

Decision by Ofcom's Sanction Panel – ESTV Ltd

Type of case	Broadcast Standards
Outcome	Ofcom's Sanction Panel has decided not to impose any further sanction on ESTV Ltd for broadcasting an interview with David Icke on its local television channel London Live which included potentially harmful content about the coronavirus pandemic. ESTV Ltd has already been directed to broadcast a summary of Ofcom's findings.
Programme	London Real: Covid-19
Service	London Live
Date & time	8 April 2020, 22:00
Category	Harm
Summary	This programme featured potentially harmful statements about the Coronavirus pandemic and adequate protection was not provided to viewers. Breach of Rule 2.1 of the Broadcasting Code and a direction to broadcast a statement of Ofcom's findings in this case.

London Live is a local television channel serving the London area. The licence for London Live is held by ESTV Limited ("ESTV" or "the Licensee"). *London Real*¹ is a talk show featuring interviews hosted by Brian Rose, broadcast on Thursdays at 22:00.

¹ The programme is produced by London Real, a media company founded by Brian Rose.

This decision related to an episode of *London Real* in which Brian Rose interviewed the conspiracy theorist David Icke about his views on the Coronavirus pandemic.

Ofcom's decision published on 20 April 2020 in the [Broadcast and On Demand Bulletin](#), found this programme featured potentially harmful statements about the Coronavirus pandemic and failed to protect viewers from that harm, in breach of Rule 2.1 of the Broadcasting Code:

Rule 2.1: "Generally accepted standards must be applied to the content of television and radio services...so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material".

Ofcom found that this programme had the potential to cause significant harm to viewers by giving David Icke a platform for some 80 minutes, to put forward views which cast doubt on the motivation behind mainstream health advice being given by governments and health organisations to protect the public from the Coronavirus outbreak. In particular, David Icke claimed that the public health advice on social distancing was being given to undermine the world economy and establish a new social order controlled by a cult, rather than to curb the spread of the virus. We considered this claim, put forward throughout the programme without evidence or sufficient challenge, had the potential to undermine confidence in the motives of public authorities and in turn discourage viewers from following the Government's social distancing rules. Given the prevalence of Coronavirus in London at the time of broadcast, we also considered the audience was likely to have been particularly vulnerable to any misleading or unsubstantiated claims that could be potentially harmful to them.

Given the serious breach in this case and in order to remedy the potential harm caused as quickly as possible, Ofcom decided that it was appropriate to direct the Licensee to broadcast a summary of Ofcom's Decision. ESTV broadcast this statement on 22 April 2020 at 22:00 as directed. The licensee fully cooperated with Ofcom on the expedited timelines we implemented during this investigation to take account of the seriousness of cases relating to the Coronavirus pandemic.

Ofcom subsequently considered whether imposing any further sanction in addition to the direction would be appropriate in this case.

We took into account the steps the Licensee had taken in an attempt to ensure the programme complied with the Code. These included: editing the original full-length interview to remove content it considered to be medical advice or contrary to government guidance; removing content it considered did not reflect the increased understanding of the scientific and medical community of the virus since the recording of the interview; and displaying a full screen slate disclaimer before each programme segment which directed viewers to the UK Government's webpage about the Coronavirus. We also acknowledged that the Licensee stated it had "taken on board Ofcom's findings" on the programme and "reviewed and updated" its compliance systems.

ESTV said the decision to broadcast this interview was a matter of editorial judgment. It said Ofcom's view that there was insufficient context and challenge to David Icke's theories in the programme was, to some extent, "subjective" and "of an editorial nature". It said that such decisions were fine judgments and when making them, freedom of expression was "of paramount importance".

In reaching our decision on whether to impose any further sanction in this case, Ofcom took careful account of the fundamental importance of freedom of expression. We acknowledged that the programme was broadcast during a period in which the UK Government's lockdown policy to encourage social distancing in response to the Coronavirus crisis has led to an unprecedented restriction on public freedoms in peacetime. Given the high level of public concern about the Coronavirus pandemic, it is clearly legitimate and in the public interest for broadcasters to question public policy and the rationale behind it and to robustly hold the Government to account, but in doing so they must ensure compliance with the Code. Our rules do not prohibit the broadcast of controversial or outlandish views, such as those of David Icke. However, broadcasters must ensure that such views are properly contextualised so as to comply with the Code.

Ofcom's Code and [published guidance](#) clearly sets out to broadcasters that they are required to provide adequate protection to viewers from potentially harmful material, and states that there are various methods broadcasters can consider to ensure this. While it is an editorial decision for the individual broadcaster as to how adequate protection might be achieved, all broadcasters must ensure the material they broadcast complies with the Code and protects audiences from harm. This is particularly the case during a health crisis which is unprecedented in modern times, when audiences may be vulnerable to harmful claims.

Ofcom considers the imposition of any form of sanction on a broadcaster a serious matter as it interferes with the broadcaster's fundamental right to freedom of expression. A direction to broadcast a statement of our findings can quickly remedy potential harm to viewers by highlighting that a broadcast was in breach of the Code and providing the service's viewers with a summary of our decision. We also consider that, as broadcasting a statement of our findings is an imposition on a licensee's airtime, it can act as a deterrent to prevent future breaches of the Code.

Taking account of all the above, Ofcom concluded that the direction it had already imposed on ESTV to broadcast a statement of its findings was sufficient in remedying potentially significant harm to viewers and that any further sanction would not be appropriate in this case.

The [full sanction decision](#) to issue a direction to ESTV was published on 20 April 2020.