

OFCOM BROADCAST AND ON DEMAND BULLETIN

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Contents

Introduction	3
Broadcast Standards cases	
In Breach/Not in breach	
<u>Various programmes</u> <u>RT, 17 March to 4 May 2018</u>	
Introduction and Summary	4
Background	5
Licensee's Responses – General Factors	8
Decision – Ofcom's Response to General Factors	19
Decision – Sputnik, 17 March 2018, 19:30	25
Decision – Sputnik, 7 April 2018, 19:30	41
Decision – Worlds Apart, 1 April 2018, 23:30	56
Decision – Crosstalk, 13 April 2018, 20:30	77
Decision – Crosstalk, 16 April 2018, 20:30	100
Decision – Crosstalk, 20 April 2018, 08:30	123
Decision – News, 18 March 2018, 08:00	145
Decision – News, 30 March 2018, 18:00	160
Decision – News, 26 April 2018, 08:00	170
Decision – News, 4 May 2018, 08:00	181
Next Steps – Minded to consider for sanction	190

Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives¹. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act².

Ofcom reflects these requirements in its codes and rules. The Broadcast and On Demand Bulletin reports on the outcome of Ofcom's investigations into alleged breaches of its codes and rules, as well as conditions with which broadcasters licensed by Ofcom are required to comply. The codes and rules include:

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
 - the prohibition on 'political' advertising;
 - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
 - gambling, dating and 'message board' material where these are broadcast as advertising³.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

It is Ofcom's policy to describe fully television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast and On Demand Bulletin may therefore cause offence.

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² The relevant legislation can be found at Part 4A of the Act.

³ BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

In Breach/Not in Breach

Various programmes

Sputnik, RT, 17 March 2018, 19:30

Sputnik, RT, 7 April 2018, 19:30

Worlds Apart, RT, 1 April 2018, 23:30

Crosstalk, RT, 13 April 2018, 20:30

Crosstalk, RT 16 April 2018, 20:30

Crosstalk, RT, 20 April 2018, 08:30

News, RT, 18 March 2018, 08:00

News, RT, 30 March 2018, 18:00

News, RT, 26 April 2018, 08:00

News, RT, 4 May 2018, 08:00

Introduction and Summary

This document sets out Ofcom's Decisions in relation to the above ten programmes, which were broadcast on RT over a period of approximately seven weeks between 17 March 2018 and 4 May 2018, in the wake of the poisoning of Sergei Skripal and his daughter Yulia in Salisbury on 4 March 2018. The licence for the RT service is held by Autonomous Non-profit Organisation TV-Novosti ("TV Novosti" or "the Licensee").

Ofcom was alerted to these programmes by a combination of complaints from viewers and Ofcom's own monitoring. Ofcom considered that the programmes raised issues warranting investigation under the due impartiality rules set out in Section Five of the Ofcom Broadcasting Code ("the Code"). As required under our published procedures⁴, we wrote to the Licensee on 18 April 2018 and 14 May 2018, requesting its comments under the relevant rules of the Code. TV Novosti provided its written representations on 6 and 20 June 2018. Ofcom prepared Preliminary Views in relation to each of the ten programmes, which we sent to the Licensee on 13 September 2018. The Licensee provided its written representations on 22 November 2018 and its oral representations on 5 December 2018.

In accordance with our published procedures, having watched all the programmes and taken careful account of all the relevant information, including the individual facts of each case and the various representations made by TV Novosti, Ofcom has decided that the following programmes are in breach of the Code for the reasons set out in full in each corresponding decision:

- *Sputnik, RT, 17 March 2018, 19:30;*
- *Sputnik, RT, 7 April 2018, 19:30;*
- *Crosstalk, RT, 13 April 2018, 20:30;*
- *Crosstalk, RT, 16 April 2018, 20:30;*
- *Crosstalk, RT, 20 April 2018, 08:30;*

⁴ See https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

- *News*, RT, 18 March 2018, 08:00; and
- *News*, RT, 26 April 2018, 08:00.

In addition, and for the reasons set out in full in each case, we have decided that the following three programmes are not in breach of the Code:

- *Worlds Apart*, RT, 1 April 2018, 23:30;
- *News*, RT, 30 March 2018, 18:00; and
- *News*, RT, 4 May 2018, 08:00.

At the Preliminary View stage, Ofcom considered that one (*News*, 30 March 2018) of the ten programmes was not in breach of Section Five of the Code. However, following careful consideration of the Licensee's written and oral representations, we decided that a further two programmes (*Worlds Apart*, 1 April 2018 and *News*, 4 May 2018) were also not in breach of Section Five of the Code.

Background

Background to our investigations

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. The licence for RT is held by TV Novosti.

The ten programmes were broadcast in a period of approximately seven weeks between 17 March 2018 and 4 May 2018, in the wake of the poisoning of the former FSB secret service officer, Sergei Skripal and his daughter Yulia in Salisbury on 4 March 2018.

Since the events in Salisbury, we had observed⁵ a significant increase in the number of programmes broadcast that we considered warranted investigation as potential breaches of the Code. On 18 April 2018 we announced the opening of investigations into the following seven programmes.

- *Sputnik*, RT, 17 March 2018, 19:30;
- *Sputnik*, RT, 7 April 2018, 19:30;
- *Worlds Apart*, RT, 1 April 2018, 23:30;
- *Crosstalk*, RT, 13 April 2018, 20:30;
- *Crosstalk*, RT, 16 April 2018, 20:30;

⁵ As well as receiving a number of complaints about programmes broadcast on RT, we had monitored the RT service in the past as part of our overall monitoring programme and had been doing so intensively following the events in Salisbury.

- *News*, RT, 18 March 2018, 08:00; and
- *News*, RT, 30 March 2018, 18:00.

On 14 May 2018, we launched investigations into the following three programmes:

- *Crosstalk*, RT, 20 April 2018, 08:30;
- *News*, RT, 26 April 2018, 08:00; and
- *News*, RT, 4 May 2018, 08:00.

Background to Ofcom's due impartiality rules

Reflecting our duties under the Communications Act 2003⁶ ("the Act"), Section Five of the Code requires that news in television and radio services is presented with due impartiality and that the special impartiality requirements set out in section 320 of the Act are met.

The special impartiality requirements include the preservation, in the case of every television service, of due impartiality on matters of political or industrial controversy and matters relating to current public policy. Section 320 of the Act requires Ofcom, for the purposes of setting the due impartiality rules in the Code, to take account, in particular, of the need to ensure the preservation of impartiality in relation to: matters of major political or industrial controversy; and major matters relating to current public policy.

Ofcom considered that seven of the ten programmes that we investigated were dealing with matters of major political controversy and major matters relating to current public policy. Therefore, the following rules applied in relation to those seven programmes:

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".

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".

Four of the ten programmes we investigated were news programmes, including one of the programmes which was dealing with matters of major political controversy and major matters relating to current public policy. Therefore, the following rule applied to those four programmes:

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

⁶ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>; and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

To assist broadcasters in complying with due impartiality rules in Section Five of the Code, Ofcom has published Guidance⁷. Amongst other things, Ofcom's Guidance to Section Five of the Code makes clear that: it is an editorial matter for the broadcaster how due impartiality is preserved, as long as the Code is complied with⁸; and there are a range of editorial techniques for maintaining due impartiality⁹.

Our Guidance¹⁰ also states that the broadcasting of comments either criticising or supporting the policies and actions of any political organisation or elected politician is not, in itself, a breach of due impartiality rules. Any broadcaster may do this provided it complies with the Code. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints or provide context in an appropriate way to ensure that Section Five of the Code is complied with.

Ofcom's Code and Guidance is drafted, and given effect to, in accordance with the broadcaster's and the audience's right to freedom of expression as set out in Article 10 of the European Convention of Human Rights ("ECHR") ("Article 10"). In carrying out its duties, Ofcom must balance the broadcaster's freedom to discuss any controversial subject or point of view in their programming and the requirement in the Code to preserve due impartiality on matters relating to political or industrial controversy or matters relating to current public policy.

⁷ See https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf

⁸ Ibid, paragraph 1.6.

⁹ Ibid, paragraph 1.17.

¹⁰ Ibid, paragraph 1.34.

Licensee's responses in Ofcom's investigations

During Ofcom's investigation of these cases, the Licensee had three opportunities to make representations. It made its initial response when Ofcom opened the investigations earlier this year and then made written and oral representations following Ofcom's Preliminary Views in each case.

In all three sets of representations the Licensee made general points which apply across all the cases. We summarise these general points made by the Licensee in its initial response and its written and oral representations below, followed by Ofcom's response to these general points. We then turn to each individual programme in which these general points were considered in the fact-specific context of each programme.

Licensee's Initial Response – General

Before commenting specifically on each programme, the Licensee made a number of "background points for Ofcom to take into account".

Nature of RT as a service

The Licensee said that: its mission is "to make available an alternative point of view on world events, especially Russia-related ones". However, it recognised that making available a Russian point of view on matters of controversy did not require – and should not mean – presenting that Russian point of view as if it were the only point of view. It said that its mission was not to serve as a propaganda vehicle for the Russian Government but to cover stories overlooked or underreported by the mainstream media; provide alternative perspectives on current affairs; and, question the long-held, often unfounded, assumptions and clichés that often underlie the reporting of news and the discussion of current affairs. RT's purpose was to acquaint international audiences with a Russian viewpoint on major global events.

Ofcom Guidance

TV Novosti said that it recognised the importance of maintaining due impartiality in the treatment of controversial matters in UK licensed services and respected Ofcom's important function in regulating this difficult area.

TV Novosti referred to four compliance meetings that it had had with Ofcom since 2012 to resolve the due impartiality challenges RT faces when presenting matters of controversy from an alternative or Russian viewpoint. After receiving guidance from Ofcom, the Licensee said it had organised a number of internal compliance training sessions for RT's anchors and producers, both in London and Moscow, led by a compliance professional with years of experience. At these compliance meetings TV Novosti said that Ofcom had advised, in particular, that presenting alternative views could be done by "any type of presence of [an alternative] view – such as in the form of words, graphics, or ticker – so long as it is visible in some way". If the alternative point of view is not represented in the broadcast itself, the graphics or ticker should "at least present the alternative view simultaneously when presenting the main point of view". The Licensee had understood this to mean that, where the specific circumstances are such that it is necessary to reflect an alternative viewpoint, it would be sufficient to indicate to the audience that the alternative view exists, and the necessary indication could be conveyed to the audience by any means, whether in words in the main editorial content of the programme or by graphics or by the ticker. TV Novosti said that it had, therefore, presented alternative viewpoints through ticker or caption use within the programme, while the main point of view put forward in the RT programme is expressed by, for example, the presenter or interviewees.

The Licensee also said that it had received guidance from Ofcom that it was “not essential” to have live interviewees and that material on the RT website that contained counter-views could be used as evidence of due impartiality. It understood that these counter-views could be displayed as on screen or split screen graphics, or voice overs and that they would be considered by Ofcom as alternative viewpoints and indicative of due impartiality.

TV Novosti also made representations on what it perceived to be a lack of clarity on how the rules in Section Five of the Code should be interpreted and applied by broadcasters. By way of example, the Licensee cited the use of the term “appropriate” in Ofcom’s Guidance. It said that previous Ofcom guidance had been that “‘appropriate expression’ is crucial” when assessing the reflection of alternative viewpoints. However, it considered that this lacked clarity as appropriateness is a relative term, not an objective standard.

Another example it gave related to what it considered to be uncertainty over Ofcom’s expectations in regard to ‘linked programmes’. For example, it cited previous Ofcom guidance in April 2017 concerning an RT broadcast. Ofcom’s guidance was that although the Code does not specify what may constitute ‘timely’, it expected RT to plan alternative views to be broadcast “relatively contemporaneously” with the original material. TV Novosti argued that this could be interpreted very broadly. It pointed, in particular, to the difficulty of advance planning for a live rolling news channel, and the fact that such a channel is “not always capable” of doing this.

TV Novosti argued that Ofcom needed to take “this lack of certainty” into account in reaching its decisions on whether individual programmes breached Section Five.

Media plurality and audience expectations

The Licensee also referred to “the importance of plurality” and argued that RT should be seen as an important “voice” in that context.

It argued that RT’s remit and ambition were analogous in some respects to those of the BBC and Channel 4. The BBC’s public purposes expressly included “representing the UK, bringing the UK to the world and the world to the UK”. In the same way, RT’s objects included the dissemination of information about life in Russia and the promotion of contacts with foreign countries and raising the international image of the Russian Federation. Channel 4’s remit included “challenging established views so as to support and stimulate well-informed debate, and promoting alternative views and new perspectives”. Likewise, RT challenges the views purveyed by the mainstream Western media by presenting alternative viewpoints, often providing the Russian viewpoint on international news items in order to provide a plurality of opinions.

TV Novosti highlighted the need to take audience expectations into account in this context. Audience expectations would be “shaped accordingly” taking account of RT’s editorial approach, as described above. The Licensee cited the examples of the Salisbury incident or the stories about chemical attacks in Syria as hugely reported matters in the United Kingdom for which the “predominant narrative” was that of the United Kingdom Government. By contrast:

- “RT has a relatively small UK audience and is avowedly Russian and broadcasting an alternative viewpoint”.
- “Audiences will not be ambushed by views aired on RT, and will not lack the context in which to evaluate them. RT is not a British broadcaster. Audiences do not expect its broadcasts to

resemble those of British national broadcasters. Viewers turn to RT with the expectation that they will receive a Russian viewpoint”.

- “[V]iewers may watch RT with no interest in altering their opinion but instead to see another perspective on unfolding events”.
- “On matters that relate to disagreement between the United Kingdom and Russian Governments (for instance on Salisbury or Syria), there will be viewers who want to hear the Russian point of view from a Russian channel, unfiltered by a British broadcaster”.

TV Novosti added that Ofcom research has also demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience¹¹.

Freedom of expression

The Licensee highlighted the importance of freedom of expression in this context, which encompasses a broadcaster’s right to disseminate, and an audience’s right to receive, creative material, information and ideas without interference, but subject to restrictions prescribed by law and necessary in a democratic society. It said that freedom of expression was one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. The importance of these rights being protected was underlined by Strasbourg jurisprudence, especially in matters relating to political speech and public interest. Accordingly, any restrictions imposed by authorities on freedom of expression in this regard was “decidedly limited”.

Licensee’s Response to the Preliminary Views – General points (written and oral representations)

We sent the Licensee Preliminary Views in relation to each programme and invited them to make both written and oral representations to Ofcom before we reached a final decision.

In its written representations, before commenting on individual programmes, the Licensee made general representations concerning what it considered “fundamental defects in Ofcom’s approach” as to whether TV Novosti had breached the Code. In its oral representations, the Licensee¹² also emphasised particular general points. These general written and oral representations are summarised below.

Preliminary View Content and Structure

In its written representations, the Licensee commented on the content and structure of the Preliminary Views under three main themes:

- a) Ofcom failed to record accurately and take proper account of several arguments raised in RT’s Comments;
- b) Ofcom’s extensive repetition across the 10 Preliminary Views generated doubt as to whether each case had been assessed independently and on its own merits. Only the last section of each

¹¹ It cited in this context Ofcom’s Guidance Notes on Section Five of the Code, paragraph 1.14.

¹² Sam Grodzinski QC made oral representations to Ofcom on behalf of the Licensee on 5 December 2018.

Preliminary View contained evidence of any individualised analysis (which was often inadequate), thereby making it difficult for RT to provide a meaningful reply; and

- c) Ofcom had not taken due and proper account of the relevant and individual context and freedom of expression, despite some of the introductory remarks about context that Ofcom had made. In any Rule 5.5 and 5.11 and 5.12 investigations, Ofcom should start its analysis by looking at how due impartiality might have been maintained in the programme itself. Ofcom conceded in a number of the present cases that the UK or US viewpoint was reflected in the programme to some extent. Ofcom should then examine any series of programmes or timely and linked programmes. Ofcom should assess the relevant context of the programme, how freedom of expression – in particular as regards political speech – applies to that programme; and finally review the relevant evidence and factors in the round in reaching a conclusion. Ofcom had not demonstrated that it took into account the special latitude that should be given to political speech, which was a relevant factor in these cases. Had it done so, it would have led to a different conclusion.

Freedom of Expression and Political Speech

In its written representations, the Licensee reiterated “the fundamental importance” of the right to freedom of speech, particularly political speech, guaranteed by Article 10 ECHR. With this in mind, it considered that the starting point in the present cases needed to be “the need not to deny to an avowedly Russia originated channel and its viewers the right to broadcast and receive political views without unlawful interference”. This was “ever more important given the political controversy surrounding the subject matter of some of these broadcasts”. As stated in each of the Preliminary Views, “in carrying out its duties, Ofcom must seek to balance the broadcaster’s freedom to discuss any controversial subject or point of view in their programming and the requirement in the Code to preserve due impartiality”. However, the Preliminary Views did not in practice set out how Ofcom had carried out that crucial balancing act and the relative weight accorded to conflicting rights and obligations and to all the relevant factors in the round. The effect of this was to deny Article 10 rights “an importance that accords with Ofcom’s words”.

In its oral representations, TV Novosti referred to the important principles set out by the European Court of Human Rights in *Gaunt v United Kingdom*¹³, as restated in *Bédat v Switzerland*¹⁴. It emphasised that any exceptions to the right to freedom of expression must “be construed strictly and the need for any restrictions must be established and convincing”. Any interference with the exercise of freedom of expression had to be necessary within the meaning of Article 10(2) and this “imply[ed] the existence of a pressing social need”.

The Licensee said it wished to draw out the following six key principles from the judgments:

- in the area of political free speech and in matters of public interest, there is little scope for restrictions on freedom of expression;
- any interference with the right to freedom of expression has to be in pursuit of a legitimate aim;

¹³ *Gaunt v United Kingdom* (2016) 63 EHRR SE 15. This case concerned a 2008 interview on Talksport, a speech-based radio station between presenter Jon Gaunt and a member of Redbridge London Borough Council. Ofcom found that the interview was in breach of Rules 2.1 and 2.3 of the Code. Mr Gaunt applied for a judicial review of Ofcom’s decision, firstly with the national courts and then he appealed to the European Court of Human Rights. His appeal was rejected.

¹⁴ *Bédat v Switzerland* (2016) 63 EHRR 730

- there has to be a pressing social need for any interference which must be convincingly established by the public authority imposing it;
- the limits of acceptable criticism of a politician are wider than those of a private individual and the limits of acceptable criticism of a whole government are wider still;
- Article 10 of the ECHR protects not only the substance of the ideas and information expressed but also the form in which the ideas are conveyed; and,
- journalistic freedom covers possible recourse for a degree of exaggeration or, indeed, provocation.

Context

The Licensee noted that the definition of due impartiality emphasises the importance of context and therefore, Ofcom should frame its assessment of due impartiality by taking account of the relevant context (as defined in the Code), which in the case of the 10 RT programmes in question, included the following:

With reference to “the service on which the material is broadcast” and the “likely expectation of the audience”, the Licensee noted that viewers watch RT for the Russian perspective on current affairs, and/or for a different perspective to the mainstream viewpoint, a point echoed by Peter Lavelle in his statement responding to Ofcom’s Preliminary Views concerning the *Crosstalk* programme.

TV Novosti said it considered Ofcom failed to consider this key contextual issue of audience expectation. It added that, from the Preliminary Views, Ofcom appeared to treat the specific broadcast as the viewer’s only source of information, which was unrealistic. The definition of “context” included taking into account “what other programmes are scheduled before and after the programme or programmes concerned”.

The Licensee noted that this is particularly important given the prevalence across the investigations of the Syrian conflict and the Skripal event, in relation to which, in its view, most viewers would be aware of the mainstream media viewpoint.

The Licensee said it actively engaged in inviting proponents of opposite viewpoints to appear in programmes, citing 30 individuals invited to appear on *Worlds Apart* as an example. It noted that these unsuccessful efforts highlight the difficulties faced by RT in presenting alternative viewpoints to its viewers. It argued that Ofcom should recognise this as a contextually relevant factor (i.e. “the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information”) when considering the editorial techniques RT adopted in its efforts to ensure due impartiality. TV Novosti acknowledged that Ofcom’s guidance makes clear that a broadcaster may not rely on the fact that it invited participation from individuals offering alternative perspectives, if such an invitation was declined. However, it argued that the refusal impacts on the extent to which the content can be brought to the audience’s attention and its efforts to secure alternative perspectives should have been taken into account, in accordance with the Guidance.

TV Novosti said Ofcom should draw on all of these contextual factors to judge due impartiality in each instance, and whilst Ofcom briefly acknowledged them, it did not use them to inform its interpretation of the relevant Code rules and did not draw on them when reaching its conclusion that due impartiality was not achieved. The Licensee noted that Ofcom’s Preliminary Views

acknowledged the contextual factors before defining the due impartiality being considered. This meant that they were treated as background and was inappropriate given the status and emphasis afforded to context in the Code. Instead, "the focus in each case should [have] be[en] on **due impartiality, driven by context**" [TV Novosti's emphasis].

The Licensee contended that Ofcom had paid more regard to contextual considerations in its Preliminary View concerning RT's news broadcast on 30 March 2018, in which it did not find a breach of the Code, deciding that contextual factors negated the need for balancing content. TV Novosti considered that this gave appropriate recognition to the importance of context, which Ofcom failed to do in the other nine Preliminary Views. It also noted Ofcom's decision concerning the *James O'Brien Show*¹⁵, broadcast on 27 October 2017. In particular, it noted Ofcom's recognition in that case that viewers would have likely been well aware of Sadiq Khan and Jeremy Corbyn's positions, recognising that a viewer does not watch programmes on one channel in isolation from information from other services and sources. TV Novosti considered that Ofcom should adopt a similar approach in the present cases.

In its oral representations, the Licensee observed that the contextual factors in the Code reflected the factors which Ofcom is required to have regard to in setting standards under section 319 of the Act.

It made the following submissions in relation to context:

- The Licensee submitted that Ofcom had not given "proper weight" in the Preliminary Views to the fact that RT has a relatively small UK audience; the channel is "avowedly Russian in broadcasting an alternative viewpoint" and viewers watch RT "to receive a better idea of the Russian perspective on current affairs and/or to gain a perspective that differs, often, from the mainstream viewpoint"; and "audiences will not be ambushed by views aired on RT and will not lack the context in which to evaluate them".
- The Licensee said that whatever meaning may be ascribed to the words in the Code "linked and timely programmes"¹⁶, Ofcom must always take into account what programmes are scheduled before and after the programme under investigation¹⁷. For example, the Licensee submitted that if a programme containing what Ofcom considers to be a predominantly Russian perspective on the Syria conflict is immediately followed by a programme broadcasting the British Prime Minister giving the UK Government's perspective then Ofcom cannot only consider the earlier programme in isolation from the latter.

The Licensee said that while knowledge gained from other news sources is not explicitly set out as a factor in the Code it was nevertheless an important contextual factor. The Licensee argued that it was "entirely fanciful" to assume that anyone, let alone a significant segment of the viewing population, derives their knowledge of current affairs solely from RT. This also tied in to the

¹⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0020/122960/issue-363-broadcast-on-demand-bulletin.pdf

¹⁶ Rule 5.11 requires due impartiality to be preserved on matters of major political or industrial controversy and matters of current public policy in each programme or in "clearly linked and timely programmes".

¹⁷ One of the contextual factors listed in Section two of the Code to which the definition of "due impartiality" in Section Five makes reference is "what other programmes are scheduled before and after the programme or programmes concerned".

Licensee's point about how the impartiality requirements today may have a very different effect and interpretation to when they were first enacted.

The requirement to preserve due impartiality

In its oral representations, the Licensee argued that given the "very strong obligation" in section 3 of the Human Rights Act, it was necessary to give the due impartiality requirements a meaning and effect that places the least possible limitation on RT's and audiences' Article 10 rights and only to find a breach when it can be established convincingly that such a breach is necessary to avoid harm to audiences. This required a proper understanding of the "important qualifier" (i.e. the word 'due') in the expression 'due impartiality', which was a flexible concept, and as the definition in the Code makes clear, context is important¹⁸.

In its oral representations, the Licensee also made various submissions, in light of its representations about freedom of expression, regarding the approach it believed Ofcom should follow when considering whether a breach of the due impartiality rules had taken place.

Recognising that the rules can operate as a constraint on the freedom of expression of broadcasters and their audiences, it said that the starting point had to be to identify what legitimate aim is being pursued by the Code requirements. As the Act requires Ofcom to have regard "to the degree of harm or offence likely to be caused" when setting standards under section 319(4)(a) the legitimate aim must be the protection of audiences from harm. The Licensee observed that Ofcom's published statement of 18 April 2018¹⁹ regarding these investigations had followed this approach. In particular, Ofcom had made a number of references to protecting audiences from harm, both in the context of referring to its duty to secure standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material, and in reference to protecting audiences from harm being the main reason for broadcasting regulation.

In considering the issue of protecting audiences from harm, the Licensee submitted it was very important to keep in mind the legislative history of the requirement for UK broadcasters to preserve due impartiality, which first appeared in the Television Act 1954. This dated back to a time before the advent of multi-channel television when viewers would have received their television news only from the BBC or ITV. The circumstances today were "entirely different" given the broad choice of television channels providing news services today – for example, there are 19 different channels listed in the 'News' section of Sky's EPG. It was the Licensee's view that this was significant because it considered the possibility of harm to viewers from watching news content on a single channel was very different to what it once was.

The Licensee then turned to what it submitted was "the process of analysis" required when Ofcom is considering potential breaches of the due impartiality rules. As a public authority, Ofcom is obliged

¹⁸ Section Five of the Code defines due impartiality as follows: "'Due' is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. 'Due' means adequate or appropriate to the subject and nature of the programme. So 'due impartiality' does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important".

¹⁹ See https://www.ofcom.org.uk/_data/assets/pdf_file/0012/113043/rt-investigations.pdf

under section 3 of the Human Rights Act 1998 to interpret and give effect to the requirement of due impartiality in the Code, and to do so in a way which provides for the minimum possible interference with freedom of speech under Article 10. TV Novosti considered this meant that Ofcom had to be able to convincingly establish that such interference is necessary and proportionate to the legitimate aim being pursued, namely the aim of preventing harm to audiences.

In support of this, TV Novosti cited key passages from two human rights decisions in the House of Lords. The first of these was Lord Hope's speech in *R v Shayler*, where he observed that the European Court of Human Rights had established in *Handyside v United Kingdom* that the word 'necessary' in Article 10(2) introduced the principle of proportionality.²⁰ Necessary did not mean "indispensable" but the European Court was clear that a restriction on the disclosure of information could not be said to be necessary unless: a) relevant and sufficient reasons are given by the national authority to justify their restriction; b) the restriction in disclosure corresponds to a pressing social need; and c) it is proportionate to the legitimate aim pursued. Consequently, Lord Hope concluded that the starting point was that an authority which seeks to justify a restriction on a fundamental right on the grounds of a pressing social need had a burden to discharge. The Licensee submitted that in this case the pressing social need was the protection of audiences from harm and the burden was on the state to show that the legislative means adopted were no greater than necessary.

In relation to proportionality, Lord Hope identified that the first relevant consideration was whether the objective or pressing social need is sufficiently important to justify limiting a fundamental right; the second was whether the means chosen to limit that right are rational, fair and not arbitrary; and the third was whether the means used impair the right as minimally as reasonably possible. The Licensee said it wished, in particular, to draw Ofcom's attention to the third consideration and to Lord Hope's view that it was not enough to assert that the decision taken was a reasonable one. Rather, "a close and penetrating examination of the factual justification for the restriction is needed if the fundamental rights enshrined in the Convention are to remain practical and effective for everyone who wishes to exercise them".

The second House of Lords decision which the Licensee referred to was *Ghaidan v Godin-Mendoza*.²¹ This was still regarded as the leading case on the proper approach to the requirement in section 3 of the Human Rights Act that primary and secondary legislation must be read *so far as it is possible to do so* in a way which is compatible with the rights in the Convention. Both Lord Steyn and Lord Nicholls expressed similar views that it was Parliament's intention that section 3 may require a court to depart from the unambiguous meaning the legislation would otherwise bear.²² The Licensee submitted that this meant there was a "very strong obligation" on Ofcom to interpret and apply the Code in a way that is Convention compliant "and thus that produces the minimum possible interference of the rights of RT and the audience under Article 10". This was another reason why the Licensee considered the requirement of due impartiality had to be interpreted and applied "quite differently" from when it was first enacted in 1954.

Drawing all this together, the Licensee said its core submission was that in every case where Ofcom is considering whether to make a finding of breach of the Code it must ask itself whether it can be convincingly established that harm is likely to have been caused to audiences by the relevant programme which justifies interfering with RT's and the audience's Article 10 rights. The Licensee

²⁰ *R v Shayler* [2003] 1 AC 247, paras 57 to 61

²¹ *Ghaidan v Godin-Mendoza* [2004] 2 AC 557.

²² *Ibid*, paras 30 to 32 and 43 to 45.

said this was a “rigorous and demanding test” which could not be satisfied by Ofcom by “simply referring to the existence of Article 10 and saying it has been taken into account”. It was the Licensee’s view that, “as a matter of structure and as a matter of substance”, Ofcom’s Preliminary Views had failed properly to apply this test. Therefore, TV Novosti was of the view that Ofcom had not followed the rigorous approach required for justifying the restriction on its Article 10 rights.

Procedural Unfairness

The Licensee said Ofcom’s Preliminary Views failed to recognise the submissions it made in its initial response about the frequent use of the word ‘appropriate’ in the Code and Guidance. It said this was an “elusive concept” and that the “lack of objective standards” caused difficulty for broadcasters in interpreting and complying with the due impartiality rules. It said that if Ofcom is to set a standard, it needs to be clear and transparent as to what this standard entails. TV Novosti had “actively engaged” with Ofcom to “attempt to formulate an effective strategy” when dealing with due impartiality issues, and Ofcom’s further advice and clarification (including the guidance given by Ofcom at a meeting with the Licensee in December 2015) had not met that need. It was important that broadcasters know and understand how the regulator “expects them to behave” and the law required Ofcom to apply coherent standards and to take a consistent approach. Any decision that failed to do this would be struck down by the Courts. It said that Ofcom had failed to provide necessary clarification before issuing its Preliminary Views about what it saw as the potential breaches and that this unfairness was compounded by the failure of Ofcom’s Preliminary Views to spell out in sufficient detail how it regarded TV Novosti as having fallen short of the standards it regards as ‘appropriate’.

TV Novosti said that given what it saw as a lack of clarity for broadcasters in interpreting the due impartiality rules, it was all the more important that broadcasters know, through Preliminary Views and eventual findings, what exactly, in the context of the particular adverse finding, led to that finding. Otherwise, a broadcaster is “left to guess and render itself liable to investigation – and a finding of breach – for guessing wrong”. The Licensee said that Ofcom’s definition of ‘due impartiality’ indicates that “the approach to due impartiality may vary”. It said that broadcasters and the public were “entitled to expect to understand how it may vary”.

The Licensee cited a communication from Ofcom in April 2017 as evidence that Ofcom needed to be accurate and consistent in its approach. TV Novosti said it was told in 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 a programme or in clearly linked **or** timely programmes...” [TV Novosti’s emphasis]. The Licensee said that the regulator understandably expects the broadcaster to respect and follow Ofcom’s formal guidance and for Ofcom to do the same. It noted that “the Code refers to ‘linked **and** timely programmes’ but critically the formal guidance quoted above used the disjunctive word ‘or’ [emphasis added]”.

Lack of Reasoning

TV Novosti said Ofcom had failed to provide an adequate explanation of how it reached its draft conclusion in nine out of ten of its Preliminary Views. It said that they gave no clear indication as to how, and with regard to what and to what extent, an individual factor contributed or failed to contribute to the maintenance of due impartiality in a particular case. Expressions such as ‘we [Ofcom] took into account’ or ‘we considered’ were of themselves insufficient.

The Licensee considered this was particularly evident in relation to the Preliminary View in which Ofcom had not found the Licensee in breach of the Code. Much of Ofcom’s language in this

Preliminary View was very similar to Ofcom's language in the other nine Preliminary Views, the only difference being that Ofcom concluded that RT had preserved due impartiality. The Licensee argued that there was an "absence of reasoned explanation" (contrary to Ofcom's Procedures and the common requirement on decision makers) and that this was unfair, as it prevented TV Novosti from identifying why Ofcom felt it met the standard in this single instance, but failed to do so in the other nine programmes.

The Licensee added that if a public authority cannot provide relevant grounds for a decision the court may view the decision itself as lacking rationality, noting that "it is important for reasons to be delivered, not only to aid understanding, but also to provide the affected party with an opportunity to consider appeal or review". A court would be likely to infer that a failure to do this was evidence of an exercise of unlawful powers or that the actual reasons for the decision were inadequate.

The Licensee referred to its request in its previous representations for Ofcom to reconsider whether it was appropriate to apply Rules 5.11 and 5.12, rather than Rule 5.5 alone. It reiterated that Rules 5.11 and 5.12 impose a significantly higher standard for due impartiality on a broadcaster, and thus further restrict its right to freedom of expression. TV Novosti considered that Ofcom's reasoning for engaging Rules 5.11 and 5.12 was vague, as was the definition itself of a matter of 'major political or industrial controversy and major matters relating to current public policy' and submitted that Ofcom should always therefore err on the side of caution when applying these Code rules, "particularly in light of their potential limitations on free speech". It was clear from the jurisprudence that increased latitude must be accorded to free speech in the context of political expression, and that any interference must be subjected to close scrutiny.

TV Novosti argued that Ofcom frequently referred in the Preliminary Views to the need for alternative views to ensure due impartiality, but failed to specify its expectations, adding that Ofcom was, to a great extent, unclear on what 'alternative views' were necessary in any particular case to ensure that due impartiality was preserved. Given that any major matter will have multiple perspectives, the Licensee argued that the nature of necessary 'alternative views' was often unclear. As Peter Lavelle had commented in his "Reply to Ofcom" on the *Crosstalk* Preliminary Views, "there are multiple ways to understand a conflict". By way of illustration, *Crosstalk* specifically sets out to react to news events with "a variety of opinions", but in respect of a number of the Preliminary Views the Licensee did not know which opinion Ofcom considered it should have included. There are often "myriad possible alternative views" and this emphasises the "vagueness" of Ofcom's request for an alternative viewpoint. As Peter Lavelle also commented, "even among Russia-watchers there are differing opinions about Russian politics and Russia's role in the world".

Contemporary Political Context and Pressure on Ofcom

In its written representations, TV Novosti said it was important for Ofcom to keep in mind the context in which the issues of alleged Code breaches had arisen. It noted, in particular, the "highly charged political atmosphere, in which RT is threatened with the loss of its licences to broadcast". The Licensee quoted as evidence the Secretary of State for Digital, Culture, Media and Sport, whose recent remarks it considered demonstrated an intense pressure on Ofcom from the Government. It also considered there was political pressure from beyond the Government, as demonstrated by proceedings before the House of Commons Digital, Culture, Media and Sport Committee on 31 October 2018.

Further, the Licensee referred to the Secretary of State for Digital, Culture, Media and Sport having referred to "40 different official narratives", "Russia Today" and "RT", as if they were all the same entity, which the Licensee considered confusing.

TV Novosti noted that the Secretary of State has also said that “Ofcom has repeatedly found that RT has been in violation of standards; these include cases when Ofcom says RT’s coverage has been labelled ‘materially misleading’”. The Licensee considered the Secretary of State had ignored the comparative records of RT and other broadcasters, and noted both Ofcom’s view that, “until recently, TV Novosti’s overall compliance record had not been materially out of line with other broadcasters” and the fact that Ofcom had recorded only two breaches of the Code against it between 2014 and 2017. The Licensee repeated comments it made in response to Ofcom’s seven requests of 18 April 2018²³ including its view that its record is “better than the record held by many other broadcasters”, and its surprise at Ofcom’s use of the words, “until recently”, noting that it had not been found in breach of the Code in the last year and a half, and that it was unaware of any increase in audience complaints.

TV Novosti stated that it strives and considers itself to be a responsible broadcaster, noting its engagement in dialogue with Ofcom and repeating its contention that its record is as good as or better than that of other broadcasters. This latter point, it noted, was confirmed by Ofcom in its published statement²⁴ of 18 April 2018. It said, however, that Ofcom has opened ten due impartiality investigations within a very short space of time, which it stated was unprecedented, and which it stated Ofcom immediately linked to an investigation on whether TV Novosti was a “fit and proper” person to hold UK broadcasting licences. The Licensee considered it was therefore reasonable to infer that Ofcom’s course of action had been “influenced by the current political climate”.

Accordingly, TV Novosti underlined the importance of Ofcom addressing the merits of each case transparently, independently, properly, carefully and fairly, in line with the requirements under common law and Article 10 ECHR. It also noted the risk to RT’s reputation and its susceptibility to politicised attacks were it to be found it breach of the Code. Finally, the Licensee argued that its service is important for plurality in broadcasting.

TV Novosti also addressed this issue in its general oral representations. It recognised that Ofcom is an independent regulator and that it is not controlled by the British Government or by politicians. However, given the current political climate, it said it had a “concern that the outcome of these investigations might, however subconsciously, be influenced by strong political pressure...”. It was particularly important, therefore, that Ofcom’s decision-making process was rigorous, both in terms of Ofcom’s application of the law and a careful and detailed explanation of Ofcom’s reasoning, so as to ensure confidence that each of these cases has been decided purely on its merits and not influenced by any outside political pressure.

²³ TV Novosti’s letter to Ofcom of 6 June 2018 - see above under ‘Introduction and Summary’

²⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0012/113043/rt-investigations.pdf

Decision – Ofcom's Response to General Factors

As the Licensee made general representations common to all the ten programmes, we have structured our decisions and the reasoning to discuss all the general factors first, before going on to consider the individual programmes and the Licensee's specific representations on those programmes.

Before dealing with the general factors, we first address the Licensee's representations about the political context and the alleged political pressure on Ofcom.

Contemporary political context

Ofcom is the UK's independent broadcast regulator. In performing our broadcast standards duties, we act independently from Government and politicians.

We approached these cases in our usual way, following our published procedures which provide for a fair and transparent process. After watching all the programmes, we assessed and investigated each individual programme against the rules in Section Five of the Code. We considered the fact-specific context for each programme, took account of the Licensee's written and oral representations and reached an independent decision on the merits of each individual case. Our detailed reasoning on the facts of each case is explained in the individual programme decisions. We are satisfied that we reached these decisions independently.

We set out below the statutory framework and our approach to freedom of expression. We then discuss the other general common contextual factors which apply to all the individual programmes. We considered all of these factors in our analysis of the fact specific context in each programme. We cross-refer back to the statutory framework, our approach to freedom of expression and the general common factors in each individual decision, but we do not repeat them each time.

