

Decision by the Broadcasting Sanctions Committee

Press TV Limited for breaches of the Ofcom Broadcasting Code

Consideration of Sanction against:	Press TV Limited (“Press TV” or “the Licensee”) in respect of its service Press TV (TLCS-1211).
For:	<p>Breach of Rules 7.1 and 8.1 of Ofcom’s Broadcasting Code (“the Code”):</p> <p>Rule 7.1: Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes; and</p> <p>Rules 8.1: Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.</p>
On:	1 July 2009
Decision:	<p>Direction to broadcast a summary of Ofcom’s Adjudication;</p> <p>Direction not to repeat the material found in breach on any future occasion; and</p> <p>To impose a financial penalty (payable to HM Paymaster General) of £100,000.</p>

Background summary

1. Press TV is an Iranian news channel, broadcasting in English on the Sky platform on channel number 515. This channel is operated under a Television Licensable Content Service ("TLCS") licence issued by Ofcom under section 13 of the Broadcasting Act 1990 ("the 1990 Act").
2. On 1 July 2009, Press TV broadcast a news item that reported an attack that had taken place on 15 June 2009 on a Basij base in Tehran by the supporters of the unsuccessful Iranian presidential candidate, Mr Hossein Mousavi, during a post-election demonstration. The item contained images of demonstrators throwing stones and what appeared to be petrol bombs at the buildings. The programme's presenter commented that the reporting of the demonstration by some TV news channels had been biased by not showing the attacks on the base by the demonstrators. Footage obtained by Press TV of demonstrators attacking the base and footage taken from a *Channel 4 News* report of the security forces shooting at the demonstrators from the roof of the base were shown together by way of comparison. The report then showed interview footage of Mr Maziar Bahari in which he said he had sent a report about the attack against the base to *Channel 4 News* and to *Newsweek* magazine.
3. Simons, Muirhead and Burton Solicitors complained to Ofcom on behalf of Mr Bahari about unfair treatment and unwarranted infringement of privacy in the making and broadcast of a news item broadcast by Press TV on 1 July 2009.
4. In Ofcom's Finding published in Broadcast Bulletin 182 on 23 May 2011, the Ofcom Executive found that the programme had breached Rules 7.1 and 8.1 of the Code.
5. In summary, Ofcom found that:
 - Press TV's presentation of Mr Bahari in the programme broadcast was unfair in that it omitted material facts and was placed in a context in which inferences adverse to Mr Bahari could be drawn.
 - Press TV did not obtain Mr Bahari's consent to his participation in the programme and this contributed to the overall unfairness to Mr Bahari in the item broadcast.
 - Press TV's filming and broadcast of the interview without Mr Bahari's consent while he was in a sensitive situation and vulnerable state was an unwarranted infringement of Mr Bahari's privacy.
6. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in broadcasting or other licence-related cases ("the Sanctions Procedures")¹, breaches of Rules 7.1 and 8.1 of the Code were referred to the Broadcasting Sanctions Committee ("the Committee").

Summary of Committee's Decisions

7. The Committee held a hearing on 5 July 2011 at which representatives of the Licensee made oral representations.

¹ This Sanctions Adjudication was made under the Sanctions Procedures which were in force until 31 May 2011. Revised sanctions procedures have been in force since 1 June 2011.

8. After considering all of the evidence and representations made to it, the Committee decided that these breaches of Rules 7.1 and 8.1 of the Code were sufficiently serious to warrant the imposition of a financial penalty. The Committee then also considered the level of the fine to be imposed in accordance with Ofcom's Penalty Guidelines².
9. In summary, the Committee considered that the case represented serious and deliberate breaches of the Code because of the vulnerable circumstances of the complainant Mr Bahari, the lack of steps to obtain his informed consent and the effect the broadcast had on him.
10. Having regard to the seriousness of the breaches and with regard to Ofcom's Penalty Guidelines, the Committee decided it was appropriate and proportionate in the circumstances to impose a financial penalty (payable to HM Paymaster General) of **£100,000**; to direct the Licensee not to repeat the material found in breach on any future occasion; and to require the Licensee to broadcast a statement of Ofcom's findings on its service Press TV in a form to be determined.

Legal Framework

The Communications Act 2003

11. Ofcom has a duty under section 319 of the Communications Act 2003 ("the Act") to set standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives. The standards objectives are set out in section 319(2) of the Act. They include that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)).
12. In discharging its functions, Ofcom's principal duties are to further the interests of citizens in relation to communications matters and the interests of consumers (section 3(1)) and to secure a number of other matters. These include the application in the case of all television and radio services of standards that provide adequate protection to members of the public from both:
 - unfair treatment in programmes included in such services (section 3(2)(f)(i)); and
 - unwarranted infringements of privacy resulting from activities carried on for the purposes of such services (section 3(2)(f)(ii)).
13. In performing these duties, Ofcom is also required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and where relevant, a number of other considerations including:
 - the need to secure that the application in the case of television and radio services of standards relating to unfair treatment in programmes and

² This Sanctions Adjudication was made under the Penalty Guidelines which were in force until 12 June 2011 as they were the basis for the Provisional Decision upon which the Licensee made its representations. Revised Penalty Guidelines have been in force since 13 June 2011.

unwarranted infringements of privacy is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)); and

- the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3(4)(h)).
14. Under section 110(1) of the Broadcasting Act 1996 (as amended) (“the 1996 Act”), Ofcom has a duty to consider and adjudicate on complaints which relate:
 - (a) to unjust or unfair treatment in programmes; or
 - (b) to unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.
 15. These complaints are collectively referred to as “fairness complaints” by virtue of section 110(4) of the 1996 Act.

The Human Rights Act 1998

16. Under section 6 of the Human Rights Act 1998, there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (“the Convention”).
17. Article 8 of the Convention provides for a right to respect for one’s “private and family life, his home and his correspondence”, subject to certain restrictions that are “in accordance with law” and “necessary in a democratic society”. Article 8(2) of the Convention states that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
18. Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to “impart information and ideas” and also the audience’s “right to receive information and ideas without interference by public authority”. Such rights may only be restricted if the restrictions are: “prescribed in law and 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) of the Convention).
19. Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights 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.

