian perspective on UK and global news and current affairs related programming. In the UK, the channel broadcasts on satellite and terrestrial platforms.
2. Between 17 March and 26 April 2018, RT broadcast the following programmes:
 - *Sputnik*, 17 March 2018, 19:30;
 - *Sputnik*, 7 April 2018, 19:30;
 - *Crosstalk*, 13 April 2018, 20:30;
 - *Crosstalk*, 16 April 2018, 20:30;
 - *Crosstalk*, 20 April 2018, 08:30
 - *News*, 18 March 2018, 08:00; and,
 - *News*, 26 April 2018, 08:00.
3. The programmes were concerned with the following issues: the poisoning of Sergei and Yulia Skripal in Salisbury on 4 March 2018 (*Sputnik*, 17 March and 7 April 2018); the armed conflict in Syria (*Crosstalk*, 13, 16 and 20 April 2018; *News*, 18 March 2018); and the Ukrainian Government's position on Nazism and its treatment of Roma Gypsies (*News*, 26 April 2018).

The Breach Decisions

4. In Ofcom's decisions published on 20 December 2018 in issue 369 of the Broadcast and On Demand Bulletin (the "Breach Decisions")⁴, Ofcom found that each of the seven programmes listed above had failed to maintain due impartiality and had breached Rule 5.1 and/or Rules 5.11 and 5.12 of the Code.⁵
5. The Breach Decisions set out specifically the broadcast material that was in breach, along with reasoning as to why the material had breached the applicable rules of the Code.
6. Ofcom put the Licensee on notice in the Breach Decisions that it considered the seven breaches in the six-week period, taken together, to be a serious failure of compliance and it was minded to consider these breaches for the imposition of a statutory sanction. Ofcom gave the Licensee an opportunity to make representations on this matter and, having considered the Licensee's submissions, decided to consider the Breach Decisions for the imposition of a statutory sanction.
7. The Licensee has brought proceedings for judicial review of the Breach Decisions. Ofcom will not enforce the sanction contained in this Sanction Decision until those proceedings are concluded.

The Sanction Decision

8. In accordance with Ofcom's procedures for the consideration of statutory sanctions in breaches of broadcast licences (the "Sanctions Procedures")⁶, Ofcom considered whether the Code

⁴ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131159/Issue-369-Broadcast-and-On-Demand-Bulletin.pdf

⁵ Specifically, Ofcom found that *Sputnik*, 17 March and 7 April 2018 and *Crosstalk*, 13, 16 and 20 April 2018, breached Rules 5.11 and 5.12, *News*, 18 March 2018 breached Rules 5.1, 5.11 and 5.12, and *News*, 26 April 2018 breached Rule 5.1. Ofcom's investigation also considered a further three programmes that Ofcom concluded were not in breach of the Code.

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf. These procedures took effect on 3 April 2017.

breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee.

9. Ofcom has decided to impose a financial penalty of £200,000 and direct the Licensee to broadcast a statement of Ofcom’s findings in a form and on date(s) to be determined by Ofcom. This paper sets out the basis for Ofcom’s Decision, taking into account all the relevant material in this case and Ofcom’s Penalty Guidelines⁷ (the “Penalty Guidelines”).

Legal Framework

10. We set out in the Breach Decisions the relevant legal framework and the duties which Ofcom took into account in making the Breach Decisions.
11. Ofcom must also act in accordance with these statutory duties in considering whether it is appropriate to impose a statutory sanction and, if so, the type and level of sanction which it would be proportionate to impose.
12. Ofcom’s principal duty, set out in section 3(1) of the Communications Act 2003 (the “2003 Act”), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets.
13. Ofcom has a specific duty under section 319 of the 2003 Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that news included in television and radio services must be reported with due accuracy and presented with “due impartiality” and that the impartiality requirements of section 320 of the 2003 Act are complied with (section 319(2)(c) and (d)).
14. Reflecting Ofcom’s duties under sections 319 and 320 of the 2003 Act, Section Five of the Code requires that the special impartiality requirements are met.⁸ The relevant rules of the Code are set out in full at the beginning of this Decision.
15. In performing these duties, Ofcom must have regard to the principles under which its regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and, among other things, to the need to secure the application of standards in television services in the manner that best guarantees an appropriate level of freedom of expression.⁹
16. As a public authority, Ofcom must also act in accordance with its public law duties to act lawfully, rationally and fairly, and it has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (the “Convention”).¹⁰
17. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster’s freedom to impart and the audience’s freedom to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1)).¹¹ It applies not only to the content of information but also

⁷ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf

⁸ Accompanying Guidance Notes to each section of the Code are published, and from time to time updated, on the Ofcom website: https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.

⁹ Sections 3(3) and 3(4)(g) of the 2003 Act

¹⁰ Section 6(1) of the Human Rights Act 1998

¹¹ *Lingens v Austria* (1986) 8 EHRR 407

to the means of transmission or reception.¹² And while subject to exceptions, the need for any restriction must be established convincingly.¹³ The exercise of these freedoms may be subject only to conditions and restrictions which are “prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary” (Article 10(2)). Decisions of the European Court of Human Rights make clear that there is little scope for restrictions on freedom of expression in two fields, namely political speech and on matters of public interest. Accordingly, a high level of protection of freedom of expression will normally be accorded, with the authorities having a particularly narrow margin of appreciation.

18. Ofcom must exercise its duties in light of the broadcaster’s and audience’s Article 10 rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim (i.e. proportionate to the legitimate aim pursued and corresponding to a pressing social need).
19. It is well established that the freedom of expression of licensed broadcasters may legitimately be restricted where such measures are necessary to achieve the positive objective of maintaining fair and equal democratic discourse on influential media platforms to the benefit of society generally.¹⁴ The due impartiality standards required under sections 319 and 320 of the 2003 Act form part of a tripartite series of measures (the others being a prohibition on paid political advertising¹⁵ and the provision of free party political and party election broadcasts according to defined rules¹⁶) which aim to safeguard the integrity of democratic debate on matters of public concern by preventing influential broadcast media platforms from being hijacked by wealthy or well-placed interests promoting a partial agenda.
20. As explained in the Government White Paper which led to the 2003 Act:
*“[Due impartiality] obligations have played a major part in ensuring wide public access to impartial and accurate information about our society and the opportunity to encounter a diverse array of voices and perspectives. They ensure that the broadcast media provide a counter-weight to other, often partial, sources of news. They therefore contribute significantly to properly informed democratic debate.”*¹⁷
21. The interference with Article 10 attendant on imposing a statutory sanction in relation to findings of breaches of due impartiality requirements may, where appropriate and proportionate in the circumstances of the case, be justified by the need to achieve these

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

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

¹⁴ *Animal Defenders v United Kingdom* [2013] EMLR 28 and *R (On The Application of Animal Defenders International) v Secretary of State For Culture, Media and Sport* [2008] 1 AC 1312 and *Animal Defenders v United Kingdom* [2013] EMLR 28

¹⁵ See s.319(2)(g) and 321(2) of the 2003 Act

¹⁶ S.333 of the 2003 Act provides that licences for certain broadcasters must require the inclusion of free broadcasts and the observance of the Ofcom Rules on Party Political and Referendum Broadcasts. Those Rules regulate party political broadcasts (offered to qualifying parties outside election periods); party election broadcasts (offered to qualifying parties during election periods); and referendum campaign broadcasts (offered to each designated referendum organisation before each referendum).

¹⁷ Communications White Paper – A New Future for Communications, December 2000,

https://webarchive.nationalarchives.gov.uk/20100407160140/http://www.culture.gov.uk/images/publication/s/communicationswhitepaper_fullreport.pdf, section 6.6.1.

legitimate aims. In order to be proportionate, any interference must be the minimum necessary to promote the legitimate objective pursued.

The Breach Decisions and subsequent correspondence with the Licensee

22. In the Breach Decisions, Ofcom found that the following material broadcast on RT was in breach of the Code:
- *Sputnik*, 17 March 2018, 19:30 – Breaches of Rules 5.11 and 5.12;
 - *Sputnik*, 7 April 2018, 19:30 – Breaches of Rules 5.11 and 5.12;
 - *Crosstalk*, 13 April 2018, 20:30 – Breaches of Rules 5.11 and 5.12;
 - *Crosstalk*, 16 April 2018, 20:30 – Breaches of Rules 5.11 and 5.12;
 - *Crosstalk*, 20 April 2018, 08:30 – Breaches of Rules 5.11 and 5.12;
 - *News*, 18 March 2018, 08:00 – Breaches of Rules 5.1, 5.11 and 5.12; and,
 - *News*, 26 April 2018, 08:00 – Breach of Rule 5.1.
23. The Breach Decisions¹⁸ set out specifically the broadcast material that was in breach, along with the reasoning as to why the material had breached the applicable rules in the Code.
24. Ofcom put the Licensee on notice in the Breach Decisions that it considered seven breaches in respect of news and current affairs programmes broadcast in the six-week period from 17 March 2018 to 26 April 2018, taken together, to be a serious failure of compliance and, subject to the Licensee’s representations, it was minded to consider these breaches for the imposition of a statutory sanction.
25. At the time of publication of the Breach Decisions on 20 December 2018, Ofcom gave the Licensee an additional opportunity (which Ofcom does not normally provide for as part of its sanctions process) to provide representations on whether Ofcom should proceed to consider the imposition of a statutory sanction. Having considered the Licensee’s representations, Ofcom decided to consider the Breach Decisions for the imposition of a statutory sanction.¹⁹

Ofcom’s Decision to impose a Statutory Sanction

26. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
27. In this case, Ofcom issued a Preliminary View that Ofcom was minded to impose a statutory sanction in the form of a financial penalty and to direct the Licensee to broadcast a statement of Ofcom’s findings, on a date and in a form determined by Ofcom. Ofcom sent a copy to the Licensee on 18 March 2019. The oral and written representations of the Licensee (“the Representations”) are summarised in paragraphs 29 to 38 below.
28. In reaching its decision on whether to impose a statutory sanction and, if so, what type and level of sanction, Ofcom took account of all the evidence and representations made by the Licensee. In addition, we had regard to the Sanctions Procedures and Ofcom’s Penalty Guidelines in reaching our Decision.

¹⁸ See Broadcast and On Demand Bulletin 369 for the material broadcast on RT and found in breach of Ofcom’s Broadcasting Code (“the Code”), https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131159/Issue-369-Broadcast-and-On-Demand-Bulletin.pdf.

¹⁹ See correspondence between Ofcom and the Licensee between 17 January 2019 to 27 February 2019.

Licensee's Representations

29. The Licensee made written and oral representations addressing a number of general matters, as set out below. The Licensee also made specific representations regarding the various factors that Ofcom is required to take into account under the Penalty Guidelines when determining the level of any financial penalty. We set out these representations in Paragraphs 68 to 102 alongside Ofcom's own consideration of these factors.

Freedom of Expression

30. The Licensee emphasised that any sanction decision must be compatible with Article 10 of the Convention. It also said it was incumbent on Ofcom to "demonstrate that there has been harm caused by RT's breaches of the Code which justifies a financial penalty of the level proposed, where such penalty seriously interferes with Article 10 rights". It submitted that Ofcom had not demonstrated convincingly that there was a risk to fair and equal democratic discourse or that the sanction proposed was strictly necessary in order to alleviate that risk. At the same time, the Licensee also considered that Ofcom must take into account the legal requirement that there is very little scope for interference in cases involving political free speech.