Statutory framework and freedom of expression

Ofcom's principal duty, in carrying out its functions, is to further the interests of citizens in communication matters, and to further the interests of consumers in relevant markets. Ofcom is required as one of its general duties – amongst others – to secure the application of standards to provide adequate protection to members of the public from the inclusion of offensive and harmful material in television services.²⁵ In performing its regulatory duties, Ofcom must have regard 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.²⁶ Ofcom must also set standards for the content of broadcast services that appear to it best calculated to secure the standards objectives set by Parliament.²⁷ There are 12 "standards objectives", one of which is that "news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with". In setting the standards, Ofcom must have regard in particular, and to such extent as appears to it to be relevant, to matters such as the degree of harm or offence likely to be caused, the likely size and composition of the potential audience, and the likely expectation of the audience.

²⁵ Section 3(2)(e) of the Act.

²⁶ Section 3(4)(g) of the Act.

²⁷ Section 319 of the Act.

Ofcom has specific duties relating to due impartiality under section 320 of the Act which are not restricted specifically to news content. For television services, Ofcom is required to ensure the exclusion of all expressions of the views or opinions of the broadcaster on any matters of political or industrial controversy and matters relating to current public policy²⁸ and the preservation of due impartiality on the part of the broadcaster as respects such matters²⁹. And in the case of radio services, Ofcom is required to ensure the prevention of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.³⁰ Parliament has thus specified the contexts in which due impartiality must be preserved on broadcast services licensed by Ofcom.

Ofcom has complied with its standards duties by publishing the Code. Rules relating to due impartiality are set out in Section Five of the Code. Broadcasters are required, as a condition of their Ofcom licence, to comply with the Code, and to establish and maintain procedures for the handling and resolution of complaints about observance of the Code.

The Licensee stated in its oral representations that it does not say that the expression "due impartiality" in the legislation or the impartiality standards in the Code are themselves incompatible with Article 10. It submitted, and Ofcom agrees, that Ofcom must interpret the legislation and perform its duties in accordance with Article 10 of the ECHR. The Licensee argued that if Ofcom had properly taken account of Article 10 in these cases, Ofcom would not have found any of these programmes to be in breach of the Code.

As a public authority, it is unlawful for Ofcom to act in a way that is incompatible with Article 10 of the European Convention of Human Rights.³¹

As the UK's independent broadcast regulator, Ofcom agrees with the Licensee that freedom of expression is one of the essential foundations of a democratic society.³² As is well established, it encompasses the broadcaster's right to freedom of expression as well as the audience's right to receive information and ideas without interference.³³ It applies not only to the content of information but also to the means of transmission or reception.³⁴ And while subject to exceptions, the need for any restriction must be established convincingly.³⁵ Any interference must be prescribed by law; pursue a legitimate aim; and be necessary in a democratic society (i.e. proportionate to the legitimate aim pursued and corresponding to a pressing social need). 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

²⁸ Section 320(1)(a) of the Act.

²⁹ Section 320(1)(b) of the Act.

³⁰ Section 320(1)(c) of the Act

³¹ Section 6 Human Rights Act 1998.

³² *Steel & Morris v UK* (2005) EMLR 15; see also *Handyside v UK* (1979-80) 1 EHRR 737.

³³ *Lingens v Austria* (1986) 8 EHRR 407.

³⁴ *Autronic v Switzerland* (1990) 12 EHRR 485.

³⁵ *Steel & Morris v UK* (2005) EMLR 15.

protection of freedom of expression will normally be accorded, with the authorities having a particularly narrow margin of appreciation.

The Government's White Paper³⁶ published in advance of the Communications Bill in December 2000, set out the Government's rationale for the continuation of the due impartiality requirements for television and radio broadcasting in the UK. It stated that:

"...one of the cornerstones of broadcasting in the UK has been the obligation on all broadcasters to present news with due accuracy and impartiality. There are also important impartiality obligations applying to other programming. The Government believes that these 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. Responses to the consultation indicated general support for retaining them".

In passing the Act, Parliament set out in legislation the restrictions prescribed by law and which it has judged to be necessary in our democratic society. The legitimate aim is for the protection of rights of others. The statutory framework set by Parliament specifically assigns an area of judgment, to be exercised by Ofcom, as to how the requirements of the legislation are to be applied to the facts of each case.

The Code containing the standards has been drafted in light of section 319(4) of the Act and Article 10, and following extensive public consultation, to reflect the need to take account of contextual factors when applying the due impartiality rules in Section Five.

The Code and Ofcom's Guidance make clear that "due" is an important qualifier to the concept of due impartiality. Impartiality itself means not favouring one side or another. "Due" means adequate or appropriate to the subject and nature of the programme. So "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content and the extent to which the content and approach is signalled to the audience. Context is important.

Contrary to the Licensee's suggestion in its representations on the Preliminary Views, Ofcom does not simply pay lip service to Article 10 considerations as an afterthought to its analysis on breach. Ofcom did not consider the relevant content of the programmes in isolation from Article 10. The final paragraphs of the Preliminary Views were a reiteration and emphasis of Ofcom's careful regard to Article 10 when considering each individual programme. Each and every time Ofcom applies the Code to broadcast content, Ofcom gives careful consideration to the broadcaster's and the audience's Article 10 rights. In order to reach a decision on whether due impartiality was maintained in these programmes, Ofcom has had careful regard to the Article 10 rights and all the relevant contextual factors for each programme.

For each of the ten programmes, Ofcom has taken full account of all the contextual factors particular to each programme. There are general contextual factors which are common to all the programmes, which we discuss here in one place without repeating in each programme analysis. We also cross

³⁶ 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

reference these in relation to each individual programme, showing that we have properly taken them into account in each case.

General contextual factors applying to all ten programmes

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 our view, the points raised by the Licensee regarding general contextual factors related to the nature of RT as a service and audience expectations (as discussed above under 'Licensee's Initial Response – General') are important and significant factors in our approach to considering the preservation of due impartiality on RT. However, it does not obviate the impartiality requirements, especially when dealing with matters of major political and industrial controversy and major matters relating to current public policy.

We acknowledged that all the programmes were broadcast at the time of an ongoing, highly politically sensitive issue, namely, the aftermath of the poisoning of Sergei and Yulia Skripal, and that, in relation to those programmes discussing the Skripal poisoning, the RT audience would expect a Russian perspective on this subject.

As explained above, Ofcom recognises the importance of the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without undue interference³⁷ in our democratic society. We acknowledge that the right to freedom of expression encompasses the right of broadcasters to make programmes providing audiences with the 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. We recognise that this may include programmes challenging accusations made against Russia, for example accusations by the UK Government about the Russian authorities' alleged role in the Skripal case.

However, to the extent that the programmes examined politically controversial matters, TV Novosti still needed to comply with Section Five of the Code by ensuring that due impartiality was preserved. These rules, amongst others, require broadcasters to ensure that alternative viewpoints are reflected, as appropriate, on matters of major political and industrial controversy and relating to current public policy. The way due impartiality is preserved is an editorial matter for each individual broadcaster.

³⁷ We note that the Licensee characterised this in its first response as also being a question of media plurality. Media plurality, as reflected in Ofcom's statutory duty to secure, in carrying out its principal duty, the maintenance of a sufficient plurality of providers of different television and radio services, is primarily concerned with ensuring that there are a wide range of viewpoints available across such services from a variety of media organisations, and preventing too much influence over the political process being exercised by any one media owner – see Ofcom's Advice to the Secretary of State for Culture, Media and Sport on the measurement framework for media plurality, 5 November 2015, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf The rules in question in Section Five of the Code have a different focus, namely to ensure that news is reported with due accuracy and presented with due impartiality, and on matters of major political and industrial controversy and major matters relating to current public policy, that due impartiality is preserved in each programme or in clearly linked and timely programmes.

In a number of programmes, the Licensee argued that it had preserved due impartiality across its service by, for example, broadcasting other significant viewpoints in its news bulletins and also by broadcasting live the Prime Minister's statements to the House of Commons on the Salisbury incident. However, as mentioned above in relation to the UK statutory framework, television services such as RT cannot preserve due impartiality by relying on what is broadcast across their service as a whole.³⁸ It is possible for television services such as RT to preserve due impartiality, in the context of Rule 5.12, in clearly linked and timely programmes. However, because it cannot be guaranteed that a person watching one programme will have been watching the programme that precedes it or follows it, the broadcaster must take steps to ensure that the two programmes are "clearly linked".

We took into account the Licensee's argument that a relevant contextual factor, contained within the non-exhaustive list of such factors in Section Two of the Code is "what other programmes are scheduled before and after the programme or programmes concerned". However, we considered it appropriate to put much less weight on this contextual factor compared with other factors listed in Section Two of the Code such as the likely size and composition of the potential audience and likely expectation of the audience. This is because, as set out in Rule 5.6³⁹ of the Code, the due impartiality rules envisage that if a broadcaster is seeking to preserve due impartiality by reflecting alternative viewpoints in linked programming, this should be made clear to the audience on air.

The Licensee argued that in many of these programmes, as the dominant narrative was widely disseminated by most if not all other media outlets/broadcasters, it was not necessary for RT to repeat that perspective explicitly in the programme. However, as detailed above, when dealing with matters of major political and industrial controversy (such as the Salisbury incident and its aftermath), the Code requires compliance with the special impartiality provisions. When dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters are required to take additional steps in order to preserve due impartiality, namely an appropriately wide range of significant views must be included and given due weight. In our view, to attempt to do so only by implicit means would not be appropriate and would not be giving those matters due weight.

In each individual programme, in considering whether the Licensee has complied with the due impartiality requirements of the Code, we took account of all these general contextual factors as well as the specific individual contextual factors for each programme, with careful regard to the broadcaster's and audience's Article 10 rights.

³⁸ As we made clear in our December 2013 *Syrian Diary* Decision (see https://www.ofcom.org.uk/data/assets/pdf_file/0025/45745/obb244.pdf), due impartiality can only be preserved across a whole service in the case of non-national radio services. Specifically, section 320(1)(c) of the Act requires: "the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on...matters [of matters of political or industrial controversy; and matters relating to current public policy]". Section 320(4)(b) states that the requirement contained in section 320(1)(c) "is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole".

³⁹ Rule 5.6 states: "The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air".

Content and Structure of the Preliminary Views

We do not agree with the Licensee's representations on this point. In considering ten programmes at the same time, applying the same Code rules, there will of course be an element of repetition as we adopted a consistent approach to each. In these final decisions, we have grouped the common contextual factors in this general section in order to avoid unnecessary repetition. In analysing each individual programme, the reasoning makes clear that as well as these general contextual factors, we have given discrete consideration to each programme on an individual basis and assessed each on its own merits.

Procedural unfairness

We do not accept the Licensee's submission that our approach to due impartiality is incoherent or inconsistent. Ofcom's Code and Guidance in relation to due impartiality correctly explain that our approach may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience, as well as all relevant contextual factors. Each case will naturally depend on its facts and its particular context, but our approach to assessing these contextual factors is consistent. All Ofcom's broadcasting standards decisions are published in fortnightly bulletins and licensees are well aware of Ofcom's approach. We have reviewed the email from April 2017 cited by the Licensee as an example of inconsistent guidance and it is clear from reading the whole email that it is a simple typographic mistake in one sentence when the "or" should have been an "and". Further there is a direct quote from the published Code which is correctly represented in another paragraph in the same email.

Lack of reasoning

We do not agree that our Preliminary Views contained inadequate reasoning. Each individual decision analyses the content and the treatment of alternative views and identifies when we considered them lacking. As our Guidance makes clear, broadcasters have editorial discretion as to how they preserve due impartiality and to which alternative views they include in any particular programme, so long as they comply with the relevant impartiality rules in the Code.

Use of the word "balance"

In response to the Licensee's representations on this issue, we agree that the Code's definition of due impartiality makes clear that it does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. In our Preliminary Views we correctly applied the Code's definition, following our Guidance. We also note that the Licensee referred to "balance" a number of times in its first written representations. Ofcom's reference to "balance" in a number of the Preliminary Views was not intended to connote such an equal division of time and we have therefore amended our reasoning in each individual decision to make this clear.

Ofcom's investigations into individual programmes

In Breach

Sputnik, 17 March 2018, 19:30

Introduction

Sputnik is a weekly 25-minute current affairs discussion programme. Ofcom received a complaint that this edition of the programme was not duly impartial in a discussion about the poisoning of the former FSB secret service officer, Sergei Skripal and his daughter Yulia in Salisbury on 4 March 2018.

We watched the programme and noted that at the start of this edition of *Sputnik*, the following caption was broadcast:

"The views and opinions expressed in the following programme do not necessarily coincide with those of RT".

The first half of the programme featured a discussion between the presenter, George Galloway ("GG"), his co-presenter Gayatri Pertiwi ("GP"), and his guest, Alexander Nekrassov ("AN"), described as the *"former Kremlin and Russian government adviser"*. They discussed the poisoning of Sergei and Yulia Skripal, as follows:

- GG: *"So President Putin is such a genius that just days before his Presidential election and just 100 days before Russia hosts the World Cup, he tries to kill two Russians, one of whom lives in Moscow and could have been strangled there for nothing with her own scarf; the other of whom could have been killed in a Russian prison or at any time since or later, using a weapon known to have been invented by Russia, in England, in public, in broad daylight, for no purpose yet even speculated upon. Pure genius".*
- GP: *"They say it was a nerve agent called Novichok – or newcomer – which was developed by the former Soviet Union in the 1980s. Its formula long ago ceased to be a secret. Its inventor now lives in the United States and a version of it no doubt resides in Britain's own nerve agent weapons base at Porton Down – which as coincidence has it, is just seven miles from the scene of the crime in Salisbury".*
- GG: *"We know the nerve agent was present in the British agent's house because that is where it is said to be where the brave police officer Det Sgt Nick Bailey was affected. We know that the substance affected nobody in the Salisbury pub and restaurant visited by Mr and Miss Skripal. Neither did it affect the doctor who treated the couple on the park bench for half an hour; yet it affected the British spy and his daughter alright, and they remain in hospital in a critical condition, though stable".*
- GP: *"So a murder plot in which nobody yet died but which has set Britain on a collision course with Russia. It reads like a plot of a spy novel as indeed it may well be".*
- GG: *"Joining us on this edition of Sputnik is former Kremlin and Russian Government advisor, best-selling novelist, redoubtable media commentator Alexander Nekrassov. Alexander ... these are dark days for British-Russian relations – dark of course indeed to the victims of the attack in Salisbury. Did this come out of the blue for you – was this a course of action that you could have predicted; and if you could have predicted*

it maybe there is something in that – that this is all a script, this is all a narrative, pre-prepared for some ulterior political motives?”

AN: *“Well George, it looks like a badly prepared provocation. It’s like the people behind it didn’t really think it through properly. First of all, the target. Now you mentioned in your opening words that it’s strange that they would pick this man who was exchanged in a spy swap and his daughter, of all people, who came from Moscow. By the way not the first time she came to visit here. So that particular bit was not thought through at all and it would be very difficult to explain to anyone who is going to accuse Russia of involvement that why they pick these people. So, this was a surprise for me. Now I was a former spin doctor for the Kremlin – the first one actually in Russia – and I can tell you I sense those small things when I see this sort of charade played out. So, you can see where the problem comes from and where they will have a hell of a time proving their point. Now this first thing I said is the target – wrongly chosen completely. Second point, the assertion that because it’s the Novichok nerve agent that means Russia is behind it. Excuse me, seven miles away is the biggest chemical warfare centre in Europe – Porton Down. Now they have samples of this particular nerve agent – have had them for years – why? Because they need it to produce the antidote otherwise you can’t do it. We were even informed by some ‘experts’ in chemical warfare that the antidote was given to Mr Skripal and his daughter so, which means, it was given from Porton Down, so immediately the trail goes not to Russia but to Porton Down, although I must say it might lead to other laboratories in America, in Europe, well, all over the world. What I have read in the papers, what I have seen on television goes beyond parody. These are journalists, who are saying things, that first of all they are reading from the same script because in the same words and sentences which is a bit strange. Secondly, there is no logic in their reporting and what I found on the first day when they started aggressively attacking Russia is that they started saying things like ‘Well, it’s not even – yet – proven but everything shows that it’s Russia. Look at the pattern’. Which pattern? What pattern? Things they were starting to write and say things like ‘Remember Litvinenko⁴⁰’. Well I’d like to remind people that the Litvinenko case was closed quickly, and they decided not to talk about it. The British Government even made secret most of the things about it because there were – let’s say – suspicious circumstances with Litvinenko. Then came Boris Berezovsky – ‘oh this oligarch died, committed suicide, but we think he was still killed by the Russians.’ Boris Berezovsky was bankrupt, Boris Berezovsky wrote a letter to Putin saying forgive me please and let me come back and I will tell you everything that happened with Litvinenko and I will tell the world. So why would the Russians kill a man who is saying to them forgive me for what I have done, and I am coming back. So, it is all presented–”*

GG: [Interrupting] *“What about timing Alexander, because this is the third in the triptych of reasons to disbelieve. The daughter, as I said, could have been murdered in a dark street in Moscow with her own scarf at the cost of absolutely zero, political and financial?–”*

GP: [Interrupting] *“But why?”*

⁴⁰ Alexander Litvinenko, a former Russian secret service officer died in 2006 of polonium poisoning. An independent inquiry chaired by Sir Robert Owen, and which reported in January 2016, found that Andrei Lugovoi and Dimitry Kovtun had poisoned Alexander Litvinenko and that this action was “probably approved” by the Russian authorities including President Putin (see <http://webarchive.nationalarchives.gov.uk/20160613090324/https://www.litvinenko inquiry.org/report>).

- GG: *"Yes. 'Why?', of course, is another matter. Skripal could have been killed when he was in prison, could have been killed in any time in the last years he has been living in England but most significantly, if they wanted to kill him, why couldn't they wait until after the World Cup? Why would they create such a crisis, international crisis, on the threshold of what was supposed to be the showcasing of the new Russia?"*
- AN: *"Well, my personal opinion in this case is that the people in Britain – the politicians, Westminster and others, they are in trouble and they need the distraction. There are so many problems that have come up ranging from corruption with Carillion, Capita – you know Government contracts being given to companies that are going down – no names are given, no ministers are mentioned. Then of course the paedophile scandals. They are getting out of control. There are people saying they will demand an investigation into Telford and Rotherham again and dozens of cities are mentioned. This is not good for Westminster".*
- GG: *"And then the small matter of Brexit".*
- AN: *"Well, Brexit – I wanted to come later, third, because there is a very interesting connection with Brexit. Brexit was presented by the remainers as something that Russia helped to achieve. So, tarnishing Russia, tarnishes Brexit automatically – maybe not directly but indirectly. This whole attack on Russia is an attack on Brexit because Russia supposedly was the main instigator–"*
- GP: [Interrupting] *"Russia is behind everything anyway".*
- AN: *"–They are now investigating again whether Russians were helping Brexit on the internet and whether they were funding. So, yes, indirectly it's an attack on Brexit".*
- GG: *"This is part of the paradox – one of many – they, they say that President Putin is this Mephistophelian genius who can rig elections in the United States, influence people in Sunderland and Swansea to vote for Brexit, move the Catalans to demand independence and so on. Yet this genius is also so stupid that he carried out this double hit".*
- GP: *"Speaking of so stupid these were spies under the protection of Britain, right? No one has questioned that matter right? So much under the protection right?"*
- GG: *"If MI6 offered me protection I think I would say no thanks, I'll take my chances with the village bobby. The other paradox, of course, deals with RT. On the one hand they say no one watches RT except conspiracy theorists and extremists and so on, but on the other hand they say we simply can't allow RT to continue, presumably because so many people are watching it–"*
- GP: [Interrupting] *"Or even being aired".*
- AN: *"I would like to say a word in the defence of the conspiracy theorists if I may. The conspiracy theorists emerge not because people are stupid but because they don't trust the Government".*
- GG: *"Since the Iraq War, the credibility of the British ruling elite, and its media, and its political class has plummeted and that is what Brexit was all about".*

AN: *"Plummeted is putting it mildly".*

GG: *"Yes, the bottom has fallen out of it. We can assume that this war with Russia now declared will not go hot, but there was someone on the floor of the house yesterday, a Tory MP, calling for a cyber-attack from Britain on Russia. What could possibly go wrong? It is now going to get very nasty now isn't it?"*

AN: *"Well, first of all the cyber-attacks against Russia going on have always been going on, if you remember the NSA⁴¹ scandal, remember what transpired that practically even the President's mobile phone – that was President Medvedev⁴² – was hacked by the NSA and by the way the British. So, I cannot understand one thing. If the Russians are the only ones who are aggressive, who are involved in cyber wars, are hacking, what is the American 44 billion a year CIA doing? Are they doing anything? Because that's what I find remarkable. That all these Russians are everywhere, listening, hacking in, doing things and where is MI6, where is the CIA and where is the other 149 American intelligence agencies – their budget astronomical nearly billions and billions – I think a trillion dollars. We are witnessing a very strange campaign when all the intelligence services of the West are being downgraded to idiots who are just watching in awe these Russians and do nothing. I'm sorry I don't buy this. This is absurd".*

The discussion then ended.

Several times during the programme, the following banner was displayed on screen:

"UK, France, Germany, U.S. say Skripal case is an 'assault on UK Sovereignty' by Russia".

Ofcom considered that the programme was dealing with a matter of major political or industrial controversy and major matters relating to current public policy, namely, the policies and actions of the UK and Russian Governments concerning the poisoning of Sergei and Yulia Skripal.

We therefore considered that this programme raised issues warranting investigation under the following rules:

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".*

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".*

Ofcom requested comments from the Licensee on how the programme had complied with these rules.

⁴¹ US National Security Agency. In 2013 Edward Snowden leaked details of the NSA's covert surveillance of various individuals.

⁴² President of Russia 2008 to 2012.

Initial Response

General

The Licensee made several “background points” about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10.

Due impartiality in the programme

The Licensee said it recognised that “the Salisbury incident and its aftermath has severely strained the relationship between the United Kingdom and the Russian Federation...[but TV Novosti had] gone to great lengths to bring as much appropriate balance to its coverage of the Skripal case as it could, for example by ensuring that RT anchors refer to the UK Government’s version of the events and by inviting commentators of sufficient authority and knowledge to present the UK Government’s point of view”. The Licensee added, however, that it had received “37 refusals to such requests recently”, including: former UK Ambassadors to Moscow; a Minister of State for Security and Counter Terrorism; a former Defence Secretary; and a former UK representative to the United Nations.

TV Novosti did not dispute that this specific programme dealt with a “major matter”. However, it considered that “due weight was given to a wide range of significant viewpoints in the debate over the policies and actions of the UK and Russian Governments as regards the Skripal poisoning either within the programme itself and/or clearly linked and timely programmes and taking into account all the relevant context”.

The Licensee said “an appropriately wide range of significant views in this programme would include the dominant view expressed by the UK and other Western Governments that Mr Skripal and his daughter were poisoned by a military grade nerve agent”. It added that this “dominant view” as it understood it, “holds that the UK has identified this agent as only being made and available in Russia, and therefore likely to have come from Russia and therefore the Russian state is responsible”.

TV Novosti said that the purpose of *Sputnik* is “looking behind the stories which made the news, as well as unearthing ones that didn’t”. It therefore considered that “although alternative views to the dominant position are given more time and emphasis within the programme, the UK/Western position is reflected and frames the programme’s discussion of the event in question”.

The Licensee said Mr Galloway’s introduction confirmed the UK position “to ensure this viewpoint frames the discussion that follows as host George Galloway presents a series of legitimate and objective questions surrounding the theory held by the mainstream that Russia is responsible”. TV Novosti also considered that Ms Pertiwi set out the UK position in her opening remarks.

In the Licensee’s view, this statement confirmed “the gravity of the difference between the UK and Russia that underlies the ‘collision course’ between the two nations and the UK/Western position on the Skripal case that the poisoning was a Russian act of state, and a murder plot”. It added that Mr Galloway went on to recite a “series of facts which ‘We know’ and which form the basis of the dominant UK/Western viewpoint and are not contested in the programme”. These included that “the ‘nerve agent’ was found in Mr Skripal’s house, the ‘brave’ DS Nick Bailey was affected by it and the then definite (‘all right’) critical health condition of the Skripals”.

TV Novosti described the discussion with the guest, Mr Nekrassov, as being “framed around legitimate and objective questions to explore the conclusions that had been drawn in relation to the poisoning”. In particular, the Licensee said that Mr Nekrassov challenged “how the UK/dominant view about what happened to the ‘target’ was reached while presenting it: ‘because it’s Novichok nerve agent, that means that Russia’s behind it’”. TV Novosti said this “was a recognition of the British Government’s point of view and not criticism of a policy but an exploration of the conclusions drawn”. The Licensee also considered that Mr Nekrassov’s criticism was “particularly directed at the media”.

The Licensee also said that it relied on previous Ofcom guidance “that one way of presenting the alternative view is in the form of graphics or tickerline” and accordingly, “broadcast a banner message...over a dozen times during the programme”. TV Novosti said the banner message stated: “UK, France, Germany, U.S. say Skripal case is an ‘assault on UK Sovereignty’ by Russia”. It added that the same banner was displayed throughout the entire day of broadcast and appeared on screen for over 26 minutes over the course of the day. TV Novosti therefore considered the graphic had “continually informed viewers that a major group of Western states supported the UK view that the Skripal poisoning was a serious matter which amounted in their opinion to an attack on the UK’s territorial sovereignty – something they could only logically believe if they considered another state (Russia, as set out in the programme itself) was responsible”.

Due impartiality in other programmes

TV Novosti said it had “carefully reviewed its output news footage from 17 March 2018 (the day this programme was broadcast)”. The Licensee considered that a “number of its news programmes reflected the UK Government/Western dominant position on the matter of the poisoning of the Skripals, and the policies and actions of the UK Government in reaction to this event”, citing a range of examples from news programmes broadcast on 17 March 2018.

Contextual factors relevant to this programme

The Licensee also cited various contextual factors that it felt was relevant in this case:

- In relation to the nature of the subject matter being discussed, TV Novosti described the poisoning of the Skripals as a “highly controversial event with direct relevance to the Russian-centric focus of [RT]” and therefore the audience would expect to be given a Russian perspective on this subject. The Licensee also considered that viewers would have “been interested to learn the Russian view” on related issues such as the sanctions imposed on Russia by the UK and US Governments and the accusatory statements made by Theresa May about Russia.
- The Licensee described the presenter of *Sputnik*, George Galloway as “a highly controversial politician and commentator” and that “viewers will know him for that, or will immediately learn it”.
- In relation to the expectations of the audience for *Sputnik*, TV Novosti said that the programme’s agenda is “transparently signalled as bringing a new perspective, a different view” and that the RT audience has a “general expectation of receiving a different viewpoint”. The Licensee considered this particularly applied to a programme such as *Sputnik* where the “objective and audience expectation is not to hear again the mainstream British view, but to hear views that are new, or different”. Given that “the media and public discourse was understandably flooded with the UK Government’s narrative”, TV Novosti considered “there was thus all the more need for people to hear contrary or questioning views”.

- The Licensee also addressed the wider context of the right to freedom of expression and the role of journalism. It said that “it is a vital function of journalism to ask questions, and RT considers that its programmes must probe the motives, policies and actions of Governments in the public interest of citizens and consumers”. Given what “some regard as a relatively limited and set agenda as to what the most important stories are and how they should be covered”, TV Novosti considered that “[m]any citizens in the UK after the Skripal poisoning were asking the same questions as Mr Galloway and his guest in the programme, querying for example the potential motive for the Kremlin to order such a poisoning just before the World Cup, of a spy who had been the subject of an agreed spy swap between Russia and the UK, and in such a way that it seemed that the suspicion would fall immediately on Russia”. The Licensee described these as “legitimate journalistic questions which were posed and explored in this programme”. Although TV Novosti accepted that Mr Galloway’s approach may have been “more rumbustious” than others “who had discussed these issues across other media outlets”, it argued that “this overall context is very material in assessing whether this programme maintained due impartiality”. The Licensee also described the questions raised by Mr Galloway as “legitimate” and “objective questions to be asked” and said that “regulatory intervention to prohibit or chill such examination would be contrary to public interest, especially in a matter of major political controversy and public policy”.

Preliminary View

Ofcom issued a Preliminary View that the edition of *Sputnik* broadcast on 17 March 2018 at 19:30 was in breach of Rules 5.11 and 5.12 of the Code and invited TV Novosti’s representations on the Preliminary View. The Licensee provided written and oral representations on the Preliminary View.

Response to Preliminary View

The Licensee made general representations about factors common to all the Preliminary Views which are summarised earlier at pages 10 to 18.

In addition, in its written representations the Licensee summarised what it considered to be the key points made in Ofcom’s Preliminary View and said it did not agree with Ofcom’s findings.

TV Novosti said that Ofcom had “rightly acknowledged” that the UK Government and Western perspective on the Skripal incident had formed the implicit basis of the whole programme, arguing that as the dominant narrative, widely disseminated by most if not all other media outlets/broadcasters, it was not necessary for *Sputnik* to repeat that perspective explicitly, which is indeed manifestly intended to put forward questions and an alternative view that is critical, sometimes highly critical, of the dominant perspective.

The Licensee therefore considered it was sufficient in this instance for it to have reflected the UK/Western perspective “to a limited extent”, particularly in light of the viewers’ expectation to obtain a Russian perspective on the event and/or a questioning/critical perspective of the dominant narrative.

TV Novosti said that the due impartiality requirement must take into account the context of the specific programme⁴³, adding that *Sputnik* does not purport to be a news programme (akin for example to the BBC 10 o’clock news), but is rather in substance a current affairs talk show,

⁴³ The Licensee noted that under Section 1.33 of the Ofcom Guidance to Section Five of the Code assessing whether the requirement has been met will take into account “the nature of the programme ...the transparency of its agenda ... and what the audience’s expectations are”.

presented by a man who is well known in the UK for his controversial, anti-establishment views. Accordingly, the Licensee argued that viewers of *Sputnik* do not expect a detailed and balanced explanation of the UK Government's position.

TV Novosti noted its use of graphics to present the alternative view in *Sputnik*, which it reiterated was a method of achieving due impartiality "expressly endorsed by Ofcom". It said that in this instance, however, Ofcom erroneously considered the graphic in isolation, rather than its effect in the round, alongside all other factors raised to demonstrate the provision of an appropriately wide range of significant views.

The Licensee argued that the free speech requirements of Article 10 would be undermined if a broadcaster were to be required to explicitly repeat the prevalent UK/Western perspective in a programme such as *Sputnik*, even where that perspective is (which the Licensee states that Ofcom accepts) already implicit as the background to the programme and is explicitly and widely published elsewhere.

TV Novosti also argued that the Code should be interpreted generously to give effect to Article 10 when considering the meaning and requirements of the reference to "clearly linked and timely programmes in Rules 5.11 and 5.12". It said that a "highly relevant" factor that should have been taken into account was that other programmes were broadcast on RT on the same day which did reflect that UK Government/Western position. The Licensee argued that the link between these programmes and *Sputnik* was clear as they were "obviously dealing with the same subject matter". It argued that viewers did not therefore need a more explicit link to be made between the programmes and would have been likely aware of the UK Government's position from these additional broadcasts. TV Novosti argued that Ofcom had considered the programme in isolation, failing to acknowledge RT's wider output that day. Finally, it argued that "it would be placing form over substance (and contrary to Article 10)" to require an explicit call to viewers to watch other RT programmes later that day.

In its oral representations on Ofcom's Preliminary View, the Licensee said that it relied on all its written representations, and in addition emphasised the following contextual factors:

- given the programme was broadcast 13 days after the events in Salisbury and five days after the Prime Minister's address to Parliament, the Licensee considered it highly unlikely that viewers would have been unaware of the British Government's view that Russia was responsible for the Skripal poisoning. Therefore, it did not consider that it needed to repeat that perspective explicitly in this programme to protect audiences from harm and it would be "context-blind" for Ofcom to consider this programme as the only source of information regarding the Skripal poisoning;
- viewers of *Sputnik* would not have expected the programme to cover current affairs matters in the same way as western news channels. TV Novosti considered that pursuant to its Article 10 rights, RT must be able to broadcast a Russian perspective as a counter to the western narrative without fear of being held in breach of the Code;
- George Galloway is well known for having controversial and anti-establishment views and audience expectations would be very different for this programme than, for example, a programme presented by Jonathan Dimbleby on the BBC; and
- TV Novosti identified several news programmes broadcast by RT on the same day as this programme that had included material which reflected the UK Government's position on the

Skripal poisoning. TV Novosti considered this to be “plainly relevant” to the overall context of this episode of *Sputnik* irrespective of whether the programmes had an explicit editorial link.

Decision

Reflecting our duties under the Act⁴⁴, Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.11 states that: “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”.

Rule 5.12 states that: “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”.

We acknowledged that the programme was made in the context of an ongoing, highly politically sensitive issue, namely, the aftermath of the poisoning of Sergei and Yulia Skripal. We also took account of TV Novosti's view that the poisoning of the Skripals was a “highly controversial event with direct relevance to the Russian-centric focus of [RT]” and therefore the audience would expect to be given a Russian perspective on this subject.

In light of the above, and in line with broadcasters' right to freedom of expression and audiences' right to receive information (as detailed earlier in the general discussion on the statutory framework and freedom of expression and not repeated here), we considered that it was legitimate for the Licensee to broadcast a programme which examined and explored the ramifications of the poisoning of the Skripals on UK-Russian relations from a Russian perspective. However, to the extent that such a programme examined politically controversial matters, we considered that TV Novosti needed to comply with Section Five by ensuring that due impartiality was preserved.

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned matters of major political or industrial controversy or matters relating to current public policy.

The Code states that matters of major political or industrial controversy and major matters relating to current public policy will vary according to events, but these will generally be matters of political or industrial controversy or matters of current public policy which are “of the moment” and of national, and often international, importance, or are of similar significance within a smaller broadcast area.

This section of the programme focused on a discussion about the poisoning of Sergei Skripal and his daughter Yulia Skripal, who were found unconscious in Salisbury on 4 March 2018 after coming into contact with what police later identified as a nerve agent. The UK Government had on 12 and 14

⁴⁴ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>; and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

March 2018 said that this constituted an unlawful use of force by the Russian State in the UK⁴⁵. The Russian Federation denied⁴⁶ that it had developed the nerve agent concerned or committed the attempted murder.

Throughout this period, there was intense international media and political interest in:

- the ongoing investigations by the UK police and the OPCW,
- allegations about the alleged culpability of the Russian Government in the poisoning of Sergei and Yulia Skripal and the Russian Government's response to these allegations; and
- the impact of the poisoning on diplomatic relations between Russia, the UK and the wider international community.

The discussion in the programme concerned, among other things, the likely involvement of the Russian Federation in the incident, and included a number of statements that were either critical or dismissive of the UK Government's position on the poisoning of the Skripals, and therefore that were implicitly critical of the policies and actions of the UK Government in connection of the incident.

We considered that the position of the UK Government on the purported responsibility of the Russian State for the incident and the response of the UK Government and the wider international community were subjects of debate and political controversy both in the UK and internationally and were of both national and international importance.

We took into account that the Licensee did not dispute that the programme dealt with a "major matter" in this regard.

For these reasons, we considered that the programme was concerned with matters of major political controversy and major matters relating to current public policy and the Licensee was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code.

The preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on these matters. The Code makes clear that "due" means adequate or appropriate to the subject and nature of the programme. "Due impartiality" does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content and the extent to which the content and approach are signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due

⁴⁵ See the statement of Theresa May to the House of Commons on 12 March 2018, <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-12-march-2018> and on 14 March 2018, <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-response-14-march-2018>

⁴⁶ See, for example, the statement of Vasily Nebenzya to the United Nations on 14 March 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.8203

impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

We took into account all the arguments that the Licensee had made regarding relevant contextual factors in this case. We took into account that the programme was broadcast on a channel that, as TV Novosti said, aims to: "make available an alternative point of view on world events"; "cover stories overlooked or underreported by the mainstream media"; and acquaint "international audiences with a Russian viewpoint on major global events". We also took into account that the presenter of *Sputnik*, George Galloway is, in the Licensee's words "a highly controversial politician and commentator" and is "well known in the UK for his controversial, anti-establishment views". TV Novosti also pointed to the likely audience expectations of RT, which it argued are "shaped" by its editorial approach. Specifically, it said that the poisoning of the Skripals was "hugely reported" in the UK and the "predominant narrative was that of the United Kingdom Government" and this had been "widely disseminated by most if not all other media outlets/broadcasters". The Licensee therefore argued that viewers "turn to RT exactly for the reason that it does not resemble the approach of British national broadcasters" and want to hear the Russian point of view from a Russian channel, "unfiltered by a British broadcaster"; they do not expect a "detailed and balanced explanation" of the UK Government's position. It said that *Sputnik* does not purport to be a news programme and its agenda is "transparently signalled as bringing a new perspective, a different view".

We have taken a number of contextual factors into account in considering the broadcaster's and audience's Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, we acknowledged that viewers were likely to expect programmes on the channel, including *Sputnik*, to address controversial issues, and to do so from a Russian perspective. We also acknowledged that it was likely to have been in line with audience expectations for programmes such as *Sputnik* to comment critically on various political issues, including in this case the policies of the UK Government. TV Novosti argued that as the dominant narrative was widely disseminated by most if not all other media outlets/broadcasters, it was not necessary for *Sputnik* to repeat that perspective explicitly. However, as we mention earlier in our general discussion on the statutory framework, the Code requires due impartiality to be preserved on matters of political and industrial controversy and matters relating to current public policy. In particular, when dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters are required to take additional steps in order to preserve due impartiality, namely to reflect an appropriately wide range of significant views and to give those views due weight.

During this programme, as mentioned above, there were various statements that were critical and/or dismissive of the UK Government's response to the events that had occurred in Salisbury. For example, Mr Nekrassov, described the UK Government's view on the Russian State's involvement in the Skripals' poisoning as: looking like "*a badly prepared provocation*"; a "*charade*"; and, when asked by Mr Galloway why he thought Russia would create "*an international crisis on the threshold of what was supposed to be the showcasing of the new Russia*", that his view was that the incident had been put forward because "*the politicians, Westminster and others...are in trouble and they need the distraction*". In addition, Mr Nekrassov said that the accusations made against Russia were being used as a way to undermine the process of Brexit ("*So, tarnishing Russia, tarnishes Brexit automatically – maybe not directly but indirectly*").