The Code

20. Section 107(1) of the 1996 Act sets out Ofcom’s duty to draw up a code giving guidance in connection with the avoidance of unjust or unfair treatment in programmes and unwarranted infringements of privacy.
21. Standards set by Ofcom in accordance with section 319 of the Act and section 107 of the 1996 Act are set out in the Code.

22. Accompanying Guidance Notes to each section of the Code are published and from time to time updated, on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
23. The relevant Code rules in this case are set out in full on the first page of this Decision.

Remedial action and penalties

24. Under section 325 of the Act, every programme service licensed under the Broadcasting Act 1990 or 1996 (“a Broadcasting Act Licence”) includes conditions for securing that the standards set by Ofcom under section 319 are observed. If Ofcom is satisfied that the holder of a Broadcasting Act Licence has contravened a condition of the Licence, it may impose the sanctions set out below where the relevant licence is a Television Licensable Content Service (TLCS) licence.
25. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or statement of findings (or both) or not to repeat a programme on contravention of a licence condition.
26. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence of a maximum of whichever is the greater of £250,000 and 5 per cent of its qualifying revenue on each occasion that a breach of the licence has occurred (whether as a result of a breach of the Code or another licence condition). Ofcom may therefore impose a financial penalty on each occasion that a programme has breached the Code.
27. 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.

Compliance history

28. Press TV had not been found to have breached Rules 7.1 or 8.1 before this case.
29. On three occasions the Licensee had been found to have breached Rules contained in Section 5 of the Code: Due impartiality and Due Accuracy and Undue Prominence of Views and Opinions.
30. In Broadcast Bulletin 139 published on 3 August 2009, Ofcom found the programmes *Comment* and *The Real Deal*, broadcast in January 2009 to have breached Rules 5.11 and 5.12.
31. In Broadcast Bulletin 163 published on 2 August 2010, Ofcom found the programme *Remember Palestine* broadcast on 5 January 2010 to have breached Rule 5.5.
32. In Broadcast Bulletin 170 published 22 November 2010, Ofcom found that the programme *Comment* broadcast on 18 February 2010, 27 May 2010, 3 June 2010, 10 June 2010, 17 June 2010 and 24 June 2010 breached Rules 5.5 and 5.9.

Ongoing compliance issues

33. On 17 May 2011, the Adjudication recording the breaches which are the subject of this case was sent to the Licensee.

34. On 25 May 2011, Press TV broadcast a news report which included footage of the interview conducted by Mr Bahari in prison and an edited version of an interview of Mr Bahari with BBC Persia after his release.
35. Press TV also broadcast a news report on 26 May 2011 which re-broadcast footage that had already been found to have contravened Rule 8.1 of the Code, namely, the footage of Mr Bahari giving an interview whilst in prison.
36. Press TV directed viewers to the website www.presstv.ir, which it described repeatedly on air as “our web site”. On this site, articles were published about the Bahari case, some of which criticised Ofcom’s finding regarding Mr Bahari.
37. The Executive wrote to the Licensee on five occasions regarding its conduct after it was informed of Ofcom’s final adjudication on 17 May 2011 and received five responses from the Licensee.

Code breaches

38. On 1 July 2009, Press TV broadcast a news item that reported an attack that had taken place on 15 June 2009 on a Basij base in Tehran by the supporters of the unsuccessful Iranian presidential candidate, Mr Hossein Mousavi, during a post-election demonstration. The item contained images of demonstrators throwing stones and what appeared to be petrol bombs at the buildings. The programme’s presenter commented that the reporting of the demonstration by some TV news channels had been biased by not showing the attacks on the base by the demonstrators. Footage obtained by Press TV of demonstrators attacking the base and footage taken from the *Channel 4 News* report of the security forces shooting at the demonstrators from the roof of the base were shown together by way of comparison. The report then showed interview footage of Mr Maziar Bahari in which he said he had sent a report about the attack against the base to *Channel 4 News* and to *Newsweek* magazine.
39. In Ofcom’s Finding published in Broadcast Bulletin 182 on 23 May 2011, the Ofcom Executive found that the programme had breached Rules 7.1 and 8.1 of the Code.
40. In summary, Ofcom found that:
 - Press TV’s presentation of Mr Bahari in the programme broadcast was unfair in that it omitted material facts and was placed in a context in which inferences adverse to Mr Bahari could be drawn.
 - Press TV did not obtain Mr Bahari’s consent to his participation in the programme and this contributed to the overall unfairness to Mr Bahari in the item broadcast.
 - Press TV’s filming and broadcast of the interview without Mr Bahari’s consent while he was in a sensitive situation and vulnerable state was an unwarranted infringement of Mr Bahari’s privacy.

Referral by the Ofcom Executive to the Chair of the Committee

41. The consideration for sanction follows a decision by the Ofcom Executive that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a licence requirement. A case is then referred to the Chair of the Committee for the provisional consideration of the imposition of a statutory sanction.

42. The Ofcom Executive informed the Chair of the Committee of its recommendation that the breaches of the Code were sufficiently serious to warrant a referral to the Committee.

Referral to the Broadcasting Sanctions Committee

43. The Chair of the Committee chose to refer the breaches to the Committee for consideration and prepared a Provisional Decision setting out his view on whether sanctions should be imposed and the level of those sanctions. The Provisional Decision was sent to the Licensee on 7 June 2011 and the Licensee was invited to make written representations on the Provisional Decision in advance of the hearing.

The Licensee's Written Representations in respect of the Provisional Decision

44. The Licensee submitted written representations on the Provisional Decision reached by the Chair of the Committee.

45. In summary, the Licensee considered that Ofcom had failed to uphold its duty as an impartial regulator with regard to the following:

- Ofcom accepted Mr Bahari's unreasonable excuses for delay in filing a late complaint.
- Ofcom altered the filing date of Mr Bahari's complaint in order to avoid new procedural rules that shortened the time-frame within which new complaints have to be filed; and
- Ofcom chose to ignore Mr Bahari's status as a convicted fugitive from [Iranian] law.