Seriousness of the Breaches

31. The Licensee accepted that, in the event RT's judicial review proceedings do not succeed, and the Breach Decisions are found to be lawful, it would be appropriate for Ofcom to consider the imposition of a statutory sanction on the basis that the Licensee would have "repeatedly" breached a relevant requirement.²⁰ However, the Licensee did not accept Ofcom's Preliminary View that the breaches were "serious". It said this was because:

- Ofcom had not identified any relevant harm that had resulted from the alleged breaches;
- the Preliminary View set out Ofcom's legitimate aim in this case as "maintaining fair and equal democratic discourse on influential media platforms to the benefit of society generally". TV Novosti said that if Ofcom is relying on this legitimate aim to justify its regulatory intervention in this case, it was necessary for Ofcom to explain how RT can be considered an "influential media platform" in the context of RT having a comparatively small audience. The Licensee also considered it necessary for Ofcom to "convincingly demonstrate that the programmes in question have led to real (not hypothetical) impact on fair and equal democratic discourse and/or the democratic process in circumstances where a relatively small broadcaster affords more limited or in Ofcom's judgement insufficiently respectful airtime to the UK and/or US Government perspectives in a programme on a controversial political issue, where that perspective is readily available from, and dominates, a wide range of other media sources (including references in the programmes under investigation and other programmes screened on RT)";
- the Preliminary View failed to give any consideration to the comparative seriousness of the individual breaches, and in particular, the relevant contextual factors of each; and
- it was not relevant to any consideration of seriousness that Ofcom had previously provided guidance to RT on its approach to ensuring compliance with the due impartiality requirements in the Code. In particular, TV Novosti considered that any such guidance "was likely to be of limited value in the unprecedented circumstances of the issues the subject of these programmes, in particular the Salisbury poisoning";
- Ofcom was incorrect to identify a number of breaches as a "systemic" failure of compliance and had failed to identify any inherent flaw in the Licensee's compliance system.

²⁰ Paragraph 16 of the Licensee's representations.

A Direction to Broadcast a Statement of Findings

32. The Licensee accepted that, in the event that the breach finding in respect of each programme was found to be lawful, a direction requiring the Licensee to broadcast a statement of Ofcom’s findings would be appropriate. It did not agree with Ofcom’s Preliminary View that a direction to broadcast a statement of findings alone would not act as an effective incentive to discourage it from repeating similar breaches of the Code, and also act as a deterrent for other licensed broadcasters. As Ofcom has recorded no breaches against RT since the breach findings being considered for the imposition of sanction here, the Licensee considered that it appeared that no such incentive is required. As the Licensee has not previously received a statutory sanction²¹ it was of the view that “it cannot be right that a broadcaster goes from never [emphasis in original] having a statutory sanction imposed on it in the course of a decade’s broadcasting under Ofcom’s jurisdiction to having close to the maximum financial penalty imposed on it”. TV Novosti considered that this argument was supported by Ofcom’s approach regarding Channel 4 following the breach recorded against *Channel 4 News* in September 2017²². TV Novosti pointed to this being the fourth time in three years that *Channel 4 News* had been found in breach of the Code requirement to report news with due accuracy and in that case “there was no suggestion of the imposition of a statutory sanction, or financial penalty”.

Financial Penalty

33. TV Novosti also said that a financial penalty of the level proposed in the Preliminary View would constitute a disproportionate interference with the free speech rights of RT and its audience and have a significant chilling effect. Further, it considered that the imposition of such a penalty would have an “unduly disproportionate impact on RT”. It described RT as being “publicly attacked in the UK press” and said this had prompted British companies to suspend their advertisements on RT. In the Licensee’s view, a substantial financial penalty would “fuel further future attacks by individuals with an agenda to pursue against RT”.
34. The Licensee also made specific representations regarding the various factors that Ofcom is required to take into account under the Penalty Guidelines when determining the level of any financial penalty. We set out these representations in Paragraphs 68 to 102 alongside Ofcom’s own consideration of these factors.

Written response to questions put to it by the panel at the oral hearing

35. During the oral hearing, the Sanctions Panel asked the Licensee for details of its compliance structure and processes before the breaches occurred and the changes that had been made as a result of Ofcom’s investigation.
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37. [X~~CONFIDENTIAL~~]
38. The Panel also asked the Licensee to comment on its description of reporting on the issues discussed in the Programmes as causing “unprecedented complexities and difficulties”. The Licensee said this was a reference in particular to the Skripal poisoning. It described the story as “an unprecedented news story in the pace at which it developed and the strain that it placed on the relationship between the United Kingdom and the Russian Federation”. It also said in “the highly charged political atmosphere in which the broadcasts were taking place, the due impartiality rules raised difficult issues of judgement”. However, the Licensee considered that it

²¹ While not a statutory sanction, Ofcom previously directed the Licensee to broadcast a summary of Ofcom’s decision regarding a breach of Rule 5.5 relating to ‘*The Truthseeker: Genocide of Eastern Europe*’, broadcast on RT Europe on 13 and 14 July 2014.

²² Published in Broadcast and On Demand Bulletin 336, https://www.ofcom.org.uk/data/assets/pdf_file/0014/106232/issue-336-broadcast-on-demand-bulletin.pdf

was now “confident in its ability to manage future issues that might raise given the difficulties and complexities of the sort raised by the Skripal story”.

Serious nature of the breaches

39. The imposition of a sanction against a broadcaster is a serious matter, and Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement. Ofcom’s Decision is that, for the reasons set out below, the breaches of Rules 5.1 and/or 5.11 and 5.12, were serious and therefore warrant the imposition of a statutory sanction.
40. As set out in the Breach Decisions and at paragraphs 19 to 20 above, the public policy rationale for the requirement of due impartiality in broadcasting is that these obligations play a major part in ensuring wide public access to an appropriately diverse range of information about important societal and democratic issues, thereby providing a counterweight to other, often partial, sources of news, information and discourse. They therefore contribute significantly to properly informed democratic debate.²³ Breaches of the impartiality rules have the potential adversely to affect and distort the dynamic of the ensuing debate, with viewers becoming exposed to narrow and one-sided programming on important policy and political matters in which competing views are either ignored or raised only to be denigrated or dismissed.
41. In response to Ofcom’s Preliminary View on sanction, TV Novosti submitted that Ofcom had not identified any relevant harm that resulted from the breaches. However, the harm which flows from such breaches is readily identifiable. If programming of this nature were permitted on licensed television services, the balance of informed public debate and discussion on important matters of public concern is liable to become distorted, with damaging consequences for the democratic and societal objectives which the due impartiality regime is designed to promote, as well as the credibility of broadcast media as a trustworthy source of information on matters of public concern.
42. Breaches of Rule 5.1 relating to the requirement to ensure due impartiality is preserved in relation to news may or may not be serious depending on the circumstances. A breach of Rule 5.11 and/or 5.12 is potentially more serious, since these rules concern the specific requirement to maintain due impartiality in relation to matters of major political or industrial controversy and major matters relating to current public policy. The obligations on licensees to take measures to preserve due impartiality are correspondingly more onerous where Rules 5.11 and 5.12 are applicable than when Rules 5.5 or 5.6 are engaged. Generally, a single breach of the impartiality rules is likely to be less serious in principle than a single breach of the rules concerning hate speech or incitement to crime. However, it may be quite a serious matter due to the potential impact on democratic debate and public trust in regulated news and current affairs outlets, in relation to which, in some circumstances, a sanction can be appropriate.
43. Ofcom fully acknowledges the broadcaster’s right to make programmes providing audiences with a Russian viewpoint on news and current affairs, including programmes which feature viewpoints that are supportive of certain nation-states, or which are critical of the policies of particular governments, including the UK. However, such programmes still need to comply with Section Five of the Code. Ofcom considers that multiple breaches of due impartiality rules, which occur during a concentrated period of time, potentially aggravate the detriment to viewers. In addition, they have the effect of undermining public confidence in the impartiality of, and therefore trust in, broadcast news and current affairs, which the rules in Section Five of the Code are intended to safeguard.

²³ See the Government’s Communications White Paper (Safeguarding the interests of citizens, 6.6.1) https://webarchive.nationalarchives.gov.uk/20100407191943/http://www.culture.gov.uk/images/publications/communicationswhitepaper_fullreport.pdf

44. In assessing the seriousness of the breaches in question as set out in the Breach Decisions, Ofcom took into account the nature of each of the breaches and the fact that there were seven of them in a short period of time.
45. Ofcom took into account that the breaches were in some respects different in nature, and that they varied in seriousness. Six of the breaches (*Sputnik*, 17 March and 7 April 2018, *Crosstalk*, 13, 16 and 20 April 2018, and *News*, 18 March 2018) concerned a failure to preserve due impartiality in relation to matters of major political controversy and major matters relating to current public policy, namely matters connected to the policies and actions of the UK Government in relation to the poisoning of the Skripals and to the policies and actions of the US Government and/or its allies in relation to the Syrian conflict. These were matters of very high public and political concern at the time the programmes were broadcast and the failure of the programmes to adhere to the due impartiality standards in covering them was considered by Ofcom to be more damaging (given the democratic objectives which those standards seek to secure) and therefore more serious. One of the cases (*News*, 26 April 2018) did not concern a failure to preserve due impartiality in relation to matters of major political controversy or major matters relating to current public policy and was less serious, and we have taken this into account.²⁴ Ofcom did not consider that the seriousness of the breaches was lessened by the likely expectation of the audience as to the nature of the programmes' content or the content of the programmes, for example that the programmes were likely to examine recent events such as the Skripal poisoning from a largely Russian geopolitical perspective.
46. Ofcom has previously engaged with the Licensee on a number of occasions to provide guidance on its approach to ensuring compliance with the due impartiality requirements in the Code. This engagement followed previous breaches by the Licensee of the due impartiality requirements, including a breach sufficiently serious to warrant a direction from Ofcom.²⁵ We therefore considered that the Licensee is well-versed in how to comply with the due impartiality rules. In light of that, Ofcom considered that all seven breaches were, individually, sufficiently serious to warrant the imposition of some form of statutory sanction.
47. The Licensee submitted that any guidance previously given by Ofcom "was likely to be of limited value in the unprecedented circumstances of the issues the subject of these programmes, in particular the Salisbury poisoning". We note that guidance given to the Licensee in two of our previous decisions concerned how to preserve due impartiality on the same broad issue that was discussed in three out of the seven programmes found in breach in the present case, namely the conflict in Syria.²⁶ We also consider that the guidance given in our previous decisions regarding Rules 5.11/5.12²⁷ should have provided a general indication to the Licensee of what is required to comply with Section Five of the Code in respect of matters of major political or industrial controversy or major matters of public policy, of which the Skripal poisoning was one.

²⁴ In this case, Ofcom considered that the news item breached the due impartiality requirements for news as it made serious allegations against the Ukrainian authorities, to the effect that the Ukrainian Government "glorified Nazism" and had a policy of failing to protect ethnic and minority groups, including Jewish and Roma people, at a state level, and had failed to represent the viewpoint of the Ukrainian Government on these issues or provide sufficient factual context to provide challenge in relation to these criticisms.