In light of these critical statements, we considered whether, as required under Rule 5.12, an appropriately wide range of significant views was included and given due weight in this programme. As highlighted in Ofcom's Guidance on Section Five of the Code, the broadcasting of highly critical

comments concerning the policies and actions of, for example, any one state or institution, is not in itself a breach of due impartiality rules. It is essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical. However, as envisaged by section 320 of the Act – which is given effect by Rules 5.11 and 5.12 – a broadcaster must maintain an adequate and appropriate level of impartiality in its presentation of matters of major political controversy. We took into account that the Licensee acknowledged that “an appropriately wide range of significant views in this programme would include the dominant view expressed by the UK and other Western Governments”, including the viewpoint that “the Russian state is responsible” for the poisoning. Given the nature and amount of criticism of it in the programme, and taking into account that the programme was dealing with a matter of major political controversy, we would have expected the viewpoint of the UK Government on the incident to be appropriately reflected in the programme⁴⁷.

We took into account the Licensee's argument that “although alternative views to the dominant position are given more time and emphasis within the programme, the UK/Western position is reflected and frames the programme's discussion of the event in question”. According to TV Novosti, both Mr Galloway's and Ms Pertiwi's introductory remarks⁴⁸ confirmed the UK's position “to ensure this viewpoint frames the discussion that follows as host George Galloway presents a series of legitimate and objective questions surrounding the theory held by the mainstream that Russia is responsible”. It added that Mr Galloway's initial statement confirmed “the gravity of the difference between the UK and Russia”. He went on to recite a “series of facts which ‘We know’ and which form the basis of the dominant UK/Western viewpoint and are not contested in the programme”, including that “the ‘nerve agent’ was found in Mr Skripal's house, the ‘brave’ DS Nick Bailey was affected by it and the then definite (‘all right’) critical health condition of the Skripals”.

We also took into account that the Licensee argued that the guest Mr Nekrassov challenged “how the UK/dominant view about what happened to the ‘target’ was reached while presenting it: ‘because it's Novichok nerve agent, that means that Russia's behind it’”. It added that this “was a recognition of the British Government's point of view and not criticism of a policy but an exploration of the conclusions drawn”. The Licensee also considered that Mr Nekrassov's criticism was “particularly directed at the media” when he said the following:

“What I've read in the papers, what I've seen on television, goes beyond parody. These are journalists, who are saying things...they started saying such things that ‘it's not even proven, not yet proven, but everything shows that it's Russia, look at the pattern’. What pattern, which pattern? They were starting to write and say things like ‘oh, remember Litvinenko’”.

We acknowledged that the viewpoint of the UK Government on the incident was arguably reflected, to a limited extent, in the discussion in the programme. The Licensee submitted it was implicit background to the debate between the presenters and their guest, Mr Nekrassov. For example, the UK Government perspective could be said to be implicit in the introductory comments of Mr

⁴⁷ Ofcom's Guidance explains that ‘significant views’ could include the viewpoint of nation states whose policies are considered to be ‘major matters’ (paragraph 1.58).

⁴⁸ Mr Galloway said at the beginning of the programme: “So President Putin is such a genius that just days before his Presidential election and just 100 days before Russia hosts the World Cup, he tries to kill two Russians, one of whom lives in Moscow and could have been strangled there for nothing with her own scarf; the other of whom could have been killed in a Russian prison or at any time since or later, using a weapon known to have been invented by Russia, in England, in public, in broad daylight, for no purpose yet even speculated upon. Pure genius”. Soon after Ms Pertiwi said: “They say it was a nerve agent called ‘Novichok’ or ‘newcomer’, which was developed by the former Soviet Union in the 1980s”.

Galloway and Ms Pertiwi, and in Mr Nekrassov's view on the mainstream media coverage about the incident. We also took into account that Mr Galloway, Ms Pertiwi and Mr Nekrassov collectively put forward a number of suggestions about what motivations might lie behind the poisoning and the subsequent reaction to it, and on who may, or may not, have been responsible for the incident.

We noted that, overall, the statements made during the discussion focused overwhelmingly on expressing doubt over the UK Government's position that the Russian Government bore any responsibility for the incident.

We also observed that Mr Galloway and Ms Pertiwi, as the presenters of the programme, did not present any challenge to the views of Mr Nekrassov (as discussed above) in their questioning or elsewhere in the programme. Although Mr Galloway asked the studio guest various questions, in our view, the questioning of this interviewee primarily had the effect of encouraging or reinforcing Mr Nekrassov's views, and therefore did not provide any effective challenge to those views. For example:

GG: *"Did this come out of the blue for you – was this a course of action that you could have predicted; and if you could have predicted it maybe there is something in that – that this is all a script, this is all a narrative, pre-prepared for some ulterior political motives?"*

AN: *"Well George, it looks like a badly prepared provocation. It's like the people behind it didn't really think it through properly..."*

GG: *"What about timing Alexander, because this is the third in the triptych of reasons to disbelieve. The daughter, as I said, could have been murdered in a dark street in Moscow with her own scarf at the cost of absolutely zero, political and financial?–"*

GP: [Interrupting] *"But why?"*

GG: *"Yes. 'Why?', of course, is another matter. Skripal could have been killed when he was in prison, could have been killed in any time in the last years he has been living in England but most significantly, if they wanted to kill him. why couldn't they wait until after the World Cup? Why would they create such a crisis, international crisis, on the threshold of what was supposed to be the showcasing of the new Russia?"*

AN: *"Well, my personal opinion in this case is that the people in Britain – the politicians, Westminster and others, they are in trouble and they need the distraction".*

The strong degree of alignment between the views of Mr Galloway and Mr Nekrassov overall (which is evident in the exchanges quoted above) served to undermine the UK Government's viewpoint, to the limited extent it was reflected in the discussion, such that it was not reflected as a significant viewpoint in the programme which was given due weight in the particular circumstances.

We also considered the use of captions or banners alongside the various critical comments relating to the UK Government within the discussion taking place between Mr Galloway, Ms Pertiwi and Mr Nekrassov. We took into account the Licensee's argument that it had relied on previous Ofcom guidance "that one way of presenting the alternative view is in the form of graphics". Therefore, in this case it said it had "broadcast a banner message...over a dozen times during the programme". This said: "UK, France, Germany, U.S. say Skripal case is an 'assault on UK Sovereignty' by Russia". The Licensee considered that the graphic had "continually informed viewers that a major group of

Western states supported the UK view that the Skripal poisoning was a serious matter which amounted in their opinion to an attack on the UK's territorial sovereignty".

Graphics or captions are editorial techniques which can contribute to the preservation of due impartiality. However, as we made clear in our December 2016 *Crosstalk* Decision⁴⁹ involving TV Novosti, Ofcom underlines that whether graphics or captions do in fact maintain due impartiality in any specific programme will depend on all the relevant circumstances, such as the duration and nature of the programme and of the matter of political controversy, and the presence of any other factors in the programme which may contribute to helping to maintain due impartiality. We caution broadcasters against assuming that they can preserve due impartiality where required by solely or largely including graphics and captions. This is because, depending on the circumstances, captions or graphics may not enable sufficient weight to be given to an alternative view. Further, when ensuring that matters of major political and industrial controversy and major matters relating to current public policy are treated with due weight, we consider that the relative size and prominence and limited content within on-screen captions and graphics will make it significantly more difficult for broadcasters to ensure compliance with Rules 5.11 and 5.12. This is particularly the case if the broadcaster is seeking to preserve due impartiality where required by solely or largely including graphics and captions.

We considered whether the use of captions or banners contributed to the preservation of due impartiality in this case. The Licensee relied only on a single caption (which referenced the UK, France and US having said that the Skripal case was an "assault on UK Sovereignty" by Russia), which was one of a number of captions displayed as a banner graphic in the manner of 'rolling news' headlines. Each caption was shown only for a few seconds at any one time and the captions covered a number of different topics (including the Syrian conflict, for example), as well as referring viewers to the RT website and Twitter account. Taking this into account, along with the strength and conformity of the on-screen views of the presenters and their guest and the fact that the subject of discussion was a matter of major political controversy, we did not consider that the use of banners in this case was sufficient to reflect and give due weight to the perspective of the UK Government⁵⁰.

The Licensee also said that it had "gone to great lengths to bring as much appropriate balance to its coverage of the Skripal case as it could, for example by...inviting commentators of sufficient authority and knowledge to present the UK Government's point of view". However, TV Novosti added that, across its coverage of the Salisbury incident and its aftermath, it had received "37 refusals to such requests recently". Ofcom acknowledges the challenges that broadcasters can face obtaining interviewees in certain circumstances. However, as Ofcom has made clear on numerous occasions, 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 impartiality⁵¹. That alternative viewpoint needs to be represented in an appropriate way. If a broadcaster cannot obtain an interview or a statement on a particular viewpoint on a matter of political controversy, then it "**must** find other methods of ensuring that due impartiality is maintained" (emphasis

⁴⁹ 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.

⁵⁰ We understood from the TV Novosti's representations that the same banner was displayed for a total of 26 minutes throughout the entire day of broadcast and therefore was not designed to be specific to the programme.

⁵¹ See Ofcom's Guidance, paragraph 1.36.

added).⁵² 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.⁵³

In this case, for the reasons set out above, and having taken careful account of the relevant contextual factors discussed above, in our view the viewpoint of the UK Government was not adequately represented within this programme and the programme had not included and given due weight to an appropriately wide range of significant views.

Due impartiality in clearly linked and timely programmes

Broadcasters may comply with Rules 5.11 and 5.12 by ensuring due impartiality is maintained either in each programme “or in clearly linked and timely programmes”. We next considered whether such views were included in clearly linked and timely programmes and given due weight.

TV Novosti argued that: “Difficulty can...arise because of uncertainty over Ofcom’s expectations in regard to linked programmes to demonstrate due impartiality. A live rolling news channel is not always capable of advance planning”. We acknowledge the challenges that can be faced by rolling news channels in ensuring compliance with the Code. However, as discussed earlier in the general contextual factors, television services such as RT cannot preserve due impartiality by relying on what is broadcast across their service as a whole⁵⁴. It is possible for television services such as RT to preserve due impartiality, in the context of Rule 5.12, in clearly linked and timely programmes. However, because it cannot be guaranteed that a person watching one programme will have been watching the programme that precedes it or follows it, the broadcaster must take steps to ensure that the two programmes are “clearly linked”.

Therefore, even if other programmes that have been broadcast do deal with the same subject matter and contain relevant alternative viewpoints, these contextual factors alone are not sufficient to ensure that due impartiality is preserved, particularly where the matter concerned is a major matter within the scope of Rule 5.11 and 5.12. This is because without an explicit link viewers may not be aware of the other programmes. We acknowledge that there may be particular challenges including explicit links to other programmes in pre-recorded content. However, we do not consider these challenges are insurmountable. For example, broadcasters could include links to other programmes in a continuity announcement broadcast over the end credits of the pre-recorded programme or in a prominent caption or slate superimposed over the pre-recorded content. We

⁵² Ofcom’s Guidance, paragraph 1.36.

⁵³ See Ofcom’s Guidance, paragraphs 1.60 and 1.37. This could, for example, include reflecting alternative viewpoints through questions posed by presenters. We have explained above why we do not consider that the editorial techniques employed by the broadcaster in this case were sufficient to ensure due impartiality was maintained.

⁵⁴ As we made clear in our December 2013 *Syrian Diary* Decision (see https://www.ofcom.org.uk/_data/assets/pdf_file/0025/45745/obb244.pdf), due impartiality can only be preserved across a whole service in the case of non-national radio services. Specifically, section 320(1)(c) of the Act requires: “the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on...matters [of matters of political or industrial controversy; and matters relating to current public policy]”. Section 320(4)(b) states that the requirement contained in section 320(1)(c) “is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole”.

would expect such a link to include a reference to the fact that the linked programme deals with the same matters as the programme in question.

In this case, TV Novosti considered that a “number of its news programmes” broadcast on 17 March 2018 (i.e. the day of broadcast of this programme) “reflected the UK Government/Western dominant position on the matter of the poisoning of the Skripals, and the policies and actions of the UK Government in reaction to this event”. However, although the various news items cited by the Licensee were broadcast on the same day as this edition of *Sputnik*, as reiterated by the Licensee in its representations on Ofcom's Preliminary View, we did not consider that these were clearly linked programmes within the meaning of the Code. This was because there was no material at all which referred explicitly to, and so potentially linked the programme to, any other RT broadcasts, in the manner described above, including the news broadcasts in question. This was particularly significant in the context of a programme which concerned major matters of political controversy.

Given the above, we did not consider that TV Novosti had reflected, and given due weight to, an appropriately wide range of significant views in clearly linked and timely programmes.

In this case, we have taken careful account of the broadcaster's and audience's rights of freedom of expression and all the relevant contextual factors. For all the reasons set out above, Ofcom's decision is that the Licensee failed to include and give due weight to an appropriately wide range of significant viewpoints in relation to the relevant matters of major political controversy and major matters relating to current public policy dealt with in the programme.

Breaches of Rules 5.11 and 5.12

In Breach

Sputnik, 7 April 2018, 19:30

Introduction

We watched this programme and noted that at the start of this edition of *Sputnik*, the following caption was broadcast:

"The views and opinions expressed in the following programme do not necessarily coincide with those of RT".

The second half of the programme featured a discussion between the presenter, George Galloway ("GG"), his co-presenter Gayatri Pertiwi ("GP"), and his guest, David Morrison ("DM"), described as an "independent researcher". They discussed the poisoning of Sergei and Yulia Skripal, as follows:

GG: *"The fiasco of the British Government's handling of the Salisbury spy poisoning affair is now familiar enough, and not now just with the viewers of RT".*

GP: *"After momentarily being caught like rabbits in the headlights, the Government and its media, particularly The Times, the vanguard of anti-Russian news, are back on the front foot".*

GG: *"It was the Russians that did it, they still claim; and The Times claims to know exactly which test tubes were used. Of course they do. Joining us, to delve deeper into this Witches of Salem affair, is independent researcher, a man with a long track record of smelling and finding rats in official stories, is David Morrison. Welcome back to the Sputnik after a long absence David. The normal rule of holes is that when you are in one stop digging; but the British Government today are not stopping to dig, they're digging themselves deeper. How do you see that?"*

DM: *"Well obviously they were discombobulated by the man from Porton Down who seemed to be worried that the findings from his colleagues there were going to be used for purposes that were not appropriate. That they were going to add to the Government's case that Russia was responsible when in fact there is really very little that has come out of Porton Down that backs up the Government case".*

GG: *"Is it because – as I like to think – experts, scientists, even intelligence operatives, have read the Chilcot Inquiry report,⁵⁵ they don't want to be left holding the parcel if this whole thing blows up and therefore they are defending their professional territory, if you like, and not being prepared to allow politicians to misuse their expertise".*

DM: *"I think that is certainly possible what is going on at the moment. You may recall that Craig Murray⁵⁶ was of the opinion that various people were under pressure to say that this stuff came from Russia and had been identified as the stuff that was*

⁵⁵ The report of the Iraq Inquiry (see: <http://webarchive.nationalarchives.gov.uk/20171123122743/http://www.iraqinquiry.org.uk/the-report/>).

⁵⁶ Craig Murray is a former British diplomat who is now a political activist and campaigner.

actually used and they resented the fact that they were being put under pressure to do this when, of course, the scientists had no evidence to prove that at all".

GG: *"The Government are really walking a tightrope here aren't they, because by doubling down they've increased stakes, the news now is that the daughter Yulia Skripal is discharging herself from hospital. If she comes out and tells a different story to Theresa May and Boris Johnson, the Government could fall off the high wire, couldn't they?"*

DM: *"That's obviously possible though I wish I was as confident as you. Europe has disappointed me intensely the way in which it has backed up this non-story".*

GG: *"A European Government expelling a single Russian diplomat or two or two and a half in one case – is not much of an act of solidarity and itself signalled a lack of confidence in the British Government's position, and German officials in particular, although Angela Merkel has now slapped down the official in question. German officials in particular seem to be the least persuaded of all".*

DM: *"Yes, you are quite right. Up until now the sanctions have been diplomatic largely and it's very difficult to see that Europe is going to do any more and Britain can't really do any more on its own since it is still in Europe so, in economic terms, so, on the face of it not all that much punishment has been meted out yet too".*

GG: *"Not if it was really was a military nerve agent attack by a foreign power on the streets of a European Union country".*

DM: *"And presented as an attack on the British state essentially".*

GP: *"Just very quickly back to Yulia because I was fearing for Yulia and her father from the beginning, wondering who was protecting them in the hospital and what would happen if they indeed would wake up. And they have by the grace of God. Yulia's going to be dispatched from hospital. What's going to happen with her next? Is she going back to Russia do you think? Will she be safe there?"*

DM: *"Yes, am I right in thinking that the Russian Embassy still hasn't had contact with her?"*

GP: *"That's what I thought".*

GG: *"They haven't no. There's only the Russian cousin in touch with her and she said that Yulia said she is about to discharge herself and moreover that her father is fine".*

DM: *"Happy days. Happy days. If that is true".*

GG: *"Whatever else it was it wasn't a successful military grade nerve agent attack".*

DM: *"No. She obviously, the way in which the British authorities kept the Embassy out of this, particularly when she is definitely a Russian citizen – and seems to be some doubt as to whether he is also a Russian citizen still – and kept the Russian Embassy away from all this stuff, this is about a court case, and so on and so forth. You would thought they should be involved as normal if this happened with somebody else.*

Surely to goodness the Embassy would be involved to help things along and make sure they get things right and so on and so forth”.

GG: *“Seventeen countries in the OPCW⁵⁷ in the Hague abstained from voting and the Russian position was lost in asking for a joint investigation into this affair. That in itself, not necessarily, but to me, speaks volumes. Why wouldn't you want a joint investigation?”*

DM: *“Yeah, well I'm not quite sure what was being proposed exactly there because obviously what's going to happen here now is that the OPCW is going to, having farmed the samples taken out to various labs – which is what they do – in the normal course of events. When the results come back, I presume they will be announced publicly and it's going to be, obviously, very interesting to see whether or not what they find conforms to what has been said by Porton Down”.*

GG: *“Well I'm assuming that Porton Down rushed out their statement – which as you say the Government were discombobulated by – because they knew that the OPCW are going to say something similar”.*

DM: *“Yes. Now what happens in the OPCW after that I don't quite know. Theoretically there is this mechanism in the chemical weapons charter whereby an individual state if they have a concern about what is going on in another individual state can request what is known as a 'challenge inspection'. So clearly, Britain should be asking for a challenge inspection in this laboratory–”*

GG: [Interrupting] *“Where The Times has identified–”*

DM: *“Apparently so. When somebody has whispered in their ear”.*

GG: *“Well you know the conduct of, leaving aside who did it, none of us know who did it but leaving that aside, the conduct of the British Government's narrative has been sadly in want of consistency and accuracy and that's why there is such widespread public scepticism, rising to derision, about the Government's voice. Is this partly because the British Government itself is so weak that the Prime Minister's political position is so flimsy?”*

DM: *“Yes but unfortunately there has been near unanimity across the political spectrum on the issue”.*

GG: *“You don't think that Jeremy Corbyn struck a cautionary enough note?”*

DM: *“No, I think he could have done better. He did actually try, to give him his due, on the Wednesday when May announced the punishment on that day he actually did try and ask a question about the very issue”.*

GG: *“Heaven forbid – a question in Parliament?”*

DM: *“He asked had the appropriate tests been done in Porton Down to try and establish whether the origin of the agent and its sometimes possible to do that because there would be, as it were, impurities in the stuff which would be known to have been in*

⁵⁷ OPCW: Organisation for the Prohibition of Chemical Weapons.

stuff made in a particular laboratory. He asked a reasonable question on those lines but that was just brushed aside and he was er—

GG: [Interrupting] *“David, I’ve worked with you for nearly 20 years and I know the quality of your research work and I know that researchers don’t go for speculation, but if I forced you to speculate, what would be your speculation? What lies behind all this?”*

DM: *“I just haven’t a clue. The one thing that strikes you is that it must be an enemy of Putin because I mean he couldn’t possibly have organised this even if he was in the business of killing spies dormant for 10 years or something. Why didn’t he leave it until after the World Cup? Why did he use something that would be immediately associated with Russia which would’ve allowed the British Government to do what they have done? We all know they haven’t produced proof. But clearly— ”*

GG: *“Hysteria— ”*

DM: *“—the person who did this wanted this to happen, wanted the British Government to behave in this way, wanted the punishment, such as it is, to be applied to Russia, for Russia to be further demonised. Putin didn’t do that—”*

GG: [Interrupting] *“Well its odd because most of the time they paint him as a Mesostopholian genius who is capable of rigging everybody else’s elections but at the same time he is such an idiot that he does such a cack-handed thing as this and one which moreover doesn’t even succeed in killing the target”.*

DM: *“Exactly”.*

George Galloway then thanked David Morrison and the discussion ended.

Ofcom considered that the programme was dealing with a matter of major political or industrial controversy and major matters relating to current public policy, namely, the policies and actions of the UK and Russian Governments concerning the poisoning of Sergei and Yulia Skripal.

We therefore considered that this programme raised issues warranting investigation under the following rules:

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”.*

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”.*

We therefore asked the Licensee how the programme complied with these rules.

Initial Response

General

The Licensee made several "background points" about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10.

Due impartiality in the programme

The Licensee said it recognised that "the Salisbury incident and its aftermath has severely strained the relationship between the United Kingdom and the Russian Federation...[but TV Novosti had] gone to great lengths to bring as much appropriate balance to its coverage of the Skripal case as it could, for example by ensuring that RT anchors refer to the UK Government's version of the events and by inviting commentators of sufficient authority and knowledge to present the UK Government's point of view". The Licensee added, however, that it had received "37 refusals to such requests recently", including: former UK Ambassadors to Moscow; a Minister of State for Security and Counter Terrorism; a former Defence Secretary; and a former UK representative to the United Nations.

TV Novosti did not dispute that this programme dealt with a "major matter". However, it considered the respective positions of the UK and Russian Governments were given due weight. It added that: "The UK/dominant view expressed by the UK Government and some other Western Governments is that Mr Skripal and his daughter were poisoned by a military grade nerve agent and that this was an act of the Russian State".

In the Licensee's view, the UK Government's position on the poisoning was clearly articulated in the second part of the programme as it was introduced with a statement of the UK/Western position by co-host Ms Pertiwi:

"Coming up next – the Russians did it – or did they?"

TV Novosti argued that Ms Pertiwi had stated the UK/Western view and then posed "the question that reflects the ethos of the programme, to find a different perspective". It added that "the UK/Western view was also reflected in co-host Mr Galloway's remarks for the opening of the relevant section of the show e.g. *"It was the Russians who did it, they still claim"*". The Licensee said that the focus of the discussion in this part of the programme was on "the quality of evidence for the UK Government's view that Russia was the likely perpetrator and on the way in which the UK Government had handled such evidence in its public statements". It added that: "As for the evidence, there was a fair discussion of the position of Porton Down, reference to the comment of former UK ambassador Craig Murray that people were under pressure to say that this stuff came from Russia and mention of the fact that there had been a vote at the OPCW in favour of an investigation (not a joint investigation by Russia and the OPCW as Russia had requested)".

According to TV Novosti, regarding the handling of the evidence, Mr Galloway said, towards the end of the item, that *"the conduct of the British Government's narrative has been sadly in want of consistency and accuracy and that is why there is such a widespread public scepticism rising to derision about the Government's voices...is it partially because the British Government itself is so weak that the PM's political positions are so flimsy?"* It added: "Conversely, at the start of the item, after referring to the fiasco of the British Government's handling of the Salisbury spy poisoning, he had stated that: *'after momentarily being caught like rabbits in the headlights, the Government and*

its media, particularly The Times (the vanguard of anti-Russian news) are back on the front foot". In the Licensee's view, this approach "focussed on evidence and the Government's handling of the evidence" and was "very much in the public interest". It added that: "Democracy thrives when there is open discussion and the asking of questions. It is not the purpose of the Code to suppress this".

Due impartiality in other programmes

The Licensee said that: "For practical reasons...it is not possible to explicitly link the content on a rolling news channel between pre-recorded programmes and news bulletins".

However, it added that "news aired by RT on the same day was timely...[and] reflected the UK Government/dominant position held by the West on the matter of the poisoning of the Skripals", citing a range of examples from news programmes broadcast on 7 April 2018. TV Novosti argued that the "UK and Western nations' viewpoints were prominently displayed, without dismissive comment, by RT in immediate proximity to the *Sputnik* programme".

Contextual factors relevant to this programme

The Licensee also cited various contextual factors that it felt was relevant in this case:

- In relation to the nature of the subject matter being discussed, TV Novosti said the programme's real nature was "a testing of the evidence in the spirit of exploration and debate, and ultimately, in the public interest".
- The Licensee described the presenter of *Sputnik*, George Galloway as "a highly controversial politician and commentator" and that "viewers will know him for that, or will immediately learn it".
- In relation to the expectations of the audience for *Sputnik*, the Licensee said that the programme's agenda is "transparently signalled as bringing a new perspective, a different view" and that the RT audience has a "general expectation of receiving a different viewpoint". The Licensee considered this particularly applied to a programme such as *Sputnik* where the "objective and audience expectation is not to hear again the mainstream British view, but to hear views that are new, or different". It added that: "The Salisbury story was everywhere in the media and in public conversation. The predominant narrative was naturally that of the UK Government". It therefore argued given that "this is a factor that must weigh heavily in considering programmes on a channel dedicated to presenting an alternative perspective".

Preliminary View

Ofcom issued a Preliminary View that the edition of *Sputnik* broadcast on 7 April 2018 at 19:30 was in breach of Rules 5.11 and 5.12 of the Code and invited TV Novosti's representations on the Preliminary View. The Licensee provided written and oral representations on the Preliminary View.

Response to Preliminary View

The Licensee made general representations about factors common to all the Preliminary Views which are summarised earlier at pages 10 to 18.

In addition, in its written representations TV Novosti disagreed with our Preliminary View and referred to its representations on our Preliminary View of *Sputnik*, 17 March 2018, which it said also applied here. Furthermore, it emphasised the following points:

- The UK Government's perspective on the Skripal incident remained the dominant narrative at the time of this broadcast, and had been widely disseminated by most if not all other media outlets/broadcasters. Consequently, it was sufficient for the UK Government perspective to be reflected even 'to a limited extent', rather than more fully, as a fuller reflection could and would have been accessed by viewers from a wide range of other sources (as well as on other RT programmes).
- The clear intention of the programme was to put forward an alternative view and it would have been the viewers' expectation to obtain a Russian perspective, and/or one that was questioning/critical of the dominant narrative. This also meant there was no need to rehearse or repeat the UK Government's view.
- RT prominently broadcast the UK and Western viewpoint on the Skripal incident, without dismissive comment, in its news bulletins that were aired in immediate proximity to the *Sputnik* programme, which in Ofcom's view was not sufficient to editorially link the programmes, as there was no reference in *Sputnik* to any other programmes. It contested Ofcom's view because:
 - The expression 'editorially linked' is confined to the definition of 'series of programmes taken as a whole', in Rules 5.5 and 5.6, which Ofcom did not identify as being applicable in this case.
 - It was not possible, on a rolling news channel, to link explicitly the content between pre-recorded programmes (such as *Sputnik*) and news bulletins. Ofcom's Preliminary View referred to this difficulty, but failed to explain how to overcome it.
 - "In order to give effect to Article 10 of the European Convention on Human Rights, the Code should be interpreted widely in favour of broadcasters, which means that the link between the *Sputnik* programme and the news programmes was clear from the fact that they were obviously dealing with the same subject matter.
 - Therefore, viewers did not need an explicit link to be made between the various programmes provided it is implicit from all the circumstances. It said this was the case here and that what viewers needed was not for *Sputnik* to refer to any other RT broadcasts, but that the subject matter of the second programme referred, or related, to that of the first.
- *Sputnik* is manifestly a current affairs talk show, presented by Mr Galloway, a man who is well known in the UK for his controversial, anti-establishment agenda. Viewers of *Sputnik* do not expect a detailed and balanced explanation of the UK Government's position.
- If the Code were interpreted so strictly that the dominant UK/Western perspective had to be repeated and/or fully set out in a programme like *Sputnik*, and in circumstances where that perspective was already implicit as the background to the programme; and where that perspective has been explicitly and widely published on most if not all other broadcasting/media channels, including the Licensee's channel, the fundamental free speech requirements of Article 10 would be undermined.

In its oral representations on Ofcom's Preliminary View, the Licensee said that it relied on all its written representations, and in addition emphasised the following contextual factors:

- the UK Government's perspective on the Skripal poisoning was still the "dominant narrative" at the time the programme was broadcast and there would have been an even longer period for viewers to have been exposed to it compared to the episode of *Sputnik* broadcast on 17 March 2018;
- as *Sputnik* is "manifestly intended" to put forward an alternative view from the Russian perspective, so there was no need to repeat the UK Government's view on the Skripal poisoning in this programme; and
- TV Novosti disagreed with Ofcom's Preliminary View that the other programming broadcast by RT on the same day as the programme was relevant to the preservation of due impartiality only if those programmes were "editorially linked in a sufficient way". Rules 5.11 and 5.12 refer to due impartiality being maintained in "clearly linked and timely programmes", whereas the term "editorially linked" programmes is contained in Rules 5.5 and 5.6. Therefore, Ofcom applied the incorrect test and (as highlighted in the general representations) Ofcom must consider, as a relevant contextual factor, the programmes broadcast before and after the edition of *Sputnik* in this case.

Decision

Reflecting our duties under the Act⁵⁸, Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.11 states that: "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".

Rule 5.12 states that: "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".

In light of the above, and in line with broadcasters' right to freedom of expression and audiences' right to receive information (as detailed earlier in the general discussion on the statutory framework and freedom of expression and not repeated here), we considered that it was legitimate for the Licensee to broadcast a programme which examined and explored the ramifications of the poisoning of the Skripals on UK-Russian relations from a Russian perspective. However, to the extent that such a programme examined politically controversial matters, we considered that TV Novosti needed to comply with Section Five by ensuring that due impartiality was preserved.

⁵⁸ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>; and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned matters of major political or industrial controversy or matters relating to current public policy.

The Code states that matters of major political or industrial controversy and major matters relating to current public policy will vary according to events, but these will generally be matters of political or industrial controversy or matters of current public policy which are “of the moment” and of national, and often international, importance, or are of similar significance within a smaller broadcast area.

This section of the programme focused on a discussion about the poisoning of Sergei Skripal and his daughter Yulia Skripal, who were found unconscious in Salisbury on 4 March 2018 after coming into contact with what police later identified as a nerve agent. The UK Government had on 12 and 14 March 2018 said that this constituted an unlawful use of force by the Russian State in the UK⁵⁹. The Russian Federation denied⁶⁰ that it had developed the nerve agent concerned or committed the attempted murder.

Throughout this period, there was intense international media and political interest in:

- the ongoing investigations by the UK police and the OPCW⁶¹,
- allegations about the alleged culpability of the Russian Government in the poisoning of Sergei and Yulia Skripal and the Russian Government's response to these allegations; and
- the impact of the poisoning on diplomatic relations between Russia, the United Kingdom and the wider international community.

The discussion in the programme, concerned, among other things, the likely involvement of the Russian Federation in the incident, and included a number of statements that were either critical or dismissive of the UK Government's position on the poisoning of the Skripals, and therefore that were implicitly critical of the policies and actions of the UK Government in connection with the incident.

We considered that the position of the UK Government on the purported responsibility of the Russian State for the incident and the response of the UK Government and the wider international community were subjects of debate and political controversy both in the UK and internationally and were of both national and international importance.

We took into account that the Licensee did not dispute that the programme dealt with a “major matter” in this regard.

⁵⁹ See the statement of Theresa May to the House of Commons on 12 March 2018, <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-12-march-2018> and on 14 March 2018, <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-response-14-march-2018>

⁶⁰ See, for example, the statement of Vasily Nebenzya to the United Nations on 14 March 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.8203

⁶¹ The Organisations for the Prohibition of Chemical Weapons.

For these reasons, we considered that the programme was concerned with matters of major political controversy and major matters relating to current public policy and the Licensee was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code.

The preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on these matters. The Code makes clear that “due” means adequate or appropriate to the subject and nature of the programme. “Due impartiality” does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content and the extent to which the content and approach are signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

We took into account all the arguments that the Licensee had made regarding relevant contextual factors in this case. We took into account that the programme was broadcast on a channel that, as TV Novosti said, aims to: “make available an alternative point of view on world events”; “cover stories overlooked or underreported by the mainstream media”; and acquaint “international audiences with a Russian viewpoint on major global events”. We also took into account that the presenter of *Sputnik*, George Galloway is, in the Licensee’s words “a highly controversial politician and commentator” and is “well known in the UK for his controversial, anti-establishment views”. TV Novosti also pointed to the likely audience expectations of RT, which it argued are “shaped” by its editorial approach. Specifically, it said that the poisoning of the Skripals was “hugely reported” in the UK and that in relation to these events the “predominant narrative was that of the United Kingdom Government” and this had been “widely disseminated by most if not all other media outlets/broadcasters”. The Licensee therefore argued that viewers “turn to RT exactly for the reason that it does not resemble the approach of British national broadcasters” and want to hear the Russian point of view from a Russian channel, unfiltered by a British broadcaster”; *Sputnik* is “manifestly a current affairs talk show”; viewers do not expect a “detailed and balanced explanation” of the UK Government’s position and there was no need for the programme to “rehearse or repeat the UK Government’s view”.

We have taken a number of contextual factors into account in considering the broadcaster’s and audience’s Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, we acknowledged that viewers were likely to expect programmes on the channel, including *Sputnik*, to address controversial issues, and to do so from a Russian perspective. We also acknowledged that it was likely to have been in line with audience expectations for programmes such as *Sputnik* to comment critically on various political issues, including in this case the policies of the UK Government. TV Novosti argued that as the dominant narrative was widely disseminated by most if not all other media outlets/broadcasters, it was not necessary for *Sputnik* to repeat that perspective explicitly. However, as we mention earlier in our general discussion on the statutory framework, the Code requires due impartiality to be preserved on matters of political and industrial controversy and matters relating to current public policy. In particular, when dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters are required to take additional steps in order

to preserve due impartiality, namely to reflect an appropriately wide range of significant views and to give those views due weight.

During this programme, as mentioned above, there were various statements that were critical and/or dismissive of the UK Government's response to the events that had occurred in Salisbury. For example, in the opening remarks of Mr Galloway, the UK Government's handling of the poisoning of the Skripals was described as a "*fiasco*," the UK Government was described as being "*momentarily being caught like rabbits in the headlights*" and the incident was described as a "*Salem witchcraft affair*". Later, it was suggested that "*the conduct of the British Government's narrative has been sadly in want of consistency and accuracy*", and it was questioned whether "*there is such a widespread public scepticism rising to derision about the Government's voice...partially because the British Government itself is so weak, that the Prime Minister's political position is so flimsy?*". It was also suggested that "*various people were under pressure to say that this stuff [i.e. the nerve agent used in the Skripals' poisoning] came from Russia and had been identified as such stuff that was actually used...when, of course, the scientists had no evidence to prove that at all*".

In light of these critical statements, we considered whether, as required under Rule 5.12, an appropriately wide range of significant views was included and given due weight in this programme. As highlighted in Ofcom's Guidance on Section Five of the Code, the broadcasting of highly critical comments concerning the policies and actions of, for example, any one state or institution, is not in itself a breach of due impartiality rules. It is essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical. However, as envisaged by section 320 of the Act – which is given effect by Rules 5.11 and 5.12 – a broadcaster must maintain an adequate and appropriate level of impartiality in its presentation of matters of major political controversy. We took into account that the Licensee acknowledged that the "views of Russia and the UK are obviously significant" but that it considered that their respective positions were given due weight, not least because it considered that a fuller reflection of the UK Government view "could and would have been accessed by viewers from a wide range of other sources (as well as on other RT programmes)". Given the nature and amount of criticism of it in the programme, and taking into account that the programme was dealing with a matter of major political controversy, we would have expected the viewpoint of the UK Government on the incident to be appropriately reflected in the programme⁶².

According to TV Novosti, both Mr Galloway's and Ms Pertiwi's introductory remarks⁶³ confirmed the UK Government's position. We also took into account the Licensee's view that the focus of the discussion in this part of the programme was on "the quality of evidence for the UK Government's view that Russia was the likely perpetrator and on the way in which the UK Government had handled such evidence in its public statements". It added that: "As for the evidence, there was a fair discussion" as to various aspects of the poisoning of the Skripals. In the Licensee's view, the approach taken in the programme "focussed on evidence and the Government's handling of the evidence" and was "very much in the public interest". It added that: "Democracy thrives when there is open discussion and the asking of questions".

We acknowledged that the programme did make limited reference to the UK Government's viewpoint. For example, in Mr Galloway's opening remarks, he said that "*It was the Russians that did*

⁶² Ofcom's Guidance explains that 'significant views' could include the viewpoint of nation states whose policies are considered to be 'major matters' (paragraph 1.58).

⁶³ Ms Pertiwi said ahead of the beginning of the discussion: "*Coming up next – the Russians did it – or did they?*" Soon after Mr Galloway said: "*It was the Russians that did it, they still claim*".

it, they still claim". Later on, in a discussion of the diplomatic response of countries across the European Union to the incident, Mr Galloway mentioned the claim of the UK Government that it was *"a military grade nerve agent attack by a foreign power on the streets of the European Union country"* and the guest on the programme, Mr Morrison, added: *"It was presented as an attack...on the British state essentially..."*.

We noted that overall the statements of the two presenters and their guest, David Morrison, were focused overwhelmingly on expressing doubt over the UK Government's position on the issue of the Skripals' poisoning, and whether there was any evidence to support it.

We took into account that there are a number of editorial techniques that can be used to ensure that alternative viewpoints are appropriately reflected in a programme⁶⁴. For example, depending on the circumstances, it is possible for alternative viewpoints to be reflected through questions posed by presenters. In this case, although Mr Galloway asked the studio guest various questions, in our view, the questioning of this interviewee primarily had the effect of encouraging or reinforcing Mr Morrison's views. As the interviewee tended to express agreement with the propositions suggested to him by Mr Galloway, the questioning by Mr Galloway did not provide any effective challenge to his guest's views. For example:

GG: *"The normal rule of holes is that when you are in one stop digging; but the British Government today are not stopping to dig, they're digging themselves deeper. How do you see that?"*

DM: *"Well obviously they were discombobulated by the man from Porton Down who seemed to be worried that the findings from his colleagues there were going to be used for purposes that were not appropriate. That they were going to add to the Government's case that Russia was responsible when in fact there is really very little that has come out of Porton Down that backs up the Government case".*

GG: *"The Government are really walking a tightrope here aren't they, because by doubling down they've increased stakes, the news now is that the daughter Yulia Skripal is discharging herself from hospital. If she comes out and tells a different story to Theresa May and Boris Johnson, the Government could fall off the high wire couldn't they?"*

DM: *"That's obviously possible though I wish I was as confident as you. Europe has disappointed me intensely the way in which it has backed up this non-story".*

GG: *"Leaving aside who did it – none of us know who did it and leaving that aside – the conduct of the British Government's narrative has been sadly in want of consistency and accuracy and that is why there is such a widespread public scepticism rising to derision about the Government's voice...is it partly because the British Government itself is so weak, that the PM's political position is so flimsy?"*

⁶⁴ Ofcom's Guidance indicates that a number of editorial techniques may be used by broadcasters to ensure that due impartiality is preserved. This could, for example, include reflecting alternative viewpoints through questions posed by presenters. See paragraphs 1.60 and 1.37.