46. Further, the Licensee stated that Ofcom accepted Mr Bahari's unsubstantiated claims on blind faith, and played the role of his advocate by making arguments on his behalf while rejecting the Licensee's position even after Mr Bahari's own attorneys conceded the Licensee's points. In particular the Licensee stated that:

- There was no invasion of privacy because Mr Bahari was a public figure and his detention was a matter of public knowledge. This raised the question of whether viewers would in fact have been denied knowledge of material facts (e.g. his detention) in viewing the footage.
- There was nothing in the broadcast that was unfair to Mr Bahari, but Ofcom, through the use of suppositions and conjecture, concluded Mr Bahari may have possibly been cast in a negative light in viewers' minds, despite the fact that no viewer actually ever complained to the regulator regarding the broadcast.
- Press TV broadcast Mr Bahari saying that he sent footage of an attack, something that he has repeatedly, publicly and proudly proclaimed on numerous occasions since returning to the UK.
- The sentence broadcast was a statement of fact which the Licensee claimed Mr Bahari had subsequently acknowledged as true, and he had been unable to demonstrate that the broadcast of it in any way actually caused him any

harm. It noted that Ofcom concluded that Mr Bahari was 'forced under duress' to make the 10-second statement even though the footage does not show him in a state of duress, and it was a statement that in no way cast Mr Bahari in a negative light nor had any negative consequences for him.

- The broadcast did not show that Mr Bahari had provided selective footage or had been complicit in working with the Western media.

47. The Licensee also stated that Ofcom:

- found it in breach of the Code without going through the investigatory process or giving it an appropriate opportunity to respond;
- launches investigations against it without receiving a complaint from a British viewer;
- disregards its complaints against other Ofcom licensed broadcasters;
- persecutes [it] for broadcasting the truth, while ignoring and failing to investigate other British news programmes that intentionally have misled viewers regarding events taking place in Iran; and
- fails to investigate other British news programmes broadcasting rape confessions from captured soldiers, but persecutes it for broadcasting one sentence from Mr Bahari in which he simply confirms that he was doing his job as a journalist by sending footage of protesters attacking a security base to his employers.

48. The Licensee also made specific representations on the content of the Provisional Decision.

49. The Licensee noted that the Provisional Decision stated that Ofcom has found Press TV in breach of the Code on three separate occasions. The Licensee said that "it is noteworthy that all three cases involved Press TV's coverage of these events of the Israeli-Palestinian issue. We concede that our coverage of these events differs from other mainstream British media, particularly the BBC, which have been proven with both empirical studies and anecdotal statements from former journalists, to be disproportionately biased towards the Israeli viewpoint." The Licensee goes on to state that "...Press TV's attempts to provide balance coverage by also giving voice to the Palestinian perspective is contrary to what Ofcom wants British viewers to be exposed to."

50. The Licensee also noted that the Provisional Decision referred to ongoing compliance issues. With regard to the reference to the articles published on www.presstv.ir, the Licensee states that "Ofcom has absolutely no jurisdiction over this site which is owned and operated by Press TV in Iran, and the British regulator has no authority to try to dictate what should or should not be published on the site." The Licensee continued, "while it is true that www.presstv.co.uk automatically redirected the browser to www.presstv.com, the automatic redirection was an action that was taken in error by members of the IT department without authorisation. The mistake has subsequently been rectified and appropriate disciplinary action taken."

51. With regard to the news reports broadcast on Press TV on 25 May 2011 and 26 May 2011, the Licensee stated that "Ofcom completely disregard[ed] the principles that it

is charged to comply with, and finds Press TV in violation of the Code without ever requesting a copy of the broadcasts, launching an investigation, or giving [Press TV] an appropriate opportunity to respond.”

52. The Licensee noted that the Provisional Decision referred to “the apparent disregard for compliance held by the Licensee in this instance.” The Licensee stated that it takes seriously its compliance with the Code. Specifically it states, “prior to launching on the Sky platform in the UK in 2008, Press TV undertook a comprehensive orientation and training programme to ensure that all departments and employees involved with output were familiar with the Code and complied with it.” The Licensee continued, “we prepared a handbook detailing the Code and how it applied to [Press TV]. We conducted seminars for each department tailored to how the Code applied to their work and what they would need to do to ensure they did not violate the Code. Subsequent to that, each new employee is given a copy of the handbook during orientation and it is explained to them how it is imperative that they are fully familiar with the Code and in compliance with it. During training, a senior staff member of the department in which a new employee begins working is tasked with supervising and guiding the new employee to ensure that their work output is in compliance with the Code. We have also put in place an Evaluation Department, which monitors Press TV’s output to ensure it is in compliance with the Code.”
53. The Licensee continued that when conducting interviews in Iran, its practice for ensuring subjects participate with informed consent has been to film the conversation in which the subject confirms that they consent to participating. In this case it was unable to locate a copy of this recording, and it therefore “realised the potential benefit of having a signed informed consent form [in English and Farsi] from interview subjects.” However, the Licensee questioned the value to Ofcom of a written consent form or a video-taped consent from Mr Bahari, as “given the nature of his unsubstantiated allegations regarding torture and death threats, it is likely he would now renounce his consent and claim it was given under duress.”
54. The Licensee challenged the conclusion in the Provisional Decision that the broadcast had a negative effect on Mr Bahari. The Licensee noted that in the Provisional Decision Ofcom states that the footage broadcast was of a highly sensitive nature and exposed Mr Bahari in a vulnerable state to the audience. The Licensee noted that in its original adjudication on the case, Ofcom stated that in demonstrating that Mr Bahari was not under duress, “the extract in question was so short that it was of little probative value.” The Licensee therefore put forward the question “how can the footage be of little probative value when it comes to demonstrating that Mr Bahari was not under duress, but at the same time be of a highly sensitive nature and expose him in a vulnerable state to the audience?”
55. The Licensee noted that Ofcom had not received any complaints from viewers about the broadcast.
56. The Licensee stated that other channels have broadcast “much more extensive footage of the interview.... If the footage is so sensitive in nature and damaging to Mr Bahari, it begs the question as to why he would consent to other broadcasters showing the world even more extensive out-takes from the interview.”
57. The Licensee submitted that the Provisional Decision used “supposition upon supposition to reach the conclusion that the broadcast negatively affected Mr Bahari. This despite the fact that nothing broadcast by Press TV was actually untrue or misleading.”