²⁵ *The Truthseeker: Genocide of Eastern Ukraine*, 13 and 14 July 2014.

²⁶ *News*, 12 July 2012 which considered compliance with Rule 5.1 and *Syrian Diary*, 7 March 2013 which considered Rules 5.5 and 5.9 (Rule 5.9 states "Presenters and reporters (with the exception of news presenters and reporters in news programmes). Presenters of "personal view" or "authored" programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as whole...").

²⁷ See, for example, *News*, 1, 3, 5, 6 March 2014.

48. We considered that the fact that so large a number of breaches took place even after this guidance was given made the breaches taken together still more serious.
49. In our Preliminary View we stated that the fact that multiple breaches of the due impartiality requirements had occurred within a six-week period also indicated that there had been a “systemic” failure of compliance during this period. We have taken into account the Licensee’s representations that the breaches in this case do not represent a systemic failure of compliance, and we accept that we did not clearly describe our concern in this regard in our Preliminary View. Our concern was that seven due impartiality breaches, including six regarding matters of major political or industrial controversy or major matters of public policy, had occurred in a short period of time, and that this represented serious and repeated failures of compliance. We do not consider that the use of the word ‘systemic’ in our Preliminary View has any effect on Ofcom’s findings in relation to the seriousness of the breaches. As explained above at paragraph 43, Ofcom considers that multiple breaches which occur during a concentrated period of time potentially aggravate the damage to viewers, and have the effect of undermining public confidence in the impartiality of, and therefore trust in, broadcast news and current affairs, which the rules in Section Five of the Code are intended to safeguard.
50. The Licensee argued that the breaches were not serious because alternative perspectives on the subject matters in question were readily available from a wide range of other media sources, including in other programmes broadcast on RT. We disagree. It is clear that the due impartiality requirements are imposed at the level of individual licensees. These requirements therefore cannot be met by considering whether a collection of broadcasters or services taken together preserve due impartiality and it would be inappropriate to place weight on the conduct of those other broadcasters in assessing the seriousness of the breaches.
51. Similarly, other programmes on a licensed service are only relevant to the question of whether due impartiality has been preserved in respect of Rules 5.11 and/or 5.12 insofar as these programmes are ‘clearly linked and timely’. For the reasons set out in the breach decisions, Ofcom did not consider any of the programmes on which the Licensee sought to rely as providing an alternative perspective were ‘clearly linked’ to the programmes in question. In terms of the requirement for news to be presented with due impartiality under Rule 5.1, there is no provision for due impartiality to be maintained through other linked programming on a particular service. We place little weight on the existence of such programming in assessing the seriousness of the breaches.
52. TV Novosti also argued that in its Preliminary View on sanction, Ofcom failed to give any consideration to the comparative seriousness of the individual breaches and to the relevant contextual factors of each. As we have set out above at paragraphs 39-48, while we acknowledge that the breaches were of varying degrees of gravity, we considered that the nature and effect of all of the breaches were serious. Moreover, for the reasons we have given above, we also consider that all seven breaches were, in the circumstances, sufficiently serious to warrant the imposition of some form of statutory sanction.
53. Accordingly, Ofcom’s Decision is that these breaches of Rule 5.1 and/or Rules 5.11 and 5.12, individually and taken together, represent a serious failure of compliance with the due impartiality requirements of the Code on the part of the Licensee, which warrants the imposition of a statutory sanction.

Imposition of sanction

54. Ofcom therefore considered which of the sanctions available to it were appropriate in the present case.

Ofcom's powers to impose statutory sanctions for breaches of content standards requirements

55. As noted above, the Licensee holds a television licensable content service ("TLCS") licence.²⁸ Under section 325 of the 2003 Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 ("the 1990 Act") or 1996 must include conditions for securing that the standards set under section 319 of the 2003 Act are observed by the licensee. Condition 6 of a TLCS licence requires the same.
56. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the 2003 Act insofar as relevant to the case.
57. Section 236 of the 2003 Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme which was in contravention of a licence condition.
58. Section 237 of the 2003 Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and 5 per cent of the qualifying revenue from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force.
59. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence where a licensee is in contravention of a condition of a TLCS licence or direction thereunder.

Directing the Licensee to broadcast a statement of Ofcom's findings and/or not to repeat the programme

60. The purpose of directing a licensee to broadcast a statement of Ofcom's findings in relation to due impartiality breaches is to inform audiences of Ofcom's findings and ensure they are aware of the specific way in which the programmes breached the Code. For the reasons set out at paragraphs 39 to 53 above, Ofcom considered that these seven breaches represent a serious failure of compliance with the due impartiality requirements of the Code on the part of the Licensee.
61. Ofcom's Decision is that the Licensee must broadcast a statement, to be prepared by Ofcom, summarising Ofcom's findings in relation to the seven due impartiality breaches. The statement must be broadcast on three occasions, namely at the beginning of an RT *News* programme at 8:00, an RT *Sputnik* programme at 19:30 and an RT *Crosstalk* programme at 20:30, on date(s) to be determined by Ofcom. This would ensure that Ofcom's findings are drawn to the attention of the audiences of each of those programmes, and help to deter future misconduct by the licensee and other broadcasters.

Financial penalty

62. Given Ofcom's assessment of the seriousness of the breaches as set out at paragraphs 39 to 53 above, Ofcom considered whether a direction alone would be a sufficient sanction.
63. Ofcom took account of the fact that it has previously taken a number of regulatory steps to secure compliance by the Licensee with the due impartiality rules in the Code following previous breaches of the Code by the Licensee, including requiring the Licensee to broadcast a summary of Ofcom's decision following a serious breach of the due impartiality rules in 2014, and holding a number of meetings with the Licensee to discuss its compliance procedures, most recently in 2017.

²⁸ As noted above, the RT service is also broadcast on digital terrestrial television under a DTSP licence, however, for the purposes of this sanctions process, we are proceeding on the basis of RT's TLCS licence.

64. Ofcom did not consider a direction alone would be a sufficient sanction to act as an effective disincentive to discourage this Licensee from repeating similar breaches of the Code or other licensees from contravening the Code in a similar manner. Ofcom's Decision is therefore that it would be proportionate to impose a financial penalty in addition to the direction.

Proposed amount of the financial penalty

65. As explained at paragraph 58 above, under section 237 of the 2003 Act, the maximum level of a financial penalty that can be imposed on the holder of a TLCS licence is whichever is the greater of £250,000 and 5 per cent of the qualifying revenue²⁹ from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force. [X<CONFIDENTIAL]
66. Ofcom's Penalty Guidelines state (in paragraph 1.11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty."
67. In considering the appropriate amount of a financial penalty, Ofcom took account of the specific relevant factors set out at paragraph 1.12 of the Penalty Guidelines as set out below:

The seriousness and duration of the contravention

68. For the reasons set out in paragraph 31, the Licensee objected to Ofcom's Preliminary View that the breaches were "serious". It also did not consider that the breaches could be said to have occurred "over a lengthy period".
69. As set out above, Ofcom has placed particular weight on the fact that there were multiple breaches of the due impartiality requirements within a six-week period, the majority of which involved breaches of Rules 5.11 and 5.12, which Ofcom considered to be a serious and repeated failure of compliance. As set out above and below, these occurred after Ofcom had made a number of previous breach findings against the Licensee and engaged with it substantively to help it understand its obligations under the due impartiality rules.

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

70. TV Novosti considered a "key flaw" in the Breach Decisions and Ofcom's Preliminary View on sanction was "the failure to identify any harm to viewers". In particular, the Licensee said it remained incumbent on Ofcom to explain "how democratic debate could conceivably be harmed in circumstances where a relatively small broadcaster is alleged to have failed to broadcast an appropriately wide range of viewpoints and where the alternative viewpoints are readily available from a range of other media sources".
71. As explained at paragraph 40 above, the purpose of the due impartiality requirements for broadcast content is to safeguard the integrity of democratic debate on licensed broadcasters on matters of public concern. There are stricter requirements in respect of programmes that deal with matters of major political controversy and major matters of current public policy,

²⁹ 'Qualifying revenue' is the Licensee's qualifying revenue for its last complete accounting period (as determined in accordance with Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act) falling within the period for which the Licensee's licence has been in force. In summary, section 19(2) of the 1990 Act states that the qualifying revenue for any accounting period of the licence holder shall consist of all payments received or to be received by him or by any connected person (a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or (b) in respect of charges made in that period for the reception of programmes included in that service.

reflecting the heightened importance of preserving due impartiality in relation to such matters. Breaches of those requirements by any broadcaster potentially causes harm both to the viewers who watched the programme in issue and also undermines the democratic objectives which the due impartiality regime is designed to promote.

72. Ofcom noted that RT has a relatively small audience. In 2018, its average UK audience at any given point during the day was 2,300 viewers, a share of total viewing in the UK of 0.03%. However, Ofcom considered that the breaches in question, particularly the breaches of Rules 5.11 and 5.12 of the Code, had the potential adversely to affect those viewers who choose to consult RT for news programming and who were therefore presented with coverage of important policy and political matters which denied them an appropriately wide range of viewpoints. In this context, the extent of a channel's audience cannot sensibly dictate the gravity of the breach, not least because the due impartiality regime could easily be circumvented and undermined if smaller broadcasters were allowed an effective exemption from generally applied standards. Moreover, Ofcom considered that the cumulative nature of the multiple breaches of due impartiality requirements during the six-week period had the potential to aggravate the damage to viewers and to undermine public confidence in the impartiality of, and trust in, broadcast news and current affairs, which the rules in Section Five of the Code are intended to safeguard.

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

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

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

74. TV Novosti said it was "clear that RT had taken appropriate steps to prevent contraventions of the Code". In support of this, it highlighted the following factors:

- The Licensee set out a number of features of its compliance process and policies including:
 - guidance being circulated amongst RT employees and programme presenters;
 - since 2017, annual compliance training given by a UK based adviser in Moscow, Washington and London;
 - a dedicated senior member of staff focused on compliance; and,
 - an Output Editor "with considerable compliance experience from a reputable non-Russian media outlet in each news team" and an Output Analytic adviser who analyses RT output for possible infringements of editorial standards and factual mistakes.

The Licensee also highlighted Ofcom's recognition that RT's compliance record has "not been materially out of line with other broadcasters"³⁰ prior to the first of the programmes found in breach of the Code in 2018, and that Ofcom had found no further breaches of the Code since then.

- Extensive engagement with Ofcom:
 - The Licensee set out the history of compliance meetings it had had with Ofcom which it said had helped the development of its compliance strategy. It said it

³⁰ See Ofcom's update on the RT service, published 18 April 2018:
https://www.ofcom.org.uk/data/assets/pdf_file/0012/113043/rt-investigations.pdf

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had taken Ofcom's advice seriously and that it had learned a considerable amount from the guidance and feedback provided by Ofcom.