DM: *"Yes but unfortunately there has been near unanimity across the political spectrum on the issue".*

GG: *"A European Government expelling a single Russian diplomat or two – or two and a half in one case – is not much of an act of solidarity and itself signalled a lack of confidence in the British Government's position, and German officials in particular, although Angela Merkel has now slapped down the official in question. German officials in particular seem to be the least persuaded of all".*

DM: *"Yes, you are quite right. Up until now the sanctions have been diplomatic largely and it's very difficult to see that Europe is going to do any more and Britain can't really do any more on its own since it is still in Europe so, in economic terms, so, on the face of it not all that much punishment has been meted out yet too".*

GG: *"Not if it was really was a military nerve agent attack by a foreign power on the streets of a European Union country".*

DM: *"And presented as an attack on the British state essentially".*

The strong degree of alignment between the views of Mr Morrison and Mr Galloway overall (which is evident in the exchanges quoted above) served to undermine the UK Government's viewpoint, to the limited extent it was reflected in the discussion, such that it was not reflected as a significant viewpoint in the programme which was given due weight in the particular circumstances.

In reflecting alternative viewpoints, the Licensee also relied upon: firstly, the comment of a former UK Ambassador, Craig Murray, that *"people were under pressure to say that this stuff came from Russia"*; and, second, the programme's mention of the fact that there had been a vote at the OPCW in favour of an investigation (not a joint investigation by Russia and the OPCW, as Russia had requested). However, we did not consider that either of these statements could be said to reflect the viewpoint of the UK Government. In particular, the comment made by the former UK Ambassador appeared to suggest that the UK Government and/or the scientific experts at the Porton Down laboratory were motivated by "pressure" rather than by the evidence.

The Licensee also said that it had "gone to great lengths to bring as much appropriate balance to its coverage of the Skripal case as it could, for example by...inviting commentators of sufficient authority and knowledge to present the UK Government's point of view". However, TV Novosti added that, across its coverage of the Salisbury incident and its aftermath it had received "37 refusals to such requests recently". Ofcom acknowledges the challenges that broadcasters can face obtaining interviewees in certain circumstances. However, as Ofcom has made clear on numerous occasions, where an alternative viewpoint is needed to maintain impartiality, inviting contributors to participate who then refuse to do so is not sufficient to preserve due impartiality⁶⁵. That alternative viewpoint needs to be represented in an appropriate way. If a broadcaster cannot obtain an interview or a statement on a particular viewpoint on a matter of political controversy, then it "must find other methods of ensuring that due impartiality is maintained" (emphasis added)⁶⁶. The

⁶⁵ See Ofcom's Guidance, paragraph 1.36.

⁶⁶ Ofcom's Guidance, paragraph 1.36.

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 impartiality⁶⁷.

In this case, for the reasons set out above, and having taken account of the relevant contextual factors discussed above, in our view the viewpoint of the UK Government was not adequately represented within this programme and the programme had not included and given due weight to an appropriately wide range of significant views.

Due impartiality in clearly linked and timely programmes

Broadcasters may comply with Rules 5.11 and 5.12 by ensuring due impartiality is maintained either in each programme "or in clearly linked and timely programmes". We next considered whether such views were included in clearly linked and timely programmes and given due weight.

TV Novosti argued that: "For practical reasons...it is not possible to explicitly link the content on a rolling news channel between pre-recorded programmes and news bulletins". We acknowledge the challenges that can be faced by rolling news channels in ensuring compliance with the Code. However, as discussed earlier in the general contextual factors, television services such as RT cannot preserve due impartiality by relying on what is broadcast across their service as a whole⁶⁸. It is possible for television services such as RT to preserve due impartiality, in the context of Rule 5.12, in clearly linked and timely programmes. However, because it cannot be guaranteed that a person watching one programme will have been watching the programme that precedes it or follows it, the broadcaster must take steps to ensure that the two programmes are "clearly linked".

Therefore, even if other programmes that have been broadcast do deal with the same subject matter and contain relevant alternative viewpoints, these contextual factors alone are not sufficient to ensure that due impartiality is preserved, particularly where the matter concerned is a major matter within the scope of Rule 5.11 and 5.12. This is because without an explicit link viewers may not be aware of the other programmes. We acknowledge that there may be particular challenges including explicit links to other programmes in pre-recorded content. However, we do not consider these challenges are insurmountable. For example, broadcasters could include links to other programmes in a continuity announcement broadcast over the end credits of the pre-recorded programme or in a prominent caption or slate superimposed over the pre-recorded content. We would expect such a link to include a reference to the fact that the linked programme deals with the same matters as the programme in question.

In this case, TV Novosti considered that a "number of its news programmes" broadcast on 7 April 2018 (i.e. the day of broadcast of this programme) "reflected the UK Government/dominant position held by the West on the matter of the poisoning of the Skripals" and that "such viewpoints were prominently displayed, without dismissive comment, by RT in immediate proximity to the Sputnik programme". However, although the various news items cited by the Licensee were broadcast on

⁶⁷ See Ofcom's Guidance, paragraph 1.37.

⁶⁸ As we made clear in our December 2013 *Syrian Diary* Decision (see https://www.ofcom.org.uk/data/assets/pdf_file/0025/45745/obb244.pdf), due impartiality can only be preserved across a whole service in the case of non-national radio services. Specifically, section 320(1)(c) of the Act requires: "the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on...matters [of matters of political or industrial controversy; and matters relating to current public policy]". Section 320(4)(b) states that the requirement contained in section 320(1)(c) "is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole".

the same day as and close to the edition of *Sputnik*, as reiterated by the Licensee in its representations on Ofcom's Preliminary View, we did not consider that these were clearly linked programmes within the meaning of the Code. This was because there was no material at all which referred explicitly to, and so potentially linked the programme to, any other RT broadcasts in the manner described above, including the news broadcasts in question. This was particularly significant in the context of a programme which concerned major matters of political controversy.

On a related matter, TV Novosti argued that a relevant contextual factor in this case was what programmes were broadcast before and after the edition of *Sputnik* in this case. However, for the reasons given in our consideration of common contextual factors above, we considered it appropriate to put much less weight on this contextual factor compared with other contextual factors. This is because the due impartiality rules envisage that if a broadcaster is seeking to preserve due impartiality by reflecting alternative viewpoints in linked programming, this should be made clear to the audience on air.

Given the above, we did not consider that TV Novosti had reflected an appropriately wide range of significant views in clearly linked and timely programmes.

In this case, we have taken careful account of the broadcaster's and audience's rights of freedom of expression and all the relevant contextual factors. For all the reasons set out above, Ofcom's decision is that the Licensee failed to include and give due weight to an appropriately wide range of significant viewpoints in relation to the relevant matters of major political controversy and major matters relating to current public policy dealt with in the programme.

Breaches of Rules 5.11 and 5.12

Not in Breach

Worlds Apart, 1 April 2018, 23:30

Introduction

Worlds Apart is a weekly current affairs discussion programme. Ofcom received a complaint that this edition of the programme was not duly impartial.

We watched this programme and noted that it featured a 30-minute interview between regular presenter Oksana Boyko and Walter Litvinenko, the father of Alexander Litvinenko, a former FSB⁶⁹ secret service officer who died in 2006 of polonium poisoning. A large part of the interview was about the poisoning of another former FSB secret service officer, Sergei Skripal, and his daughter Yulia in Salisbury on 4 March 2018.

Ms Boyko introduced the programme by saying:

"The British authorities explicitly cite the poisoning of the former FSB agent Alexander Litvinenko in London as circumstantial evidence in the Skripal case. 'The Russians did it before, they will do it again' — that's the essence of the UK's allegations against Russia. But doesn't London itself have capability, intent and motive for this kind of national character assassination?"

Ms Boyko ("OB") then introduced Mr Litvinenko ("WL"). Their conversation was held in Russian which had been dubbed into English. The following exchange took place:

OB: *"...right after the death [of Alexander Litvinenko] you publicly blamed Russia for his death. Who or what made you change your opinion on this issue?"*

WL: *"Analysis. I kept analysing this situation. I kept thinking again and again and eventually I came to a conclusion and now, nothing can change my opinion. Putin would never do anything like that".*

OB: *"I'm sorry for interrupting but we know that your son blamed, accused Putin. There were some serious accusations. He said Putin was behind the Russian apartment bombings, behind the 9/11 attacks in the United States. These are serious accusations. Why do you think Russian Intelligence services, or maybe politicians, could not have done something like that?"*

WL: *"You know, perhaps some in the Russian leadership would want to do any such thing but we have one person in charge of everything and that's the way it has always been and it's the same these days. The President is on top of everything and I can see he's a decent person. He doesn't do such nasty things. So I reject all those ideas. And he's smart. He's a smart guy. He would never do something. Who is Alexander? He was just a regular agent. He loved his work. He was fighting criminals. That was his primary job. He was going after criminals".*

They then discussed the circumstances of Alexander Litvinenko's death and its aftermath. Approximately ten minutes after the start of the programme, Ms Boyko raised the subject of the poisoning of the Skripals:

⁶⁹ The Federal Security Service of the Russian Federation.

OB: *"...after Litvinenko's death, and that was a very public case, all the newspapers wrote about it, but there were no serious measures after that. No expulsions of diplomats, no financial sanctions, nothing was done. But now, even though we still don't know what actually happened to the Skripals, there are serious measures that are being taken. You personally, how do you explain this absence of serious measures back then and the steps that the Government has taken now?"*

WL: *"The stories about what the British services do, they try to do something against Russia but what can they do, so they can only expel our diplomats. But actually they are scared, they are afraid of Russia. Well, if you're afraid of Russia, be human. We don't want anything. We're not imposing anything on you. You know, all those new weapons, it's just because we don't want anybody to make jokes about us".*

A commercial break then took place. After the programme resumed, the conversation returned to the poisoning of the Skripals.

OB: *"The latest news is that Yulia Skripal is getting better and it's a miraculous recovery because the British media kept saying that they had no chance to survive but now we are learning that she's conscious, she's eating, and she can talk. Is it because the healthcare in the UK is so wonderful?"*

WL: *"Or it's just because the guy who poisoned them is not standing next to them so they may survive. Alexander had the guy who poisoned him standing next to him at the hospital so I would say he survived. He had three poisonings. The first time he was taken to hospital and they thought he ate something. I don't know if it was doctors. It was just somebody who visited him in hospital and poisoned him further".*

OB: *"Your son's death was very public and that picture at the hospital with his shaved head and he looked very tired. It was a very emotional picture and it was just everywhere. But in this current case, in the Skripal case, nobody has seen the victims ever since the suspected poisoning. Do you have any theories as to why the doors were opened for visitors back then and anybody could take a picture of him but now there is such secrecy?"*

WL: *"You know when Alexander was poisoned this was a fake. Something they wanted to show to the whole world how cruel Russia is. How brutal Russia is. How Russia offs its enemies. Back then, when they realised that they [i.e. the UK authorities] were in trouble, they decided to change it around a little bit. This time they took a different approach so this time they don't put things on display they just keep it secret. They are just waiting to see how Russia responds. If this were Russia's hand they would pursue this track on and on but Scotland Yard did not look for the perpetrator, they were covering up their tracks. What they did with Alexander is they covered up their tracks and now they are reluctant to reveal those things because they know that again they will have to cover up their tracks".*

OB: *"But I would like to argue with you a little bit maybe here".*

WL: *"Because they realise that Russians are smart and Russian scientists would be able to establish what this substance was".*

- OB: *"But if we accept your theory, which is very popular in Russia, that it was all coordinated and initiated by the British".*
- WL: *"They [i.e. the UK authorities] are scared, they are scared. They are afraid that Russia would find out who did that. Personally, I think it was Ukraine that did that because Ukraine wants Russia to clash with the rest of the world".*
- OB: *"But if the British knew that Russia had nothing to do with that then this Yulia Skripal recovering is not going to work for them because right now it doesn't really make sense because at first they said that it was a deadly agent that nobody would ever recover from that but now we know that this young lady is actually recovering so that's not in their interest".*
- WL: *"It's not in their interest if Sergei Skripal survives. The girl, she doesn't know anything. Skripal knows a lot".*
- OB: *"Now, it's a big question, were they actually poisoned with Novichok⁷⁰ because we're told that it's a very powerful poison and it doesn't look right that somebody's able to recover from it".*
- WL: *"You know they say that there is a place 13km away from the spot where they [i.e. the Skripals] were found where they manufacture these nerve agents and manufacture antidotes. But Russia was done with him a long time ago. Russia let him go a long time ago and then all of a sudden they blamed Russia for poisoning him".*
- OB: *"Russia still has no access to Yulia and Sergei Skripal even though they are both Russian citizens, from what I understand. I think they still have relatives and all those relatives are in Russia. From your own experience, the British doctors, do they respect their patient's rights, like visitation rights?"*
- WL: *"British doctors just do their job - there is always somebody in the back, controlling them. CIA. I don't know. MI6. We don't know. We don't know who's in charge of all this operation. Maybe it's just some people who were cooking up poison for the rest of the world. I know all those nerve agents. We used to have those during the Soviet time but then we abandoned this programme and got rid of all those chemical weapons. We have other weapons. We don't need chemical weapons".*
- OB: *"In any case, if the Soviet Union was developing such substances, in order to determine where this substance came from we need access to some biological*

⁷⁰ Novichok is a type of nerve agent originally developed by the former Soviet Union. In a statement on 12 March 2018 the UK's Prime Minister said that a group of nerve agents known as Novichok was used in the poisoning of Sergei and Yulia Skripal: <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-12-march-2018> On 12 April 2018, the Organisation for the Prohibition of Chemical Weapons confirmed the findings of the UK relating to the identity of the toxic chemical. https://www.opcw.org/fileadmin/OPCW/S_series/2018/en/s-1612-2018_e_.pdf We also note the letter published by the UK's National Security Adviser to the Secretary-General of NATO, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699819/Letter_from_the_UK_National_Security_Adviser_to_the_NATO_Secretary_General_regarding_the_Salisbury_incident.pdf

materials and Russia still has no such access. What do you think? Will this access be granted or do you think the UK does not want to investigate this case?"

WL: *"No, further on they will just keep hiding all those things deeper and deeper and deeper and what the British are thinking about is how to turn this entire situation against Russia. They realise by now that they have got themselves into a deep mess. Theresa May, I don't know, maybe they arranged this whole thing on purpose before the Presidential election in Russia and then, this whole thing blew up. I think they were hopeful that when Alexander got poisoned they thought they would get rid of Putin".*

OB: *"I want to compare these two cases again because the Litvinenko case, there was sense and logic in the chain of events. The meeting at the hotel, the polonium in the tea cup, and then he felt worse, he was taken to the hospital".*

WL: *"No, that's not how it started".*

OB: *"You said that there was some preliminary poisoning, there was some attempt".*

WL: *"When they [i.e. the UK authorities] started this whole thing, there were this Italian guy, Scaramella⁷¹, and they brought him in. They brought him in to deny all those things and later, when this whole thing started they started talking about Lugovoi⁷², about Kovtun⁷³, about Sokolenko⁷⁴, and then they started developing this theory. But you know what? First, if those three guys did it then there would be more traces. Three is more than one. Listen. It's possible for one person to cover his tracks when his poison but it was a group, it was a group. Look, look at those traces. There was a person following the traces leaving polonium. There was polonium on Alexander and there was polonium all along their track. Whoever they were. Lugovoi and those other people at the stadium, at the plane. One person would never leave such a trace. They left traces at the restaurant. In other words, they wouldn't have done it themselves".*

OB: *"I'm not even asking about the—".*

WL: *"You know how much polonium they spent? It was worth 38 million dollars. 38 million dollars to poison some guy Litvinenko. 38 million dollars!?"*

OB: *"This is actually similar to the Skripal theory because if we believe that this Novichok would have cost several million dollars because it is not a cheap product".*

⁷¹ On 1 November 2006, the day he was poisoned, Alexander Litvinenko met the Italian academic Mario Scaramella for lunch on the same day as meeting Andrei Lugovoi, a former KGB officer, and Dmitry Kovtun. An independent inquiry chaired by Sir Robert Owen, and which reported in January 2016, found that Andrei Lugovoi and Dimitry Kovtun had poisoned Alexander Litvinenko and that this action was "probably approved" by the Russian authorities including President Putin (see <http://webarchive.nationalarchives.gov.uk/20160613090324/https://www.litvinenkoinquiry.org/report>).

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Viacheslav Sokolenko was a business associate of Andrei Lugovoi.

- WL: *"See all those provocateurs, they have lots of money".*
- OB: *"In any case, no matter what happens, and no matter who is behind Litvinenko's murder and the attempted murder of the Skripals the UK is going to use this as a pretext to escalate the tensions in the relations with Russia".*
- WL: *"Yes, they would love to do that, but eventually they will be exposed. They will be revealed. They will be caught red handed and Theresa May will be shamed for saying the things she said today and this clown, Boris Johnson, their Foreign Secretary, this guy Boris, yes, Boris, he will be shamed as well".*
- OB: *"I think he'll survive, he'll be okay".*
- WL: *"Yeah, he couldn't care less".*
- OB: *"But I would like to ask you a different question. How do you think Russia acts in this situation?"*
- WL: *"They [i.e. the UK authorities] don't have conscience. Russia does the right thing. Russia doesn't pay attention. Russia just does its thing and that's the right way to go. Like Putin said we are strong enough now. We have got missiles. We have got everything we need to respond to all those guys seeking global domination. We know what global domination is but we would never do such a thing and Putin does the right thing and Europe is now on its knees and there is nothing you can do about Europe. I feel sorry for Europeans but we've got Putin so let's follow him".*

Ms Boyko then concluded the interview and the programme ended.

During the interview, a number of captions were shown across the bottom of the screen, which included the following:

- *"Pew Research Center: 43% of Britons believe Russia is a major threat to their country";*
- *"The UK expelled 23 Russian diplomats over Russia's alleged culpability of the Skripal incident on March 14";*
- *"Former double agent Sergei Skripal and his daughter Yulia were poisoned in Salisbury on March 4";*
- *"Levada Center poll: 6% of Russians believe the UK is an enemy of their country";*
- *"BBC: Yulia Skripal is conscious and talking, but Sergei Skripal is in a critical but stable condition";*
- *"The OPCW confirmed that Moscow had completely destroyed its chemical weapons stockpiles on September 27, 2017";*
- *"VTSIOM poll: Just 3% of Russians believe that Moscow was involved in the poisoning of the Skripals";*
- *"Novichok was first disclosed to the public by Russian chemist Vil Mirzayanov in 1992"; and*

- “VTSIOM poll: 38% of Russians believe the poisoning of the Skripals was carried out by the enemies of Russia”.

Ofcom considered that the programme was dealing with a matter of major political or industrial controversy and major matters relating to current public policy, namely, the policies and actions of the UK and Russian Governments concerning the poisoning of Sergei and Yulia Skripal⁷⁵.

We therefore considered that this programme raised issues warranting investigation under the following rules:

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”.

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”.

We therefore asked the Licensee how the programme complied with these rules.

Initial Response

General

The Licensee made several “background points” about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10.

Application of Rules 5.11 and 5.12

As described above, in response to Ofcom's initial request for comments, TV Novosti requested that Ofcom “specify what the major matter is: the 2018 Salisbury incident or the 2006 murder of Alexander Litvinenko” and stated that it was “inappropriate to conflate the two incidents”. Ofcom subsequently clarified that it considered the “major matter” in this case to be “the policies and actions of the UK and Russian Governments concerning the poisoning of Sergei and Yulia Skripal”, while noting that this was discussed “against the background of the poisoning of Alexander Litvinenko in 2006”.

TV Novosti also queried why Ofcom considered that Rules 5.11 and 5.12 were engaged in this case. The Licensee accepted that, in relation to a different programme which Ofcom was investigating⁷⁶, the content of which was “completely focussed on” the Skripal incident, the programme dealt with a “major matter”. However, TV Novosti argued the *Worlds Apart* interview “ranged widely over a series of topics triggered by reflections about the unlawful killing of [Alexander Litvinenko], which had happened more than a decade before the Salisbury poisoning”. The Licensee considered that “arguably, any comments about the Skripal poisoning were incidental”.

⁷⁵ See further discussion on this under “Application of Rules 5.11 and 5.12” below.

⁷⁶ *Sputnik*, 17 March 2018.

Due impartiality within the programme

TV Novosti acknowledged that the programme “required appropriate inclusion of the views of the UK/dominant position and Russian position on political controversy concerning Salisbury” in order for due impartiality to be preserved. The Licensee considered that “the views of Russia and the UK/dominant position are obviously significant and the respective positions are given due weight”. In terms of the UK view on the Skripal poisoning, the Licensee considered that this would have been “widely known and therefore less time reflecting this view would be required to maintain due impartiality”. It also said that “it would have been a rare viewer indeed who was unaware that the perspective of the UK Government was that the poisoning of the Skripals was a repeat of the poisoning of the interviewee’s son, a factor which supported the view that the Salisbury incident was an act of terror, revenge and/or warning that was conducted by the Russian state, on English soil”.

Even if a viewer was unaware of this before the programme, the Licensee considered the programme reflected a range of significant viewpoints, including the following UK/dominant views “in a totally unambiguous manner”, citing the following examples:

- *“British authorities say explicitly that the poisoning of the former agent Alexander Litvinenko in London is circumstantial evidence in the Skripal case”;*
- *“There’s an interesting coincidence in this case. Theresa May, when she was Home Secretary, classified the Litvinenko case and all the investigation materials. She said it was a matter of national security”;*
- *“Many in the UK think that the British authorities did not want this tension in the relations with Russia so after Litvinenko’s death there was no serious diplomatic push but now finally they are fed up?”;*
- *“British media kept saying that they [Sergei and Yulia] had no chance of survival”;* and
- *“This is actually similar to the Skripals theory because if we believe that, this Novichok would have cost several million dollars as well because this is not a cheap programme”.*

It was TV Novosti’s view that many of the references to the Skripals in the programme were “incidental to the interviewee’s account of his own story”. It added that these references “were not critical of the policies and actions of the UK Government...but rather querying certain alleged ‘facts’ published by mainstream media about the Skripals’ story as was known at that date of broadcast”, citing the following examples:

- *“We still don’t know what actually happened to the Skripals, there are serious measures that are being taken”;*
- *“The latest news is that Yulia Skripal is getting better”;*
- *“But in the Skripal case, nobody has seen the victims ever since the suspected poisoning”;*
- *“Yulia Skripal’s recovery is not going to work for [the UK Government] because right now it doesn’t really make sense. At first they said it was a deadly agent and nobody would ever recover from that but now we know that this young lady is actually recovering so that’s not in their interest...”;*

- *"It's not in their [unclear if this is referring to Russian or UK Government] interest if Sergei Skripal survives. The girl doesn't know anything whereas Sergei Skripal knows a lot";*
- *"Russia still has no access to the Skripals even though they are both Russian citizens";*
- *"This is actually similar to the Skripals theory because if we believe that, this Novichok would have cost several million dollars..."; and*
- *"In any case, no matter what happens and no matter who is behind Litvinenko's murder and the attempted murder of the Skripals, the UK is going to use that as a pretext to escalate the tensions in the relations with Russia".*

The Licensee informed Ofcom that "30 individuals were invited to appear on *Worlds Apart* to provide a 'Western/British perspective' around the time this programme was broadcast to discuss the Skripal case". However, "those individuals proved unable or unwilling to appear on" the programme. Therefore, the Licensee highlighted that Ofcom's Guidance to Section Five states that in a scenario where alternate views are not readily available a broadcaster might consider a number of editorial techniques to ensure due impartiality is maintained, including: "where an interviewee is expressing a particular viewpoint, interviewers could reflect alternative viewpoints through questions to that interviewee". TV Novosti considered that this technique was employed by the presenter Ms Boyko by challenging and probing Mr Litvinenko's viewpoint, citing the following examples:

- *"As far as I know, you were with your son at the hospital during his last few days; he basically died in your arms. After his death you publicly blamed Russia for his death. Who or what has made you change your opinion?";*
- *"I'm sorry for interrupting but we know that your son accused Putin. There were some serious accusations in which he said that Putin was behind the Russian apartment bombings and behind the 9/11 attacks in the US. These are serious accusations. Why do you think that Russian intelligence services or politicians could not have done something like that?";*
- *"Well, in Putin's eyes, I guess, he was a traitor";*
- *"Let's not talk about Putin but rather your son's case. Many of our British colleagues say that whether you trust Putin or not, whether you trust the British authorities, there's a chemical trace that leads through Lugovoy to the airport and then back to Moscow".;*
- *"Your opinion about the cause of death of your son is different from what his widow, Marina, says. She still publicly and I think sincerely accuses the Russian authorities";*
- *"The British authorities say that it [polonium] is such an unusual poison that nobody could think that somebody would use it";*
- *"Many in the UK think that the British authorities did not want this tension in the relations with Russia, so after Litvinenko's death there was no serious diplomatic push but now they are fed up?";*
- *"But I would like to argue with you a little bit";*

- *“But if the British knew that Russia had nothing to do with that, then Yulia Skripal’s recovery is not going to work for them because right now it doesn’t really make sense. At first they said it was a deadly nerve agent and nobody would ever recover from that but now we know that this young lady is actually recovering so that’s not in their interest”*; and
- *“This is actually similar to the Skripal theory because if we believe that, this Novichok would have cost several million dollars as well because this is not a cheap program[sic]”*.

In the Licensee’s view, it was “sometimes difficult to categorise or indeed ascertain what view Mr Litvinenko is presenting during his interview” as his responses to Ms Boyko’s questions were “somewhat rambling and disconnected in places”. It added that given that Mr Litvinenko blamed “in turn the CIA, the Ukrainians and the British for his son’s tragic death...this inconsistency would have been obvious to audiences and showed that what he said was the product of his very personal perspective, not any consistent or editorial viewpoint”. It was also TV Novosti’s view that if alternative viewpoints were needed to counter Mr Litvinenko’s views (which it described as “more indications of personal distress than political statements”), these were implicit in the “firm but gentle and wide-ranging” questioning of Ms Boyko.

In ensuring the broadcast of an appropriately wide range of significant views and giving them due weight, the Licensee said it had “relied on advice from Ofcom indicating presenting the alternative view can be in the form of graphics (e.g. on screen banners)”. It said that these banners reflected a UK perspective “which is critical and suspicious of Russia after the Skripal poisoning, and BBC factual reporting of the condition of the Skripals”. It also drew Ofcom’s attention to the scrolling news headline (*“Spat over poisoning of former Russia spy sees envoys expelled, consulates closed”*) that was broadcast 14 times during the programme. TV Novosti said this was “clearly referring to the tough diplomatic measures taken by Western states against Russia for its alleged involvement with the Skripal poisoning”.

Contextual factors relevant to this programme

The Licensee also cited various contextual factors that it felt was relevant in this case:

- in relation to the nature of the programme, TV Novosti said that this was a “challenging programme” that gave the viewer the “opportunity to watch an extended interview with a father who must still feel keenly the loss of his son”. Because of this, it said that: “the interviewer and indeed the programme as broadcast are naturally respectful of the father and solicitous not to deprive him of the opportunity to say what he wants”. In the Licensee’s view, the viewer “was left to decide what view to take of the idiosyncratic statements of the interviewee, aided by the interviewer’s wide ranging questioning”;
- TV Novosti said that mainstream Western networks would not have access to Mr Litvinenko and therefore without this contribution by RT, Mr Litvinenko “would not have been heard to express his views and theories of what happened to this son”;
- the Licensee said the audience for this programme would expect “a degree of controversy with the purpose of promoting debate”. It also said that “it is in the nature of controversy that there is disagreement; there are opposing views”;
- citing the right to freedom of expression, TV Novosti considered that it was “difficult to understand why the broadcast of the very individual thoughts of a grieving father would require

this regulatory intervention". It also was of the view that "an alternative viewpoint to the personal thoughts of Mr Litvinenko on his son's death does not need to be presented".

Preliminary View

Ofcom issued a Preliminary View that the edition of *Worlds Apart* broadcast on 1 April 2018 at 23:30 was in breach of Rules 5.11 and 5.12 of the Code and invited TV Novosti's representations on the Preliminary View. The Licensee provided written and oral representations on the Preliminary View.

Response to Preliminary View

The Licensee made general representations about factors common to all the Preliminary Views which are summarised earlier at pages 10 to 18.

In addition, in its written representations TV Novosti disagreed with our Preliminary View. It said that the programme was "a personal interview with the father of Alexander Litvinenko, a former Russian agent who had died in tragic circumstances". It said this was relevant for the following reasons:

- viewers would clearly not have expected a dispassionate analysis of the matters relating to Mr Litvinenko's son's death or of the Skripal incident. Rather, it would have been obvious that this was a highly personal, and at times inconsistent, take on these events by Mr Litvinenko. Therefore, the 'due' impartiality requirements for the programme are manifestly different from and less demanding than, say, a news programme; and
- given the context of a grieving father whose son had tragically died and who was not a Government spokesman, the Code cannot be read to have demanded that Ms Boyko robustly challenge Mr Litvinenko's personal views;

In any event, Ms Boyko did challenge Mr Litvinenko's personal views in a manner that was "polite, and respectful of the interviewee's position as a grieving father, but...real". In particular, the Licensee referred to Ms Boyko's comments on our Preliminary View, which said that she had pointed out to Mr Litvinenko that the UK government disputed his version of events.

The Licensee also gave the following additional reasons for disagreeing with the Preliminary View:

- viewers would have been well aware of the UK Authorities' strong view and assertions that Russia was responsible for the poisoning of the Skripals, not just from the content of the *Worlds Apart* programme itself, and from other RT programmes, but also and indeed primarily from the wide range of other media broadcasts and publications that reported on the Skripal incident at the time. Therefore, it would be an entirely artificial and context-blind application of the Code to consider that viewers of *Worlds Apart* would have been unaware;
- the Code did not impose a test of "balance" in relation to due impartiality, but Ofcom had applied such a test, for example in its consideration that Ms Boyko's comments were not sufficient to provide balance so as to preserve due impartiality. It said that this had "import[ed] a higher test than that required by the Code", which it said stated "'due impartiality' does not mean an equal division of time has to be given to every view". It said this was "reflective of the overall, flawed approach taken by Ofcom to the question of whether this programme entailed a breach of Rules 5.11 and 5.12"; and

- it agreed with Ms Boyko's comments that broadcasting Mr Litvinenko's views "in an unedited form added a new and unusual dimension to the public discourse on both Litvinenko and Skripal's case" and that "discouraging RT from airing controversial guests for the reason of them not fully reflecting 'the viewpoint of the UK Government', the viewpoint that's aptly represented within the UK media landscape...would amount to indirect and selective censorship".

In its oral representations on Ofcom's Preliminary View, the Licensee said that it relied on all its written representations, and in addition emphasised the following contextual factors:

- although Ofcom had used the term "balance" in its Preliminary View, the Code's definition of due impartiality does not require that balance be preserved in a particular case. This was because the word "balance" suggests equal weight being given to both sides of an argument, which is not required in order for due impartiality to be preserved;
- with respect to the context of the programme, it was an interview with Walter Litvinenko, whose son had died in tragic circumstances and viewers would not have been harmed because Ms Boyko had not been more robust in her challenge of Mr Litvinenko, rather than "being polite and respectful of his position". Further, viewers would not have expected a dispassionate analysis of Mr Litvinenko's son's death or the Skripal poisoning. It was obvious to viewers that Mr Litvinenko was expressing a personal and at times inconsistent view rather than a factual presentation by RT such as in a news programme; and
- viewers of *Worlds Apart* would have been well aware of the UK Government's position on the Skripal poisoning from the content of the programme itself, as well as from other RT programmes and other media broadcasts that had reported on the incident at the time.

Response from Oksana Boyko

In response to Ofcom's Preliminary View proposing a breach of rules 5.11 and 5.12, the presenter Oksana Boyko provided additional representations. These representations concerned a detailed explanation of the editorial context of *Worlds Apart* as well as specific responses to Ofcom's reasoning in the Preliminary View.

Ms Boyko said that the description of the programme in Ofcom's Preliminary View was not fully accurate. It was not a weekly but a biweekly programme which was driven by the personal interests, preferences and views of the host. This was reflected in the programme's full title: *Worlds Apart with Oksana Boyko*. The inclusion of the presenter's name meant that the views and values of the presenter would be expected by viewers.

The presenter said that it was always her intention to comply with Ofcom's Code. However, it was not always obvious to her as a presenter what was required to comply with Ofcom's due impartiality rules. This was particularly relevant as the programme aimed to stimulate discussion and put forward points of view which may challenge established opinions (especially in countries outside of Russia).

With specific regard to the Preliminary View, Ms Boyko referred to Ofcom's statement in its Preliminary View that the programme included "a number of statements that were either critical or dismissive of the UK Government's position on the poisoning of the Skripals" without specifying in all cases who had made these statements. Ms Boyko said that in her view the statements detailed in the Preliminary View belonged almost exclusively to the guest Walter Litvinenko. In her view, he was

entitled to express his own opinions which were informed by his direct experiences in Russia and the UK.

Ms Boyko stated that the UK's position on the Skripal poisoning has not been fully established and that the allegations voiced by the Prime Minister in Parliament had not brought about any criminal charges, as at the time of broadcast. Therefore, the reference in the Preliminary View to "the UK Government's position" constitutes verbal and at times conflicting statements by public officials in their individual capacities, rather than a formal, legally binding, government position.

Ms Boyko said that when the programme was made, very few facts about the Skripal case had been verified by an independent judicial or quasi-judicial process, in the absence of which there must be wide editorial freedom for presenting these issues. In this case, given what Ms Boyko characterises as the unsubstantiated nature of the UK allegations against Russia, claims of impartiality should start from the presumption of innocence until guilt is legally proven.

Notwithstanding, Ms Boyko said she ensured impartiality by asking questions which probed the guest's views on both the British and Russian narratives and to highlight the inconsistencies in both. Further, she claimed it was obvious from the context that Mr Litvinenko's statements on the Skripals were his own opinions and in the absence of greater clarity as to the facts, his reasoning was more relevant given his own experience than what Ms Boyko sees as speculation over the matter.

Ms Boyko raised an objection to Ofcom's conclusion that given Mr Litvinenko's critical comments of the UK government the presenter should have defended the UK Government more extensively "to provide balance so as to preserve due impartiality". The presenter said that the Code makes clear "due impartiality" does not mean an equal division of time must be given to every view or that every argument must be represented. Yet Ofcom found that the presenter's "limited comments" were not sufficient to provide such balance. This, she argued, would have required constant repetition of the same points thus leading to significant credibility risk and calling on Ms Boyko to serve as a blind contrarian rather than facilitating public debate.

Ms Boyko said that the Preliminary View also stated that the examples where she challenged Mr Litvinenko's viewpoint mostly only concerned the poisoning of his son and therefore "did not serve to reflect the viewpoint of the UK Government on the Skripal poisoning". In response, Ms Boyko said Mr Litvinenko was not representing the view of the Russian Government on the programme nor was he a professional critic of the British Government. Rather he was speaking in a personal capacity as a father of an assassinated former security agent. It was the presenter's duty in this case to point out that the UK Government disputed his version of events, which Ms Boyko said she did, but it was "an unrealistic and insensitive expectation to match his emotional conviction".

As a matter of policy, the presenter said the programme promised all its guests live-to-tape conversations which comes with a risk of a guest going off tangent or expressing controversial or irrelevant views. In this particular episode, the presenter said they didn't consider Mr Litvinenko's comments could be categorised as so offensive they needed editing. Ms Boyko concluded that she understood why some viewers may have found Mr Litvinenko's perspective unsettling but she considered that airing his views in an unedited form added a new and unusual dimension to the public discourse on the Litvinenko and Skripal cases. In her view, discouraging RT from airing controversial guests because they do not reflect the viewpoint of the UK Government, when this viewpoint was already represented within the UK media landscape, would amount to indirect and selective censorship.

Decision

Reflecting our duties under the Act⁷⁷, Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.11 states that: “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”.

Rule 5.12 states that: “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”.

We acknowledged that the programme was made in the context of an ongoing, highly politically sensitive issue, namely, the aftermath of the poisoning of Sergei and Yulia Skripal. We also took account of TV Novosti's comments that the “mainstream or Western networks would not have access” to Mr Litvinenko. The Licensee therefore considered that without RT gaining this access to Mr Litvinenko he “would not have been heard to express his views and theories of what happened to his son, surprising as they may be to Western audiences”.

In light of the above, and in line with broadcasters' right to freedom of expression and audiences' right to receive information (as detailed earlier in the general discussion on the statutory framework and freedom of expression and not repeated here), we considered that it was legitimate for the Licensee to make and broadcast a programme which examined and explored the ramifications of the poisoning of the Skripals on UK-Russian relations from a Russian perspective, and from the perspective of someone who was closely connected with, and had personal knowledge of, the poisoning of Alexander Litvinenko. However, to the extent that such a programme examined politically controversial matters, we considered that TV Novosti needed to comply with Section Five by ensuring that due impartiality was preserved.

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned matters of major political or industrial controversy or major matters relating to current public policy.

The Code states that matters of major political or industrial controversy and major matters relating to current public policy will vary according to events, but these will generally be matters of political or industrial controversy or matters of current public policy which are “of the moment” and of national, and often international, importance, or are of similar significance within a smaller broadcast area.

A significant part of the interview included discussion about the poisoning of Sergei Skripal and his daughter Yulia Skripal, who were found unconscious in Salisbury on 4 March 2018 after coming into contact with what police later identified as a nerve agent. During the course of this 30-minute interview, Ms Boyko and Mr Litvinenko discussed, among other things, the response of the UK Government to the poisoning of the Skripals, the potential involvement of British, Ukrainian or

⁷⁷ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>; and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

Russian authorities in the poisoning, and the impact of the poisoning on relations between the UK and Russia. This included a number of statements that were either critical or dismissive of the UK Government's position on the poisoning of the Skripals, and therefore were implicitly critical of the policies and actions of the UK Government in connection with the incident.

In its representations, the Licensee queried why Ofcom considered Rules 5.11 and 5.12 were potentially engaged in this case as, in the Licensee's view, the programme was focused on topics "triggered by [Walter Litvinenko's] reflections about the unlawful killing of his son, which happened more than a decade before the Salisbury poisoning". The Licensee considered that "[a]rguably, any comments about the Skripal poisoning were incidental".