58. Regarding the issue of questioning Mr Bahari's independence and impartiality as a journalist, the Licensee explained that "Press TV took steps to minimise the possibility that viewers might come to the conclusion that Mr Bahari was a biased journalist by not referring to him as a Western journalist or Channel 4 reporter, and clarifying in both [the] anchor's statement and the 10-second soundbite of Mr Bahari that we broadcast that he had sent footage of the attack on the Basij base."
59. Regarding the potential damage that the broadcast may have had on Mr Bahari's career, the Licensee stated that "two years have passed since the broadcast, and neither Mr Bahari, Ofcom, nor anyone else...has been able to demonstrate any actual negative impact on Mr Bahari's career."
60. The Licensee stated that "it should be remembered that Mr Bahari's much publicised statements regarding events that transpired during his detention are simply his uncorroborated version of events.... Mr Bahari has never been able to provide any evidence that he suffered any physical or psychological harm as a result of his detention."
61. With regard to the Kiss FM precedent case referred to in the Provisional Decision, the Licensee stated that there is "little similarity" between that case and this case, because "there was no information in Press TV's broadcast that was highly personal, intimate or sensitive." The Licensee continued, "we broadcast Mr Bahari saying he sent footage of the attack to Channel 4. This was not a confession of a crime, or of Mr Bahari doing something unethical or unsavoury, nor was it portrayed as such in the Press TV broadcast. In fact, Mr Bahari himself has repeatedly and publicly proclaimed the truth and accuracy of this information, and Ofcom even stated in its adjudication that it 'considered this information was of very limited public interest'". The Licensee added that "Ofcom has stated that the clip is of little probative value in showing the state Mr Bahari was in when making the statement."
62. With regard to the BBC precedent case referred to in the Provisional Decision, the Licensee submitted that in contrast to the BBC case, "there was nothing in the Press TV broadcast that could be construed as attempting to publicly ridicule and humiliate Mr Bahari". Further, the Licensee stated that "public interest was completely lacking in the [BBC case], but was a compelling factor in the broadcast of the Press TV news item which exposed the misleading and dishonest way Channel 4 had portrayed the events on June 15, 2009 at the Basij base."

The Hearing

63. The Committee held a hearing to consider this case on 5 July 2011 and to give the Licensee the opportunity to make oral representations to the Committee. The Licensee was represented by Matthew Richardson and Nargess Moballegghi of Press TV, Babak Gharaati of Press TV International, and former MPs and broadcasters George Galloway and Derek Conway.
64. A summary of the oral representations made on behalf of the Licensee is detailed below.
65. Mr Richardson, of Press TV, noted that the statement made by Mr Bahari in the broadcast "has never been denied by Mr Bahari" and "it does not cast him in a negative light." He continued that Ofcom has not considered any evidence from Mr Bahari which would lead to the conclusion that his life or career has been damaged as a result of broadcasting this statement. Mr Richardson submitted that the focus of the news item was Channel 4 and not Mr Bahari.

66. Mr Richardson submitted that the item was not misleading as it did not infer that Mr Bahari was a Channel 4 journalist. Rather the item referred to Mr Bahari in on-screen text as a "*Newsweek* journalist", and the news anchor referred to Mr Bahari as a "journalist".
67. With regards to the proposed sanction of prohibiting future broadcasts of the interview, Mr Richardson stated that this "would act as censorship". However, he noted that it had no intention of broadcasting the footage again.
68. With regards to the proposed sanction of requiring Press TV to broadcast a statement of Ofcom's findings, Mr Richardson said that he was concerned that in a letter from Ofcom dated 17 May 2011, Ofcom had said that such a statement of findings would not be issued. He continued that "in the last two years... Press TV has been the subject of ridicule, demonization and exploitation by other news outlets" and he suggested that "this is something that the Sanctions Committee should take into consideration", adding, "essentially, if there is any damage to be done to Press TV, it's already been done." Mr Richardson submitted that this sanction "would not act as a deterrent.... All it serves would be the purpose to restrict a news broadcaster's intentions or incentive to highlight the shortcomings of other channels. It would also disproportionately affect the viewers of a news channel, given the fact that this investigation by no means produced any substantial evidence of the breach, or that it was by any means a black and white issue."
69. Mr Richardson described the proposed financial penalty as "punitive". He submitted that it was not an appropriate sanction for this case and would "have a chilling effect on whether or not [a broadcaster] can do its job of covering the news freely and without fear of suffering financial penalties."
70. Mr Richardson, submitted that elements of Mr Bahari's version of events were questionable and stated that "it is also of concern that Ofcom has not responded to Press TV, despite numerous requests, to provide an explanation as to why Ofcom chose Mr Bahari's statement to be reasonable as opposed to unreasonable, or substantiated as opposed to unsubstantiated."
71. Mr Richardson noted that "Ofcom itself accepts that the footage that was broadcast... was of little probative value" and therefore questioned how this being the case, Ofcom could determine that the footage showed Mr Bahari in a vulnerable state.
72. Mr Richardson stated that Ofcom should consider that "there is no substantial evidence that [Mr Bahari] has suffered mistreatment, or was shown in a negative light, or that there was an invasion of his privacy." There was also no damage to Mr Bahari's career.
73. With regards to Ofcom's consideration that the Licensee had a disregard for compliance, Mr Gharaati of Press TV International stated that no investigation was launched for the broadcasts of 25 and 26 May 2011 and that Ofcom did not seek Press TV's comments before determining that the broadcasts were in breach of the Code.
74. Mr Gharaati submitted that on the previous three occasions it had been found to have breached the Code, it had "made adjustments" to its programmes in order to comply with the Code.