- TV Novosti went on to set out the advice it had received from Ofcom at these compliance meetings. It said, as a result of this advice, it had gone to considerable effort to ensure that alternative views are presented, in particular by the use of graphics, captions and tickers. It said that such techniques were deployed in the majority of cases in the Breach Decisions.
- TV Novosti described the due impartiality obligations as being "highly subjective" and said this was relevant to the question of sanction. In particular, it considered that "the lack of certainty and objectivity in the due impartiality obligation is a highly relevant factor in reaching decisions on whether individual programmes breached the relevant obligations (and, if so, how seriously) and therefore on the appropriate regulatory action to be taken against the broadcaster".
- Linking to timely programmes:
 - The Licensee raised the perceived difficulty of linking between programmes to demonstrate due impartiality in the context of a live rolling news channel, where advance planning is not always possible. It cited a communication from Ofcom in April 2017 in which it was given formal guidance that "in preserving due impartiality on matters of major political or industrial controversy and major matters relating to current public policy, alternative viewpoints should be given due weight in clearly linked **or** timely programmes [TV Novosti's emphasis]. Although the Code does not specify what may constitute 'timely', Ofcom would expect RT to plan alternative views to broadcast relatively contemporaneously with the original material".
 - TV Novosti considered it had done this in many of the programmes that were the subject of the Breach Decisions. It acknowledged that the April 2017 communication was incorrect and that "clearly linked or timely programmes" should have read "clearly linked and timely programmes". The Licensee considered that "irrespective of whether that is right, the fact that RT acted consistently with formal advice which had clearly been given by Ofcom, is plainly a relevant factor that must be taken into account in considering an appropriate penalty".
- Steps taken in respect of the programmes the subject of the Decisions:
 - The Licensee also considered it was necessary for Ofcom to take into account the steps taken by it in respect of the seven programmes in an attempt to ensure they complied with the due impartiality obligations. It also asked Ofcom to take into account that it had been "effectively boycotted by commentators who advance an alternative viewpoint" which it considered had occurred as a result of "the barrage of unfounded and false criticism that has been made against RT over the past year" by various senior political figures.
 - It went on to describe how it had faced "serious barriers" when approaching British commentators to appear on its programmes, in particular, *Sputnik* and *Crosstalk*. TV Novosti told Ofcom that it had gone to great lengths to provide the UK Government's and/or another Western government's point of view but the majority of these invitations had been refused. It said this had made it extremely difficult for it to do more than it had to convey the alternative viewpoint.

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- The Licensee acknowledged that having a commentator or guest to appear on a programme is not the only way to that an alternative view can be presented. However, it considered the efforts it had gone to in order to secure commentators offering an alternative viewpoint, and the difficulties it said it had faced, were important context for Ofcom.
 - Against the background of this “effective boycott”, it said it used a variety of methods to maintain due impartiality (for example the “extensive use of graphics, captions and tickers”). It considered that such steps “plainly demonstrat[ed] that RT takes its regulatory obligations seriously”.
 - The Licensee also argued that the generic guidance previously given by Ofcom was likely to be of limited value in the “unprecedented” circumstances of the issues the subject of these programmes, in particular the Skripal poisoning.
75. We acknowledge the comprehensive submissions made by the Licensee regarding the processes it has in place to comply with Section Five of the Code. However, for the reasons set out above and below, we considered that the Licensee’s compliance procedures had been inadequate to prevent multiple breaches of the due impartiality requirements in the Code over a six-week period.
76. We took into account that the Licensee had considerable previous engagement with Ofcom regarding the requirements of, and compliance with, Section Five. This took the form of several meetings between senior RT editorial and/or compliance staff and senior members of Ofcom’s Standards and Audience Protection team, following a number of cases in which we found breaches of due impartiality requirements (*News*, RT, 12 July 2012; *Syrian Diary*, RT, 7 March 2013 and *Crosstalk*, RT, 11 July 2016).³¹ Specific guidance was also provided to the Licensee in these previous decisions as to what Ofcom considered necessary to comply with the requirements of Section Five. In addition, the previous direction Ofcom imposed on the Licensee in respect of a breach of Rule 5.5³² should have indicated that the Licensee’s compliance procedures at that time were inadequate. In light of this, we consider the Licensee should have been particularly well-informed about how to preserve due impartiality on its service.
77. We carefully considered whether the typographical error in the guidance Ofcom gave to RT by email in 2017 warranted a reduction in the penalty. We do not consider that it does. The rule was correctly cited, in quote marks, within the same email three paragraphs above the text RT relied on. The email was clearly not carefully drafted: it contained a number of other typographical errors and grammatical errors. The paragraph that is two paragraphs above the typographical error, talking about why content broadcast on the same day as content of concern did not relieve the concern, states:
- “We noted that you made reference to coverage on Brexit in RT’s general news output (such as the clip featuring David Davies in relation to the 1 February 2017 programme). However, clearly *Going Underground* is a standalone programme strand on RT, and is not “clearly linked” editorially with RT’s news output. Further, there was no statement or other content editorially linking the 1 February 2017 edition of *Going Underground* with the news bulletin featuring David Davies. Therefore, Ofcom does not consider it is appropriate to use examples of coverage in news to justify how due impartiality may have been achieved across the service in this case”.

³¹ These compliance meetings took place on 3 November 2012, following our breach finding relating to *News*, RT, 12 July 2012, on 28 March 2014, following our breach finding relating to *Syrian Diary*, RT, 7 March 2013, and on 2 March 2017, following our breach finding relating to *Crosstalk*, RT, 11 July 2016.

³² *The Truthseeker: Genocide of Eastern Ukraine*, 13 and 14 July 2014.

78. RT had, at all times, access to the rules themselves, Ofcom's published guidance on the rules³³, all previous decisions on impartiality in Ofcom's Broadcast Bulletin and in particular the previous decisions on Rules 5.11 and 5.12 of Ofcom directed to RT itself.³⁴
79. Taking into account RT's previous compliance history and the breaches at issue in this case, we have noticed a trend of non-compliance in RT programmes which discuss Russian foreign policy matters that differ to, or conflict with, the general policy position of Western countries. This is of particular concern given such matters are likely to constitute matters of major political or industrial controversy or major matters of public policy, as was the case in six out of the seven breaches in question.
80. As set out above, we do not accept the Licensee's position that the topics being covered were so unprecedented that the generic guidance it had previously received could not be applied effectively to the programmes. We noted that that guidance given to the Licensee in two of our previous decisions concerned how to preserve due impartiality on the same broad issue that was discussed in three out of the seven programmes found in breach in the present case, namely the conflict in Syria. We also considered that the guidance given in our previous decisions regarding Rules 5.11/5.12 should have provided a general indication to the Licensee of what is required to comply with Section Five of the Code in respect of matters of major political or industrial controversy or major matters of public policy, of which the Skripal poisoning was one.
81. We noted that some of the broadcast content found to be in breach was pre-recorded, and the Licensee would have had the opportunity to review it prior to broadcast. We would have expected that such a review ought to have identified the programmes' failure to preserve due impartiality in relation to the matters dealt with in the programmes.
82. Some of the content found to be in breach was not pre-recorded (for example, some of it was live news content). While we acknowledged that there can be challenges in ensuring that live programming complies with the due impartiality requirements in the Code, we considered that the Licensee ought to have had appropriate procedures in place to ensure due impartiality was preserved in relation to these news items.
83. We also noted that in its representations to Ofcom during the course of the investigation, the Licensee had told Ofcom that it had sought to invite contributors onto the *Crosstalk* programmes of 16 and 20 April 2018 who would convey a variety of views, but that these invitations had been declined.³⁵ As Ofcom has made clear on numerous occasions,³⁶ where an alternative viewpoint is needed to maintain due impartiality, inviting contributors to participate who then refuse to do so is not sufficient to preserve due impartiality and the alternative viewpoint needs to be represented in an appropriate way.³⁷

³³ See Paragraph 1.57.

³⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0025/47635/obb266.pdf, in which Ofcom carefully considered a programme that was broadcast immediately after the content in question, but was not editorially linked, and found a breach of the Code; and https://www.ofcom.org.uk/_data/assets/pdf_file/0019/46621/issue_308.pdf.

³⁵ RT's comments in response to Ofcom's seven requests of 18 April 2018, 6 June 2018; RT's comments in response to Ofcom's three requests of 14 May 2018, 20 June 2018; and RT's submissions regarding Ofcom's 10 Preliminary Views, 13 September 2018.

³⁶ See Ofcom's Decision on *Crosstalk*, RT, 11 July 2016, published in issue 319 of Ofcom's Broadcast and On Demand Bulletin, 19 December 2016, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/96012/Issue-319-of-Ofcoms-Broadcast-and-On-Demand-Bulletin,-to-be-published-on-19-December-2016.pdf.

³⁷ The Guidance gives examples of a number of editorial techniques which a broadcaster might consider employing, where alternative views are not readily available, in order to preserve due impartiality – see

84. We also acknowledged in respect of the *Crosstalk*, 13 April 2018 programme, one of the contributors, Mr Murphy, former US Career Ambassador to Syria, had put forward a different perspective to the presenter and other two guests which reflected to a limited extent, the US Government's viewpoint on Syria. However, we did not consider it was sufficient to maintain due impartiality because his contribution to the debate was significantly undermined by the fact that he was interrupted by the presenter and given little opportunity to respond fully to the presenter's increasingly vigorous and aggressive challenges. Again, we considered that the Licensee ought to have identified this issue prior to the content being broadcast. The fact that it did not do so is relevant to the question of sanction as well as breach.
85. Therefore (and also for the reasons explained above), we consider these seven breaches of the Code represent a serious and repeated failure of compliance with the due impartiality requirements of the Code.

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

86. We took into account in relation to seriousness and the steps taken by the regulated body to prevent the contravention that the Licensee is well-versed with the requirements for compliance with the due impartiality rules, having attended compliance meetings with Ofcom and discussed its compliance procedures on several occasions following previous breaches of the rules in Section Five of the Code (see further paragraph 100100 below). For the reasons already set out we considered that this represented serious and repeated failures on the part of the Licensee during this period to ensure due impartiality was preserved. Although we have no evidence that the breaches were deliberate or reckless, such a serious failure in compliance ought to have been prevented by the compliance procedures and we are concerned about how such a failure has occurred.

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

87. The Licensee set out the steps it had taken following notification that Ofcom had launched investigations into the programmes broadcast on RT. These included: RT's head of Programming having lengthy conversations with the presenters of *Crosstalk* and *Worlds Apart* and their production teams "to ensure they properly understood the compliance procedures and requirements"; a three-day compliance refresher course being held in Moscow in June 2018; and, in January 2019, a training session being held for RT staff in Washington DC who were making programmes which might be shown on RT's Ofcom licensed channels.
88. The Licensee also highlighted that prior to the 2018 investigations, it had not been found in breach of the due impartiality requirements for over 18 months, and that it has not been found in breach since the 2018 investigations began. It therefore considered that if there were any issues at RT, they have now been resolved.
89. The Licensee did not appear to be aware of the issues concerning the programmes that Ofcom found in breach until Ofcom wrote to the Licensee on 18 April 2018 informing it that Ofcom was opening investigations into the first seven programmes considered in the Breach Decisions.³⁸ Ofcom subsequently opened investigations on 14 May 2018 into three further programmes.³⁹

paragraphs 1.60 and 1.37. This could, for example, include reflecting alternative viewpoints through questions posed by presenters.

³⁸ Ofcom found two of these programmes not to be in breach of the Code.