We acknowledged that this interview initially focused on the death of Walter Litvinenko's son, Alexander. However, as Ms Boyko made clear in her introduction, the 2006 poisoning of Alexander Litvinenko was used as background to a discussion about the poisoning of Sergei and Yulia Skripal. She said:

"The British authorities explicitly cite the poisoning of the former FSB agent Alexander Litvinenko in London as circumstantial evidence in the Skripal case. 'The Russians did it before, they will do it again' — that's the essence of the UK's allegations against Russia. But doesn't London itself have capability, intent and motive for this kind of national character assassination?"

Having discussed the poisoning of Alexander Litvinenko for approximately ten minutes, Ms Boyko went on to repeatedly question Walter Litvinenko on his views about the Skripal poisoning. Some of these questions (and their answers) compared and contrasted the Skripal incident with the Litvinenko incident. Others focused specifically on the Skripal incident. For example:

"You personally, how do you explain this absence of serious measures back then and the steps that the Government has taken now [in response to the poisoning of the Skripals]?"

"But in this current case, in the Skripal case, nobody has seen the victims ever since the suspected poisoning. Do you have any theories as to why the doors were opened for visitors back then [following Alexander Litvinenko's poisoning] and anybody could take a picture of him but now there is such secrecy?"

"Now, it's a big question, were they actually poisoned with Novichok because we're told that it's a very powerful poison and it doesn't look right that somebody's able to recover from it?"

"I want to compare these two cases again because the Litvinenko case, there was sense and logic in the chain of events..."

"How do you think Russia acts in this situation?"

Given the repeated references to the poisoning of the Skripals in the programme, which were the focus of a substantial proportion of the programme's running time, we did not agree with the Licensee's argument that any comments about the Skripal poisoning were "incidental".

We therefore considered that the programme dealt with the policies and actions of the UK Government in connection with the Skripal incident. We then considered whether this was a "major matter".

The UK Government had on 12 and 14 March 2018 said that the poisoning of the Skripals constituted an unlawful use of force by the Russian State in the UK⁷⁸. The Russian Federation denied⁷⁹ that it had developed the nerve agent concerned or committed the attempted murder.

During the period between the poisoning and the broadcast of this programme there was intense international media and political interest in:

- the ongoing investigations by the UK police and the OPCW⁸⁰;
- allegations about the alleged culpability of the Russian Government in the poisoning of Sergei and Yulia Skripal and the Russian Government's response to these allegations; and
- the impact of the poisoning on diplomatic relations between Russia, the UK and the wider international community.

We considered that the position of the UK Government on the purported responsibility of the Russian State for the incident and the response of the UK Government and the wider international community were subjects of debate and political controversy both in the UK and internationally and were of both national and international importance.

For these reasons, we considered that the programme was concerned with matters of major political controversy and major matters relating to current public policy and the Licensee was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code.

The preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on these matters. The Code makes clear that "due" means adequate or appropriate to the subject and nature of the programme. "Due impartiality" does not therefore mean an equal division of time **must** be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience and the

⁷⁸ See the statement of Theresa May to the House of Commons on 12 March 2018, <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-12-march-2018> and on 14 March 2018, <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-response-14-march-2018>

⁷⁹ See, for example, the statement of Vasily Nebenzya to the United Nations on 14 March 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.8203

⁸⁰ The Organisation for the Prohibition of Chemical Weapons.

extent to which the content and approach are signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

We acknowledged the arguments that the Licensee had made regarding relevant contextual factors in this case. We took into account that the programme was broadcast on a channel that, as TV Novosti said, aims to: "make available an alternative point of view on world events"; "cover stories overlooked or underreported by the mainstream media"; and acquaint "international audiences with a Russian viewpoint on major global events". We also recognised that the Licensee considered that *Worlds Apart* was signalled as a "challenging programme" and that viewers were likely to have expected "a degree of controversy with the purpose of promoting debate". We also took account of the Licensee's argument that "the UK/dominant view on the plight of the Skripals would have been widely known". Lastly, we took account of the Licensee's submission that the programme contained Mr Litvinenko's "idiosyncratic statements", some of which contained inconsistencies, and that this "showed that what he said was the product of his very personal perspective, not any consistent or editorial viewpoint".

We have taken a number of contextual factors into account in considering the broadcaster's and audience's Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, Ofcom acknowledged that viewers of RT, and of programmes like *Worlds Apart*, were likely to expect such programmes to address controversial issues, and to do so from a Russian perspective. We also acknowledged that it was likely to have been in line with audience expectations for this programme to present the perspectives and opinions of the interviewee on controversial political issues, including, in this case, on the policies of the UK Government. TV Novosti argued that as the dominant narrative was widely disseminated by most if not all other media outlets/broadcasters, it was not necessary for *Worlds Apart* to repeat that perspective explicitly. However, as we mention above, the Code requires due impartiality to be preserved on matters of political and industrial controversy and matters relating to current public policy. In particular, when dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters are required to take additional steps in order to preserve due impartiality, namely to reflect an appropriately wide range of significant views and to give those views due weight.

In its representations, the Licensee argued that many of the references to the Skripals were "not critical of the policies and actions of the UK Government...but rather querying certain alleged 'facts' published by the mainstream media...". We accepted that some of the examples that the Licensee relied upon in support of this submission did not contain criticism of the policies and actions of the UK Government⁸¹. However, in our view, the programme did include a number of statements that were clearly critical of the UK Government's response to the events that had occurred in Salisbury, and in particular its allegation that Russian authorities were responsible for the poisoning. For example, the UK Government was described as: being "scared" that Russian authorities would find out who committed the poisoning; thinking about "how to turn this entire situation against Russia"; being in a "deep mess"; potentially having arranged the poisonings "on purpose before the Presidential election in Russia"; going to be "caught red handed and Theresa May will be shamed"; and, not having "conscience".

⁸¹ For instance: "We still don't know what actually happened to the Skripals, there are serious measures that are being taken"; "The latest news is that Yulia Skripal is getting better"; and "Russia still has no access to the Skripals even though they are both Russian citizens".

These criticisms were reinforced by statements which were supportive of the Russian authorities. For example, President Putin was described as “a decent person” who “doesn’t do such nasty things [as the poisoning of the Skripals]”. Mr Litvinenko concluded the interview by saying: “We know what global domination is but we would never do such a thing and Putin does the right thing and Europe is now on its knees and there is nothing you can do about Europe. I feel sorry for Europeans but we’ve got Putin so let’s follow him”.

In light of these statements, we considered whether, as required under Rule 5.12, an appropriately wide range of significant views was included and given due weight in this programme. As highlighted in Ofcom’s Guidance on Section Five of the Code, the broadcasting of highly critical comments concerning the policies and actions of, for example, a state or institution, is not in itself a breach of due impartiality rules. It is essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical. However, as envisaged by section 320 of the Act – which is given effect by Rules 5.11 and 5.12 – a broadcaster must maintain an adequate and appropriate level of impartiality in its presentation of matters of major political controversy. Given the nature and amount of criticism of the UK Government in the programme, we considered the extent to which the viewpoint of the UK Government had to be appropriately reflected⁸². We took into account that the Licensee accepted that the UK Government’s position was “obviously significant” and that “to present this programme with due impartiality required appropriate inclusion of the views of the UK/dominant position and the Russian position” on the Salisbury incident.

We took into account the Licensee’s argument that the UK/dominant position would have been widely known, and therefore “less time reflecting this view would be required to maintain due impartiality”. We also took account of Ms Boyko’s statements which the Licensee said reflected the “UK/dominant view” in a “totally unambiguous manner”. These were:

“British authorities explicitly said that the poisoning of the former agent Alexander Litvinenko in London is circumstantial evidence in the Skripal case”.

“There’s an interesting coincidence in this case. Theresa May, when she was Home Secretary, classified the Litvinenko case and all the investigation materials. She said it was a matter of national security”.

“Many in the UK think that the British authorities did not want this tension in the relations with Russia so after Litvinenko’s death there was no serious diplomatic push but now finally they are fed up?”

“British media kept saying that they [Sergei/Yulia] had no chance of survival”.

⁸² Ofcom’s Guidance explains that ‘significant views’ could include the viewpoint of nation states whose policies are considered to be ‘major matters’ (paragraph 1.58).

"This is actually similar to the Skripals theory because if we believe that, this Novichok would have cost several million pounds as well because this is not a cheap programme".

We acknowledged that the viewpoint of the UK Government on the incident was arguably reflected, to a limited extent, in some of Ms Boyko's statements. For example, and as the Licensee submitted, Ms Boyko's introductory remarks could be said to put forward the Government's view that the Russian state was responsible for the incident (*"British authorities explicitly cite..."*).

We considered that Mr Litvinenko's comments during the interview as a whole were generally critical of the UK Government and its position on the incident. However, we considered an important contextual factor in this case was, as argued by the Licensee, that this programme was "a personal interview" of a "grieving father" whose son had died in tragic circumstances. We also agreed with TV Novosti that the interviewee was not acting as an official spokesman for the Russian Government and that the due impartiality requirements should be considered in this context. We considered that these factors would have been crucial in shaping audience expectations and that viewers would not have expected the same approach to due impartiality in this programme, which could be characterised as a long-form 'human interest' interview, notwithstanding that it was dealing with a matter of major political controversy.

Given the above, and in assessing the Licensee's approach to due impartiality in this case, we therefore considered the different editorial elements of this programme.

Firstly, we considered the role of the presenter in this programme. The Licensee submitted that Ms Boyko put to Mr Litvinenko a number of points to "probe and challenge his viewpoint". We considered that most of the examples relied on by the Licensee in support of this submission involved Ms Boyko challenging Mr Litvinenko's viewpoint on the poisoning of his son and therefore did not serve to reflect the viewpoint of the UK Government on the Skripal poisoning⁸³. We also considered that in some instances her questions arguably reinforced Mr Litvinenko's views. For example, we took into account the following exchanges:

OB: *"Now, the big question is whether they were actually poisoned with Novichok because we're told that it's a very powerful poison and it doesn't look right that somebody's able to recover from it".*

WL: *"You know they say that there is a place 13km away from the spot where they were found where they manufacture these nerve agents. But Russia was done with him long ago. Russia let him go a long time ago and now all of a sudden they blame Russia for poisoning him".*

OB: *"Russia still has no access to the Skripals even though they are both Russian citizens. From what I understand, I think they still have relatives and all those relatives are still in Russia..."*

OB: *"In any case, if the Soviet Union was developing such substances in order to determine where this substance came from we need access to some biological*

⁸³ For example: *"Who or what has made you change your opinion [on the question of who was responsible for the poisoning of Alexander Litvinenko]?"*; *"Why do you think that Russian intelligence services or politicians could not have done something like that?"*; and *"Your opinion about the cause of death of your son is different from what his widow, Marina, says. She still publicly and I think sincerely accuses the Russian authorities"*.

materials and Russia still has no such access. What do you think? Will this access be granted or do you think the UK does not want to investigate this case?"

WL: *"No, further on they will just keep hiding all those things deeper and deeper and deeper and what the British are thinking about is how to turn this entire situation against Russia. They realise by now that they are in a deep mess. I don't know, maybe they arranged this whole thing on purpose before the presidential election in Russia and then it blew up. I think that they were hopeful - you know when Alexander was poisoned they thought it would get rid of Putin".*

OB: *"I want to compare these two cases. In the Litvinenko case, there was sense and logic in the chain of events..."*

OB: *"In any case, no matter what happens, and no matter who is behind Litvinenko's murder and the attempted murder of the Skripals the UK is going to use this as a pretext to escalate the tensions in the relations with Russia".*

WL: *"Yes, they would love to do that, but eventually they will be exposed. They will be revealed. They will be caught red handed and Theresa May will be ashamed for saying the things she says today, and that clown, the foreign secretary, that guy..".*

OB: *"Boris Johnson".*

WL: *"Boris, yes, Boris. He will be ashamed as well".*

OB: *"I think he will survive, he will be okay".*

However, we acknowledged the argument put by Ms Boyko in her comments in response to Ofcom's Preliminary View that, while it was the presenter's duty to point out that the UK Government disputed Mr Litvinenko's version of events, it was "an unrealistic and insensitive expectation to match his emotional conviction".

Taking all these factors into account, including that she was conducting a long-form 'human interest' interview, we noted that Ms Boyko did provide some challenge to Mr Litvinenko's viewpoint. For example, after Mr Litvinenko said that the British authorities were trying to "cover up their tracks", the following exchange took place:

OB: *"But I would like to argue with you a little bit maybe here".*

WL: *"Because they realise that Russians are smart and Russian scientists would be able to establish what this substance was".*

OB: *"But if we accept your theory, which is very popular in Russia, that it was all coordinated and initiated by the British".*

WL: *"They [i.e. the UK authorities] are scared, they are scared. They are afraid that Russia would find out who did that. Personally, I think it was Ukraine that did that because Ukraine wants Russia to clash with the rest of the world".*

OB: *“But if the British knew that Russia had nothing to do with that then this Yulia Skripal recovering is not going to work for them because right now it doesn't really make sense because at first they said that it was a deadly agent that nobody would ever recover from that but now we know that this young lady is actually recovering so that's not in their interest”.*

We also considered the conduct of the interviewee, Mr Litvinenko. We acknowledged the Licensee's references to the inconsistencies in Mr Litvinenko's remarks (by way of example, the Licensee identified Mr Litvinenko blaming “in turn the CIA, the Ukrainians and the British for his son's tragic death”). The Licensee considered this would have demonstrated that Mr Litvinenko was giving his personal perspective and “not any consistent or editorial viewpoint” and that it “would have been obvious that this was a highly personal, and at times inconsistent, take on these events”. We recognised that viewers would have understood that Mr Litvinenko was giving his opinion on the poisoning of Yulia and Sergei Skripal (and the death of his son) and acknowledged that what he said was “the product of his very personal perspective, not any consistent or editorial viewpoint”. Within this context, we accepted that viewers would not have expected a dispassionate analysis by Mr Litvinenko of the matters relating to either his son's death or the Skripal affair.

We also considered the use of captions or banners in the programme. We took account of the Licensee's argument that it had relied on previous Ofcom guidance that “presenting the alternative view can be in the form of graphics (e.g. on screen banners)”. It submitted that banners broadcast throughout the programme had reflected the UK perspective “which is critical and suspicious of Russia after the Skripal poisoning, and BBC factual reporting of the condition of the Skripals”. The Licensee also identified a scrolling news headline which stated: *“Spat over poisoning of former Russian spy leaves envoys expelled”*. This was broadcast 14 times during this programme. The Licensee considered this headline was “clearly referring to the tough diplomatic measures taken by Western states against Russia for its alleged involvement with the Skripal poisoning”.

Graphics or captions are editorial techniques which can contribute to the preservation of due impartiality. However, as we made clear in our December 2016 *Crosstalk* Decision⁸⁴ involving TV Novosti, Ofcom underlines that whether graphics or captions do in fact maintain due impartiality in any specific programme will depend on all the relevant circumstances, such as the duration and nature of the programme and of the matter of political controversy, and the presence of any other factors in the programme which may contribute to maintaining due impartiality. We caution broadcasters against assuming that they can preserve due impartiality where required by solely or largely including graphics and captions. This is because, depending on the circumstances, captions or graphics may not enable sufficient weight to be given to an alternative view. Further, when ensuring that matters of major political and industrial controversy and major matters relating to current public policy are treated with due weight, we consider that the relative size and prominence and limited content within on-screen captions and graphics will make it significantly more difficult for broadcasters to ensure compliance with Rules 5.11 and 5.12. This is particularly the case if the broadcaster is seeking to preserve due impartiality where required by solely or largely including graphics and captions.

We considered whether the use of graphics, captions or banners, or of the scrolling news headline, contributed to the preservation of due impartiality in this case. In Ofcom's view, only one of the captions identified by the Licensee, and the scrolling news headline, could be considered to have represented the viewpoint of the UK Government (*“The UK expelled 23 Russian diplomats over*

⁸⁴ See Ofcom's Decision *Crosstalk*, 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

Russia's alleged culpability of the Skripal incident on March 14th and *"Spat over poisoning of former Russia spy sees envoys expelled, consulates closed"*). The other captions identified by the Licensee were purely factual statements that confirmed either: the current medical status of Yulia and Sergei Skripal; or, opinion poll data on the views of British citizens about who was responsible for the poisoning. In addition, each caption was shown only for a few seconds at any one time as well as referring viewers to the RT website and Twitter account. In our view, given the context in which they were used in the programme, these banners/captions provided only a limited reference to the viewpoint of the UK Government, and would not by themselves have been sufficient to reflect and give due weight to that viewpoint. However, we considered that, taken together and considered in the overall context of the 'human interest' discussion taking place between Ms Boyko and Mr Litvinenko, they were one element which contributed to due impartiality being preserved.

In this case, we have taken careful account of the broadcaster's, Mr Litvinenko's and the audience's right to freedom of expression and all the relevant contextual factors. For the reasons set out above, it is our decision that due impartiality was preserved in this programme.

Not in breach of Rules 5.11 and 5.12

In Breach

Crosstalk, 13 April 2018, 20:30

Introduction

Crosstalk is a 25-minute current affairs discussion programme that is broadcast three times a week.

Ofcom received a complaint about this edition of the programme. The complainant objected on the grounds of due impartiality to the host's criticism of the US government and its allies.

We watched this episode of *Crosstalk* and noted that it was signposted on screen as pre-recorded and had originally been broadcast on 11 April 2018. At the start of the programme the presenter, Peter Lavelle ("PL") said:

"The drive towards war against Syria is unmistakable. The pretext is still another alleged chemical attack⁸⁵. As usual, no evidence is presented. As usual, conclusions are drawn before an independent investigation. But this time, there is a difference. Syria can defend itself and has powerful allies. We live in dangerous times".

The presenter was then joined via video conference by three guests: Joe Lauria ("JL"), Editor in Chief of consortiumnews.com and author of "How I Lost", by Hillary Clinton; Michael Maloof ("MM"), former Senior Security Policy Analyst in the Office of the US Secretary of Defense; and Richard Murphy ("RM"), a former US Career Ambassador to Syria and currently an adjunct Scholar at the Middle East Institute.

In the programme, the position of the US Government and its allies on the Syrian conflict was discussed as follows:

PL: *"As little as a week ago, Donald Trump made a very public announcement that we'll be withdrawing from Syria. Fast forward up to the last few days or so, it looks like he is being forced to stay there even if he doesn't want to stay there. We have an entire course of the media driving for war, the deep state is on board of course, John Bolton is in place and I have to make one exception at least, Tucker Carlson over at Fox [News] at least has decided to express his dissent here. Where are we, Joe, where does this all stand? Go ahead".*

JL: *"Well the fact that he wanted to withdraw from Syria makes it even less likely that the Syrian Government was behind this attack. We are seeing what we've seen for a long, long time, a pattern of deception by the US Government depending on who the enemy of the day is. If you want to go to war against Spain they blew up the main, the northern Vietnamese attacked the ship in the Gulf of Tonkin, Saddam had WMD [weapons of mass destruction], Russia invaded Ukraine, shot down a Malaysian airline, stole an election, tried to kill a former double agent in Britain and now is somehow implicated in this chemical attack. This is what governments do, but there*

⁸⁵ It has been widely reported that a chemical weapons attack took place against civilians in the Syrian town of Douma on 7 April 2018. The Fact-Finding Mission of the Organisation for the Prevention of Chemical Weapons (OPCW) has been deployed to Douma and is currently establishing the facts surrounding these reports: <https://www.opcw.org/news/article/opcw-spokespersons-statement-on-fact-finding-mission-deployment-to-douma/>.

are also two other parties beside government, there is the press and people. So governments lie, all governments lie, some worse than others but the press' job is supposed to filter that and defend the public against government lies, and we see now a press that is completely obsessed with its own fame, with its careerism, with vicarious living, through vicarious power of government and they are letting the public down so that these investigations, these conclusions before investigations begin as you pointed out at the beginning, are being let to stand and this is as you also said very, very dangerous right now".

PL: *"Richard, is on the table now a full regime change by use of military forces, do you think that's on the cards right now? Go ahead Richard in New York".*

RM: *"I see no evidence that the Administration has gone back to a position that you could say was early Obama, that it was time for Assad to step aside. I think this Administration has reconciled itself that Assad as president is likely to stay for a while".*

PL: *"Okay, Michael, but that doesn't really square with what we've heard over the last few days here, we have you know Nikki Haley⁸⁶ going off the rail, I mean, you know, I thought that Samantha Power⁸⁷ was off the, you know, had wandered off the reservation but you know Nikki Haley takes the cake there. And I'm glad Joe mentioned it, we really have the drums of war in the media. It seems to me that they really want to box Trump in, if he does nothing then he's bluster, if he does something it's against international law and maybe the law of unintended consequences by getting involved in this war you never know, because if you look over the last 18 years you know these military adventures never end the way they expect. Go ahead Michael".*

MM: *"No, I think you're right. I think that even though President Trump wanted to get out, I think that other people who are surrounding him are much more determined that he'd stay, and actually the fact that John Bolton is now the National Security Adviser, who was the fellow who really, really wanted us to go to Iraq on the premise that there were WMD. I think the administration is slowly turning towards a regime change again [in Syria]. I think that's what they're gonna go after and the whole idea as far as a strategic policy, if there is one, for the United States is ultimately to divide Syria".*

PL: *"Yeah well you can throw in the Turkish angle which of course is a completely different programme, but you know it looks like a partition is really what they're going to settle on here. You know Joe, the interesting thing is that, you know, I've never believed that anybody in the US Government, politicians, think tankers and all of that, they don't give a hoot about the Syrian people, they never have and what I see now, this is a geopolitical gambit here. We've noticed that Russia is being held responsible for this alleged chemical attack which there is no evidence presented to the public, which I guess the public is just getting used to it, an evidence free foreign policy to go to war, go ahead Joe".*

⁸⁶ US Ambassador to the United Nations since 2017.

⁸⁷ US Ambassador to the United Nations 2013 to 2017.

- JL: *"Yeah I don't think they care very much about the American public either let alone the Syrians, I mean this is another attempt to drag Russia into this and Russia, we don't, we have no idea why, even if there was a chemical attack, they haven't even begun the investigation, we hear Nikki Haley saying we need an investigation but that's one side of her mouth and at the other side of her mouth Syria did it and Russia was behind it. This is really, really not a safe situation as you pointed out. I do think that they noticed that Russia and Russian backed Syrian Government was winning this war, it's practically over. The suburbs of Damascus, Ghouta, had been a thorn in the side of the Syrian government since the very beginning of this conflict five years ago. It's really a last stronghold after Aleppo and Idlib so I think that that is a realisation in the capitals of Riyadh⁸⁸ and Ankara⁸⁹ and certainly in Washington, and by the rebels themselves, this was the last chance if they were gonna try to reverse this tide. So the rebels needed to bring the US into it which is why it seems like they may very well have been behind, and Russia by the way, behind this attack, and Russia warned by the way three weeks ago that this could happen, that there was a false flag chemical attack in the works, I don't know if that's what happened, but I certainly don't know that the Syrian Government did it, but that doesn't seem to matter to people like Nikki Haley, Syria did it, and now we're going to see an attempt maybe by the United States to get deeply involved in this to reverse the tide and this is their last chance before the Syrian Government wins this war, which they're on the verge of doing".*
- PL: *"Richard, what national interest does Syria hold because I mean, you know when Trump came in almost exactly a year ago there was an alleged chemical incident and then he ordered a Tomahawk strike against Syria. No evidence, we know now, Secretary Mattis⁹⁰ came out 'Well we don't have any evidence that there ever was a chemical attack perpetrated by the Syrian Government'. I mean, what is wrong with these people, I mean a year ago an attack was made illegally against a country's sovereignty here and now this is like we're running this bad film. Syria has never attacked the United States, it is not a threat to American national interests, and now we're on the verge of going to war, Congress doesn't even get involved, it abrogates its responsibility to war making. I mean, why is Syria so important for the United States to get involved militarily? Please Richard in New York".*
- RM: *"To start with, its geographic position, it is in a key area and the policies that has followed over the last few years of opening the doors to Iran to establish an increasing militia presence, to keep the corridor—".*
- PL: *[Interrupting] "But Richard, isn't that the sovereign right of a state, can Syria have friends of its own choosing? Why does the United States determine what countries can have friends with whom? Why? Go ahead Richard".*
- RM: *"Well come on, it's not a matter of smiling at each other and having friends. They are actively assisting the government of Iran in creating a corridor across Iraq, Syria to*

⁸⁸ i.e. Saudi Arabia.

⁸⁹ i.e. Turkey.

⁹⁰ James Mattis, US Secretary of Defense.

Hezbollah⁹¹ in Lebanon with the aim of mounting pressure on the Israelis, that has to catch American attention—”.

PL: *[Interrupting] “Well okay that’s really interesting, let me go to Michael here, well, you know some sovereignty is more important than others okay, I mean Syria should have the legal sovereign right to make whatever friends it wants okay, the United States does that all the time, okay, and nobody says anything about it, and let me to go to Michael you know, Israel is right on the border, they are one of the largest militaries in the world, most powerful, and it has never lifted one finger to fight terrorism in Syria, actually just the opposite, it’s aided and abetted groups okay, so I mean worrying about ‘Israel’s concerns’, Israel is part of the problem here and I think Saudi Arabia is part of the problem here, two key allies to the United States. Go ahead Michael”.*

MM: *“You hit it right on it at the end there, this is flowing out of a deal between the Saudis and the Israelis and again the Saudis actually are pouring millions of dollars into the Sunni controlled areas as well as into Lebanon because they see a potential for Iran absolutely capturing them as far as that influence is concerned, and the Saudis are absolutely against that, and you have the Israelis who are trying to help that and they see the forward movement of the Iranians as a direct threat to them and as a consequence I wouldn’t doubt that Israelis could initiate an attack on Lebanon at almost any time and I know people in Lebanon that I talk to are very concerned about that”.*

PL: *“Joe weigh in on that there, because you know is this policy being driven by Tel Aviv and Riyadh?”*

JL: *“Well certainly Riyadh and other Gulf states from the very beginning and Turkey, wanted the overthrow of Assad and that brings me to the point that whether you agree or like the Assad Government or not, it’s a fact that they have been on the defensive, this is an uprising, this was an attempt to overthrow a government so you’re on the defensive, so to invite Iran and Russia to help them defend themselves is a natural act of a government trying to survive. This was not Iran or Russia invading Syria, the Iranians wouldn’t have come in if there was no attempt to overthrow the government so they have every right as you pointed out to invite whoever, any friends they have to help them survive, this is natural and any government would do that. Now the Israelis, I mean Hezbollah by the way I think is defending Lebanon even Lebanese, Christians and Sunnis would agree with—”*

PL: *“Right, right, they support Hezbollah!”*

JL: *“—as much as they hate them, well they may not like them, but they realise that...”*
[PL then interrupted JL to go to an advertisement break].

After the advertisement break, the discussion continued as follows:

PL: *“Richard, I know you are a career diplomat and diplomacy is sorely lacking these days around the world. But Richard, what a military strike against the Assad Government in Damascus, what kind, what outcome would Washington be looking*

⁹¹ Hezbollah is a Shi’a Muslim militant group that is based in Lebanon and has a presence in Syria.

for in striking Syria? You've said that they've backed away from regime change, I think that doesn't seem to make a whole lot of sense, I think they will want to go all the way, I mean what kind of behaviours you're trying to enact here? I mean this is the problem with military policy, because it doesn't really work with political outcomes; it has certain goals of destruction and threatening, it doesn't really talk about the political part of it. Go ahead Richard in New York".

RM: *"Well we certainly do need a clearer overall policy towards Syria. The strategy has been wanting to put it mildly. Now, the question though, what are we trying to accomplish by staying in, why were 2,000, very small number, there in North-eastern Syria. We don't think, first of all we don't think that the ISIS effort is totally ended and we also know there are other groups ready to come in in its wake if given the least opportunity. So what's needed is a strategy which develops the country as a whole as quickly as possible, involves the people with their own government as quickly as possible. After these years of warfare and massive killings and dislocations it's not gonna come easy, it's not gonna come quickly. But one thing we could contribute at the moment is the continued small military presence in the country with ISIS very much at the top of our concerns".*

PL: *"Well Richard just the opposite is probably the truth, I mean the US maintaining its forces in Syria probably gives ISIS a reason to exist to fight a foreign occupier. Number two, Richard, this US government has already warned that it will sanction third parties and countries that help Syria with its reconstruction so getting all the people together and helping developing the country that's already off the table, you'll be sanctioned! Okay, Michael I can see you wanted to jump in there, go ahead".*

MM: *"Yeah, once again it gets back to the whole point as to why US forces are remaining in the Sunni controlled area of Eastern Syria looking for bases, actually that the Turks have complained about in the Kurdish controlled area. The whole idea, I think by the United States, if it's trying to resurrect a strategic policy of any kind, is to unite the Sunnis of East Syria with Western Iraq and to maintain that presence there and to control the area and basically partition Syria ultimately. Even though we have a little pocket of ISIS but the United States is supporting entities and groups, militant groups such as Jaysh al-Islam⁹² – which was in East Ghouta and has a capability by the way of launching chlorine gas and other weapons of mass destruction. They have actually admitted that in the past up in Aleppo earlier this year. So the United States is going to continue to support these Sunni controlled groups and I think ultimately it is to divide Syria and with the help of the Saudis, the Saudis are paying for this, they've offered money and I think Trump would have taken it. That maybe the only reason why he's decided not to pull out because he got a good deal—".*

PL: *[Interrupting] "Well, Michael, isn't it really wonderful that the US Government pimps out the American military for a foreign power; what a disgrace, what a real disgrace, you know, for the men and women, for the people—".*

MM: *"We're turning into mercenaries!"*

⁹² An Islamist faction involved in the Syrian conflict.

PL: *"—that work in the military to be pimped out by their own president, to have, you know, some Wahhabi crazy regime in Saudi Arabia paying you. You know, wrap your head around that, okay, that's amazing, okay. Let me go to Joe here—".*

JL: *"It's happening!"*

PL *"—what is happening to me, is that there is such an uproar in the United States because Russia, Russia, Russia, and this disease has transported itself across the Atlantic and to Britain right now, over another chemical weapons incident which we've seen no evidence of whatsoever, just supposed to believe it, but Joe, they want to give Russia a bloody nose, they want to give Russia a bloody nose in Syria. The Russians have already made it very clear that they will not take those threats lightly, okay, that's why I am very, very concerned. Go ahead Joe".*

JL: *"Yes, I totally agree with you. Now we have to understand that it's a fiction that the United States was fighting ISIS in Syria, I believe they were fighting them in Iraq, I think they were two separate wars. We know from this defence intelligence agency document from 2012, that the US and its partners in the region and in Europe wanted to establish a Salafist principality which later became ISIS. It was warned about that. Then we know from a John Kerry⁹³ leaked audio that he was watching, he says we were watching ISIS advance on Damascus to try to get Assad to leave, exactly what that document had said and to put pressure on ISIS. So there was no, there is no effort to defeat ISIS. Russia, has defeated, with Syria and Iran and [inaudible] have defeated ISIS in Syria. They're not there for that reason and we have to remember also from the campaign of Donald Trump, he wanted to cooperate with Russia in Syria so let's worry about the form of government later on whether Assad stays or not, the real problem was ISIS and I think he had, who told him that, whether it was Bannon⁹⁴ or whatever or he just got a brilliant idea one morning but that was the right policy that even Obama tried to implement if you recall, he had Kerry trying to work out a cooperation—".*

PL: [Interrupting] *"Then Ash Carter⁹⁵ you know spoilt the party—".*

JL: *"Right, right, that's right".*

PL: *"—again, you know even when there is a legitimate or quasi-legitimate diplomatic attempt it's destroyed by these hawks in the military. Keep going Joe".*

JL: *"And now Peter, he wanted to withdraw the troops. If you read the piece in the New Yorker by Robin Wright⁹⁶, the generals were the ones who were supposed to be running the show not the President. We have a civilian form of government here not the generals, so again Trump's instincts are to say the right thing but he's pulled*

⁹³ US Secretary of State 2013 to 2017.

⁹⁴ Steve Bannon was Senior Counselor to President Trump and White House Chief Strategist from January to August 2017.

⁹⁵ Ashton Carter was President Obama's last Secretary of Defense from 2015 to 2017.

⁹⁶ Robin Wright is a US foreign affairs analyst.

back by those behind him and this attack coming very fortuitously when he was about to withdraw the troops, looks like the opposite's going to happen".

PL: *"You know Richard, why is the United States threatening the Damascus government when Damascus has been doing the heavy lifting to fight ISIS and what the United States does every time it goes in there militarily, has its forces on the ground, it just dullens that attempt to fight terrorism. You know the US policy is an impediment to fighting ISIS, I don't understand the logic here? Go ahead Richard in New York".*

RM: *"I flatly disagree with your assumption about at least the consistency of Syrian policy to fight ISIS—".*

PL: *[Interrupting and shouting] "What has the United States done in Syria that's right? Name one thing that the United States has done right when it comes to Syria, one thing?!"*

RM: *"Well we tried for many, many years to get Syria interested in opening up talks with the Israelis and they were very, very reluctant to come anywhere near that situation—".*

PL: *[Interrupting] "Why? I have no idea what's that supposed to mean after seven years of civil war, a proxy international war, it's because Assad didn't want to talk to the Israelis, really?"*

RM: *"No, no, don't misinterpret, I'm just saying that we have tried to do something positive in Syria, we did work on it extensively year after year and it didn't get anywhere, okay. So that's passed. But it didn't leave a very good impression of Syria in Washington I can tell you. The Russian ambassador yesterday at the UN—".*

PL: *[Interrupting] "Well I think the Syrian people after all of, after the billions of dollars, the training, the funding, the souring of these Jihadists from outside the country, that's what the US policy has been and now they're illegally present there, illegally under international law, the Damascus government wants them out and they won't leave, I mean who's breaking the law here, who's being an animal here, okay, this war could have ended a long time ago and if it hadn't been backed by the United States, Saudi Arabia, the other Gulf countries and Israel, it would have been over a long time ago. Go ahead Michael do you want to jump in".*

RM: *"It could have been over a long time ago if they hadn't piled in and beaten up those kids down in Dura—".*

PL: *"Okay and on the first, Richard, on the first day of the protest there were violence and it was from outsiders and it was very well documented. You know, don't tell me, you know, it was all peaceniks wondering around, you know, giving flowers to people. Violence started on day one! [shouting]. Okay, Michael you want to jump in".*

MM: *"Yeah, our relationship with the CIA, I'm sorry with Syria, actually degraded in 2003 when we invaded Iraq. The Syrians saw that this was going to happen, they had the back channel with the CIA—".*

- PL: [Interrupted and shouting] *They helped! They helped, the CIA, they helped, they helped!*
- MM: *"Yeah to a point they did and then that's when they turned to the Pentagon just on the eve of the invasion to say don't invade, we'll try to work this out, we'll even send some 5,000 troops to go into Iraq for you to look for WMD. They saw what the outcome will be and so everything went to pieces from then. That's when Assad really turned to Iran, right after that and that cannot be disputed, that is a fact and I think that's when Iran and Syria really began to become closer. You got to keep in mind Assad is a Shi'a ally so that was normal and this is what upset Israel to a great extent. Our foreign policy in the United States has been to carry out, to help implement Israel's foreign policy for years and the Pentagon was the instrument for doing that".*
- PL: *"Okay Joe 40 seconds, you end the programme, go ahead Joe".*
- JL: *"Yeah well John Bolton began this week his new job as National Security Advisor. He has a real thing for Iran, the Iranian presence in Syria might be what he ultimately be going after even more than trying to overthrow Assad".*
- PL: *"Yeah, it looks to me like always it's Iran, always it's at the very, very centre, it has been since the revolution in 1979 and Trump has surrounded him with a group of people that feel exactly the same way, people that lament the defeat of Vietnam".*

Peter Lavelle then concluded the discussion and the programme ended.

During the interview, a number of captions were shown across the bottom of the screen, including the following, which referred to Syria:

- *"Russian Defence Ministry: UK was behind staging Syria Douma attack";*
- *"Foreign Office says Russian claims of UK involvement in attack 'ludicrous'";*
- *"Trump vows 'big price' to be paid by Syria for alleged chem. attack";*
- *"Supposed attack against city of Douma has yet to be proven by US";*
- *"Claims Syria used chemical weapons in April 2017 were never proven";*
- *"Syria was attacked a year ago with missiles after alleged chem. attack";*
- *"Western outlets report 70 killed in Douma, quoting White Helmets";*
- *"Washington's position that Syrian President Bashar Assad 'an animal'";*
- *"Douma the last rebel-held city in E-Ghouta; ISIL basically defeated";*
- *"Israel believes it has 'moral obligation' to intervene in Syria"; and*
- *"WH refuses to take any option off table; military strikes possible".*

It was Ofcom's view that the programme was dealing with a matter of major political or industrial controversy and major matters relating to current public policy, namely, the policies and actions of the US Government and its allies in relation to the ongoing conflict in Syria.

We therefore considered that this programme raised issues warranting investigation under the following rules:

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".

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".

We asked the Licensee how the programme complied with these rules.

Initial Response

General

The Licensee made several "background points" about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10.

The applicability of Rules 5.11 and 5.12

The Licensee made the following specific submissions on how the relevant programme complied with the Code.

At the outset, TV Novosti questioned why Ofcom applied Rules 5.11 and 5.12 in this case, when "in the past Rule 5.5⁹⁷ was applied to programmes relating to the topic of Syria".

Notwithstanding the above, TV Novosti made representations on how it believed due impartiality had been preserved in the programme.

Due impartiality in the programme

The Licensee acknowledged that within the programme, "a number of comments were made which were critical of the US Government's position in relation to the Syrian conflict" and that an "appropriately wide range of viewpoints would include the American viewpoint, which was featured in the broadcast during the discussion and also through the use of visual images [i.e. captions]". It added that "the expert guests offer an array of perspectives which are not Russian-centric. The

⁹⁷ Rule 5.5 states "Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole".

viewer hears knowledgeable Americans⁹⁸ speaking determinedly, objectively and supportively of their understanding of American policy”.