75. Mr Gharaati stated that, “Mr Bahari is the first and only person out of the thousands of people that we have interviewed, who subsequently claimed that we treated him in an unfair manner and invaded his privacy. And we categorically deny that we have ever conducted an interview against a person’s will, including Mr Bahari, and we assure you that there’s no chance we would have interviewed him if he had not consented to it.”
76. With regards to the precedent cases cited by Ofcom in the Provisional Decision, Mr Richardson stated that “Ofcom couldn’t find any similar cases to justify the level of sanction, other than two cases, none of which are television programmes... Press TV submits that there are almost no similarities.”
77. Mr Richardson noted that in the BBC case there were 45,000 complaints, whereas in this case no viewers complained. Further, in the BBC case, Andrew Sachs and Georgina Baillie were the subjects of the item, whereas in this case, Mr Bahari was not the subject of the news item, “his role was merely to provide confirmation of where the footage came from.”
78. Mr Richardson submitted that in the Kiss FM case, the subject was an unwitting member of the public, whereas in this case Mr Bahari was fully aware of the interview taking place.
79. Mr Richardson stated that in both the BBC and Kiss FM cases, the content was broadcast for entertainment purposes and there was no public interest in the broadcast of the items, whereas in this case “there was a public interest in covering the news as the western media portrayed it and challenging that as part of a news programme.” In addition, Mr Richardson stated that in the BBC case, the broadcast covered a sensitive issue and there was a clear intention to ridicule the individuals concerned. Mr Richardson submitted that in contrast, in this case, a 10 second clip was broadcast “in which Mr Bahari did not make a confession, did not lie, it wasn’t misleading to the British viewers – it was not sensitive”. Similarly, in the Kiss FM case, Mr Richardson noted that the programme caused embarrassment for the subject, whereas in this case no embarrassment was caused to Mr Bahari because he “wasn’t making any confessions, nor did he make any misleading statements.” It stated there “was no intention to ridicule Mr Bahari in [the] broadcast.”
80. The Committee asked about the compliance procedures carried out in getting the footage. Mr Richardson explained that Press TV produces and sells programmes to Press TV International who broadcasts the programme. Mr Gharaati explained the compliance procedures carried out in the news room and in the evaluation department. The compliance of news programmes takes place in Tehran and Press TV provides advice to Press TV International. When asked where the broadcast schedule for Press TV was decided, Mr Gharaati replied Tehran. Mr Richardson also confirmed that editorial decisions to produce and broadcast the programme in question was Press TV International.
81. Mr Conway told the Committee that during the three years he had been involved with Press TV he had “developed a very high regard for the attitude and professionalism for the staff involved.” Mr Conway stated that, “I can see that [Press TV] have gone wrong by the eyes of the average person looking at what they do, but it’s a question of whether the example of that, and the extent of that is such that they should be effectively forced out of the United Kingdom.” He stated “I think it would not harm the interests of Iran for one moment if Press TV in London was closed down. I think it would do a great harm to the attitude of British fair play and freedom if it was.”

82. Mr Galloway told the Committee that he was “irate” about the case because he considered that Ofcom had changed its own guidelines to entertain a complaint after the point at which the footage was lawfully destroyed. He explained that this was why Press TV was unable to answer questions about the interview with Mr Bahari. Mr Gharaati clarified that he could not be certain that Press TV had in fact destroyed the footage, but Press TV was unable to locate it when Ofcom requested it.
83. Mr Galloway put to the Committee that Ofcom “invented an offence and then you changed your own rules and regulations so that that offence could be considered by you, having appointed yourselves the judge, jury and executioner in this case.” Mr Galloway continued, “You are out to close us [Press TV] down. You are going to close us down either by imposing a set of conditions that Tehran will refuse to comply with... to give you £100,000 or more to give to William Hague to continue the subversion of the British state against Iran.” Mr Galloway stated that, “The British Foreign Office, as revealed in *The Sunday Times* and in the Wikileaks cable, wants to shut Press TV down. And you are merely the hirelings of the British Foreign Office.”

The Committee’s Deliberations

Imposition of a Statutory Sanction

84. Having viewed the material, and taken account of all the evidence and the representations of the Licensee, the Committee considered this case to be sufficiently serious to warrant the imposition of a statutory sanction. This was for the following reasons.
85. The Committee was concerned by the circumstances of the complainant during the making of the programme, the effect the broadcast of the programme had on the complainant, and the apparent disregard for compliance held by the Licensee in this instance.
86. The Committee noted that at the time the programme was being made, the complainant was being held in a prison in Iran. He was being detained because he was suspected of being a spy. He faced years in jail and the possibility of the death sentence. It was in this vulnerable, sensitive and intimidating situation that a Press TV journalist in Tehran interviewed and filmed him in circumstances in which it should have been clear to Press TV that he was giving an interview under duress, and as Ofcom found, to which he did not consent. In such circumstances, it should have been obvious to the Press TV journalist that the interview was given under duress. The Committee considered that these were serious breaches of the Code in the making of the programme.
87. The Committee also noted that Press TV based in London broadcast this footage, which exposed Mr Bahari, in this vulnerable state, to their audience. It should have been obvious to Press TV in London that the broadcast of Mr Bahari’s interview given under duress would have amounted to an unwarranted infringement of his privacy. Because of the highly sensitive nature of the footage, its broadcast constituted a serious and unwarranted infringement of Mr Bahari’s privacy.
88. The Committee further noted that by failing to make clear that Mr Bahari’s interview was conducted in prison and under duress, viewers were denied knowledge of what Ofcom considered to be significant material facts, given their potential to affect the

way in which viewers regarded the news report and the inferences which they drew from the report in relation to Mr Bahari. It should have been obvious to Press TV in London that the omission of material facts surrounding the interview would have been unfair to Mr Bahari.

89. As regards the effect the programme had on the complainant, the Committee noted that the programme was found to have unfairly inferred that Mr Bahari was a biased journalist and that he may have been part of an attack on a Basij base during the post-Presidential election demonstrations in Iran. The Committee considered that this could have potentially damaged his career by questioning his independence and impartiality as a journalist, as well as serving to increase the distress of Mr Bahari.
90. The Committee noted that during the investigation, the Licensee submitted that it is not Press TV's policy to conduct scripted interviews and that it would have stopped recording if Mr Bahari had asked.
91. However the Committee considered that the Licensee failed to demonstrate that it had taken any steps to ensure that the making of the interview in Tehran or its later broadcast were compliant with Sections Seven or Eight of the Code. For example, it did not provide: the unedited footage of the interview; any evidence from the Press TV journalist in Tehran (e.g. a witness statement); any signed consent form or other evidence of informed consent by Mr Bahari to the interview, or evidence of any agreement it had with Evin prison about how the interview was to be conducted. Neither has the Licensee provided any evidence of the compliance process it applied in London before reaching the editorial judgement to broadcast this news item.
92. The Committee considered that the apparent failure of Press TV to adopt and apply any kind of compliance procedure in a situation of such obvious and observable sensitivity demonstrated that, on this occasion, the Licensee paid no regard to its obligations to comply with the Code.
93. The Committee therefore considered that because of the vulnerable circumstances of the complainant and the lack of steps to obtain Mr Bahari's consent together with the effect the broadcast had on the complainant, this case represented a serious and deliberate breach that warranted the imposition of a sanction. Taking all of the above factors into account, the Committee considered this to be a very serious breach of the Code.