³⁹ Ofcom found one of these programmes not to be in breach of the Code.

90. Separately to the investigations, the Licensee informed Ofcom in June 2018 that it had decided to increase the size of its compliance team to ensure that its programmes remain respectful of its regulatory obligations.⁴⁰ It also said that the outcome of the investigations would be fed into the training of its editorial staff and applied in their daily editorial work with appropriate compliance oversight.
91. Ofcom has taken into account the Licensee's representations regarding the steps it has taken in relation to compliance since we launched the investigations in question, and the fact that Ofcom has not become aware of any further breaches of Section Five of the Code by the Licensee to date.

Any steps taken for remedying the consequences of the contravention

92. TV Novosti set out additional compliance steps it said it intended to introduce by the end of 2019. These included:
- arranging further meetings with all programme staff to discuss the application of the due impartiality requirements;
 - introducing a new consultation process for employees with questions regarding due impartiality and compliance with the Code to discuss queries and disseminate knowledge and best practice;
 - issuing to all employees a letter detailing Ofcom's investigation and lessons to be drawn from it; and
 - allocating additional financial resources to increase the size of the compliance team, to the extent necessary.
93. We have taken into account the additional compliance measures the Licensee intends to implement in our overall assessment of what financial penalty would be appropriate and proportionate in the circumstances of this case.

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

94. The Licensee considered that Ofcom's Preliminary View had failed to acknowledge the positive aspects of RT's compliance history, including that it had not previously received a statutory sanction.
95. Since the Licensee acquired the Licence on 4 May 2012, Ofcom has recorded 14 breaches of the Code against the Licensee, 8 of which were breaches of the due impartiality rules in Sections Five and Six of the Code (these are set out in Annex 1).
96. The largest number of the breaches, including three breaches of the due impartiality rules of the Code, and both of the Licensee's most serious previous breaches of the Code, took place in 2014.
97. In relation to one of these breaches in 2014⁴¹ ('*The Truthseeker: Genocide of Eastern Europe*', broadcast on RT Europe⁴² on 13 and 14 July 2014), given its serious nature, Ofcom directed the

⁴⁰ RT, letter to Ofcom dated 8 June 2018

⁴¹ Published in Broadcast Bulletin 288,
https://www.ofcom.org.uk/data/assets/pdf_file/0017/50507/issue_288.pdf

⁴² This was a service principally aimed at viewers on the European mainland. Although the Licensee still holds a licence for the service our information is that this service has ceased to broadcast.

Licensee to broadcast a summary of Ofcom's decision to ensure that it was brought to the attention of the licensee's audiences.⁴³

98. In 2014 Ofcom also found the Licensee to have committed a serious breach of Rule 2.2, relating to a programme⁴⁴ alleging that a "massive public investigation which made some extremely disturbing findings" had found that the BBC had faked footage of a chemical weapons attack in Syria. Given the serious nature of this breach, Ofcom directed the Licensee to broadcast a summary of Ofcom's decision to ensure this breach was brought to the attention of the Licensee's audience.⁴⁵
99. There were no breaches in 2015 and two breaches of due impartiality requirements that took place in 2016 (*Going Underground*, 5 and 23 March 2016⁴⁶; *Crosstalk*, 11 July 2016⁴⁷) were less serious than the 2014 breach in which we considered it was appropriate to issue a direction.
100. As set out above, Ofcom also took into account that following a number of cases in which we found breaches of due impartiality requirements (*News*, RT, 12 July 2012; *Syrian Diary*, RT, 7 March 2013 and *Crosstalk*, RT, 11 July 2016), we invited the Licensee to attend meetings with Ofcom to explain its compliance procedures and to ensure that the Licensee understood the requirement to comply with the due impartiality rules of the Code.
101. Full details of the Licensee's compliance history are set out in Annex 1 and we have taken this into account in our assessment of financial penalty.

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

102. We took into account that the Licensee has emphasised that it takes its responsibility to comply with the Code seriously.⁴⁸ We also noted that the Licensee has engaged with and responded to Ofcom's investigation.

Precedent

103. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to precedents set by previous cases. However, each case is decided on its own facts. In reaching our decision in this instance Ofcom has considered these previous cases and to the limited extent we consider them relevant, we have taken them into account. The absolute level of a penalty imposed is not arithmetically linked to the harmfulness of the particular content concerned, since Ofcom takes other matters into account including (but not limited to) the compliance history of the licensee, its turnover and access to funds, and the need for deterrence.
104. The Licensee considered that Ofcom's analysis of previous precedents included in the Preliminary View was unsatisfactory. In its view, Ofcom had only had regard to a limited

⁴³ While this was not a statutory sanction, the direction was intended to have an equivalent deterrent effect against future misconduct.

⁴⁴ *Media 'Staged' Syria Chem Attack*, which was broadcast on a number of occasions on 23 and 24 March 2014. This decision was published in Broadcast Bulletin, 288, https://www.ofcom.org.uk/_data/assets/pdf_file/0017/50507/issue_288.pdf

⁴⁵ Again, while this was not a statutory sanction, the direction was intended to have an equivalent deterrent effect against future misconduct.

⁴⁶ Published in Broadcast Bulletin 308, https://www.ofcom.org.uk/_data/assets/pdf_file/0019/46621/issue_308.pdf

⁴⁷ Published in Broadcast and On Demand Bulletin 319, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/96012/Issue-319-of-Ofcoms-Broadcast-and-On-Demand-Bulletin,-to-be-published-on-19-December-2016.pdf

⁴⁸ RT's initial representations dated 6 June 2018 on seven programmes broadcast between 17 March 2018 and 16 April 2018 and RT letter to Ofcom dated 8 June 2018.

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number of precedents and failed to have proper regard to them as required by the Penalty Guidelines. It went on to make the following points:

- a) There has not been a sanction decision in respect of a breach of due impartiality since July 2013.
- b) There are only five cases where a financial penalty has been imposed for the breach of the due impartiality requirements in Section 5.
- c) The low number of cases in which a financial penalty has been imposed for a breach of the Section Five due impartiality requirements is striking when compared to the number of breach decisions. The Licensee highlighted that there were 16 breaches of the Section 5 due impartiality requirements between May 2007 and November 2018 where no statutory sanction was imposed.
- d) The Licensee considered that a financial penalty of the size proposed in the Preliminary View could not be attributed to the new Penalty Guidelines, and its focus on deterrence. Quoting from previous Ofcom sanction decisions that pre-dated the current version of the Penalty Guidelines, TV Novosti considered it was clear that “there has not been a shift in policy towards deterrence, of the sort that might justify a shift towards a higher penalty of the magnitude” proposed in the Preliminary View.
- e) TV Novosti compared the current cases to cases where a financial penalty has been imposed for breaches of the rules relating to incitement and hate speech. It said that in those cases, Ofcom had been able to identify actual or potential serious harm to audience members, unlike the case currently being considered.
- f) The Licensee said that Ofcom’s approach needed to be free of any appearance of being influenced by political factors. It considered that if Ofcom were to impose a penalty of the level proposed in the Preliminary View “an impression may be created that [the penalty]...is being imposed for reasons other than the need for deterrence, either as a punishment or in order for Ofcom to be seen to be taking a strong line against a Russian broadcaster in light of the current political climate”.
- g) In light of the above, the Licensee considered a penalty of the level proposed in the Preliminary View would be “grossly inconsistent with previous Ofcom precedents, unfair and unjustified”.

105. The Licensee also discussed the following precedents in detail:

- a) *Islam Channel* – The Licensee identified that the £30,000 fine imposed on Islam Channel was, to date, the highest fine imposed as a result of breaches of the due impartiality requirements. TV Novosti noted that the case related to 24 separate programmes and that Ofcom had concluded the breaches in this case were “very serious” and demonstrated “reckless regard” of the Code. The Licensee argued that it was “impossible to see how it can be fair and proportionate and predictable” to impose a substantially higher fine in this current case; the circumstances of the case against RT could not be considered more serious than those in that case.
- b) *DM Digital* – TV Novosti pointed to a number of factors that it considered were similar in this case and to the sanction currently being considered. In particular, the DM Digital case (where Ofcom imposed a financial penalty of £20,000) concerned programmes that had included statements that were highly critical of NATO and a Pakistani political party, without adequately including alternative viewpoints. It highlighted the following section from Ofcom’s Preliminary View in this case: “The due impartiality rules exist to ensure that audiences are appraised of all relevant views on issues of political or industrial controversy and issues of current public policy.” TV Novosti was of the view

that the same could not be considered in the case against it as it argued “realistically viewers would have been well aware of the other relevant views on the Skripal case in particular, and on the US involvement in Syria”.

- c) *Ariana International* – TV Novosti highlighted that this case involved the broadcast of content that Ofcom considered could be interpreted as a direct call to action to members of the Muslim community to join ISIL and to commit violence up to and including murder against members of the police and the army in the West. Ofcom also concluded that the broadcast material represented hate speech which was not justified by the context. A fine of £200,000 was imposed on Ariana International for the broadcast of this content. The Licensee considered that should Ofcom consider these breaches as serious as those found against TV Novosti, then this would be “irrationally wrong”.
- d) *Mohiuddin Digital TV and Club TV* – These two cases both concerned the broadcast of anti-Semitic hate speech and financial penalties of £65,000 and £75,000 were imposed. The Licensee stated that if a financial penalty that considerably exceeded these two figures was imposed against TV Novosti there is a real risk the imposition of that sanction “may be seen by some as being that Ofcom regard the present cases [i.e. the breaches against TV Novosti] as...worse than programmes which broadcast virulently anti-Semitic hate speech”.

106. Taking the approach we set out at paragraph 103 and taking account of the specific representations the Licensee has made, Ofcom considered: (1) a number of previous decisions in which financial penalties had been imposed for breaches of due impartiality requirements in the Code.⁴⁹ All of these decisions are now over five years old and were decided before Ofcom’s current Penalty Guidelines⁵⁰ came into force; (2) a number of more recent decisions in which financial penalties had been imposed for particularly serious breaches of the Code, not relating to breaches of due impartiality requirements, which had the potential to cause serious harm.⁵¹ These financial penalties were imposed since December 2015, after Ofcom’s Penalty Guidelines were updated to place greater emphasis on deterrence. However, the cases involved licensees with less access to funding (see below) and in some cases much better compliance records than RT; and (3) Ofcom also considered other decisions in which Ofcom had found breaches of due impartiality rules but had decided not to impose a statutory sanction. Ofcom considered the relevance of these past precedents to the circumstances of the breaches at issue in this Decision and, where relevant, took it into account in deciding on the level of the penalty which would be proportionate in the circumstances.

107. Ofcom considered the previous decisions in which Ofcom had imposed financial penalties for breaches of due impartiality requirements in the Code. The nature of those breaches was, to some extent, similar to the nature of the breaches at issue in this Preliminary View. For

⁴⁹ These are set out in Annex 2.

⁵⁰ The current version of the Ofcom’s Penalty Guidelines came into force on 14 September 2017: https://www.ofcom.org.uk/data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf. This version of the Penalty Guidelines replaced the previous version which had come into force on 3 December 2015. The changes made in September 2017 related to a settlement process which does not apply to financial penalties for breaches of content standards regulation. The current version of the guidelines is otherwise the same as the 3 December 2015 version.