The Licensee said that the debate in this episode of *Crosstalk* centred on the following three themes and it explained how it believed due weight was given to significant viewpoints on each theme, including that of the US:

- the criticism of “journalism and the [US] media and not [US] Government policy” – by way of example, TV Novosti referred to Mr Lauria’s contribution in which he criticised a *“press that is completely obsessed with its own fame, its careerism, living through vicarious power of Government and they are letting the public down”*;
- “policy towards the Syrian conflict” – the Licensee argued that overall the debate “made it clear that there is not an agreement on policy towards Syria” and that the “quest for clear policy is perhaps the most integral theme during the programme debate”. It argued nevertheless that “a significant range of viewpoints were adequately and appropriately reflected on the topic of the ongoing conflict in Syria”. It said that “the American view on Syrian policy was reflected appropriately and adequately within the debate, and included a range of perspectives e.g. those of the American President, former Administrations, and the media and a mature and sophisticated analysis”. By way of example TV Novosti said that:
 - “the US viewpoint is clearly set out by panellist Richard Murphy, who is a former US ambassador” who, “early on...gives, and assertively defends, a thoughtful reply to the question ‘I mean, why is Syria so important for the US to get involved in militarily?’”;
 - there was an exchange between Mr Murphy and Mr Lavelle which, the Licensee believed, illustrated “how Ambassador Murphy was robust in rejecting provocative assertions of Peter Lavelle” and “demonstrates that the Russian position was vigorously challenged within the programme”; and
 - at the beginning of the programme, “the host acknowledges the US Government policy on Syria” when he referred to Donald Trump’s public change of position in relation to US troops staying in Syria.

The Licensee also said that other viewpoints on Syrian policy were represented in the programme, including as follows:

- “the Western/mainstream viewpoint was adequately represented by Ambassador Murphy...He provides a significant counterpoint to any Russian-centric view and expresses the widely-accepted Western viewpoint”;

⁹⁸ The Licensee explained that: “Mr Lauria has been a UN correspondent for 25 years which included six and a half years as the Wall Street Journal correspondent based at U.N. Headquarters in New York. His work has also appeared in The New York Times, The Washington Post, The Guardian, New York Magazine, and elsewhere. He has been interviewed on many major networks other than RT, including CNN...the BBC, the PBS News Hour, the BBC, the PBS News Hour, C- Span, Al Jazeera, Al Arabiya, Sky Arabia. Mr Maloof is a former senior security policy analyst in the Office of the Secretary of Defence, who worked at the Pentagon for many years. Richard Murphy is a former US ambassador to Syria and currently an adjunct scholar at Middle East Institute. He is a frequent commentator for NPR, CNN, BBC and FOX News and has written for the New York Times, Washington Post, Financial Times, and International Herald Tribune”.

- “the host acknowledges the Turkish angle and its effect on US policy”;
- “the UK and Western position on Syrian policy is also appropriately reflected through on-screen graphics such as rolling tickerlines and banner graphics”; and
- “a general questioning of Governments’ failure to provide evidence in support of their actions” – TV Novosti argued that it was not critical of US Government policy in Syria specifically. It acknowledged that overall the comments included in this part of the programme were “controversial” but considered them “legitimate and appropriate questions asked by a journalist to explore Government policy”.

Due impartiality in other programmes

Citing a range of examples, the Licensee further submitted that within the same hour as the broadcast of *Crosstalk*, a news bulletin featured a “wide range of significant viewpoints” on the position of the UK, US and Russian Governments on the Douma chemical attack.

Contextual factors relevant to this programme

TV Novosti also cited various contextual factors that it felt were relevant in this case:

- Nature of the programme: the conflict in Syria was “highly controversial” and it is well known that Russia is an ally of the Assad regime. The Licensee therefore argued that “given the Russian-centric position of the channel, it is not surprising that its perspective is given appropriate prominence” during the programme;
- Type of programme and channel: “RT is broadcast worldwide, intended for viewers of many different cultures and political views, and it comments on world events from a Russian point of view”. Audiences were likely to be familiar with the format of *Crosstalk* which has “a presenter adopting a provocative tone and asking challenging questions that leads to the informative and thought-provoking outcome seen in this particular programme”. TV Novosti added that the presenter’s “distinctive style” may not appeal to all and “taking what Mr Lavelle said out of context would make what he said appear biased when in context it was designed to and did elicit informative and balanced debate”; and
- Likely expectation of audience: It referred to Ofcom’s research which “demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience”.

Preliminary View

Ofcom issued a Preliminary View that the edition of *Crosstalk* broadcast on 13 April 2018 at 20:30 was in breach of Rules 5.11 and 5.12 of the Code and invited TV Novosti’s representations on the Preliminary View. The Licensee provided written and oral representations on the Preliminary View.

Response to Preliminary View

The Licensee made general representations about factors common to all the Preliminary Views which are summarised earlier at pages 10 to 18.

In addition, in its written representations TV Novosti disagreed with our Preliminary View. It said that the correct test in Rule 5.12 was “the inclusion of an ‘*appropriately* wide range of significant views’, not simply a ‘wide range of significant views’”. It said that the term “appropriate” was fundamental to the assessment of due impartiality and Ofcom’s initial letter⁹⁹ had referred to the latter and not the former.

The Licensee said that the approach Ofcom had taken in its Preliminary View was “illogical and a simplistic and unfair characterisation of [*Crosstalk*]”. It argued that Ofcom’s approach boiled down to saying that the frequency and manner of interruption by Mr Lavelle of one guest (Richard Murphy) meant that the Code requirements as to due impartiality were not met even though the programme did in fact broadcast the views of this “highly respected former US Ambassador to Syria” which were supportive of the US position and policy on Syria.

TV Novosti said that the programme involved guests offering “an array of perspectives which were plainly not all Russian-centric” and that viewers were “able to hear knowledgeable Americans speaking about their understanding of US Policy in Syria”.

The Licensee said that Ambassador Murphy, “arguably the most distinguished [guest] of them all”, was “clearly able to put forward his views (in an authoritative and cogent manner) on multiple occasions” and that he also “robustly disagreed with Mr Lavelle on several topics”, such that “a viewer will have understood the arguments he made”. It gave the following examples:

- Ambassador Murphy “explained his views as to why Syria was so important for the US and gave his view that Syria had been ‘*actively assisting the government of Iran in creating a corridor across Iraq, Syria to Hezbollah in Lebanon with the aim of mounting pressure on the Israelis and that has to catch American attention*’”;
- Ambassador Murphy had disagreed with Mr Lavelle about “the consistency of the Syrian regime’s approach to ISIS; about whether US involvement in Syria had been positive; and about Syrian forces’ involvement in Daraa”; and
- Ambassador Murphy “also noted that there was no evidence that the US currently wanted a regime change in Syria and that the US Administration had reconciled itself to President Assad’s remaining in power for the time being”.

TV Novosti acknowledged that “Mr Lavelle did occasionally and sometimes vigorously interrupt Ambassador Murphy” and that his approach to the other guests may have been different. However, it “strongly dispute[d] that Mr Murphy was ‘constantly’ interrupted or that Mr Murphy’s views (reflective of the US position) were not adequately broadcast”. It added:

“...the Code does not require broadcasters to give equal time to all competing views on controversial topics; nor does it require that a presenter be neutral in his questioning. On the contrary, it is essential (as the Code recognises) that presenters on programmes [can] adopt positions that are critical, sometimes highly critical, of a particular position”.

It said this was particularly so where that position was “the dominant narrative presented on other mainstream media channels in the UK”.

⁹⁹ Ofcom’s letter of 18 April 2018 requesting comment from RT on how it complied with Rules 5.11 and 5.12 in respect of this edition of *Crosstalk*.

The Licensee said Ofcom's Guidance on due impartiality is clear about the need to take into account "the nature of the programme...the transparency of its agenda...and what the audience's expectations are". Quoting Mr Lavelle's representations on Ofcom's Preliminary View, it said that Ofcom had failed to take account that "*Crosstalk* is not a news program; it is a political and highly polemical program reacting to news events with a variety of opinions". As the presenter himself explained his style is "not modest" and he "mock[s] and ridicule[s] when [he feels] it [is] appropriate" to hold "high officials" and "mainstream media outlets" to account. TV Novosti added that none of this was inappropriate in a society which values free speech and robust debate.

TV Novosti concluded that to respect the free speech requirements of Article 10 [of the European Convention on Human Rights], Ofcom should not find this programme "In Breach" of the Code. In basing its Preliminary View on the style of Mr Lavelle's questioning of Mr Murphy, Ofcom had failed to give "substantive respect" to these "fundamentally important requirements".

In its oral representations on Ofcom's Preliminary View, the Licensee said that it relied on all its written representations, and in addition emphasised the following contextual factors:

- although Ambassador Murphy was outnumbered by contributors who were critical of US policy in Syria, Ofcom should take into account that the US perspective was being reflected and given voice by somebody who viewers would have understood was "a distinguished figure" among the guests featured in the programme;
- Ambassador Murphy was able to put forward his views, in an authoritative and cogent manner on multiple occasions during the programme; and
- the Licensee disagreed with Ofcom's Preliminary View that Mr Lavelle "constantly interrupted" Ambassador Murphy or that Mr Murphy's views were "not adequately broadcast". TV Novosti highlighted that the freedoms protected by Article 10 include "the right for journalists to criticise political views robustly and even to interrupt and even to provoke".

Response from Peter Lavelle

The presenter of *Crosstalk*, Peter Lavelle, made representations in response to Ofcom's three Preliminary Views proposing breaches of the episodes of *Crosstalk*.

Mr Lavelle explained that the "primary mission" of *Crosstalk* was to "question narratives about politics and current affairs principally found in the western world". It was both fair and necessary to question these narratives to hold them to account and *Crosstalk* was "an attempted corrective" to provide "an on-going critique of those in power and how they use their power, as well as how 'mainstream media' report and comment on those in power" he said. Mr Lavelle's "firm belief" was that the vast majority of western media outlets "often serve as stenographers", repeating government positions and policies. He considered this was particularly so in relation to foreign policy, specifically on Syria, which was why *Crosstalk* covered this conflict in detail.

Mr Lavelle added that there were "different and compelling" narratives to the "standard" and "official" narratives and these deserved serious discussion and debate to understand controversial issues. He said it was challenging to fulfil these aims "while not breaching" Ofcom's "vaguely drafted" rules on due impartiality.

The presenter also highlighted that the programme title in the three Preliminary Views was incorrect, and should be *Crosstalk with Peter Lavelle*. Mr Lavelle said that this was "an essential

distinction" as he wears his politics on his sleeve "for all to see", and his political and social standpoint is instantly recognisable. Mr Lavelle acknowledged he has strong views on many topics and deliberately employs a provocative presenting style. This includes mocking and ridiculing to point out to viewers that there are multiple ways to understand a conflict, a politician, and how the media insert themselves into a political story and/or controversy, he said. Mr Lavelle stated that all should be held accountable, "including the policies of the Russian government".

Mr Lavelle explained that *Crosstalk* is "a political and highly polemical" programme, rather than a news programme, and reacts to news events with "a variety of opinions" including his own. As a firm believer in freedom of speech, Mr Lavelle said he "actively encouraged" the programme producers to invite guests holding different opinions, although the willingness of potential guests to appear on the programme has been affected by the chilling of relations between Russia and various western countries. Many of his guests are well-known and respected in their fields of expertise, he said.

Mr Lavelle explained that a key point of principle "at the core of *Crosstalk*", and his presentation of the programme, is "the absolute necessity of citing international law". He gave as an example his claim that the US [led] attack on Syria with missiles after "an alleged chemical attack" was illegal, which was a fact not in dispute. Mr Lavelle stated that the UN Charter was clear on this point, but international law is often "an inconvenient truth for western governments and western media" and it was important that viewers are aware that "no single set of establishment media outlets have a monopoly on the truth".

Crosstalk therefore "intentionally" positions itself as "an alternative to the western media echo chamber" drawing on alternative media sources "with good reputations" which are considered "authoritative and responsible", Mr Lavelle said.

Mr Lavelle concluded by saying that *Crosstalk* is a fact-based opinion programme covering current affairs. The presenter did not agree with Ofcom's Preliminary Views on the three editions of *Crosstalk* and questioned Ofcom's approach, suggesting that Ofcom held "some" news outlets to "a different bar than others" because of "non-mainstream political views".

Decision

Reflecting our duties under the Act¹⁰⁰, Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.11 states that: "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".

Rule 5.12 states that: "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".

We acknowledged that the programme was about a highly controversial issue, namely, the ongoing conflict in Syria. We also took account of the view that the RT audience would expect to be given a Russian perspective on this subject. In light of the above, and in line with the broadcaster's right to

¹⁰⁰ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>; and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

freedom of expression and the audience's right to receive information (as detailed earlier in the general discussion on the statutory framework and freedom of expression and not repeated here), we considered it legitimate for the Licensee to broadcast a programme that examined and explored from a Russian perspective the policies and actions of the US Government and its allies in relation to Syria. However, to the extent that such a programme examined politically controversial matters, we considered that TV Novosti needed to comply with Section Five by ensuring that due impartiality was preserved.

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned matters of major political or industrial controversy or matters relating to current public policy.

The Code states that matters of major political or industrial controversy and major matters relating to current public policy will vary according to events, but these will generally be matters of political or industrial controversy or matters of current public policy which are "of the moment" and of national, and often international, importance, or are of similar significance within a smaller broadcast area.

This programme focused on a discussion about the policies and actions of the US Government and its allies in relation to the ongoing conflict in Syria, in the wake of the alleged use of chemical weapons by the Syrian armed forces against civilians in Douma on 7 April 2018, which the Syrian and Russian Governments denied and claimed that evidence was fabricated. At the time, there was intense international media and political interest in possible retaliation by the US and its allies.

The discussion featured in the programme primarily concerned past and present US policy concerning Syria and critiqued it, such as the following comments made by the presenter:

"...We are seeing what we've seen for a long, long time, a pattern of deception by the US Government depending on who the enemy of the day is..".

"...I've never believed that anybody in the US Government, politicians, think tankers and all of that, they don't give a hoot about the Syrian people, they never have and what I see now, this is a geopolitical gambit here".

"isn't it really wonderful that the US Government pimps out the American military for a foreign power [i.e. Saudi Arabia]; what a disgrace, what a real disgrace, you know, for the men and women, for the people...".

We considered that the policies and actions of the US and its allies concerning the ongoing conflict in Syria was a subject of debate and political controversy both in the UK and internationally, and was of national and international importance.

For these reasons, we considered that the programme was concerned with matters of major political or industrial controversy and major matters relating to current public policy and the Licensee was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code.

The Licensee questioned why Ofcom applied Rules 5.11 and 5.12 in this case, when “in the past Rule 5.5 was applied to programmes relating to the topic of Syria”, and referred to a previous Ofcom decision on RT News from 2012 in support of this submission. While that decision did relate to a RT news bulletin about the Syrian conflict, in that case we considered the programme under Rule 5.1 (which states “news, in whatever form, must be reported with due accuracy and presented with due impartiality”) and not Rule 5.5.

However, we have previously considered other RT programmes dealing with the topic of the Syrian conflict under Rule 5.5, namely in the *Syrian Diary* decision. *Syrian Diary* was a documentary featuring the experiences of a group of Russian journalists as they accompanied a group of Syrian Army soldiers during the Syrian conflict. This programme was broadcast in March 2013, two years after the start of the Syrian conflict. Although it was clearly an important matter, we did not consider at the time that it fell within the definition of a “major matter” for the purposes of the Code.

By contrast, and as set out above, we considered that at the time of the *Crosstalk* broadcast there was high UK and international interest in the recent developments in the Syrian conflict and this topic was clearly “of the moment”. For these reasons, our view is that Rules 5.11 and 5.12 are applicable.

The preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on these matters. The Code makes clear that “due” means adequate or appropriate to the subject and nature of the programme. “Due impartiality” does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience and the extent to which the content and approach is signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

We took into account the arguments that the Licensee had made about relevant contextual factors in this case. The programme was broadcast on a channel that, as TV Novosti said, aims to: “make available an alternative point of view on world events”, “cover stories overlooked or underreported by the mainstream media”, and acquaint “international audiences with a Russian viewpoint on major global events”. We also took into account the Licensee’s representations that “audiences were likely to be familiar with the format of *Crosstalk*”, described as a “political and highly polemical program[me] reacting to news events with a variety of opinions”, and the presenter Peter Lavelle’s “provocative” style of mocking and ridiculing particular views when appropriate. It described *Crosstalk* as “intentionally position[ing] itself as an alternative to the western media echo chamber” in order to “question narratives about politics and current affairs principally found in the western world” and hold governments, politicians and the media to account. TV Novosti also relied on the fact that Mr Lavelle “wear[s] [his] politics on [his] sleeve for all to see” and that viewers would have been aware of his political standpoint and will recognise he holds “very strong views on many topics”. The Licensee also argued that audience expectations were “shaped” by its editorial approach and viewers therefore “turn to RT exactly for the reason that it does not resemble the

approach of British national broadcasters", as they "want to hear the Russian point of view from a Russian channel, unfiltered by a British broadcaster".

We have taken a number of contextual factors into account in considering the broadcaster's and audience's Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, Ofcom acknowledged that viewers of RT, and of programmes like *Crosstalk*, were likely to expect the channel to address controversial issues, and to reflect major global events from a Russian point of view. We also acknowledged that it was likely to have been in line with audience expectations for programmes such as *Crosstalk* to comment critically on various political issues and to robustly challenge what could be seen as the Western perspective on such issues, including in this case the policies and actions of the US Government and its allies on the Syria conflict. TV Novosti argued that as the dominant narrative was widely disseminated by most if not all other media outlets/broadcasters, it was not necessary for *Crosstalk* to repeat that perspective explicitly. However, as we mention above, the Code requires due impartiality to be preserved on matters of political and industrial controversy and matters relating to current public policy. In particular, when dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters are required to take additional steps in order to preserve due impartiality, namely to reflect an appropriately wide range of significant views and to give those views due weight.

During this programme, the presenter made numerous statements that were highly critical and/or dismissive of the US policy concerning Syria – see the examples quoted above in the "Application of Section Five of the Code" and further examples below:

"What has the United States done in Syria that's right? Name one thing that the United States has done right when it comes to Syria, one thing?!"

"Well I think the Syrian people after all of, after the billions of dollars, the training, the funding, the souring of these Jihadists from outside the country, that's what the US policy has been and now they're illegally present there, illegally under international law, the Damascus government wants them out and they won't leave, I mean who's breaking the law here, who's being an animal here, okay, this war could have ended a long time ago and if it hadn't been backed by the United States, Saudi Arabia, the other Gulf countries and Israel, it would have been over a long time ago".

In addition, the presenter and two of his guests, Joe Lauria and Michael Maloof, were largely in agreement on the various factors shaping US Government policy concerning Syria¹⁰¹. They made, for example, the following statements:

MM: *"No, I think you're right. I think that even though President Trump wanted to get out, I think that other people who are surrounding him are much more determined that he'd stay and actually the fact that John Bolton is now the National Security Adviser, who was the fellow who really, really wanted us to go to Iraq on the premise that there were WMD. I think the administration is slowly turning towards a regime change again [in Syria]. I think that's what they're gonna go after and the whole idea*

¹⁰¹ We acknowledge that the third guest, Richard Murphy, put forward a different perspective to the presenter and the other two guests on the matters under discussion. However, for reasons we discuss further below, we did not consider that Mr Murphy's input was sufficient to maintain due impartiality.

as far as a strategic policy, if there is one, for the United States is ultimately to divide Syria".

PL: *"...We've noticed that Russia is being held responsible for this alleged chemical attack which there is no evidence presented to the public, which I guess the public is just getting used to it, an evidence free forum policy to go to war, go ahead Joe".*

JL: *"Yeah I don't think they care very much about the American public either let alone the Syrians, I mean this is another attempt to drag Russia into this and Russia, we don't, we have no idea why, even if there was a chemical attack, they haven't even begun the investigation, we hear Nikki Haley saying we need an investigation but that's one side of her mouth and at the other side of her mouth Syria did it and Russia was behind it. This is really, really not a safe situation as you pointed out. I do think that they noticed that Russia and Russian backed Syrian Government was winning this war, it's practically over..."*

MM: *"...The whole idea, I think by the United States, if it's trying to resurrect a strategic policy of any kind, is to unite the Sunnis of East Syria with Western Iraq and to maintain that presence there and to control the area and basically partition Syria ultimately... So the United States is going to continue to support these Sunni controlled groups and I think ultimately it is to divide Syria and with the help of the Saudis, the Saudis are paying for this, they've offered money and I think Trump would have taken it. That maybe the only reason why he's decided not to pull out because he got a good deal..."*

JL: *"...Now we have to understand that it's a fiction that the United States was fighting ISIS in Syria, I believe they were fighting them in Iraq, I think they were two separate wars. We know from this defence intelligence agency document from 2012, that the US and its partners in the region and in Europe wanted to establish a Salafist principality which later became ISIS ... So there was no, there is no effort to defeat ISIS. Russia, has defeated, with Syria and Iran and [inaudible] have defeated ISIS in Syria. They're not there for that reason..."*

MM: *"...Our foreign policy in the United States has been to carry out, to help implement Israel's foreign policy for years and the Pentagon was the instrument for doing that".*

In light of the largely aligned views of the host and two of the three guests, which were critical of US policy, we considered whether, as required under Rule 5.12, an appropriately wide range of significant views were included and given due weight in the programme. As highlighted in Ofcom's Guidance on Section Five of the Code, the broadcasting of highly critical comments concerning the policies and actions of, for example, any one state or institution, is not in itself a breach of due impartiality rules. It is essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical. However, as envisaged by section 320 of the

Act – which is given effect by Rules 5.11 and 5.12 – a broadcaster must maintain an appropriate level of impartiality in its presentation of matters of major political controversy. The Licensee acknowledged that “a number of comments were made which were critical of the US Government’s position in relation to the Syrian conflict”. Given the nature and amount of criticism of US Government policy concerning Syria in the programme, we would have expected an alternative viewpoint, such as that of the US Government, to be reflected appropriately¹⁰².

We took into account the Licensee’s view that an “appropriately wide range of viewpoints would include the American viewpoint, which was featured in the broadcast during the discussion...”, with “expert guests offer[ing] an array of perspectives which are not Russian-centric” and “the viewer hear[ing] knowledgeable Americans speaking determinedly, objectively and supportively of their understanding of American policy”.

Further, we took into account that the Licensee argued that due weight was given to significant viewpoints on three key themes it had identified in the programme:

- Criticism of “journalism and the [US] media and not [US] Government policy”;
- “Policy towards the Syrian conflict” – TV Novosti considered the debate “made it clear that there is not an agreement on policy towards Syria” and that the “quest for clear policy is perhaps the most integral theme during the programme debate”; and
- “A general questioning of Governments’ failure to provide evidence in support of their actions”, which TV Novosti considered “controversial” but not specifically critical of US Government policy concerning Syria.

We accepted that a viewpoint generally in line with that of the US Government concerning Syria was reflected, to some extent, in the discussion in the programme, in that the guest, Mr Murphy, said:

“this [US] Administration has reconciled itself that Assad as president is likely to stay for a while”.

Syria is in “a key area” and is “actively assisting the government of Iran in creating a corridor across Iraq, Syria to Hezbollah in Lebanon with the aim of mounting pressure on the Israelis”.

“We [in the US] don’t think that the ISIS effort is totally ended and we also know there are other groups ready to come in in its wake if given the least opportunity. So what’s needed is a strategy which develops the country as a whole as quickly as possible, involves the people with their own government as quickly as possible”.

the US “tried for many, many years to get Syria interested in opening up talks with the Israelis and they were very, very reluctant to come anywhere near that situation”.

¹⁰² Ofcom’s Guidance explains that ‘significant views’ could include the viewpoint of nation states whose policies are considered to be ‘major matters’ (paragraph 1.58).

We recognised that Mr Murphy, as a former US Ambassador to Syria, was an authoritative figure and viewers would likely have recognised his expertise in the subject matter being discussed, and have taken this into account when assessing his specific contribution to the programme.

The Licensee considered that Mr Murphy was able “to put forward his views (in an authoritative and cogent manner) on multiple occasions” and “it is clear from the transcript and from a viewing of the programme that Mr Murphy gets his points across effectively”. However, we did not consider that this was a fair characterisation of his contribution overall.

We acknowledged that the presenter included Mr Murphy in the discussion and invited him to offer his opinion on the matters being discussed. However, 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. This contrasted markedly to the manner in which the presenter treated the other two contributors, who we considered were allowed to express their views at length and often with the clear endorsement of the presenter. Our assessment of whether due impartiality was maintained in a particular programme is based on the programme as broadcast, and in this case we considered the effect of the presenter’s repeated interruptions of Mr Murphy was that viewers would not have been able to hear his perspective (which opposed that of the other two contributors and the presenter) articulated fully. While the Licensee was not required to give equal time to all contributors to put forward their respective views, each viewpoint should have been presented with due weight.

We acknowledge that presenters of current affairs programmes are not necessarily required to be neutral when questioning participants, and they may take a particular stance in the interests of fostering debate. However, if taking this approach, licensees must still ensure that alternative views on a given issue are given due weight. We took into account Ofcom’s published Guidance to Section Five which states:

“As part of treating viewpoint with ‘due weight’ a broadcaster may debate and discuss such views. However, broadcasters must not dismiss or denigrate such viewpoints and include them in a programme simply as a means to put forward their own views”¹⁰³.

In Ofcom’s view, the strong degree of overall alignment in the views of the presenter, Mr Lauria and Mr Maloof, which were critical of the US Government policy on Syria, combined with the limited opportunities Mr Murphy had to express his view clearly, served to undermine the US Government’s viewpoint, to the limited extent it was reflected in the discussion. As such, we did not consider that Mr Murphy’s contribution reflected the US Government position on the Syrian conflict as a significant viewpoint in the programme with due weight.

We also acknowledged TV Novosti’s submission that the presenter made statements portraying different perspectives on Syrian policy, such as the following:

“As little as a week ago, Donald Trump made a very public announcement that we’ll be withdrawing from Syria. Fast forward up to the last few days or so, it looks like he is being forced to stay there even if he doesn’t want to stay there. We have an entire course of the media driving for war, the deep state is on board of course...”

¹⁰³ See https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf, paragraph 1.59.

"Yeah well you can throw in the Turkish angle which of course is a completely different programme, but you know it looks like a partition is really what they're going to settle on here...".

We considered that in the overall context of the programme, these statements were not given due weight and were not sufficient to provide appropriate challenge in response to the strident criticism of the policies and actions of the US Government and its allies regarding the Syrian conflict.

We also took into account the Licensee's argument that it had relied on previous Ofcom guidance "that one way of presenting the alternative view is in the form of graphics". TV Novosti considered "the UK and Western position on Syrian policy [was] also appropriately reflected through on-screen graphics such as rolling tickerlines and banner graphics", such as:

"Corbyn: PM May waiting on instructions from Trump on Syria";

"Trump Vows 'Big Price' To Be Paid By Syria For Alleged Chem. Attack"; and

"Washington's Position That Syrian President Bashar Assad An 'Animal'".

Graphics or captions are editorial techniques which can contribute towards the preservation of due impartiality. However, as we made clear in our December 2016 *Crosstalk* Decision¹⁰⁴ involving TV Novosti, Ofcom emphasises that whether graphics or captions do in fact maintain due impartiality in any specific programme will depend on all the relevant circumstances, such as the duration and nature of the programme and of the matter of political controversy, and the presence of any other factors in the programme which may contribute to helping to maintain due impartiality. We caution broadcasters against assuming they can preserve due impartiality where required by solely or largely including graphics and captions. This is because, depending on the circumstances, captions or graphics may not enable sufficient weight to be given to an alternative view. Further, when ensuring that matters of major political and industrial controversy and major matters relating to current public policy are treated with due weight, we consider that the relative size and prominence and limited content within on-screen captions and graphics will make it significantly more difficult for broadcasters to comply with Rules 5.11 and 5.12. This is particularly the case if the broadcaster is seeking to preserve due impartiality where required by relying solely or largely including graphics and captions.

We considered whether the use of captions contributed to the preservation of due impartiality in this case. The captions that referred to Syria were interspersed with other captions, which were displayed in the manner of 'rolling news' headlines as a banner graphic. Each caption was shown only for a few seconds at any one time and the banners covered topics other than the Syrian conflict, for example, *"Russian Ambassador questions Yulia Skripal refusal to meet officials"* and *"Shadow Foreign Sec: PM should apologise to Commonwealth for historical crimes"*, as well as referring viewers to the RT website and Twitter account. In our view, given the context in which they were used within the programme, the fact that they were not given any particular prominence or weight within the programme, and taking into account the fact that the subject was a matter of major

¹⁰⁴ See Ofcom's Decision *Crosstalk*, issue 319 of Ofcom's Broadcast and On Demand Bulletin, 19 December 2016, at: 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

political controversy, we considered that the captions or banners were not sufficient to reflect the position of the US Government (or its allies) on the conflict in Syria with due weight.

For the reasons given above and taking account of the relevant contextual factors discussed above, we considered that the viewpoint of the US Government was not adequately represented within this programme and the programme had not included and given due weight to an appropriately wide range of significant views.

Due impartiality in clearly linked and timely programmes

We next considered whether such views were included in clearly linked and timely programmes and given due weight.

TV Novosti argued that: “within the same hour as the broadcast of *Crosstalk*, the RT UK news bulletin featured a “wide range of significant viewpoints” in relation to the position of the UK, US and Russian Governments on the Douma chemical attack”. We acknowledge the challenges that can be faced by rolling news channels in ensuring compliance with the Code. However, as discussed earlier in the general contextual factors, television services such as RT cannot preserve due impartiality by relying on what is broadcast across their service as a whole¹⁰⁵. It is possible for television services such as RT to preserve due impartiality, in the context of Rule 5.12, in clearly linked and timely programmes. However, because it cannot be guaranteed that a person watching one programme will have been watching the programme that precedes it or follows it, the broadcaster must take steps to ensure that the two programmes are “clearly linked”.

Therefore, even if other programmes that have been broadcast do deal with the same subject matter and contain relevant alternative viewpoints, these contextual factors alone are not sufficient to ensure that due impartiality is preserved, particularly where the matter concerned is a major matter within the scope of Rules 5.11 and 5.12. This is because without an explicit link viewers may not be aware of the other programmes. We acknowledge that there may be particular challenges including explicit links to other programmes in pre-recorded content. However, we do not consider these challenges are insurmountable. For example, broadcasters could include links to other programmes in a continuity announcement broadcast over the end credits of the pre-recorded programme or in a prominent caption or slate superimposed over the pre-recorded content. We would expect such a link to include a reference to the fact that the linked programme deals with the same matters as the programme in question.

We did not consider the news bulletin cited by TV Novosti was clearly linked to this edition of *Crosstalk* within the meaning of the Code. This was because there was no material included in this episode of *Crosstalk* which referred to, and so potentially linked it to, this RT news bulletin. This meant that *Crosstalk* viewers would not have been aware that the news bulletins might include alternative viewpoints on the issues discussed in *Crosstalk*, which was particularly significant in the context of a programme which concerned a major matter of political controversy. Without any clear

¹⁰⁵ As we made clear in our December 2013 *Syrian Diary* Decision (see https://www.ofcom.org.uk/data/assets/pdf_file/0025/45745/obb244.pdf), due impartiality can only be preserved across a whole service in the case of non-national radio services. Specifically, section 320(1)(c) of the Act requires: “the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on...matters [of matters of political or industrial controversy; and matters relating to current public policy]”. Section 320(4)(b) states that the requirement contained in section 320(1)(c) “is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole”.

linkage, the fact that this bulletin may have covered the same subject matter as the episode of *Crosstalk* in question was not sufficient to constitute it being a linked programme for the purposes of Rules 5.11 and 5.12.

Given the above, we did not consider that TV Novosti had reflected, and given due weight to, an appropriately wide range of significant views in clearly linked and timely programmes.

In this case, we have taken careful account of the broadcaster's and audience's rights of freedom of expression and all the relevant contextual factors. For all the reasons set out above, Ofcom's decision is that the Licensee failed to include and give due weight to an appropriately wide range of significant viewpoints in relation to the relevant matters of major political controversy and major matters relating to current public policy dealt with in the programme.

Breaches of Rules 5.11 and 5.12

In Breach

Crosstalk, 16 April 2018, 20:30

Introduction

We watched this programme and noted that at the start of the programme the presenter, PL, said:

"The US-led attack on Syria is a gross violation of international law. Furthermore, Western public still have not been presented with evidence the Syrian Government used any chemical weapons. A new phase of the Syrian proxy war has needlessly been opened up. Another war of choice".

The presenter was then joined by two guests in the studio: Mark Sleboda ("MS"), an international affairs and security analyst, and Dmitry Babich ("DB"), a political analyst with Sputnik International.

In the programme, the position of the US, French and UK Governments on the Syrian conflict was discussed as follows:

PL: *"Let's do a post-mortem here Mark and Dima. It's only been a day or so since the US, along with Britain and France attacked Syria—".*

MS: [Interrupting] *"The usual suspects".*

PL: [Laughing] *"— the usual suspects — illegally under international law, there was no mandate from the United Nations Security Council to do this. But, you know, it's described in the mainstream as a military attack, I think it was a political attack, I think it was theatre, this is what they really wanted here. Break it out for us".*

MS: *"We've seen this show before, I mean in varying degrees in different conflicts, we saw this show a year ago, when Donald Trump made another cosmetic attack again under the pretext of chemical weapon use and later, more than nine months after that incident, the Secretary, the US Secretary of Defence, Mad Dog Mattis¹⁰⁶, admitted 'actually we have no real evidence that Assad ever used sarin gas' — "*

PL: [Interrupting] *"And two months ago we had the Russian Ministry of Defence come out and tell us that they were expecting another provocation".*

MS: *"They were expecting another fake, another pretext, a staged chemical weapon attack and the one thing that the Western media will never tell you is who was in control of Douma. This is the Saudi-backed, literally head chopping Wahabi jihadists of Jaysh al-Islam¹⁰⁷, literally they call themselves the Army of Islam. This was who is in control of Douma, right, and they were, there's no Western journalists on the ground with them of course, there's a couple of local gongos paid by the US Government—"*

¹⁰⁶ James Mattis, US Secretary of Defense.

¹⁰⁷ An Islamist faction involved in the Syrian conflict.

- PL: [Interrupting] *"The White Helmets¹⁰⁸ were there, well there's an oracle of information and knowledge".*
- MS: *"–the Syrian-American medical society, this is like saying the Muslim Brotherhood, right?"*
- PL: [To DB] *"Go ahead, jump in".*
- DB: *"There is an interesting detail that I would like to add. During all the Syrian war, several Western journalists were kidnapped, and they were never kidnapped by Assad's forces. They were always kidnapped by the so-called opposition fighters, moderates and the moderates, Matthew Schrier, a photographer, an American photographer, basically was tortured when he was held hostage. Domenico Quirico, an Italian journalist, was taken hostage by the group that the West supported and he had to go through enormous humiliation before they let him go. So the same story with Douma, why are there no Western journalists there, because–"*
- PL: [Interrupting] *"Because it's not safe".*
- DB: *"– it's not just safe, it's safe that they are going to do something bad to you, you know. Why are there Western journalists in Beirut, in Damascus, you know, in Beirut, under this terrible Hezbollah¹⁰⁹ which is so dangerous you know [exaggerating, sarcastic tone], killing people, a terrorist organisation which happens to oppose Israel you know, so you know, hypocrisy is absolute here. But coming back to your question, I think it was a media attack and it was absolutely senseless, but very risky. Why was it senseless, there was no ground troops back up for this action, so it was just senseless you know".*
- PL: *"Well it gets down to 'something must be done' mantra what is the outcome Mark, who won, who gained out of this?"*
- MS: *"Okay so, so there's several reasons this attack was carried through right, the first one is that the Organisation [for] the Prohibition of Chemical Weapons inspectors were supposed to arrive in Douma to investigate this site and check whether chemical weapons were used and if they were used, who used them, right, because it's very possible that these rebels who are, rebels quote 'Jihadists' who have a history of using chemical weapons before, you know staged this thing themselves. The attack seemingly before any investigation by international inspectors was to take place, seemingly was designed to curtail that. Supposedly they're still going to go ahead with that now, so if that was the goal, they haven't done it. Second of all, one of it is national prestige, drawing red lines right, Nikki Haley¹¹⁰ said when our President, meaning not Obama, draws a red line, he enforces a red line. However, we've got a tweet a year, a couple of years ago [reading a tweet from Donald Trump]: 'The only reason President Obama wants to attack Syria is to save face over*

¹⁰⁸ The White Helmets are also known as Syria Civil Defence, who "work to save lives and strengthen communities" in the Syrian conflict (see <http://syriacivildefense.org/about-us>).

¹⁰⁹ Hezbollah is a Shi'a Muslim militant group that is based in Lebanon.

¹¹⁰ US Ambassador to the United Nations since 2017.

his very dumb red line statement. Do NOT attack Syria, fix USA'. That was Donald Trump [laughing]!"