An imposition of a financial penalty

General Criteria

94. The Committee went on to consider whether or not to impose a financial penalty. In doing so, the Committee took into account all the evidence and factors outlined in the Chair's Provisional Decision and all the representations made by the Licensee.
95. The Committee also had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines in force at the time of the Provisional Decision. In the past, a fine has generally been imposed in circumstances where the nature of the breach(es) and/or the reasons for the compliance failure(s) were serious, and/or where they were persistent, repeated, deliberate, reckless, or negligent, that is to say where a licensee has failed to exercise reasonable care. The Committee considered that the breaches in this case were serious for the reasons set out above and that a financial penalty was appropriate.

96. The Committee therefore considered what level of financial penalty was appropriate. Under section 237 of the Act, the maximum level of financial penalty that can be imposed in respect of the relevant Code breaches in this case is up to £250,000 or 5 per cent of the Licensee's qualifying revenue relating to its last accounting period, whichever is greater.
97. In accordance with paragraph 4 of the Penalty Guidelines, in order to determine the starting point for a financial penalty for this breach, the Committee considered the "General Criteria", that is: the seriousness of the contravention, any precedents set by previous cases, and, the need to ensure that the threat of penalties will act as a sufficient incentive to comply. The Committee also considered any specific criteria which may be relevant, and any factors tending to increase or decrease the level of the penalty, before proposing a final amount of penalty for the breaches.

Seriousness of breaches

98. Having viewed the material, and taken account of all the evidence and the representations of the Licensee, the Committee considered this case to be very serious.
99. The Committee was concerned by the circumstances of the complainant during the making of the programme, the effect the broadcast of the programme had on the complainant, and the apparent disregard for compliance held by the Licensee in this instance.
100. The Committee noted that at the time the programme was being made, the complainant was being held in a prison in Iran. He was being detained because he was suspected of being a spy. He faced years in jail and the possibility of the death sentence. It was in this vulnerable, sensitive and intimidating situation that a Press TV journalist in Tehran interviewed and filmed him in circumstances in which it should have been clear to Press TV that he was giving an interview under duress, and as Ofcom found, to which he did not consent. In such circumstances, it should have been obvious to the Press TV journalist that the interview was given under duress. The Committee considered that these were serious breaches of the Code in the making of the programme.
101. The Committee also noted that Press TV based in London broadcast this footage, which exposed Mr Bahari in this vulnerable state. The Committee did not agree with the Licensee's argument that because Ofcom had noted that the broadcast was of little probative value, it meant that Ofcom could not determine that Mr Bahari was in a vulnerable state. It should have been obvious to Press TV in London that the broadcast of Mr Bahari's interview given under duress would have amounted to an unwarranted infringement of his privacy (and the fact that his detention was public knowledge did not detract from this). Because of the highly sensitive nature of the footage, its broadcast constituted a serious unwarranted infringement of Mr Bahari's privacy.
102. The Committee did not accept the Licensee's representations that there had been no negative impact on Mr Bahari. As already noted above, the Committee had regard to the fact that the programme unfairly inferred that Mr Bahari was a biased journalist and that he may have been part of an attack on a Basij base during the post-Presidential election demonstrations in Iran. The Committee considered that this could have potentially damaged his career by questioning his independence and impartiality as a journalist, as well as serving to increase the distress of Mr Bahari.

103. The Committee further noted that by failing to make clear that Mr Bahari's interview was conducted in prison and under duress, viewers were denied knowledge of what Ofcom considered to be significant material facts, given their potential to affect the way in which viewers regarded the news report and the inferences which they drew from the report in relation to Mr Bahari. It should have been obvious to Press TV in London that the omission of material facts surrounding the interview would have been unfair to Mr Bahari. The Committee did not accept the Licensee's representations that as Mr Bahari's detention was public knowledge viewers did know of the material facts relevant to the circumstances of the clip. The Committee accepted that at the time the programme was being made, it was known to some members of the public that the complainant was being held in a prison in Iran and that he was being detained because the Iranian authorities said he was suspected of being a spy. It may also have been known by some members of the public that as a result he faced years in jail and the possibility of the death sentence. The Committee noted however, that these facts were not included in the report broadcast on 1 July 2009. Further, it was in this vulnerable, sensitive and intimidating situation that a Press TV journalist in Tehran interviewed and filmed Mr Bahari in circumstances in which it should have been clear to Press TV that he was giving an interview under duress, and as Ofcom found, to which he did not consent. Viewers therefore did not know of the material facts relevant to the circumstances of the clip being obtained and broadcast.
104. In addition the Committee did not agree that because the item referred to Mr Bahari as a "Newsweek journalist", adverse inferences could not be drawn about Mr Bahari. As already noted above, the programme was found to have unfairly inferred that Mr Bahari was a biased journalist and that he may have been part of an attack on a Basij base during the post-Presidential election demonstrations in Iran. The Committee considered that this could have potentially damaged his career by questioning his independence and impartiality as a journalist, as well as serving to increase the distress of Mr Bahari, even though he was referred to as a "Newsweek journalist".
105. The Committee noted that during the investigation, the Licensee submitted that it is not Press TV's policy to conduct scripted interviews and that it would have stopped recording if Mr Bahari had asked.
106. The Committee noted the representations made on behalf of the Licensee about its compliance procedures in general and that the compliance of news programmes takes place in Tehran. However the Committee considered that the Licensee failed to demonstrate that it had taken any steps to ensure that the making of the interview in Tehran or its later broadcast were compliant with Sections Seven or Eight of the Code. For example, as already pointed out, it did not provide: the unedited footage of the interview; any evidence from the Press TV journalist in Tehran (e.g. a witness statement); any signed consent form or other evidence of informed consent by Mr Bahari to the interview, or evidence of any agreement it had with Evin prison about how the interview was to be conducted. It strongly disagreed with the Licensee's assertion on the value of obtaining evidence of Mr Bahari's consent – this was an unwarranted infringement of Mr Bahari's privacy and the Licensee should have been able to demonstrate that his consent had been obtained.
107. Taking all these factors into account, but in particular because of the vulnerable circumstances of the complainant and the lack of steps to obtain Mr Bahari's consent, together with the effect the broadcast had on the complainant, the

Committee considered that this case represented very serious breaches of the Code that warranted the imposition of a substantial financial penalty.