⁵¹ These are set out in Annex 2.

example, a number of these previous cases (*Islam Channel*⁵², *Aden Live*⁵³ *Al Mustakillah*⁵⁴) dealt with a failure to preserve due impartiality in relation to matters of major political controversy and major matters relating to current public policy, and thus were somewhat relevant to the concerns which arose with six of the breaches in this instance. We also noted that there were similarities in the present case in that, in all of these previous cases, Ofcom had also identified that the breaches had resulted from inadequate compliance procedures or compliance failures.

108. However, we considered there were key factors which distinguished these precedents from the present case. The breaches in the cases of *Aden Live* and *Al Mustakillah* were committed by broadcasters who had not had the considerable engagement with Ofcom that the Licensee has had regarding how to comply with the Code, in particular the due impartiality provisions. Further, the volume of previous due impartiality breaches committed by the Licensee is far higher than that of the broadcasters involved in those previous due impartiality cases.
109. In addition, the financial penalties imposed for previous due impartiality breaches took into account each Licensee's qualifying revenue (and access to any additional funding to the extent this was relevant), and were decided in accordance with what would be a proportionate penalty in the circumstances. In the case of *Islam Channel*, the penalty was imposed on a small organisation with apparently limited resources and Ofcom was concerned that its ability to function may be damaged disproportionately by an excessively heavy financial penalty which could impact on funds that might otherwise be used to support the station.⁵⁵ Similarly, in the case of *DM Digital*, Ofcom had regard to the evidence provided by the Licensee about its size and financial situation, including to the Licensee's responses to Ofcom's questions about sources of funding which had not been apparent prior to the sanction hearing in that case.⁵⁶ As we expand on further below in paragraphs 118-120, the Licensee in this case is funded by the Russian state and accordingly has access to greater resources than many of the Licensees in the precedent decisions.
110. In some of these previous cases, Ofcom decided it was warranted to impose a financial penalty on the licensee for breaches concerning a single programme (*TalkSPORT*⁵⁷, after one previous breach) or a couple of programmes (*Al Mustakillah*, *DM Digital*⁵⁸). All these previous cases concerned a failure on the part of the licensee to ensure compliance with Rule 5.4 concerning preservation of due impartiality on the part of the person providing the service (*Aden Live*, *Al Mustakillah*, *DM Digital*), or concerned a failure to preserve due impartiality in connection with an election (*Islam Channel*, *TalkSPORT*, *Al Mustakillah*), which were breaches we considered to be particularly serious. By contrast to those cases, where only a single programme or a couple of programmes were concerned, there is a long history of due impartiality breaches on the RT channel, and we are currently sanctioning seven breaches committed in a short period of time.

⁵² 31 July 2007, see https://www.ofcom.org.uk/_data/assets/pdf_file/0019/60562/islamchannel.pdf

⁵³ 8 May 2012, Dama (Liverpool) Limited, see http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden_Live_sanctions_decisio1.pdf

⁵⁴ 4 January 2013, Al Mustakillah Television Limited, see <https://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Mustakillah-TV.pdf>

⁵⁵ See paragraph 9.30 of that decision.

⁵⁶ See paragraph 75 of that decision.

⁵⁷ 8 December 2008, Talksport Ltd, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/57105/talksport.pdf

⁵⁸ 5 July 2013, DM Digital Television Limited, see <https://webarchive.nationalarchives.gov.uk/20160703015525/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/DM-digital-POAF.pdf>

111. As noted above, Ofcom also took into account that these precedents were not decided under Ofcom’s current Penalty Guidelines, which place greater emphasis on deterrence.
112. The more recent decisions⁵⁹ in which Ofcom has imposed a financial penalty for breaches of content standards rules did not relate to breaches of due impartiality requirements, and concerned different issues. Specifically, most of these previous cases concerned breaches of Section Three of the Code involving hate speech, and in one case also involved the broadcast of material likely to encourage or incite the commission of crime or lead to disorder. Ofcom considered these to be particularly serious breaches of the Code given their potential to cause serious harm to audiences, and in this respect we agree with the Licensee that they are generally more serious than breaches of due impartiality rules. The other case related to a serious breach of fairness and privacy requirements which had caused serious harm to the individual concerned (as footage was broadcast of the individual while detained in prison, in circumstances where it had been found he had made confessions to state authorities under torture), which also distinguished it from the concerns that arose in this present case.
113. However, although the content broadcast in some of these cases was more serious than that broadcast by the TV Novosti, for the reasons explained below at paragraph 118 none of these broadcasters concerned had the access to funding that TV Novosti does, and in some cases these broadcasters had a much better compliance record than the Licensee.
114. Ofcom also had regard to the fact that, in all other cases since May 2012⁶⁰ in which Ofcom found breaches of due impartiality requirements, including of Rules 5.1, 5.11 and 5.12, Ofcom did not consider it to be warranted to impose a statutory sanction in the circumstances of those cases. Ofcom considered it appropriate to depart from these precedents in this case, in the light of the substantial previous engagement with the Licensee, the Licensee’s previous compliance record, the volume of breaches within six weeks and the licensee’s resources.

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

115. The Licensee made representations that, taking account of RT’s qualifying revenue, a financial penalty of the level proposed in the Preliminary View would be likely to have a significant impact on RT’s business and a chilling effect on the future exercise of free speech rights.
116. It also said that RT was being “publicly attacked in the UK press”, had subsequently lost sponsorship from British companies and that a substantial financial penalty would “fuel further future attacks by individuals with an agenda to pursue against RT”.
117. We recognise that the penalty must be proportionate taking into account the Licensee’s rights under Article 10 of the Convention. Ofcom has carefully considered the Licensee’s representations regarding the implications of a substantial financial penalty on its business and reputation. However, these factors must nonetheless be balanced against the central objective of deterrence in imposing a penalty as set out in our Penalty Guidelines. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to ensure

⁵⁹ These were: Ariana Television and Radio Network, 6 July 2017, see https://www.ofcom.org.uk/_data/assets/pdf_file/0026/103949/decision-ariana-television-radio-network.pdf; Club TV Limited (Peace TV Urdu), 11 November 2016, see https://www.ofcom.org.uk/_data/assets/pdf_file/0022/96124/Noor-TV.pdf; Mohiuddin Digital Television Limited (Noor TV), 20 December 2016, see https://www.ofcom.org.uk/_data/assets/pdf_file/0022/96124/Noor-TV.pdf; Kanshi Radio, 25 July 2017, see https://www.ofcom.org.uk/_data/assets/pdf_file/0020/105167/kanshi-radio-sanction-decision.pdf; Al Arabiya News, 25 January 2018, see https://www.ofcom.org.uk/_data/assets/pdf_file/0030/109767/Al-Arabiya-sanction.pdf

⁶⁰ We note the licence was formally transferred to the Licensee on 4 May 2012.

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compliance, having regard to the seriousness of the infringement. Ofcom will impose a penalty which is appropriate and proportionate, and which will act as a deterrent, taking into account the size and turnover of the Licensee.

118. In considering what financial penalty is proportionate and will have a deterrent effect, we have taken account of the Licensee's qualifying revenue for the last accounting period and have also taken into account that, based on publicly available information on the Licensee's funding, it receives substantial funding from the Russian Government in order to carry out its operations.⁶¹ For example, in 2015 RT announced on its website that it was allocated "19 billion rubles, or just over 300 million USD, in the just-announced 2016 Federal Budget of the Russian Federation."⁶² In 2017 it was reported that RT's 2017 budget was 18.7 billion rubles (about USD \$323 million).⁶³
119. We noted that the Licensee has not suggested that it could not pay the financial penalty contained in the Preliminary View, nor did it dispute the reported figures of its funding.
120. We consider that in this case, and in accordance with the central objective of our Penalty Guidelines, any financial penalty imposed must be sufficient to have a proper deterrent effect on a Licensee which has access to substantial funding that is not represented by its qualifying revenue, and on other licensees in a similar position. Ofcom placed significant weight on this factor in reaching its Decision on the proportionality of the financial penalty.
121. For all the reasons set out above, Ofcom considers it is proportionate to impose a financial penalty on the Licensee of £200,000.

Revocation of the Licence

122. Section 238 of the 2003 Act provides Ofcom with the power to revoke a TLCS licence where a licensee is failing to comply with a condition of such a licence or a direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.
123. In considering whether to propose the revocation of a licence, Ofcom must have regard to the broadcaster's and the audience's rights under Article 10 of the Convention. We noted that the RT service seeks to provide audiences with a Russian viewpoint on major global events and revoking the licence would mean it would no longer be able to broadcast.
124. Revocation of a licence is the ultimate enforcement action available to Ofcom. A decision to revoke a licence may only be taken by Ofcom if it is satisfied that it is a proportionate response to the Licensee's failure to comply with its licence conditions. A relevant factor for Ofcom to consider in this regard is whether any sanction short of revocation could ensure that the Licensee would, in future, comply with the Code.
125. Taking account of all the relevant factors, it is Ofcom's Decision that, while these seven breaches of Rules 5.1 and/or 5.11 and 5.12 over a six-week period were serious and repeated failures of compliance, in circumstances where the other sanctions discussed at paragraphs 60 to 121 above are sufficient to act as a deterrent against future breaches, revocation would be disproportionate.

Decision

126. In order to achieve Ofcom's central objective of deterrence, we have carefully considered the nature and level of statutory sanction that should be imposed. In doing so, we have taken

⁶¹ See, for example, <https://www.themoscowtimes.com/2016/12/01/rt-channel-gets-additional-12-bln-rubles-a56375>.

⁶² <https://www.rt.com/op-ed/318181-rt-budget-down-msm/>. According to RT this figure was cut by 10% alongside other publicly-funded Russian entities in January 2016.

⁶³ <https://www.nytimes.com/2017/03/08/world/europe/what-is-rt.html>.

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account of the seriousness of the breaches, the Licensee's representations, the Licensee's size and financial position, and relevant precedent cases. We have also had regard to our legal duties, as set out in the Breach Decisions, including the need to ensure that any sanction we impose is proportionate, consistent and targeted only at cases where action is needed.

127. For all the reasons set out above, Ofcom's Decision is that we consider that it is appropriate to impose a statutory sanction and it would be proportionate (i) to impose a financial penalty of £200,000 (payable to HM Paymaster General), and (ii) to direct the Licensee to broadcast a statement of Ofcom's findings in a form and on date(s) to be determined by Ofcom.
128. In Ofcom's view, this sanction is appropriate and proportionate in the circumstances of this case, and should send a clear message of deterrence, both to the Licensee and also to other broadcasters, against any future breaches of a similar nature.