PL: *"The only interesting thing Dima, here for me is it almost has nothing to do with Syria, it has everything to do with Donald Trump looking for people to adore him. It's remarkable, but sad. It's just the only issue he seems to be able to get support across the political spectrum, is being, going on the international stage, like a hammer looking for nails here, okay. He was praised across the board for this. Also, also there always is the element of diversion, okay, there is a lot of things going on with the investigation of his campaign, of himself, of his family, this is a distraction. We can say Theresa May has done exactly the same thing in the UK and Macron, I guess he just is a little Napoleon, okay, wanting to lead Europe or something like that".*

DB: *"Macron is facing one of the biggest strikes in French history, so he probably had the only real reason to deflect attention because I don't believe in Trump's collusion with Russia and I don't believe that Theresa May, you know, is really absolutely clean on the Skripal affair which is simply falling apart, right?"*

PL: *[Laughing] "Right".*

DB: *"But anyway, coming back to the uselessness of his action, the Western coalition has no replacement for Assad. In 2013, if Obama—"*

PL: *[Interrupting] "Okay, what does this mean? Does this mean they can't accept defeat in Syria?"*

DB: *"Absolutely".*

PL: *"Is this what this is all about?"*

DB: *"Not only, not only".*

PL: *"Because I agree with you, I've said repeatedly for years on this programme, what do you want? A black flag flying over Damascus? No, no, no, no, that's not what we want, nobody tells me what they want".*

DB: *"Well in 2013 if Obama had bombed the Syrian troops then and there was a very big chance of that happening you know, then the Islamic State which was declared a few weeks afterwards, but which had all the infrastructure, all the fighters, all the arms deployed, the Islamic State would have replaced Assad. They would have taken all the chemical weapons, which were not yet destroyed you know, which were left intact, and then our today's problems would seem minuscule, you know, to us compared to what we would have seen after the Islamic State had taken Damascus".*

PL: *"But, Mark, there still is no American slash Western Syria policy, even after this".*

MS: *"Yeah, I mean there is a policy and I disagree, this was not because the West can't accept that they haven't succeeded in regime change in Syria. The partition and military occupation of Eastern Syria by Northern Syria, by Turkey, is about that. There is another reason that this occurred. This maintains the policy and the acceptance by the world that the US has the ability to screen weapons of mass destruction, right,*

whether it's Iraq, you know, we've had similar occurrences in Libya, there they cry genocide—"

PL: [Interrupting] *"And the use of these weapons in the UK".*

MS: *"—as a pretext, right? The UK is another example, they have, they believe they have the ability to screen weapons of mass destruction and then unilaterally, outside the bounds of international law, attack everyone they want with this existential situation created by these supposed weapons of mass destruction".*

PL: *"But what this does though is that it encourages groups in Syria, and around the world presumably, you can use these weapons and you can look for an American reaction, you know it's wag the dog here. I mean there are numerous cases where these rebel groups, Jihadi groups, have used chemical weapons".*

MS: *"Mohammed Alloush, the head of Jaysh al-Islam, the Jihadi group that was in charge of Douma when this supposed attack occurred, he called the attack a farce. He is very unhappy with the scale of the attack that he dialled in to Washington. He's extremely upset and luckily though Nikki Haley said in her [inaudible] speech 'the US is locked and loaded if Assad uses poison gas again'—"*

PL: [Interrupting] *"There you go!"*

MS: *"—so sending the signal to Mohammed Alloush, you know, when the Syrian army comes to liberate Idlib from the Jihadis or Daraa or Homs, all you got to do is send out the signal flares, have the White Helmets dial in another attack—"*

PL: *"Guess who's going to dial in".*

MS: *"—and it will happen again, there's not a, it's only a question of when, how soon, and we'll be right back where we are today then or worse, back in a World War Three situation".*

DB: *"The worst thing about this situation is that it is so easy to provoke another strike, I mean you just need a few days now after the alleged chemical attack. In 2013 it took them a few weeks to prepare, right, but the attack was very dangerous because the Russians could have responded from the Caspian Sea by Kalibr missiles, you know, deployed on our submarines and vessels. There were several Russian frigates nearby which could respond by their anti-aircraft, you know, missiles there was S400s inside Syria so—"*

PL: [Interrupting] *"And they were not used".*

DB: *"Yes, they were not used, the Russian Defence Ministry specifically said that they were not used. All the missiles that were struck down there is a big debate how many of them, you know, the Syrian side it's said 73 out of 103, maybe less, but they were all struck down by old Soviet anti-aircraft system that the Syrian government—"*

PL: [Interrupting] *"What are the numbers that you're hearing Mark because you have sources?"*

MS: *"Okay, so there's two different versions of this attack coming out. From Washington we hear that they fired 105 cruise missiles of various sorts, right, some of them the most advanced stealth ones and so on that they say they've used, and that all of them hit their targets, this is what we've heard, all of them—"*

PL: [Interrupting] *"All of them hit their target!"*

MS: *"We have a new Baghdad Bob, her name is Dana White, she's the Pentagon spokeswoman, I'm just, tell me, guys, what has a better ring to it? Is it DC Dana or Washington White? I'm undecided [Laughter from PL and DB]. She said that all the US missiles, none were intercepted, and all hit their targets. Meanwhile, the Russian side is saying that the US fired 103 missiles and that 71 of those were intercepted".*

PL: *"Hold that thought, we're gonna go to a hard break here. After our break we'll continue our discussion on Syria. Stay with RT".*

After the advertisement break, the discussion continued as follows:

PL: *"Okay let's finish up on that numbers game here, because like you were saying there are some radically different narratives, but then again it's Syria and that's what you get in the media, very different narratives".*

MS: *"The US says that only three sites were targeted. They supposedly fired 105 missiles which is just over double what they fired last year at many less targets. Russia says they fired at eight targets and that several of those, all of the missiles were knocked down. The US claims that these were chemical weapon research facilities—"*

PL: [Interrupting] *"But why would you target these kind of facilities, would they have chemical weapons?"*

MS: *"Well that's the argument".*

DB: *"After giving the Nobel peace prize to OPCW¹¹¹ for allegedly finding them all".*

MS: *"Agency France Presse was on the ground interviewing people at one of these, Barzah research facility. Most of these targets were in Greater Damascus, so within an urban area, there was no release of any kind of chemical weapons, no precursors even if there were binary agents, nothing, and nothing dangerous was let out. Now, this office there right, the OPCW, the Organisation [for] the Prohibition of the Chemical Weapons, has inspected this site twice. The last inspection was just six months ago, it was in November, right, just over half a year ago, they used to have an office in this building, the UN's organisation program. And they used the labs and they cooperated fully with them, right, the AFP journalists asked one of the employees of this lab, right, if they were making chemical weapons, and he said if there were chemical weapons, we would not be able to stand here and you wouldn't be able to ask those questions, right, it's ridiculous".*

PL: *"No it isn't ridiculous because Western media never asks honest questions".*

¹¹¹ Organisation for the Prohibition of Chemical Weapons.

- DB: *"Just a nice nuance to all this. On the same day the French Defence Ministry issued a statement that 'All our missiles also hit their targets and we can pride ourselves on doing this'. Probably they haven't read that AFP report [laughing]"*
- PL: *"Is this a marketing strategy for these arms makers?"*
- MS: *"Like their patriots, I don't think the US is doing a very good job of showcasing their weapons here [PL interrupting] no hold on, the Syrian observatory for Human Rights—"*
- PL: *[interrupting] "Oh God, make it short"*
- MS: *"—this Rami Abdul Rahman, this FSA¹¹² propagandist in Coventry UK right, this one guy, who has been quoted innumerable times by the Western Press to put up, inflate casualty numbers and everything like this. He disagrees with the US assessment. He says that over 65 of the US missiles were shot down. Not only that, but he did not agree that chemical weapons were used in Douma at all. He said that the people that were killed, were killed in the bombing right, the bombing of the Jihadi headquarters there. So, if you can't even get Rami Abdul Rahman to—"*
- PL: *[Interrupting] "No kidding"*
- MS: *"—to play around with your hoax, you're doing a bad job"*
- PL: *"Basically with the exception of this instance here I always think the opposite when I read what he writes, okay. Dima let's talk about something really important here again that gets no coverage in the mainstream. Russia hasn't reacted in fact—"*
- DB: *[Interrupting] "Militarily, militarily"*
- PL: *"Militarily. Why not?"*
- DB: *"Well I think the reason why the Russian anti-missiles did not strike down these missiles, and that was confirmed by our Ministry of Defence, is because we didn't want to make it a rehearsal for an attack against Russia. Remember Russia is the weaker, weaker side in this future conflict here. Russia's defence spending is 27% of what NATO's European allies spend on their defence. So, if we show all of our trumps now, if we kind of, you know, demonstrate all Russia's defence capability, that would simply encourage that. Whenever you have a stronger attacking side, a stronger aggressor, and the weaker side defends itself—"*
- PL: *[Interrupting] "When you have a situation like that you have to be smarter, okay, you always have to be smarter"*
- DB: *"You have to be smarter and you have to be kind of, you can't show all of your trumps immediately"*
- PL: *"Or there is an alternative here, they made a deal, Mark, they made a deal"*

¹¹² Free Syrian Army.

- DB: *"A very dangerous deal, you know, when you have a strike like that, the military people are very nervous when they see cruise missiles, when they see the planes, they might not get the message from their commanders that, you know, don't shoot at them, you know during an attack like that, always you have radio electronic fighters we call it you know, you may not get all the messages from your commanders, so it was a very dangerous situation".*
- PL: *"But at the same time it seems to me they wanted to make sure they had, they avoided any kind of direct conflict".*
- MS: *"Yeah, I disagree with that assessment as a military veteran whatsoever. Both Russia and the US have used both Syria and other conflicts as testing grounds for their weapons and Russia has tested numerous of its weapons. Plus, if you have a deterrent like supposedly the most advance air defence system in the world, you want to make sure it's used to demonstrate its capability, right, and this would have been a perfect opportunity, firing just unmanned cruise missiles to prove that. They did not. And also it would have been a great marketing tool to sell the weapon right, Russia's eager to sell the S400, they did not. So, I agree, a deal was struck here, despite the protestations from both sides. There were no fatalities in these bombings. None, not one. There were three injuries, no fatalities. All of these facilities were evacuated days before the incident, a deal was obviously struck".*
- PL: *"This goes back to the first thing I said. This is a political strike, this is political theatre".*
- MS: *"There was an agreement between Russia not to fire at the cruise missiles. Right, and still the Syrian defence supposedly managed to knock down this antiquated Panther S1s that Russia has given Syria and so on, the short-range, right. So, I have a problem with this. There is a short-term advantage that prevents at least temporarily a larger strike, although the next time the Jihadis dial one in we'll be right back in the same situation again, right. So it prevents a short-form strike and it prevents an immediate World War Three situation. There's a lot of problems with this though that I criticise the Kremlin for. One, it sends a signal to all of Russia's allies that Russia is not willing to defend you from a direct US attack, even if Russia has troops based legally in your country. Second of all, it maintains this ability of the US to attack unilaterally without any response".*
- PL: *"But I don't know if you can square the circle here, I mean, three facilities empty were destroyed, nobody died, okay".*
- MS: *"It's more than the number of people that died, there are precedents that are set. There are long term strategic interests and precedents that are set. This maintains the international legal violation that the US can attack countries like this by claiming weapons of mass destruction without any military response from Russia".*
- PL: *"Okay this is where I wanted to go, Dim, this is where I wanted to go, because I think to me the biggest fatality in all of this is watching the US, Britain and France, the way they dance on the global stage, with impunity. I mean we had May said, I mean this is Prime Minister May, May said that it was quote 'clear message to anyone else who thinks they can use chemical weapons with impunity'. Well who is behaving with impunity right now? This is destroying international law, the United Nations, I mean*

you even had a member country saying why is there even any votes on these resolutions anymore, because we know that it's not going to go anywhere".

DB: *"Well in the UK there was a big debate during the last week whether the Parliament should or shouldn't approve it—"*

PL: *[Interrupting] "And this time, the majority made sure it didn't happen".*

MS: *[Interrupting] "Because last time, Parliament disapproved it and stopped the attack".*

DB: *"—and the majority of voices was in favour of having the Parliament decide upon it you know. In France it's one day after the strike that President Macron informed, you know, the Parliament on the reasons why he took the decision to strike, nice way to treat things. But in general, if you look at the situation in Britain at least in 2013, the Parliament voted against it. In the United States, at least Obama in the last moment opted for basically—"*

PL: *[Interrupting] "Because he made a deal with the Russians, okay, to disarm the chemical weapons".*

DB: *"—with France there was never, never any problem about striking so when I hear, there is a lot of voices in Russia which say 'oh it's the United States forcing Europe to be behave like that, poor France, you know it is occupied, poor Germany it is occupied'. No! They're willing participants, they share the same ideology and coming back to that very important question about Russia's reaction. Basically Russia, Russia in this situation opted for you know a deal, why, because I'm not sure it was a very widely publicised deal because there were lots of interviews with Russian military specialists right, you know days before the strike and they were all afraid that the strike would be real, the real strike would be going after Assad trying to destroy him physically, you know striking at the government building in Baghdad, sorry, in Damascus. If the Western side had done this, then the Russian Defence would be switched on".*

PL: *"In a way both sides blinked".*

MS: *"Both sides blinked. I agree with that assessment and the result of that is that everything has been temporarily swept away but will resurface the next time this happens".*

PL: *"We have to remind everyone, this happens—"*

DB: *"It's sort of a tie—"*

PL: *"—the interesting thing is its we could because the end of ISIS/ISIL is within reach here and every time we get to that point with the Syrian army you know, victory is within its grasp, then we get one of these what I think is a false flag, these chemical attacks here okay, and we'll see it again with Idlib and others".*

MS: *"It has to be said again, this was both against both international and domestic law. The international law says that the only time that you can use force, is when you have a resolution by the Security Council authorising force to rectify a violation of*

international peace and security agreed to by all five of the permanent members or in a very limited sense of real existential self-defence, right, and neither one is clear. It's also against US domestic law, right, because Congress for the umpteenth time has willingly abdicated their war powers where they have to declare war and this continues and this is Congress's fault in the Obama—"

PL: [Interrupting] *"And they've been given the opportunity to debate that and they will not do it. It's not like – 30 seconds here – it's not like Trump or Obama was taking all the powers, it's Congress willingly giving it away and the responsibilities. 20 seconds Dima before we finish this"*.

DB: *"One important detail, you know, when there were rumours about Trump's collusion with Russia, you know this mythical collusion back in 2016 when he won the election, all Europe was very concerned, they said that Trump was 'a threat to European security'. I'm quoting their voices at the Malta summit. Now that Trump really did something really dangerous when he did it in a rude way calling President Assad 'an animal', saying that Russia should prepare for 'nice smart missiles' [quotation marks gestures], that's not a threat he's acting presidential, he has the support of the allies. That tells you a lot about Europe"*.

PL: *"That says a lot about Europe and the West in general. Many thanks to my guests here in Moscow"*.

Peter Lavelle then concluded the discussion and the programme ended.

During the interview, captions were shown across the bottom of the screen, including the following that referred to Syria:

- *"Bullhorns: Syria attack";*
- *"U.S. plans new sanctions against Russia over support for Syria";*
- *"UK Prime Minister to explain to Parliament strikes on Syria without approval";*
- *"U.S., UK and France bombarded multiple govt targets in Syria";*
- *"Washington, London, Paris did not release evidence of chem. attack";*
- *"U.S. on evidence of chem. attack: a lot of this stuff classified";*
- *"Syria was attacked hours before arrival of UN chemical experts";*
- *"Without evidence, U.S. says Syrian govt repeatedly used chem. weapons";*
- *"Russian military previously warned of 'provocation' with chem. weapons";*
- *"Syrian govt says bombing destroyed education centre & scientific lab";*
- *"Syria scrambled to thwart aerial invasion intercepting 71 missiles";*
- *"U.S. led strikes without UNSC mandate a violation of intl law";*

- *“Coalition forces contacted Russian military to ‘deconflict airspace’”;*
- *“Theresa May defends Syria strikes in Commons”;*
- *“Theresa May: Syria strikes were in national interest”;*
- *“Theresa May: Diplomacy on its own not enough in Syria”;*
- *“May: Strikes are response to alleged chemical attack in Douma”;*
- *“Corbyn: Theresa May following Trump’s Twitter diplomacy”;*
- *“Opposition slams government for not consulting parliament”;*
- *“Campaigners gather in Westminster against Syria strikes”;*
- *“Chemical weapons watchdog OPCW in Syria to probe alleged attack”;* and
- *“Pink Floyd star Roger Waters condemns Syria strikes”.*

Ofcom considered that the programme was dealing with a matter of major political or industrial controversy and major matters relating to current public policy, namely, the policies and actions of the US, the UK and France in relation to the ongoing conflict in Syria.

We therefore considered that this programme raised issues warranting investigation under the following rules:

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”.

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”.

We asked the Licensee how the programme complied with these rules.

Initial Response

General

The Licensee made several “background points” about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10.

The application of Rules 5.11 and 5.12

TV Novosti questioned why Ofcom applied Rules 5.11 and 5.12 in this case, when “in the past Rule 5.5¹¹³ was applied to programmes relating to the topic of Syria”.

Notwithstanding the above, TV Novosti made representations on how it believed due impartiality had been preserved in the programme.

Due impartiality in the programme

The Licensee acknowledged that “[a]n appropriately wide range of significant views would include international views on the Syrian conflict, including those held by the UK, France, and the US”. It argued however that Ofcom had itself explained that “the absence of an alternative viewpoint does not inevitably mean that due impartiality has not been maintained”. It stated that the “panellists brought their different perspectives to the programme”¹¹⁴. However, TV Novosti added that it would have “liked to have a wider spread of views reflected in the discussion and invited a number of other people to appear in the programme but they declined”. Even in the absence of such views, TV Novosti contended that an “appropriate range of significant viewpoint is adequately represented throughout the programme”.

The Licensee said that the debate in this episode of *Crosstalk* centred on “a few prominent themes”, as follows:

- “lack of clear policy on the Syrian conflict” – TV Novosti accepted that “the programme contained many views critical of the attack in Syria”. It argued however that “these criticisms were not limited to the US, UK and France. Russia was also criticised... host Mr Lavelle does not criticise any particular foreign policy, and instead points out that no clear policy exists for the West”. The Licensee added that the debate “probed and questioned the motives and actions those involved in the conflict” and that “the outcome of the programme was to deplore the effect of all parties' conduct on the international legal order”.
- “the media’s role in interpreting the event” – the Licensee acknowledged that the debate included “critical views of the media’s portrayal of the Syrian conflict”. It said that the presenter’s “most scathing criticisms are directed at the media”. It argued however that “[t]he criticism also addresses challenges of providing comprehensive reporting on a conflict in the absence of Western journalists”.
- “evidential gaps in actions taken by Governments” – TV Novosti said this was “widely-discussed” and was applied “in a general sense to all governments”.

The Licensee argued that alternative viewpoints, including those of the UK Government, “were provided on screen simultaneously while critical points were discussed” throughout the programme, by way of “rolling tickerline” and “banner”. For example, when statements were made that were

¹¹³ Rule 5.5 states “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole”.

¹¹⁴ The Licensee explained that “Mr Babich has worked for various media outlets for 25 years and is a frequent guest on the BBC, Al Jazeera and CNN commenting on international affairs and history. Mr Sleboda is a Moscow-based political analyst”.

"critical of the strikes" or when "Mr Lavelle criticise[d] Theresa May's comments", the following statements were displayed on screen showing UK Government and "other UK" viewpoints:

- *"U.S. on evidence of chem. attack: a lot of this stuff classified";*
- *"Theresa May defends Syria strikes in Commons";*
- *"Theresa May: Syria strikes were in national interest";*
- *"Theresa May: Diplomacy on its own not enough in Syria";*
- *"May: Strikes are response to alleged chemical attack in Douma";*
- *"Corbyn: Theresa May following Trump's Twitter diplomacy";*
- *"Opposition slams government for not consulting parliament";*
- *"Campaigners gather in Westminster against Syria strikes";*
- *"Chemical weapons watchdog OPCW in Syria to probe alleged attack";* and
- *"Pink Floyd star Roger Waters condemns Syria strikes".*

TV Novosti acknowledged that the viewpoints expressed in the programme were "predominantly not the views expressed by the Western Governments" but pointed to the host quoting "the British Prime Minister as saying that the bombing was 'A clear message to anyone who thinks they can use chemical weapons with impunity'". The Licensee also referred to statements made by the guests, including the following:

- *"From Washington we hear that they fired 105 cruise missiles of various sorts, some of them are most advanced, stealth ones and so on, that they say they've used. And all of them hit their targets. This is what we've heard";*
- *"The US claims that those were chemical weapons research facilities";*
- *"On the same day the French Defence Ministry issued a statement that all our missiles also hit their targets and we can pride ourselves on doing that";* and
- *"Trump...saying that Russia should prepare for 'nice, smart missiles,' that's not a threat. He is acting presidential. He has the support of the allies".*

In conclusion, TV Novosti submitted that the programme "maintained due impartiality". It said that it had "strenuously sought contributors who would convey a variety of views" but that in "the face of dozens of declined invitations from speakers who could have expressed British, American or Western views, it was...compelled to place heavy reliance on the use of headlines on screen so as to balance critical views". The Licensee felt that there was "no need to remind viewers that the UK had bombed Syria, and what reason the UK Government gave" because it was "all over the news, and the Prime Minister's speech and answers at PMQs were broadcast on RT". It added that the host emphasised that the purpose of the programme was to discuss views that do not receive coverage in the mainstream. TV Novosti therefore argued that: "Accordingly, these viewpoints are given

significant weight in the programme, whereas the mainstream viewpoint is given less focus as it is already reported broadly by the media".

Due impartiality in other programmes

The Licensee further submitted that the programme was broadcast on the day on which "the Prime Minister's statement on bombing Syria without consultation of parliament...was broadcast in full by RT as was some of Prime Minister's Questions". It added that the programme was transmitted several times, "both before and after her speech".

TV Novosti also said that the news bulletin directly preceding this programme included a video with a quote from the US Ambassador to the UN, who said that "*Russia may have tampered on the site of a chemical attack*" in Syria. In the Licensee's view, this statement reflected "the US and the Western allied position on events in Syria". It added that at the end of the same news bulletin, the presenter "explicitly signalled" that the upcoming episode of *Crosstalk* would be "*discussing a proxy war in Syria*".

Contextual factors relevant to this programme¹¹⁵

TV Novosti also cited various contextual factors that it considered relevant in this case:

- the conflict in Syria was "highly controversial" and it was well known that Russia was an ally of the Assad regime. The Licensee therefore argued that "given the Russian-centric position of the channel, it is not surprising that its perspective is given appropriate prominence" during the item;
- audiences were likely to be familiar with the format of *Crosstalk*, which is to have "a presenter adopting a provocative tone and asking challenging questions that leads to the informative and thought-provoking outcome seen in this particular programme". TV Novosti added that "taking what Mr Lavelle said out of context would make what he said appear biased when in context it was designed to and did elicit informative and balanced debate", and that Mr Lavelle's "distinctive style" may not appeal to all. It also said that the format was clearly sign-posted on the RT website and at the beginning of each episode when the presenter says "*Crosstalk rules, meaning you can jump in at any time you want and I always appreciate it*"; and
- "RT is broadcast worldwide, intended for viewers of many different cultures and political views, and it comments on world events from a Russian point of view". It referred to Ofcom's research which "demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience".

Preliminary View

Ofcom issued a Preliminary View that the edition of *Crosstalk* broadcast on 16 April 2018 at 20:30 was in breach of Rules 5.11 and 5.12 of the Code and invited TV Novosti's representations on the Preliminary View. The Licensee provided written and oral representations on the Preliminary View.

¹¹⁵ The Licensee referred to the various contextual factors that it highlighted in its representations on the 13 April episode of *Crosstalk* also being investigated by Ofcom, which it considered were relevant to this programme.

Response to Preliminary View

The Licensee made generally representations about factors common to all the Preliminary Views which are summarised earlier at pages 10 to 18.

In addition, in its written representations the Licensee disagreed with Ofcom's Preliminary View that it did not preserve due impartiality in this programme.

It acknowledged that neither of the two guests' views were supportive of the recent US led intervention in Syria and they, like the presenter, regarded that intervention as unjustified. It reiterated that all of its invitations to other individuals to appear on the programme had been declined and that it had no control over the views of guests who do agree to appear on the programme, who are clearly entitled to the views that they hold.

TV Novosti stressed that the Code does not require balance as a necessary element in due impartiality and emphasised the need, in the absence of guests offering alternative viewpoints, to consider whether the due impartiality requirements of the Code were met in other ways. Accordingly, it was essential to keep in mind the context of the programme and the following in particular:

- *Crosstalk* is not a news programme but is "obviously intended to be a political and highly polemical program reacting to news events, in which Mr Lavelle seeks to question and challenge the orthodox, mainstream media viewpoint on often well-known world events";
- Viewers would not expect this programme to present a mainstream set of views or adopt a neutral stance;
- Viewers would be likely to watch "precisely in order to gain a perspective on such events that is very different from that to be found on other channels", particularly in the context of a programme such as this concerning highly controversial events where the position of the Russian Government is manifestly different from the mainstream perspective (i.e. the widely reported views on Syria of the US, UK and France).

Taking these contextual points into account, TV Novosti argued that it had preserved due impartiality through:

- The use of captions to reflect alternative viewpoints. It said these "were particularly important in this specific broadcast" to promote alternative viewpoints in the absence of guests willing to contribute, and referred Ofcom to the "detailed reasoning" it had provided on this in its response of 6 June 2018. It contended that Ofcom's Preliminary View "effectively discounted" the captions, unfairly describing them merely as a "limited series of captions", when they were in fact relevant and did contribute to due impartiality being preserved;
- The material concerning the very recent events in Syria that it said was included in other programmes broadcast on the same day. In particular, it said that it had broadcast in full the Prime Minister's statement on the US led intervention, which included the Western allies' justification for it. It disputed Ofcom's Preliminary View that the other programmes were not "clearly editorially linked to this edition of *Crosstalk*". It argued that the expression "editorially linked" is not used in Rules 5.11 and 5.12 but, rather, comes from Rules 5.5 and 5.6 (which Ofcom had not identified as being applicable in this case) and is used there in the context of defining 'series of programmes taken as a whole'. It said that it was not possible on a rolling

news channel to link explicitly the content between pre-recorded programmes, such as *Crosstalk*, and news bulletins. It said that Ofcom's Preliminary View failed to explain how it believed this could or should have been overcome. It said that in order to give effect to Article 10 ECHR the Code the reference to "clearly linked and timely programmes" in Rule 5.12 should be interpreted widely in favour of broadcasters. Adopting that approach, the link between this programme and the news programmes was clear from the fact that they were obviously dealing with the same subject matter. Accordingly, viewers did not need an explicit link to be articulated between the various programmes; they would have been "well aware" "from a wide variety of media sources" of the justification for the attacks advanced by the US led coalition and Ofcom's approach on this was "entirely artificial".

In its oral representations on Ofcom's Preliminary View, the Licensee said that it relied on all its written representations, and in addition emphasised the following contextual factors

- the audience would be well aware they were watching a "highly polemic" current affairs programme on RT and would expect a different perspective from that of other channels;
- a number of programmes broadcast on the same day as *Crosstalk* also referred to the events in Syria, therefore these programmes should be considered linked to the programme in this case by virtue of the subject matter. That link need not be explicit, such as by something said by a presenter. As argued in its general representations, the Licensee also argued that the Code requires programmes broadcast before and after the programme in question to be considered when taking account of the relevant contextual factors; and
- Ofcom has made clear that it is an editorial matter for the broadcaster as to how it maintains due impartiality and, in this case, there was an absence of guests who were willing to appear on this programme to give an alternative viewpoint. Therefore, TV Novosti was of the view that "Ofcom should be very slow indeed to find that there is a breach on the basis that captions did not go far enough or were interspersed with views putting the other perspective".

The presenter of *Crosstalk*, Peter Lavelle, also made representations in response to Ofcom's Preliminary View. These representations are summarised in Ofcom's decision on the 13 April 2018 edition of *Crosstalk* at page 89.

Decision

Reflecting our duties under the Act¹¹⁶, Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.11 states that: "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".

Rule 5.12 states that: "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".

¹¹⁶ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>; and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

We acknowledged that the programme was made in the context of an ongoing, highly controversial issue, namely, the position of the US, French and UK Governments in relation to the conflict in Syria. We also took into account that the RT audience would expect to be given a Russian perspective on this subject.

In light of the above, and in line with broadcasters' right to freedom of expression and audiences' right to receive information (as detailed earlier in the general discussion on the statutory framework and freedom of expression and not repeated here), we considered it legitimate for the Licensee to broadcast a programme that examined and explored the decision of the US, France and Britain to carry out military strikes in Syria. However, to the extent that such a programme examined politically controversial matters, we considered that TV Novosti needed to comply with Section Five by ensuring that due impartiality was preserved.

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned matters of major political or industrial controversy or matters relating to current public policy.

The Code states that matters of major political or industrial controversy and major matters relating to current public policy will vary according to events, but these will generally be matters of political or industrial controversy or matters of current public policy which are "of the moment" and of national, and often international, importance, or are of similar significance within a smaller broadcast area.

The programme focused on missile strikes against various Syrian Government targets by the US, UK and France, in response to the alleged use of chemical weapons by the Syrian armed forces against civilians in Douma. The US, UK and France claimed that chlorine and, possibly, a nerve agent were released by the Syrians. The Syrian Government and the Russian Federation denied that chemical weapons were used and claimed that evidence was fabricated.

Discussion in the programme concerned possible reasons for the Western forces' military action and questioned the legality and justification for their decision; for example:

"It's only been a day or so since the US, along with Britain and France, attacked Syria... illegally under international law, there was no mandate from the United Nations Security Council to do this... I think it was a political attack, I think it was theatre..."

"...it almost has nothing to do with Syria. It has everything to do with Donald Trump looking for people to adore him"

"The UK...believe they have the ability to screen weapons of mass destruction and then unilaterally, outside the bounds of international law, attack everyone they want..."

“Macron is facing one of the biggest strikes in French history, so he probably had the only real reason to deflect attention...”.

We considered that the position of the UK, US and France on the purported use of chemical weapons by Syrian forces and their decision to respond militarily were subjects of intense debate and political controversy both in the UK and internationally, and were of both national and international importance.

For these reasons, we considered that the programme was concerned with matters of major political controversy and major matters relating to current public policy, and the Licensee was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code.¹¹⁷

The preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on these matters. The Code makes clear that “due” means adequate or appropriate to the subject and nature of the programme. “Due impartiality” does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content and the extent to which the content and approach are signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

We took into account the arguments that the Licensee had made about relevant contextual factors in this case. The programme was broadcast on a channel that, as TV Novosti said, aims to: “make available an alternative point of view on world events”, “cover stories overlooked or underreported by the mainstream media”, and acquaint “international audiences with a Russian viewpoint on major global events”. We also took into account the Licensee’s representations that “audiences were likely to be familiar with the format of *Crosstalk*”, described as a “political and highly polemical program[me] reacting to news events with a variety of opinions”, and the presenter Peter Lavelle’s “provocative” style of mocking and ridiculing particular views when appropriate. It described *Crosstalk* as “intentionally position[ing] itself as an alternative to the western media echo chamber” in order to “question narratives about politics and current affairs principally found in the western world” and hold governments, politicians and the media to account. TV Novosti also relied on the fact that Mr Lavelle “wear[s] [his] politics on [his] sleeve for all to see” and that viewers would have been aware of his political standpoint and will recognise he holds “very strong views on many topics”. The Licensee also argued that audience expectations were “shaped” by its editorial approach and viewers therefore “turn to RT exactly for the reason that it does not resemble the approach of British national broadcasters”, as they “want to hear the Russian point of view from a Russian channel, unfiltered by a British broadcaster”.

¹¹⁷ The Licensee also made representations questioning why Ofcom considered Rules 5.11 and 5.12 to be applicable in this case, when in the past we had applied Rule 5.5 to broadcasts which dealt with the Syrian conflict. We have responded to this point in our decision on the 13 April 2018 edition of *Crosstalk* at page 91 and do not repeat this reasoning here.

We have taken a number of contextual factors into account in considering the broadcaster's and audience's Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, we acknowledged that viewers were likely to expect programmes on the channel, including *Crosstalk*, to address controversial issues, and to do so from a Russian perspective. We also acknowledged that it was likely to have been in line with audience expectations for programmes such as *Crosstalk* to comment critically on various political issues and to robustly challenge what could be seen as the Western perspective on such issues, including in this case the policies and actions of the US, UK and French Governments on the Syrian conflict. TV Novosti argued that as the dominant narrative was widely disseminated by most if not all other media outlets/broadcasters, it was not necessary for *Crosstalk* to repeat that perspective explicitly.

However, as we mention earlier in our general discussion on the statutory framework, the Code requires due impartiality to be preserved on matters of political and industrial controversy and matters relating to current public policy. In particular, when dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters are required to take additional steps in order to preserve due impartiality, namely to reflect an appropriately wide range of significant views and to give those views due weight.

At the start of the programme, the presenter made his position clear, saying that:

"the US-led attack on Syria is a gross violation of international law".

"Western public still have not been presented with evidence the Syrian Government used any chemical weapons".

"a new phase of the Syrian proxy war has needlessly been opened up. Another war of choice".

At no point in the programme did either guest challenge these views. The remainder of the programme focused primarily on views critical of the position of the Western states on the purported use of chemical weapons by Syrian forces and their decision to respond militarily. In addition to material critical of individual countries and their leaders (examples quoted above under "Application of Section Five of the Code"), such statements included more general criticism; for example:

"The attack seemingly before any investigation by international inspectors was to take place, seemingly was designed to curtail that".

"It has to be said again, this was against both international and domestic law".

"...the biggest fatality in all of this is watching the US, Britain and France, the way they dance on the global stage, with impunity".

In light of the largely aligned views presented by the host and guests on this matter, which included criticism of the UK, US and France, we considered whether, as required under Rule 5.12, an appropriately wide range of significant views were included and given due weight in the programme. As highlighted in Ofcom's Guidance on Section Five of the Code, the broadcasting of highly critical comments concerning the policies and actions of, for example, any one state or institution, is not in itself a breach of due impartiality rules. It is essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical. However, as envisaged by section 320 of the Act – which is given effect by Rules 5.11 and 5.12 – a broadcaster must maintain an appropriate level of impartiality in its presentation of matters of major political controversy. Given the nature and amount of criticism of the Western states' position and their decision to carry out air strikes in Syria, we would have expected an alternative viewpoint on the issue to be appropriately reflected, such as the UK, US and France's justification for their military action¹¹⁸. The Licensee itself acknowledged that "[a]n appropriately wide range of significant views would include international views on the Syrian conflict, including those held by the UK, France, and the US".

In relation to TV Novosti's reference to the "prominent theme" of a "lack of clear policy on the Syrian conflict", we accepted that critical views of the military strike carried out by the US, UK and French forces (examples cited above) extended to some extent to Russia, for example:

"There was an agreement between Russia not to fire at the cruise missiles...There's a lot of problems with this though that I criticise the Kremlin for. One it sends a signal to all of Russia's allies that Russia is not willing to defend you from a direct US attack, even if Russia has troops based legally in your country. Second of all, it maintains this ability of the US to attack unilaterally without any response".

We also accepted that the programme included "critical views of the media's portrayal of the Syrian conflict", when discussing "[its] role in interpreting the event", and that "[such] criticism also address[ed] challenges of providing comprehensive reporting on a conflict in the absence of Western journalists"; for example:

"...the one thing that the Western media will never tell you is who was in control of Douma. This is the Saudi-backed, literally head chopping Wahabi jihadists of Jaysh al-Islam¹¹⁹, literally they call themselves the Army of Islam. This was who is in control of Douma, right, and they were, there's no Western journalist on the ground with them of course, there's a couple of local gongos paid by the US Government...the Syrian-American medical society, this is like saying the Muslim Brotherhood, right?"

Ofcom further took into account TV Novosti's view that "evidential gaps in actions taken by Governments" were "widely discussed" and were "applied in a general sense to all governments".

However, in Ofcom's view, the fact that the programme raised issues tangential to the position of Western states on the purported use of chemical weapons by Syrian forces and their decision to respond militarily (for example: Russia's purported agreement not to respond to such actions; media portrayal of the Syrian conflict; and the issue of suggested "evidential gaps" in relation to all governments' actions in relation to Syria), was not sufficient to ensure an appropriate range of significant views were reflected on the issue of the missile strikes by the UK, US and France in Syria.

¹¹⁸ Ofcom's Guidance explains that 'significant views' could include the viewpoint of nation states whose policies are considered to be 'major matters' (paragraph 1.58).

¹¹⁹ An Islamist faction involved in the Syrian civil war.

We also took into account that the Licensee accepted viewpoints expressed in the programme were “predominantly not the views expressed by the Western Governments”. However, it highlighted the following references as exceptions:

- the British Prime Minister saying that the bombing was “*a clear message to anyone who thinks they can use chemical weapons with impunity*”;
- claims made by the French Defence Ministry and Washington that their missiles hit their targets and from Washington that the targets were chemical weapons research facilities; and
- Donald Trump “*saying that Russia should prepare for ‘nice, smart missiles,’ that’s not a threat. He is acting presidential. He has the support of the allies*”.

In Ofcom’s view, these statements, taken in context, did not provide effective challenge to the criticism of the Western countries’ decision to take military action in Syria. They did not present an alternative view on this matter in an objective or impartial way, but rather were used to bolster the host’s and guests’ criticism of this decision, as was the material cited by the Licensee as being representative of the programme’s “prominent themes”, quoted above. For example:

- The presenter’s reference to the British Prime Minister’s statement was immediately followed by: “*Well who is behaving with impunity right now? This is destroying international law, the United Nations, I mean you even had a member country saying why is there even any votes on these resolutions anymore, because we know that it’s not going to go anywhere*”;
- The claims made by the French Defence Ministry and Washington regarding how many missiles hit their targets were contrasted with conflicting claims from the Russian government and other individuals;
- The guest’s reference to Donald Trump’s comment that Russia should prepare for “nice, smart missiles” was accompanied by quotation marks gestures, and then immediately followed by the comment “*That tells you a lot about Europe*”, with which the presenter agreed, saying “*That says a lot about Europe and the West in general*”.

We also took into account that TV Novosti said it had “strenuously sought contributors who would convey a variety of views” but “in the face of dozens of declined invitations from speakers who could have expressed British, American or Western views, it was...compelled to place heavy reliance on the use of headlines on screen so as to balance critical views”, and that it could not “control the views of those guests who do agree to appear on the programme” who “are clearly entitled to hold the views that they do”. Ofcom acknowledges the challenges that broadcasters can face obtaining contributions in certain circumstances. However, as Ofcom has made clear on numerous occasions, where an alternative viewpoint is needed to maintain impartiality, inviting contributors to participate who then refuse to do so is not sufficient to preserve due impartiality¹²⁰. A broadcaster is responsible for the views that are presented during a given programme. If a broadcaster cannot obtain an interview or a statement on a particular viewpoint on a matter of political controversy, then it “**must** find other methods of ensuring that due impartiality is maintained” (emphasis added)¹²¹. The Guidance gives examples of a number of editorial techniques which a broadcaster

¹²⁰ See paragraph 1.36, at: https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf

¹²¹ See footnote 20.

might consider employing, where alternative views are not readily available, to preserve due impartiality¹²².

The Licensee described the format of *Crosstalk* as “a presenter adopting a provocative tone and asking challenging questions”. A presenter reflecting alternative viewpoints by posing challenging questions is one technique which can contribute to the preservation of due impartiality. In this case, we did not consider that the presenter sufficiently countered or challenged the views expressed by the guests.

We also considered the use of captions or banners in the programme. We took into account the Licensee's argument that it had relied on previous Ofcom guidance “that one way of presenting the alternative view is in the form of graphics”. TV Novosti considered that alternative viewpoints, including those of the UK Government were displayed on screen simultaneously while critical points were discussed.

Graphics or captions are editorial techniques which can contribute to the preservation of due impartiality. However, as we made clear in our December 2016 *Crosstalk* Decision¹²³ involving TV Novosti, Ofcom emphasised that whether graphics or captions do in fact maintain due impartiality in any specific programme will depend on all the relevant circumstances, such as the duration and nature of the programme and of the matter of political controversy, and the presence of any other factors in the programme which may contribute to helping to maintain due impartiality. We caution broadcasters against assuming that they can preserve due impartiality where required by solely or largely including graphics and captions. This is because, depending on the circumstances, captions or graphics may not enable sufficient weight to be given to an alternative view. Further, when ensuring that matters of major political and industrial controversy and major matters relating to current public policy are treated with due weight, we consider that the relative size and prominence and limited content within on-screen captions and graphics will make it significantly more difficult for broadcasters to comply with Rules 5.11 and 5.12. This is particularly the case if the broadcaster is seeking to preserve due impartiality where required by relying solely or largely including graphics and captions.