Precedent

108. The Chair took into account the following two precedents in reaching its decision: The British Broadcasting Corporation (“the BBC”) in respect of its service Radio 2 and Kiss FM Radio Limited (“Kiss FM”) in respect of its service KISS 100 FM.
109. The BBC was fined a total of £150,000. £80,000 was the penalty for the breaches of Rule 8.1. The remaining £70,000 was imposed for harm and offence breaches. It was published on 3 April 2009. This sanction related to breaches of 8.1 of the Code.
110. Kiss FM was fined a total of £175,000. This figure was the total of £75,000 for fairness and privacy breaches and £100,000 for Standards breaches. It was published on 20 June 2008. This sanction related to breaches of Rules 7.1 and 8.1 of the Code.

The BBC

111. During two editions of Russell Brand broadcast on 18 October 2008 and 25 October 2008 offensive references were made to the actor Andrew Sachs and to his granddaughter, Georgina Baillie, which resulted in their privacy being unwarrantably infringed.
112. In that case the Committee found that “the nature of the information disclosed in the programme [...] was highly personal, intimate and sensitive.” The Committee said that “the comments were unambiguous and were revealed in the context of a programme in which Mr Sachs and Ms Baillie were named and so clearly identifiable. These led to infringements of privacy of the most serious nature.”
113. The Committee considered that this was comparable to Mr Bahari’s case to the extent that it involved the same issue of broadcasting sensitive material.
114. The Committee also noted that in the BBC case the BBC did have a compliance system in place, but that there were systematic flaws and that very poor editorial judgements were made.
115. The Committee noted that the BBC case concerned a comedy programme that included a recording which constituted an unwarranted infringement of privacy, and was broadcast as a result of a serious misjudgement.
116. The Committee noted the Licensee’s submission that the BBC case covered a “sensitive issue” and that there was a clear intention to ridicule the subjects of the ribald and offensive comments. The Committee agreed that in the present case there was no evidence to suggest that there was an intention to ridicule Mr Bahari. However, the Committee judged that the case did cover a very sensitive issue in that Press TV interviewed a person in prison under duress and without his consent and then broadcast an excerpt of the interview in a misleading and unfair context which may in turn have questioned his independence and impartiality as a journalist.
117. The Committee also noted the Licensee’s submission that Mr Bahari was not the subject of the news item. While the Committee acknowledged that the footage of Mr Bahari was a relatively small part of the news item, its broadcast for all the reasons

above raised very serious issues, and directly and adversely affected Mr Bahari because he was the subject of unfair treatment by Press TV.

118. The Committee acknowledged that 45,000 complaints were made by viewers in the BBC case. Many of these complaints related to “standards issues”. In any event, Ofcom investigates and adjudicates on potential issues under the fairness and privacy provisions of the Code irrespective of the number of complaints from third parties. What is usually required as regards a fairness and privacy issue is a complaint from or on behalf of the “affected person”. In this case, such a complaint was received from Mr Bahari and Ofcom investigated and adjudicated on this complaint in line with its normal procedures.
119. The Committee judged that in the present case, the programme makers filmed and interviewed a person in prison under duress, and without consent and then broadcast an excerpt of the interview in a misleading and unfair context. For these reasons, the Committee believes that this case is different in character and gravity from the BBC case.

Kiss FM

120. The Executive recorded eight Code breaches against Kiss FM. One of the breaches was of Rule 7.1, another Rule 8.1.
121. The programme telephoned a member of the public (the complainant, Mr R, who wished to remain anonymous) who had inadvertently left his telephone number on the presenter’s (“Streetboy”) voice mail, believing it to be his Human Resources officer’s voice mail. Streetboy then returned Mr R’s call posing as the Human Resources officer. Mr R had called his Human Resources officer in the hope of discussing redeployment opportunities in the company following his redundancy. The telephone call was recorded and broadcast on air without the complainant’s permission.
122. The Committee said in that case that: “The decision by the Licensee to transmit this material was not one which had required a fine judgement on its part. Unlike other cases of potential infringement of privacy, this was not a case where the Licensee was required to make a difficult editorial judgement balancing such factors as freedom of expression, the public interest and privacy of the individual concerned.”
123. In the present case, the Committee took the view that this case was comparable in so far as both cases involved the exploitation of an individual who was in a vulnerable and sensitive position. In the Kiss FM case, the individual was on the telephone to someone whom he thought to be his HR officer, while he was trying to find a secure job. Mr Bahari was in prison and giving an interview under duress. The Committee considered that Mr Bahari was in the more vulnerable position here and that therefore this case was more serious. However, similar to the BBC case, the Committee considered that the Kiss FM broadcast was an entertainment programme and was broadcast because of an editorial misjudgment. By contrast, the present case involved an individual in a far graver context.
124. The Licensee argued that the Kiss FM precedent was different to the current case because Mr Bahari – unlike the member of the public in the Kiss FM case – was aware of the interview and there was no “embarrassment” caused to Mr Bahari. The Committee acknowledges that the facts of all cases are different. However, the Committee believes that although Mr Bahari was clearly aware of the interview when he gave it, he was interviewed under duress in a vulnerable and sensitive position.

Further because of the circumstances in which it was broadcast, the interview when broadcast had serious consequences for and did cause embarrassment to Mr Bahari. The programme unfairly inferred that Mr Bahari was a biased journalist and that he may have been part of an attack on a Basij base, and the Committee considered that this could have potentially damaged his career by questioning his independence and impartiality as a journalist.

125. The Committee took into account both of these precedents but also noted that the circumstances surrounding these cases were different and that the present case in their view was more serious in character. Ofcom considered that Press TV's filming of Mr Bahari in custody without consent, in an interview given under duress, was a significant intrusion into his privacy and was not outweighed by any public interest in broadcasting an interview clip with Mr Bahari in relation to the Basij base attack.

Incentive to comply

126. The Committee first made the general consideration that Fairness and Privacy breaches tend to be regarded as more serious than other content breaches because they involve the rights of individuals who are either in, or have been directly affected by, a programme.

127. With this in mind, the Committee took the view that the financial penalty to be imposed should reflect the seriousness with which Ofcom considers Fairness and Privacy breaches and warranted a penalty that would act as a deterrent against similar contraventions of the Code. It should act as an incentive to other broadcasters to adhere to the regulatory regime and meet their licence requirements.