Ofcom
26 July 2019

ANNEX 1: LICENSEE'S COMPLIANCE HISTORY SINCE MAY 2012

Programme	Relevant Code Rule	Nature of the Breach
The Diplomacy Of Defence , Russia Today, 5 February 2012, 17:30, and News , Russia Today, 21 August 2011, 13:01 and 14:06 ⁶⁴	Breach of Rule 5.5 and 5.1 respectively	The first programme was a documentary concerning the NATO and US policy of creating a "missile defence shield" and deploying missiles in Eastern Europe, which included statements that were highly critical of this policy and did not include any views that reflected the viewpoint of NATO or the US Government. The second programme was a news report about the rebel insurgency in Libya, which was not duly impartial nor duly accurate.
News , RT, 12 July 2012, 10:00 ⁶⁵	Breach of Rule 5.1	This news item, which focused on the conflict in Syria, was highly supportive of the Syrian Government and there were no statements that were supportive of, or reflected the viewpoint of, the Syrian opposition or those critical of the Syrian administration.
Syrian Diary , RT, 7 March 2013, 10:30 ⁶⁶	Breach of Rules 5.5 and 5.9	The programme dealt with the conflict in Syria and the response of the international community to the conflict. It was labelled as a "personal view" programme, drawn from the diary of a television news production team who had been reporting from Syria for seven months. The programme failed to maintain due impartiality on a matter of political controversy and a matter relating to current public policy.
News , RT, 5 August 2013, 20:27 ⁶⁷	Breach of Rules 1.3, 1.11 and 2.3	This news report concerning unverified reports of the killing of Kurdish civilians. Footage was shown of three men being doused with flammable liquid, pushed over and then set alight. The material was not suitable for children and was broadcast before the watershed during the school summer holidays in the UK. The violence was not appropriately limited. The material had the potential to cause offence and was not justified by the context.

⁶⁴ These were both published in Broadcast Bulletin 213, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/47371/obb213.pdf. This breach finding related to content broadcast in 2011 and 2012, prior to the transfer of the licence to the Licensee on 4 May 2012, and was recorded against TV Novosti in our Broadcast Bulletin issued in 2012.

⁶⁵ Published in Broadcast Bulletin 217, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/46701/obb217.pdf

⁶⁶ Published in Broadcast Bulletin 244, https://www.ofcom.org.uk/_data/assets/pdf_file/0025/45745/obb244.pdf

⁶⁷ Published in Broadcast Bulletin 241, https://www.ofcom.org.uk/_data/assets/pdf_file/0019/51760/obb241.pdf

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<p>News, RT, 1, 3, 5, 6 March 2014, various times⁶⁸</p>	<p>Breach of Rules 5.1, 5.11 and 5.12</p>	<p>These four news bulletins, which dealt with the situation in Ukraine, did not adequately reflect an appropriately wide range of significant views and give those due weight, including the views of the interim Ukrainian Government in response to the various criticisms and allegations made about it. Ofcom told the Licensee that any further breaches of the due impartiality rules may result in further regulatory action, including consideration of a statutory sanction.</p>
<p>Joystick Warriors, RT, 3 and 4 March 2014, various times pre-watershed⁶⁹</p>	<p>Breach of Rules 1.11, 1.14 and 2.3</p>	<p>This two-part documentary contained a significant number of clips taken from violent video games. We concluded that the violence was not appropriately limited or justified by the context. The programme also included examples of the most offensive language.</p>
<p>News, RT, 22 May 2014, 07:00⁷⁰</p>	<p>Breach of Rules 6.4 and 6.5</p>	<p>This news item was broadcast on the day of the 2014 European Parliamentary Elections just after polling stations were opened. It dealt with election issues, focusing on the success of UKIP in the latest opinion polls and reported on the reaction of various political parties to UKIP's performance in those opinion polls.</p>
<p>The Truthseeker: Media 'Staged' Syria Chem Attack, RT, 23 and 24 March 2014, various times⁷¹</p>	<p>Breach of Rule 2.2</p>	<p>This programme alleged that a <i>"massive public investigation which made some extremely disturbing findings"</i> had found that the BBC had faked footage of a chemical weapons attack in Syria. The Licensee was unable to point to any official investigation or to any firm conclusions that had been published by such an investigation. Ofcom considered that the presentation of materially misleading facts in the programme had the potential to cause harm to viewers, due to the potential harm to audience trust. We directed RT to broadcast a summary of Ofcom's decision as we considered this to be a serious breach. While this was not a statutory sanction, the direction was intended to have an equivalent deterrent effect against future misconduct given the serious nature of the breach concerned.</p>
<p>The Truthseeker: Media 'Staged' Syria Chem Attack RT, 23 and 24 March 2014, various times⁷²</p>	<p>Breach of Rule 7.1</p>	<p>Ofcom upheld a complaint of unjust or unfair treatment made by the BBC in relation to this programme. The BBC complained to Ofcom that the</p>

⁶⁸ Published in Broadcast Bulletin 266, https://www.ofcom.org.uk/data/assets/pdf_file/0025/47635/obb266.pdf

⁶⁹ Published in Broadcast Bulletin 253, https://www.ofcom.org.uk/data/assets/pdf_file/0012/51411/obb253.pdf

⁷⁰ Published in Broadcast Bulletin 261, https://www.ofcom.org.uk/data/assets/pdf_file/0020/50069/obb261.pdf

⁷¹ Published in Broadcast Bulletin, 288, https://www.ofcom.org.uk/data/assets/pdf_file/0017/50507/issue_288.pdf

⁷² Published in Broadcast Bulletin 288, https://www.ofcom.org.uk/data/assets/pdf_file/0017/50507/issue_288.pdf

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		programme included a number of unsubstantiated and untrue allegations, including that the BBC had fabricated an atrocity in reports on Syria and had digitally altered the words spoken by an interviewee. The Licensee failed to take reasonable care to satisfy itself that material about, or in relation to, the BBC with regard to these allegations were not presented in a way which was unfair to the BBC. In addition, the BBC was not afforded an appropriate and timely opportunity to respond to the allegations made about it in the programme nor was its position on these matters fairly represented.
The Truthseeker: Genocide of Eastern Ukraine , RT Europe ⁷³ , 13 and 14 July 2014, various times ⁷⁴	Breach of Rule 5.5	This programme was concerned with the conflict in eastern Ukraine and alleged the Ukrainian Government and its supporters had a policy of genocide against the Russian-speaking population in eastern Ukraine. The programme made very serious accusations about atrocities being committed by the government and its supporters. The programme dealt with matters of political controversy and we concluded that RT failed to preserve due impartiality in its presentation of these issues, noting that many of the allegations were presented with little or no counterbalance or objectivity. Ofcom had serious concerns that the programme included grave allegations that did not appear to be supported by the sources the Licensee had relied upon. We directed RT to broadcast a summary of Ofcom’s decision as we considered this to be a serious breach. While this was not a statutory sanction, the direction was intended to have an equivalent deterrent effect against future misconduct given the serious nature of the breach concerned.
Ukraine’s Refugees , RT, 18, 19, 20 July 2014, various times ⁷⁵	Breach of Rule 5.5	This programme, which featured a number of Ukrainian refugees describing their personal experiences of the conflict in eastern Ukraine, was not duly impartial. The programme alleged various atrocities had been committed by the Ukrainian Government, including murder, torture and rape, and only reflected alternative viewpoints in a very limited way.
Going Underground , RT, 5 and 23 March 2016, 14:00 ⁷⁶	Breach of Rule 5.5	These two programmes, which heavily criticised the policies and actions of the Turkish Government

⁷³ This was a service principally aimed at viewers on the European mainland. Although the Licensee still holds a licence for the service our information is that this service has ceased to broadcast.

⁷⁴ Published in Broadcast Bulletin 288, https://www.ofcom.org.uk/data/assets/pdf_file/0017/50507/issue_288.pdf

⁷⁵ Published in Broadcast Bulletin 288, https://www.ofcom.org.uk/data/assets/pdf_file/0017/50507/issue_288.pdf

⁷⁶ Published in Broadcast Bulletin 308, https://www.ofcom.org.uk/data/assets/pdf_file/0019/46621/issue_308.pdf

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		towards the Kurdish minority within its territory, and towards ISIS, were not duly impartial.
Crosstalk , RT, 11 July 2016, 12:30 ⁷⁷	Breach of Rule 5.5	The programme’s discussion about the role of NATO was not duly impartial.
The Alex Salmond Show , RT, 16 November 2017, 07:30 ⁷⁸	Breach of Rule 2.2	Four of the six tweets and emails read out during the programme were sent by people connected either directly or indirectly with the production of the programme, or to Alex Salmond in some way. The failure to disclose this information meant that viewers were materially misled.

⁷⁷ Published in Broadcast and On Demand Bulletin 319, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/96012/Issue-319-of-Ofcoms-Broadcast-and-On-Demand-Bulletin,-to-be-published-on-19-December-2016.pdf

⁷⁸ Published in Broadcast and On Demand Bulletin 358, https://www.ofcom.org.uk/_data/assets/pdf_file/0020/116048/Issue-358-Broadcast-On-Demand-Bulletin.pdf

ANNEX 2: PRECEDENTS

Previous sanctions relating to breaches of due impartiality requirements

Sanction Decision	Breaches of Rules of the Code	Sanction	
31 July 2007, Islam Channel Ltd⁷⁹	Rules 5.5, 5.12, 6.6, 6.8, 6.9 (and Licence Condition 11)	£30,000 financial penalty	During the election period of the local elections in 2006, a number of episodes of two current affairs series were presented, at times, by candidates who were standing in the local elections. Some of these programmes also failed to treat matters of political and industrial controversy and major matters relating to current public policy with due impartiality. These breaches were very serious given: their sustained and repeated nature; the fact that the breaches occurred during an election period in programmes whose presenters were themselves candidates in those elections; and the relevant rules breached are designed to help secure the integrity of the democratic process and the public's trust in that integrity. The breaches in this case were a direct result of management and compliance failures and took place despite considerable guidance and training given by Ofcom to the licensee. These were the first breaches Ofcom had recorded against Islam Channel Ltd. However, following concerns that Ofcom had had about a programme broadcast in July 2005, Ofcom had entered into detailed correspondence with Islam Channel Ltd about the due impartiality requirements of the Code. In 2006, Ofcom ran a compliance workshop for Islam Channel Ltd that specifically addressed issues relating to due impartiality. Ofcom took these matters into account when considering the imposition of this statutory sanction.
8 December 2008, Talksport Ltd⁸⁰	Rule 6.1	£20,000 financial penalty; direction to broadcast a statement of Ofcom's findings	This case concerned the broadcast of <i>The James Whale Show</i> during which Mr Whale made a number of comments criticising the Labour candidate for the 2008 London Mayoral Elections and directly and repeatedly encouraging listeners to vote for the Conservative candidate. Alternative views about

⁷⁹ https://www.ofcom.org.uk/data/assets/pdf_file/0019/60562/islamchannel.pdf

⁸⁰ https://www.ofcom.org.uk/data/assets/pdf_file/0018/57105/talksport.pdf

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			<p>the London mayoral candidacy and the Labour candidate’s record were not represented. The contravention had the potential to cause considerable harm to the democratic process. The breach was particularly serious because it involved an experienced presenter who used his programme in a deliberate and conscious way to promote one particular candidate; the programme was broadcast in the election period close to the polling day with a greater potential to influence the voting intentions of listeners; it was the second time within eight months that the station had seriously breached the Code’s due impartiality requirements; and the Licensee could, and should, have taken more action to ensure more robust compliance.</p>
<p>8 May 2012, Dama (Liverpool) Limited (Aden Live)⁸¹</p>	<p>Rule 2.4, 5.4, 5.11 and 5.12</p>	<p>£10,000 financial penalty; direction to broadcast a statement of Ofcom’s findings</p>	<p>Regarding the breaches of the due impartiality rules, the content and views expressed in the broadcasts were almost entirely in support of the Southern Movement and the independence of South Yemen, and critical of the Government of Yemen. In addition, the views and opinions of the Licensee on the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen (a matter of major political controversy and a major matter relating to current public policy) were expressed in the output of the channel, in breach of Rule 5.4. The breaches were serious because: the licensee and its senior management sought to use the channel as a platform to present their own views; and they occurred in programmes broadcast at various times on the channel, not just in an isolated programme or series of programmes. Although this was the first time the Licensee had been found in breach of the Code, the breaches indicated poor compliance management by the Licensee and also a clear disregard for the due impartiality requirements, which the Licensee had previously and explicitly confirmed to Ofcom that it was aware of and would comply with.</p>