128. The Committee noted the Licensee's submission that the proposed sanction of directing Press TV not to repeat the Bahari interview material "would act as censorship"; and that the sanction proposed by Ofcom of a fine of at least £100,000 was "punitive" and would have a "chilling effect" on news broadcasters who may be deterred from doing their job of covering the news freely. The Committee recognises that a direction to a broadcaster not to repeat material already shown restricts a broadcaster's freedom of expression. However, if the broadcast of that material has been found by Ofcom to be a serious breach of the Code, then the Committee considers that a direction to the same broadcaster not to repeat this material again is justified and a proportionate measure. The Committee acknowledges that a proposed financial penalty of around £100,000 would clearly influence the conduct of the broadcaster concerned and others. This however, would be one of its purposes: to act as a deterrent and ensure compliance. Such a fine however, would only be imposed by Ofcom when the facts merited it – if there had been serious, repeated and/or deliberate breaches of the Code – and in accordance with Ofcom's Procedures and taking account of broadcasters' right to freedom of expression. In these circumstances there would not be any inappropriate "chilling effect" on broadcasters in covering news.

Other specific factors

129. In considering the appropriate size of a financial penalty for each of the breaches, the Chair took account of other criteria in accordance with the Penalty Guidelines.

Any gain (financial or otherwise) made by the regulated body in breach (or any connected body)

130. There is no direct evidence that the Licensee made any financial gain regarding the Code breaches.

The size and turnover of the regulated body

131. The last recorded Transmission and Revenue Return to Ofcom from Press TV was for the calendar year 2010. This return recorded Press TV's annual revenue return as nil.

The duration of the contravention

132. The Committee noted that on 25 May 2011 two days after the adjudication was published, Press TV broadcast a news item which again chose to omit critical context to a further interview that Mr Bahari conducted (this time with BBC Persia). Press TV then broadcast a further report on 26 May 2011 which included footage of the interview conducted by Mr Bahari in prison that had been found to have breached the Code. Whilst Ofcom has not recorded breaches of the Code in respect of these broadcasts, they repeated the unfairness to Mr Bahari which has been found in breach of the Code and represented a continuance of the contravening behaviour.

133. The Licensee submitted that by taking account of this continuing contravening behaviour Ofcom was finding Press TV in breach of the Code without giving it an opportunity to respond and following its own procedures before doing so, and this was inappropriate. The Committee did not agree with this point. Ofcom did ask Press TV to comment formally on these two incidents but never recorded any breaches of the Code in relation to them. Press TV therefore did have an appropriate opportunity to respond. However for a broadcaster to repeat material which Ofcom has already found to be a serious breach of the Code is "contravening behaviour", and it would be appropriate for the Committee to take account of this conduct in setting the level of a financial penalty in accordance with the Penalty Guidelines as regards "duration of the contravention."

Degree of harm caused

134. The Committee considered the degree of harm caused to the complainant to be very serious. The Committee noted that the programme was found to have contained unfair inferences that he was a biased journalist and that he may have been part of the attack on the Basij base during post-presidential election demonstrations in Iran. The Committee further took into account that the programme was found to have unwarrantably infringed the complainant's privacy.

Whether a penalty in respect of the same conduct has already been imposed by Ofcom or another body

135. There has been no previous penalty imposed by Ofcom or another body on Press TV for this conduct.

Factors tending to increase the level of penalty

136. The Committee then considered whether there were any factors which aggravated or tended to increase the level of any financial penalty it might impose, in accordance with the Penalty Guidelines.

Repeated contraventions by the same regulated body

137. The Committee noted that the programme found in breach was broadcast once on 1 July 2009. Furthermore, the Committee noted that the Licensee has failed to accept Ofcom's finding of unfair treatment of Mr Bahari and its unwarranted infringement of his privacy. The Committee noted that on 25 May 2011 two days after the adjudication was published, Press TV broadcast a news item which again chose to omit critical context to a further interview that Mr Bahari conducted (this time with BBC Persia). Press TV then broadcast a further report on 26 May 2011 which included footage of the interview conducted by Mr Bahari in prison that had been found to have breached the Code.

138. The Committee considered that the broadcasts of 25 and 26 May 2011 represented a continuance of the contravening behaviour. This served to aggravate the penalty because this demonstrated that Press TV is unwilling to recognise its obligations, as an Ofcom licensee to comply with the Code. The Committee believed that this conclusion was supported by the Licensee's representations to the Committee, in which the Licensee gave no indication that it recognised that it breached the Code and regretted any of its actions in this case.

Extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur

139. The Committee considers this to be an obvious breach, and that senior management including Press TV's compliance officer should have known that broadcasting the programme would be a very serious breach of the Code.

The absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent contravention by the regulated body concerned, or other bodies in the same group

140. Despite the Licensee's submissions on its general compliance procedures, the Committee considered that there was no evidence of effective compliance procedures when dealing with the production or the broadcast of the news item.

Mitigating Factors tending to decrease the level of financial penalty

141. The Committee considered whether there were any factors which might limit or decrease the level of financial penalty.

142. The Committee considered that the clip of Mr Bahari which was broadcast on Press TV was very short in duration (10 seconds). However, the issue under consideration was not the impact of the broadcast on the viewer, rather the impact on Mr Bahari and the circumstances in which the interview was conducted.

Level of financial penalty

143. In conclusion, it was the Committee's view that that the case represented serious breaches of the Code because of the vulnerable circumstances of the complainant Mr Bahari, the lack of steps to obtain his consent and the effect the broadcast had on him.

144. Having regard to all the factors referred to above and all the representations to date from Press TV, the Committee's decision is that an appropriate and proportionate penalty would be a financial penalty of £100,000.

Other sanctions

145. The Committee considered that because Ofcom had found that the original broadcast unfairly omitted significant material facts, that a statement of findings, making clear which facts were omitted, would act as an appropriate and proportionate sanction in this case.

146. The Committee noted that the programme had been found to have breached Rules 7.1 and 8.1 and that the Licensee had, after the publication of Ofcom's Adjudication, broadcast again the material already found to have breached the Code. The Committee therefore considered that a Direction to the Licensee not to repeat the material found in breach in its service on any future occasion would also be appropriate and proportionate in this instance, so as to avoid any further unfair treatment or unwarranted infringement of privacy against Mr Bahari.

Ofcom Broadcasting Sanctions Committee

1 December 2011