⁸¹ http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden_Live_sanctions_decisio1.pdf

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<p>4 January 2013, Al Mustakillah Television Limited⁸²</p>	<p>Rules 5.4, 5.5, 5.11, 5.12 and 6.1</p>	<p>£25,000 financial penalty</p>	<p>This case concerned two programmes in which the sole director of the Licensee directly promoted the interests and policies of the Popular Petition for Freedom, Justice and Development in Tunisia, a political manifesto written by him. The programmes were broadcast in the run up to and immediately after the 2012 Tunisian General Election. The breaches of the relevant rules during the election period of a general election were serious, and particularly so given the comments were numerous and contained in two lengthy programmes. The director of the licensee clearly used his position to influence the editorial content of the service. Viewers were provided with a one-sided view of matters, and major matters, of political controversy and the viewpoints of, for example, other Tunisian political parties or their supporters were not presented. The content and views therefore had the potential to influence the voting intentions of viewers and thus was potentially harmful to the integrity of the democratic process. The breaches, although they were the first recorded against Al Mustakillah Television Limited, taken together, underlined the Licensee’s failure to understand and ensure compliance and that its compliance arrangements were systemically ineffective.</p>
<p>5 July 2013, DM Digital Television Limited⁸³</p>	<p>Rules 5.4 and 5.5</p>	<p>£20,000 financial penalty; direction to broadcast a statement of Ofcom’s findings</p>	<p>The two programmes included coverage of a conference, held in the UK, of the Pakistan Overseas Alliance Forum. In relation to Rule 5.4, the programmes included footage of the then Chief Executive and Chairman of DM Digital Television Ltd expressing his views on matters of political and industrial controversy and matters relating to current public policy. With respect to Rule 5.5, the first programme included statements that were highly critical of the MQM (at the time the governing political party in the Pakistani province of Sindh). The second programme included highly critical statements about NATO and the US Government’s policies and actions towards Afghanistan and Pakistan. The breaches were serious because they showed</p>

⁸²<https://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Mustakillah-TV.pdf>

⁸³<https://webarchive.nationalarchives.gov.uk/20160703015525/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/DM-digital-POAF.pdf>

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			<p>that the due impartiality of the service had been compromised by the views of the licence holder. The breaches were repeated (and in the case of Rule 5.5, occurred in a sustained manner over the course of two three hour programmes). Further, the breaches highlighted the Licensee’s wholly insufficient compliance arrangements and clear lack of understanding about the due impartiality requirements. These breaches also followed a considerable history of contraventions by the Licensee between 2008 and 2012, with two of these breaches considered serious enough to warrant the imposition of a sanction: i) in 2008, a financial penalty of £15,000 and a direction to broadcast a statement of Ofcom’s findings for breaches of Rule 2.1, Rule 9.4, Rule 9.5, Rule 9.6, and Rule 9.7 regarding a programme in which a Professor made potentially dangerous claims regarding the successful use of his homeopathic medicines to treat and cure serious medical conditions and ii) in 2010, a financial penalty of £17,500 and a direction to broadcast a statement of Ofcom’s findings for breaches of the BCAP Code concerning the broadcast of an advertisement offering advice to individuals based on faith-based practices for personal problems which was likely to exploit vulnerable viewers.</p>
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Previous sanctions relating to breaches of other rules in the Code since December 2015

Sanction Decision	Breaches of Rules of the Code	Sanction	
11 November 2016, Club TV Limited (Peace TV Urdu)⁸⁴	Rules 2.1 and 2.3	£65,000 financial penalty; direction to broadcast a statement of Ofcom’s findings	The programmes contained numerous examples of overwhelmingly negative and stereotypical references to Jewish people, which could be interpreted as spreading anti-Semitism and were a form of hate speech. These statements were also delivered by a person who holds a position of authority and respect within the Muslim community (a religious scholar). Further, the presenter spoke uninterrupted and there were no views or statements in the programmes which challenged or otherwise softened the

⁸⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf

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			<p>considerable level of potential offence. The statements in question had the clear potential to cause harm by portraying Jewish people in highly negative terms. The broadcast of anti-Semitic hate speech in pre-recorded content in two separate programmes broadcast on consecutive days indicated a failure of compliance procedures. The Licensee did not have a history of contraventions prior to these breaches. However, Peace TV Urdu’s sister channel, Peace TV, which shared the same central compliance function as Peace TV Urdu and was ultimately owned by the same parent company had twice been found in breach of the rules relating to harm and offence (on one occasion, Rules 2.3 and 2.4 and on the second occasion, Rule 2.3).</p>
<p>20 December 2016, Mohiuddin Digital Television Limited (Noor TV)⁸⁵</p>	<p>Rules 2.1 and 2.3</p>	<p>£75,000 financial penalty; direction to broadcast a statement of Ofcom’s findings</p>	<p>The programme included a clear statement during a religious sermon that religious obedience within the Islamic faith could be demonstrated through murder of Jewish people, which had the potential to be interpreted as spreading anti-Semitism and were a form of hate speech. The statements were also delivered by a person who held a position of authority and respect within the Muslim community (a religious scholar). Further, the religious scholar spoke uninterrupted and there were no views or statements in the programmes which challenged or otherwise softened the considerable level of potential offence. Ofcom found that the statements in question had the clear potential to cause harm as well as being offensive. Ofcom further found that the broadcast of anti-Semitic hate speech in pre-recorded content indicated a lack of sufficiently robust compliance procedures and a failure of compliance oversight. While the Licensee did not have a history of contraventions of the Code, Ofcom took into account that the previous holder of the Noor TV licence had twice been subject to statutory sanctions for serious breaches of the Code: i) in 2011, a financial penalty of £75,000 and a direction to broadcast a statement of Ofcom’s findings for breaches of Rules 2.1, 2.2, 4.6, 10.3 and 10.15 regarding a programme in which a presenter took calls from viewers who were asked to donate money to the Noor TV channel in return for prayer or the receipt of a “special gift” of earth from the tomb of Prophet Mohammed and ii) in 2012, a financial penalty of</p>

⁸⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0022/96124/Noor-TV.pdf

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			£85,000 and a direction to broadcast a statement of Ofcom’s findings for breaches of Rules 3.1 and 4.1 regarding a programme in which the presenter made various statements which made clear that it was acceptable or the duty of a Muslim to murder any person thought to have shown disrespect to the Prophet Muhammed.
6 July 2017, Ariana Television and Radio Network ⁸⁶	Rules 2.3, 3.1 and 3.2	£200,000 financial penalty; direction to broadcast a statement of Ofcom’s findings	The relevant programme was a news item that featured a video of an individual ⁸⁷ who made various statements describing in highly positive and graphic terms his and ISIL’s intentions to carry out acts of extreme violence against the German population. His last statement contained a direct call to action to members of the Muslim community to join ISIL and an indirect call to the Muslim community to commit violence, up to and including murder, against members of the police and the army in the West. Ofcom found these breaches to be particularly serious and the content had the clear potential to cause harm. Ofcom had regard to concerns about ISIL’s use of propaganda to radicalise and recruit citizens of the UK and elsewhere. The statements had the clear potential to influence impressionable viewers by encouraging serious crime, including murder, and/or leading to disorder in relation to members of the public, the police and the army. The licensee broadcast a prolonged example of highly offensive hate speech in a news bulletin with no surrounding content that sought to challenge, soften or otherwise contextualise highly extreme views. Although the Licensee had not previously been found in breach of the Code, Ofcom considered the broadcast of this content indicated a failure of compliance oversight by the licensee, and a lack of sufficiently robust compliance procedures on the part of the licensee.
25 July 2017, Kanshi Radio ⁸⁸	Rules 2.1, 2.3, 3.2 and 3.3	£17,500 financial penalty; direction to broadcast a statement of Ofcom’s findings	A song was broadcast in Punjabi, which included lyrics that contained a number of aggressively pejorative references to the Muslim community and Muslim women in particular. Ofcom considered that the lyrics and surrounding content of the song constituted a violent and menacing message, from an extreme Sikh perspective, which promoted and justified hatred towards Muslims and Muslim women,

⁸⁶ <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins/content-sanctions-adjudications/ariana-sanction>

⁸⁷ This individual, Muhammad Riyad, went on to carry out an attack on a train in Germany where he injured five people.

⁸⁸ https://www.ofcom.org.uk/_data/assets/pdf_file/0020/105167/kanshi-radio-sanction-decision.pdf

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			<p>thereby constituting hate speech. The song was broadcast in Punjabi and broadcast on a channel which targets the Asian Punjabi speaking community in the UK, and Ofcom considered that the content had the potential to increase tensions between the Sikh and Muslim communities. Ofcom found the content taken as a whole had the potential to cause harm and be extremely offensive to listeners. The song was broadcast on two occasions as part of pre-recorded content. Although this was the first time Kanshi Radio had been found in breach of the Code, Ofcom considered the broadcast indicated a failure on the part of the licensee to have sufficiently robust compliance procedures in place.</p>
<p>25 January 2018, Al Arabiya News⁸⁹</p>	<p>Rules 7.1 and 8.1</p>	<p>£120,000 financial penalty; direction to broadcast a statement of Ofcom’s findings; direction to not repeat the content</p>	<p>Footage was broadcast of an individual (Mr Mashaima) in a private room while detained in prison, in circumstances where the Bahrain Independent Commission Inquiry had recently published its findings that certain individuals, including Mr Mashaima, had made confessions to the Bahraini authorities under torture. Ofcom found Mr Mashaima had a legitimate expectation of privacy in the footage and that the degree of harm caused to him by the breach was very serious. Factors which contributed to the seriousness of the breaches were that the allegations made against Mr Mashaima were, at the time of filming, still subject to re-trial and appeal hearings; the licensee did not take any steps to obtain Mr Mashaima’s informed consent; given the high publicity of the case, the licensee was aware or ought to have been aware at the date of broadcast that the footage may not have accurately or fairly represented Mr Mashaima’s account of events; and despite being so aware, the licensee did not take any steps to verify the veracity of the footage with Mr Mashaima. Given the extremely sensitive circumstances, the licensee did not secure Mr Mashaima’s consent to film him nor did the public interest warrant the broadcast of this material. Although the Licensee had not previously been found in breach of the Code, Ofcom considered these breaches to be sufficiently serious to warrant the imposition of a sanction.</p>

⁸⁹ <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins/content-sanctions-adjudications/decision-al-arabiya-news>