We considered whether the use of captions or banners contributed to the preservation of due impartiality in this case. There was a limited series of captions containing “headlines”, such as “*U.S. on evidence of chem. attack: a lot of this stuff classified*” and “*Theresa May defends Syria strikes in Commons*”. These were interspersed with captions that reflected further criticism of the UK's position, such as: “*Opposition slams government for not consulting parliament*”; and “*Campaigners gather in Westminster against Syria strikes*”. In our view, given the context in which they were used in the programme, the fact that they were not given any particular prominence or weight within the programme, and taking into account the fact that the subject was a matter of major political controversy, we considered that the captions were not sufficient to reflect the viewpoint of the Western countries involved in the military intervention with due weight.

¹²² See paragraphs 1.60 and 1.37, at:

https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf. We have explained above why we do not consider that the editorial techniques employed by the broadcaster in this case were sufficient to ensure due impartiality was maintained.

¹²³ See Ofcom's Decision on *Crosstalk*, issue 319 of Ofcom's Broadcast and On Demand Bulletin, 19 December 2016, at: 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

For the reasons set out above, and having taken careful account of the relevant contextual factors discussed above, in our view the viewpoints of the US, UK and French Governments were not adequately represented within this programme and the programme had not included and given due weight to an “appropriately wide range of significant views” (Ofcom’s emphasis).

Due impartiality in clearly linked and timely programmes

Broadcasters may comply with Rule 5.11 and 5.12 by ensuring due impartiality is maintained either in each programme “or in clearly linked and timely programmes”. We next considered whether such views were included in clearly linked and timely programmes and given due weight.

We acknowledge the challenges that can be faced by rolling news channels in ensuring compliance with the Code. However, as discussed earlier in the general contextual factors, television services such as RT cannot preserve due impartiality by relying on what is broadcast across their service as a whole¹²⁴. It is possible for television services such as RT to preserve due impartiality, in the context of Rule 5.12, in clearly linked and timely programmes. However, because it cannot be guaranteed that a person watching one programme will have been watching the programme that precedes it or follows it, the broadcaster must take steps to ensure that the two programmes are “clearly linked”.

Therefore, even if other programmes that have been broadcast do deal with the same subject matter and contain relevant alternative viewpoints, these contextual factors alone are not sufficient to ensure that due impartiality is preserved, particularly where the matter concerned is a major matter within the scope of Rule 5.11 and 5.12. This is because without an explicit link, viewers may not be aware of the other programmes. We acknowledge that there may be particular challenges including explicit links to other programmes in pre-recorded content. However, we do not consider these challenges are insurmountable. For example, broadcasters could include links to other programmes in a continuity announcement broadcast over the end credits of the pre-recorded programme or in a prominent caption or slate superimposed over the pre-recorded content. We would expect such a link to include a reference to the fact that the linked programme deals with the same matters as the programme in question.

In this case, the Licensee said the programme was broadcast a number of times before, after and on the day of “the Prime Minister’s statement on bombing Syria without consultation of Parliament”, which it said was “broadcast in full on RT as was some of Prime Minister’s Questions”. We also took into account that TV Novosti said the news bulletin directly preceding the programme had included a video in which the US Ambassador to the UN said that “*Russia may have tampered on the site of a chemical attack*”, and that, at the end of the bulletin, the presenter “explicitly signalled” that the upcoming episode of *Crosstalk* would be “*discussing a proxy war in Syria*”.

We did not consider the programmes cited by TV Novosti were clearly linked to this edition of *Crosstalk* within the meaning of the Code. There was no material included in this edition of *Crosstalk* which referred to, and so potentially linked it to, any other RT broadcasts, including the preceding

¹²⁴ As we made clear in our December 2013 *Syrian Diary* Decision (see https://www.ofcom.org.uk/data/assets/pdf_file/0025/45745/obb244.pdf), due impartiality can only be preserved across a whole service in the case of non-national radio services. Specifically, section 320(1)(c) of the Act requires: “the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on...matters [of matters of political or industrial controversy; and matters relating to current public policy]”. Section 320(4)(b) states that the requirement contained in section 320(1)(c) “is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole”.

news bulletin to which the Licensee referred. This meant that any viewer who had not watched, for example, the preceding news bulletin would not have been aware of any alternative viewpoints on which TV Novosti was seeking to rely for the purposes of preserving due impartiality, which was particularly significant in the context of a programme which concerned major matters of political controversy. We considered that the other RT programmes referred to by the Licensee simply reflected developing news stories of the day.

Given the above, we did not consider that TV Novosti had reflected, and given due weight to, an appropriately wide range of significant views in clearly linked and timely programmes.

In this case, we have taken careful account of the broadcaster's and audience's rights of freedom of expression and all the relevant contextual factors. For all the reasons set out above, Ofcom's decision is that the Licensee failed to include and give due weight to, an appropriately wide range of significant viewpoints in relation to the relevant matters of major political controversy and major matters relating to current public policy dealt with in the programme.

Breaches of Rules 5.11 and 5.12

In Breach

Crosstalk, 20 April 2018, 08:30

Introduction

During monitoring, we assessed this episode, in which the presenter Peter Lavelle ("PL") and his guests discussed the dynamics of the ongoing conflict in Syria, and specifically US foreign policy in Syria.

At the start of the programme the presenter, PL said:

"US President Donald Trump says he wants American troops to leave Syria. The foreign policy blob surrounding him says differently. So, what are exactly Washington's goals in Syria? Partition? War for war's sake? Or a means to sticking it to Iran and Russia? All are poorly thought out options".

The presenter was then joined by video conference by three guests: Gareth Porter ("GP"); an independent investigative journalist and historian; Danny Makki ("DM"); a Syria commentator and co-founder of Syrian Digital Media Group; and Mohammed Cherkaoui ("MC"); Professor of Conflict Resolution at George Mason University and author.

In the programme, the issue of US foreign policy towards Syria was discussed as follows:

- PL: *"Danny let me go to you because I know you've just come back from Syria, so you have a good feel for the lay of the land here. I asked in my introduction, just exactly what do you think Washington's goals are because I guess it depends on who you ask in Washington these days. Go ahead Danny".*
- DM: *"Absolutely, I mean Washington has really had nothing of a coherent strategic policy in Syria for many years, it's not just now. I mean we've had four/five years of Washington saying they've wanted to take the lead from behind, not really understanding exactly where it's going with its strategy. This has been really, really shown by the last events, over a hundred US tomahawk missiles striking different Syrian military targets, while I was in Damascus, for that matter. And at the end of the day, three or four hours later you've got pro-Assad protests within Syria and jubilation on the streets because they know Washington will not achieve their policy of regime change and that this is purely a symbolic slash limited strike¹²⁵ on different military targets. But it doesn't come with a package, there is no package at the moment. There is no clear consensus over what the US wants to do in Syria, it's just bits and pieces and if you read between the lines, what you've got is an administration where you sense a lot of people want to leave Syria, Trump really doesn't know what he wants, it's all up in the air, and if I was America's allies at the moment in the region, especially Saudi Arabia, I would be very worried over what the US wants to do in Syria".*
- PL: *"You know Gareth, you know, maybe this is by design because there is no real reason for the United States to be in Syria, actually it is there illegally under international*

¹²⁵ This appeared to be a reference to the missile strikes, carried out on 14 April 2018, by US, UK and French military forces against various Syrian Government targets.

law. I also said in my introduction is this just a means of policy wedge, a tool to stick it to Iran and the Russians?"

GP: *"Well at one level you could say that it's all of the above because there are people within the national security bureaucracy who hold those goals, but at the same time there has been, as Danny just said, there has been no coherent strategy, there's been no agreement on what US policy should be, what US strategy should be for many years and beginning with the original decision to intervene on behalf of the armed opposition to Assad, back in 2011, when the President himself, when President Obama, knew very well that he didn't really want to do it, he felt that this was getting into another sort of Afghanistan type intervention which could not turn out well. He made that argument, we know, repeatedly over the next couple of years and at the same time you had Hillary Clinton and David Petraeus¹²⁶ and others in his administration pushing for a much more aggressive policy. That's been the pattern now for years. Now today you have Trump, as everyone knows, really expressing repeatedly the desire to get out of Syria and to have a very strict time limit on the war against ISIS and the military saying no we can't do that, and others in the administration clearly not in sympathy with it. And so there's a kind of uncertainty about how that's going to play out. If you look at it in the larger picture of geopolitics you know that, basically, the President of the United States and the President of Russia are both not interested in having a war continue in Syria and I think that that ultimately is going to play a big role in how this plays out in the next year".*

PL: *"Yeah, let's see how this plays out. Mohammed let me go to you in Doha, it seems to me one of the reasons why the US is staying there. First of all, it doesn't like the current conditions and it wants to be a power broker, it wants to be part of some kind of settlement and it, always, it wants to make sure it's a settlement it wants. So, it's still kind of hedging its bets for regime change. I'm sure that there's pressure from the Saudis and the Israelis to stay there as well. But it all ties together, is – it is really incoherent, and we have these situations where we have these false, as far as I'm concerned, it was a false flag operation with this chemical weapons attack. I mean, I guess a lot of the regional players have to be very worried about what the US is going to do because it doesn't know what it wants to do. Go ahead, in Doha".*

MC: *"Well apparently there have been mixed signals coming from the White House, in particular, and I think there is no disagreement that President Trump lacks a coherent strategy or an after-attack plan how to sustain their presence or how to sustain the impact of the US foreign policy in the Middle East. The recent attacks in Homs and Damascus have been ridiculed because he raised the expectations very high by condemning the red line of his predecessor Barack Obama in 2013. So far I think Trump has entrapped himself in the very same position like Obama and his lack of effectiveness on the field has turned the United States into a joke now and I think now the Iranians are smiling, the Saudis are bewildered and most of the governments here are asking, what's next? and I think that this is a \$64,000 question".*

PL: *"Yes and I will add one more perplexity to all this Danny, is Turkey. OK the US, it won't cut the Kurds loose, this drives the Turks mad, OK, and I've said repeatedly, the Turks are in Syria illegally under international law, however I do understand their concern. I can see from their position about their security issues vis-à-vis the Kurds, I*

¹²⁶ Director of the CIA from September 2011 to November 2012.

understand it, I don't necessarily agree with it. But really what is at stake here is, not only is there ambiguity coming from Washington, there is very serious danger to NATO unity and it is being played out on the ground. Talking about red lines, I don't see the Turks backing down, at all. Go ahead Danny".

DM: *"The Turks won't back down and that's for one primary reason, they believe they have some sort of historic right to the north of Syria and they've been led that way through the actions of the United States of America. If you look at the situation now between Turkey and the Kurds, and Turkey and Northern Syria, you've got the start of another very, very, very long war. I don't think this will end anytime soon, and what the US has got out of all of this is actually that it is a very weak ally. The moment one of its allies faces a problem, or faces danger, the US just ups and leaves and pretends like nothing has happened. And the Kurds only went to the Russians and gone to Assad, because they feel that the US has betrayed them, because the US just left them. They allowed Turkey to literally eat up all of this Kurdish territory in the North of Syria. Now what we're seeing in the whole country, which is very different to how the previous situation was, it's a war of peripheries now, if you look at it. The only areas where there's conflict and there's tension is border areas, between Syria and Turkey, Syria and Iraq, Syria and Lebanon, Syria and Jordan. The centre of the country has been re-taken because of the Russian intervention in 2015, and now we go back to that huge intervention, without Russian intervening we wouldn't have this situation today, and the US are only acting out of envy because they want to be in Russia's position. Russia today, sorry Russia over the previous weeks, has broken a number of agreements for rebels to leave a number of areas around Damascus and Qalamoun, while the US is looking onwards and striking one or two military targets, in a very vague attack, which ultimately didn't really, if Syria had chemical weapons ability those strikes would not have affected it because Trump essentially gave them a weeks' notice by posting it on Twitter. So, this is the way that the US is running its wars these days, by Trump's tweets!"*

PL: *[Laughing] "And this is something he said he would never, ever, do. One of his first press conferences he said, I will never tell you what I'm going to do, and then he telegraphs it. But Gareth, he did that on purpose because he knows he's painted himself into a corner and his advisors are making sure that he doesn't have any manoeuvre room, so that's why you throw these missiles at them. I've heard a dozen different versions about how many of them made their target, how many of them were shot down and how many of them didn't work, OK. I don't know, OK, but the American version doesn't stand up to much scrutiny, from what I can tell. Go ahead, Gareth, it was just political theatre, it wasn't actually a military strike, it was political theatre. Gareth".*

GP: *"I couldn't agree more on that point and, you know, if you actually read the morning briefing that was given at the Pentagon after the night that the strikes took place, it was an amazing performance, in the sense that, you know, the people doing the briefing absolutely would not answer questions—"*

PL: *[interrupting and laughing] "I know".*

GP: *"—that had to do with, for example, you know, did you actually do any air sampling to find out if when you hit this supposed place where they were making chemical weapons, that there was any problem of affecting the air of the people surrounding*

it?, and it's clear that they hadn't done it and that they couldn't basically say what the consequences were of the target they hit and I think what that means is that they really didn't have any information that that was a place where they were producing those kind of chemicals".

PL: *"Of course they didn't".*

There was then an advertisement break. After the break, the discussion continued as follows:

PL: *"Ok, let me go back to Mohammed in Doha. Nikki Haley¹²⁷, she says she's not confused, I think she's confused all of the time. She made it very clear that the US presence in Syria is aimed at Iran, she was very clear about that. Of course, people in the White House didn't like her saying it, but she said she's not confused. Is this really what it's really all about? Is it because of the political, the status quo in Syria, where other actors are creating political facts and the US is just occupying. Is, are they really turning in a different direction, is this really what it is all about? Is focusing in on Iran?"*

MC: *"Well, I think that Nikki Haley is not the only US official in the Trump administration who is confused –"*

[PL laughs]

MC: *"–or doesn't know how to paraphrase the intentions of Trump and I think now that we are at the situation that is a combination of performative politics à la Trumpism, if we can say it that way, and also piecemeal tactics whenever Trump runs into problems he has to figure out the theatrics of politics in front of the cameras. The difference between what is said in front of the cameras and what is done, or executed, in the field, in particular in Syria, is huge. And I think now we have been talking about the rise of anti-Americanism, I think now we have to pay attention to something new – the waning confidence in Washington by Middle-easterners and now it becomes like this great power that has lost its focus and also, probably, Trump has put so much on his plate that he can't handle now. We have the future escalation next month with Iran and the nuclear deal and we have the upcoming summit with the North Korean leaders, so much to deal with and I think now Trump has probably lowered the expectations of the public in this region of the world by embracing so many adventures, and then he cannot deliver much. What the main concern is about if Trump and the Kremlin loses their grip on both the Iranians on one hand and the Israelis on the other hand, that's when it's going to be a messy joke and I don't think that Trump will be able to figure out what to do next".*

PL: *"Danny, Mohammed brought up a really good point because there's so many festering issues, particularly in the Middle East and on a broader scale with North Korea. The US doesn't have grasp on the situation. One of the things I have noticed with this administration is that there's so many war hawks, so many military people, and then you have Pompeo¹²⁸ coming in, not exactly a man of great tact in diplomacy. What we really need now, and I mean this for all players, because my primary issue is peace and having peace settlements, okay. You're going to need a*

¹²⁷ US Ambassador to the United Nations.

¹²⁸ Mike Pompeo, US Secretary of State.

lot of finesse, you're going to need a lot of patience and, to date, this administration doesn't exhibit any of the above. Go ahead, Danny".

DM: *"Well, I would just like to bring you back to the moment when, the initial disagreement between the Russians and Trump started, and Trump issued the tweet and the response of the Russian foreign ministry was that, we don't participate in Twitter diplomacy. Now, you can bring this back here because the main problem is the policy, it's not just the people, you need finesse, you need that class of managing to find agreements. Obama managed to do it with the Iranians for sure. But the Americans don't have a policy, that's the problem. You've got Trump who's just discussing leaving Syria, and then within the next couple of days he sets another red line. And then he begins to make threats of attacking Syria after an alleged chemical weapons attack, which wasn't verified internationally, and he chose to strike Syria on the same day that the UN chemical weapons inspectors arrived to investigate the scene. So, from that perspective, you've got a leader who's acting in a very confusing way, who's misleading himself, his administration and his allies and who essentially doesn't know what to do in Syria longer than this week. So, what Syria needs at the moment is an international agreement to be reached, but is Trump the person to deliver that agreement, that consensus - absolutely not! If I was sat in Moscow's position now I would be very wary with having to negotiate or deal with Trump on any matter, not just Syria for that matter, because in Trump you're dealing with an individual who is so unpredictable, who has such a lack of understanding of the situation that all you have to do is bring up his tweets from 2013 ridiculing Obama, who didn't act in Syria, to understand that the guy has completely gone against every one of his statements. I mean, as one of the commentators said, you know, 'There's a Trump tweet for every occasion'. So, if you look at the situation now, you've got—".*

PL: *[Interrupting] "I wish that weren't funny, but it is. Okay, I shouldn't laugh, because it's such situations of great gravity here. Let me go to Gareth here, 'cos you know, both Mohammed and Danny bring up really good points there. I mean next month I guess we're all anticipating it, that Trump's going to withdraw from the Iran deal, OK. At the same time he wants to make a deal with the North Korean's, I mean and then, the US is stubborn, and actually it works as a negative force in Syria, it doesn't allow for a peace process to move forward. Any time that peace could possibly break out in Syria, well Ash Carter¹²⁹ comes around and bombs, okay. Or just when a major city is liberated from terrorists, supported by foreigners, oh, we have a chemical weapons attack here. So, I mean, on every single scale there's no reason to be optimistic here and one does influence the other, these situations are interconnected. Go ahead, Gareth".*

GP: *"Well, of course, they are interconnected in the sense that the North Koreans are constantly looking at what the United States is doing elsewhere in the world, to assess, you know, how to deal with them in terms of trying to negotiate a settlement, which they've been trying to do for three generations of the Kim family. So, that is entirely, that's centrally important to their calculations. I think that it's very important to understand that Kim Jong-Un does indeed intend to bring about a comprehensive solution with Trump, if it is at all possible. This has happened primarily, I would argue, because of President Moon of South Korea's patient*

¹²⁹ Ashton Carter, US Secretary of Defense, February 2015 to January 2017.

diplomacy with the North and with Trump. Clearly Moon has been very clever in appealing to Trump's sense of vanity, making it possible for Trump to say I'm the one who's made this possible and It couldn't have happened without me. As long as Moon is able to carry on that diplomacy with Trump, I do have some hope for these talks really succeeding. But, of course, we have John Bolton¹³⁰ whispering in Trump's ear—".

PL: [Interrupting] "Oh yeah".

GP: *"—trying to convince him to do something different and that is the fly in the ointment, to say the least. But definitely I think that Trump is now moving in the direction that is hopeful on peace with North Korea, and that is quite an astonishing turn of events, even more astonishing, I must say, than Nixon going to China".*

PL: *"Let me go back to Doha. Mohammed, one of the things I think is very interesting is, I mean we had the North Korean leader visit Beijing recently. We had Pompeo actually, the state department designate, had a meeting with the leadership of North Korea. I get this strong feeling, and I don't see Western analysts looking at it this way, the trip to China wasn't begging, it was 'I've got an idea and do you back it' and I think it's going to be, and this is going to be the true test of leadership. Is it denuclearisation? Yes. America must withdraw its military completely from the peninsula, that is actually a good idea, with Chinese and Russian guarantees, okay. The American deep state, the blob, will never ever under any circumstances buy that deal, though it would be a good deal. Go ahead, Mohammed".*

MC: *"A month ago I was very optimistic about the next summit between Donald Trump and Kim Jong-Un, and I thought they would achieve a breakthrough. But having reflected on Trump as a conflict analyst, from my perspective, I am kind of confused because when I consider him a pragmatist or realist, he is not good at waging wars and this is the second attack on Syria and Assad may go back and use the chemical weapons once again. So, there is no pragmatism in the way that Trump handles his decision of going to war. At the same time, when I consider him a dealmaker, I don't see him as an innovative leader who can engage in deal making. So, he is everything but being a pragmatist, so now my fear is that we will witness a huge kind of media event that will focus on the things around the ego of Trump on the one hand, Kim on the other. And because of this inflated ego politics, we may not witness what we are looking for – a little major, or a little significance in events on the agenda. So, I think now that the ball will go back into the court of the Chinese. I think that if there is any balance in power between North Korea and the United States, it is what Beijing can do. Otherwise, if it is left to Trump and Kim I don't see any progress coming too".*

PL: *"Ok, I'm going to finish with Danny, and I'm going to give you a situation Danny. With the situation with the Iran deal and North Korea, this is how it's going to be. Trump comes out and says, we want a deal and sitting right next to him is John Bolton, and he says to the Iranians and North Koreans, all you have to do is surrender and everything will be fine, OK? That's how it's going to play out. Ok, 40 seconds to Danny, finish up".*

DM: *"It is more likely that it will play out that way, but in essence what the fundamental flaw in Trump's Syria action was, which will lead to huge problems in the future, was*

¹³⁰ US National Security Advisor since April 2018.

setting a precedent and saying he was going to stick by it. Now, any whiff of an idea that chemical weapons might have been used and he will be under immense pressure internally to strike Syria again. If he does attack Syria again, who knows the next time what kind of a response there will be from the Russians, from the Iranians, from the Syrians and you've got to remember there are US troops on the ground, in Syria, who for the short part, apparently the Saudi Arabian troops are going to go in now and replace them so you've got this policy which is up in the air but Trump has set a very dangerous precedent now in Syria".

Peter Lavelle then concluded the discussion and the programme ended.

Throughout the programme a number of captions were repeatedly broadcast. The only one of these that referred to Syria was the following:

"Russian TV Channel interviews boy seen in White Helmets chemical video".

It was Ofcom's view that the programme was dealing with a matter of major political or industrial controversy and major matters relating to current public policy, namely, the policies and actions of the US Government in relation to the ongoing conflict in Syria.

We therefore considered that this programme raised issues warranting investigation under the following rules:

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".

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".

We asked the Licensee how the programme complied with these rules.

Initial Response

General

The Licensee made several "background points" about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10.

The applicability of Rules 5.11 and 5.12

The Licensee made the following specific submissions on how the relevant programme complied with the Code.

At the outset, TV Novosti questioned why Ofcom applied Rules 5.11 and 5.12 in this case, when “in the past Rule 5.5¹³¹ was applied to programmes relating to the topic of Syria”.

Notwithstanding the above, TV Novosti made representations on how it believed due impartiality had been preserved in the programme.

Due impartiality in the programme

TV Novosti said that the three panellists¹³² featured in this episode, Gareth Porter, Danny Makki and Mohammed Cherkaoui, each brought “different perspectives to the programme and each contribute a different viewpoint”. Although the Licensee said that it had sought the participation of a number of other panellists for this programme they “either failed to respond to RT’s offer at all or declined to participate”. TV Novosti recognised that this fact did “not absolve it from the requirement to ensure due impartiality is maintained in the programme” but considered it did “demonstrate RT’s efforts to maintain due impartiality”.

The Licensee described the debate in this programme as focusing “on the central theme of the aim and conduct of US policy in Syria, and how this impacts other US foreign policy issues”. It said that “one of the main problems in ensuring impartiality in presentation of that policy is, as participants in the programme point out on numerous occasions, and as is a major theme of the discussion, is that US foreign policy in Syria is in many respects – not least in its strategic aims – unclear”. TV Novosti added that this created difficulties when producing programmes about Syria as “not only have recent US administrations appeared to have different foreign policy aims in Syria and carried them over time, but there are well documented disagreements and differences of opinion within the current administration of President Trump”. The Licensee said that Mr Makki addressed this point by saying:

“You’ve got Trump who’s discussing leaving Syria and then within the next couple of days he sets another red line...”

TV Novosti also argued that “with President Trump regularly making comments on Twitter on foreign policy matters which sometimes appear to contradict statements and remarks by others in his government or even himself, it is challenging for broadcasters to work out what the alternative viewpoint or ‘significant view’ of the US government is on foreign policy in Syria so that it can be featured in some appropriate way or given ‘due weight’”.

However, in so much as “the aims of US foreign policy were reasonably clear”, the Licensee considered that the US Government’s viewpoint was adequately reflected and given due weight so that due impartiality was maintained. It added that much of the discussion in the programme concerned “what the US foreign policy in Syria actually is, or may be, and is not criticism of it”. The Licensee considered there were three additional themes that ran throughout the debate.

¹³¹ Rule 5.5 states “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole”.

¹³² The Licensee explained that: “Mr Porter is an independent investigative journalist and winner of the 2012 Gellhorn Prize for journalism [and] a policy analyst specialising in US national security policy...”. The Licensee also said that “Mr Makki is a journalist and commentator on Syria” whose work has been published in “Open Democracy, The Sun, LA Times, Sofrep, Al-Akhbar and he has appeared on the BBC, France-24, Al-Jazeera English, Press-TV and numerous Arabic language outlets”. TV Novosti told Ofcom that “Mr Cherkaoui is Adjunct Professor at the School for Conflict Analysis and Resolution, George Mason University in Virginia, US”.

The Licensee described the first theme as “uncovering strategy applied by international powers”. TV Novosti said that the “US Government view on one key foreign policy aim in Syria is clearly stated by the host in the introduction to the programme” as follows:

“US President Donald Trump says he wants American troops to leave Syria”.

The Licensee considered that this statement “set out clearly and objectively” this aspect of US policy was a “key component to maintaining due impartiality within the programme”. It also considered that Mr Porter reflected the US President’s position by saying:

“Now today you have Trump as everyone knows really expressing repeatedly the desire to get out of Syria and to have a very strict limit on the war against ISIS. And the military saying ‘No, we can’t do that’”.

TV Novosti considered that these references gave “due weight to the US Government’s position on this issue as clearly defined by the US Commander in Chief” by reflecting a speech made by President Trump on 3 April 2018 in which he had said: “I want to get out. I want to bring our troops back home”.

According to the Licensee, the programme also reflected the US foreign policy position on the strategic purpose of the US military presence in Syria as set out by Nikki Haley, the US Ambassador to the United Nations. Mr Lavelle said:

“[Nikki Haley] made it very clear that the US presence in Syria is aimed at Iran. She was very clear about that”.

TV Novosti stressed that the “US viewpoint on these two aspects of its foreign policy in Syria is stated in both Parts I and II of the programme, ensuring that viewers who may have only viewed one of the two parts would be made aware of it”.

The Licensee acknowledged that “Mr Lavelle talks of US foreign policy in Syria as possibly being a ‘policy wedge, a tool to stick it to Iran and the Russians’”, but considered Mr Lavelle presented the US perspective in the following statement:

“And it [the US] wants to be a power broker, it wants to be a part of some kind of settlement. And always it wants to make sure it’s a settlement it wants. So, it’s still kind of hedging its bets for regime change. I’m sure there’s pressure from the Saudis and the Israelis to stay there as well”.

Further, the Licensee considered that the programme included some positive discussion of US policy in a global context, in particular on President Trump’s negotiations with North Korea. During the programme, Mr Porter said:

“As long as Moon [the President of South Korea] is able to carry on that diplomacy with Trump I do have some hope for these talks really succeeding...definitely I think that Trump now moving in the direction that is hopeful on peace with North Korea and that is quite an astonishing turn of events – even more astonishing, I must say, than Nixon going to China”.

TV Novosti said that the programme did include discussion about “the lack of consistency in US policy” in Syria. The Licensee considered that “in this context, an appropriate range of viewpoints would include commentary on what the current US Government’s policy on Syria actually is, and this

is indeed included...". TV Novosti said that "this analysis of the inconsistency in the US strategic approach to Syria is then applied, primarily in Part II of the programme to potential outcomes following President Trump's proposed meeting with Kim Jong-Un". In the Licensee's view, this was not criticism of US foreign policy and its actions in Syria but rather "speculation as to potential outcomes in light of the confusion surrounding US policy in Syria". It also considered the title of the programme ("*War without a goal?*") framed "the debate topic as a question, and throughout the programme the host ensures that questions are asked in an attempt to prompt discussion and clarify the US position".

The second theme identified by the Licensee was "geopolitical concerns" (i.e. "the position, interests, and concerns of different nations around the world"), which were discussed in general terms through the following statement:

"If you look at the larger picture of geopolitics, you know that basically the President of the United States and President of Russia are both not interested in having a war continue in Syria".

In TV Novosti's view, where there was criticism in the programme, this was "levelled not at US policy inconsistency but at multiple participants". For example, Mr Lavelle said:

*"...what we really need now, and I mean this **for all players**, because my primary issue is peace and having peace settlements, okay. You are going to need a lot of finesse, a lot of patience"* [emphasis added by the Licensee].

The Licensee described these comments as "stating that all participants in the Syrian conflict need finesse and patience, and not that these are attributes the US alone has or lacks". It added that this point echoed Mr Makki's remark that: "*You need finesse; you need the class of managing to find agreements*". TV Novosti therefore argued that: "As agreement requires parties to come together on a particular issue, Mr Makki was suggesting that parties other than the US also need finesse".

The third and final theme identified by the Licensee was the "different perspectives or narratives of the events in Syria, especially the influence of the media upon how the public perceives events". For example, Mr Cherkaoui said:

"The difference between what is said in front of cameras and what is done or executed in particular in Syria is huge".

Mr Cherkaoui was also "critical of how the media can disrupt the progression of a political party" as follows:

"Now my fear is that we will witness a huge kind of media event that pivots around the ego of Trump on one hand and Kim on the other. And because of ego, this inflated ego politics we may not see or witness what we are looking for – a little major or a little significance in advancing the agenda".

TV Novosti considered that these comments "reflected the programme's underlying theme of examining alternative perceptions of events which in turn examines questions of illusion and reality". It added that the comments were "not a broadcaster's criticism of a policy" but "the personal opinion expressed by a panellist in the course of debate aimed to elicit a range of opinions".

Due impartiality in other programmes

TV Novosti considered that *Crosstalk* is “integrally linked both in subject and content to the current news of the day”. The Licensee also considered that typically RT news presenters “make ‘a link’ or an ‘intro’ to the *Crosstalk* programmes which connects the news to *Crosstalk* and other programmes featuring RT’s current affairs output”. The Licensee said that the US position on the Syrian conflict was referred to within news items broadcast on the same day as *Crosstalk*, including those shown immediately before and after the *Crosstalk* episode. In TV Novosti’s view, by including additional material “in timely linked news bulletins, RT ensured that a wide range of significant viewpoints were included and given due weight, and that due impartiality was preserved”.

Contextual factors relevant to this programme

The Licensee also cited various contextual factors that it considered relevant in this case:

- Nature of the subject: TV Novosti said that the conflict in Syria is controversial. It argued the debate within the programme focused on “the elusive scope and substance of US Government policy in Syria” which included “analysing what current US policy on the Syria conflict actually is, or might be, and the US government’s related actions in Syria...rather than criticism of its position or actions to date”.
- Type of programme and channel: TV Novosti said that “RT is broadcast worldwide, intended for viewers of many different cultures and political views and comments on world events, always trying to include the views and opinions that are often disregarded or not given due prominence by...[the] ‘mainstream’” media. It highlighted that Ofcom’s Guidance to Section Five states “Ofcom research has also demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience”. The Licensee described *Crosstalk* as presenting “hot-topic discussions on politics, business, newsmakers, global trends, present-day conflicts, and dangers and challenges facing our world”. TV Novosti added that “guests are encouraged to intervene whenever they wish” and that the programme’s presenter, Peter Lavelle, “challenges common assumptions and viewpoints by using the common journalistic device of inversion – testing them by their opposite”. In this episode, the Licensee considered that Mr Lavelle had asked questions to “provoke responses from the panellists as to what actually constitutes US Government policy in Syria”.
- Likely expectation of audience: The Licensee added that although the “British version of RT (RT UK) has more UK-related news than the international version, it is still a global channel and is clearly seen by the audience as such”. It considered that this episode of *Crosstalk* “gave alternative viewpoints on US foreign policy and actions in Syria to those widely broadcast in US and UK mainstream media” and this was “well within the expectations of the audience for this channel and this programme”.
- Right to freedom of expression and the role of journalism: Mr Lavelle presented questions “which are intended to provoke and prompt debate”. Although TV Novosti acknowledged that out of context, his statements “may come across as critical”, in the context of the programme “they serve their purpose to fuel the debate”.

TV Novosti concluded its representations by stating that “While on a superficial level the debate may be viewed as partial, with articulation of Russian viewpoints, this is more a reflection of audience expectations in relation to a channel that explicitly aims to provide an alternative view and acquaint

audiences with the Russian perspective...a key underlying theme of the programme seeks to deconstruct different perceptions of the unfolding events in relation to the Syrian conflict. Overall, vital public interest is served by the recognition and encouragement of public debate of these different perspectives. RT aims to do this whilst preserving due impartiality within the Code”.

Preliminary View

Ofcom issued a Preliminary View that the edition of *Crosstalk* broadcast on 20 April 2018 at 08:30 was in breach of Rules 5.11 and 5.12 of the Code and invited TV Novosti's representations on the Preliminary View. The Licensee provided written and oral representations on the Preliminary View.

Response to Preliminary View

The Licensee made general representations about factors common to all the Preliminary Views which are summarised earlier at pages 10 to 18.

In addition, in its written representations TV Novosti disagreed with Ofcom's Preliminary View that due impartiality was not preserved in this programme.

It referred to all the contextual points it made on Ofcom's Preliminary Views on the *Crosstalk* programmes broadcast on 13 and 16 April 2018 concerning the nature of the programme and audience expectations. It said that they applied with equal force to this programme. In particular, it was likely to have been in line with audience expectations for *Crosstalk* to comment critically on the policies and actions of the US Government and its allies on the Syrian conflict. The Licensee argued that it could not be supposed that UK viewers do not know the US position (i.e. that the US military action and presence in Syria was justified), particularly as the predominant narrative in the UK (whose closest ally is the US) “is that the Assad regime has been engaged in brutal suppression of its own people, contrary to respectable international standards”.

The Licensee argued that Ofcom's Preliminary View acknowledged that:

- “numerous” statements were made during the course of the programme which referred to the US Government's viewpoint/s concerning Syria;
- criticisms were made during the programme not just of US policy, but also of the policies of other countries involved in the region; and,
- the programme also included positive comments about US policy.

TV Novosti argued that the programme included “evidence” clearly showing the inconsistency of the US approach in Syria and referred, in particular, to the following comments:

- Mr Lavelle referred to President Trump's goal of withdrawing American troops from Syria;
- Mr Porter also referred to this, saying: “Now today you have Trump, as everyone knows, really expressing repeatedly the desire to get out of Syria and to have a very strict time limit of the war against ISIS”, though contrasting that with “the military saying no we can't do that, and others in the administration clearly not in sympathy with it. And so there is a kind of uncertainty about how that's going to play out”;

- Mr Cherkaoui's comments about several international players in the region, e.g. saying that "the main concern is about if Trump and the Kremlin lose their grip on both the Iranians on one hand and the Israelis on the other hand ..."; and
- Mr Porter said: "definitely I think that Trump now moving in the direction that is hopeful of peace with North Korea, and that is quite an astonishing turn of events".

The Licensee said that despite these statements and despite the evidence, Ofcom's Preliminary View apparently considers that this was not sufficient to ensure due impartiality and that "the programme should have done more to present a viewpoint that US [p]olicy in relation to Syria was consistent and justified". It argued that this approach was "unjustified" and that the due impartiality requirement in the Code "cannot go as far as Ofcom's PV suggests". In particular, due impartiality "cannot have demanded more" given the audience's expectations, the "undoubted inconsistencies in the US approach" (as discussed by the programme's guests), the references in the programme to the US policy and the reasons for it, and "the audience's access to numerous other mainstream channels which were more supportive of the US position/s on Syria".

The Licensee argued that it was fundamentally inconsistent with the right to political free speech that is protected by Article 10 ECHR for Ofcom to interpret the Code in a way that demands that further steps should have been taken to present a pro-US/Western perspective (and/or which presented the idea that US policy was coherent).

Ofcom's Preliminary View was also "wrong" to dismiss the news programmes broadcast before and after this edition of *Crosstalk* as not 'editorially linked', given that they referred to the three main aspects of US Government Policy in Syria at the time (bringing back its troops, pushing its allies to play a more active role, and explaining that its troops had been fighting ISIS in Syria). Those news programmes also featured footage of President Trump and comments from present and former US Government officials explaining the justification for the US presence as being the fight against ISIS. The Licensee referred in this regard to its submissions on Ofcom's Preliminary View on the edition of *Crosstalk* broadcast on 16 April 2018 on "the proper approach on linkage between different programmes", including that:

- "the expression "editorially linked" is not contained in Rules 5.11 or 5.12, or in the Guidance relating to these rules;
- it was not possible, on a rolling news channel, to link explicitly the content between pre-recorded programmes (such as *Crosstalk*) and news bulletins;
- in any event, the link between the news programmes and the *Crosstalk* programme was clear from the fact that they were obviously dealing with the same subject matter and "indeed...that common subject matter was the link".

TV Novosti concluded that Ofcom should not find this programme in breach.

In its oral representations on Ofcom's Preliminary View, the Licensee said that it relied on all its written representations, and in addition emphasised the following contextual factors:

- the programme had included "numerous statements" that referred to the US Government's viewpoint and which criticised the policies of other countries involved in the conflict in Syria; and

- the news programmes broadcast before and after this episode of *Crosstalk* “coherently explain[ed] what the US position was”. The Licensee considered that it would be wrong for Ofcom to dismiss these news programmes as irrelevant on the basis there was no explicit link between those programmes and this episode of *Crosstalk*.

The presenter of *Crosstalk*, Peter Lavelle, also made representations in response to Ofcom's Preliminary View. These representations are summarised in Ofcom's decision on the 13 April 2018 edition of *Crosstalk* at page 89.

Decision

Reflecting our duties under the Act¹³³, Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.11 states that: “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”.

Rule 5.12 states that: “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”.

We acknowledged that the programme was about a highly controversial issue, namely, the ongoing conflict in Syria. We also took into account that the RT audience would expect to be given a Russian perspective on this subject. In light of the above, and in line with the broadcaster's right to freedom of expression and the audience's right to receive information (as detailed earlier in the general discussion on the statutory framework and freedom of expression and not repeated here), we considered it legitimate for the Licensee to broadcast a programme that examined and explored the nature of US Government policy and actions in Syria. However, to the extent that such a programme examined politically controversial matters, we considered that TV Novosti needed to comply with Section Five by ensuring that due impartiality was preserved.

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned major matters of political or industrial controversy or matters relating to current public policy.

The Code states that matters of major political or industrial controversy and major matters relating to current public policy will vary according to events, but these will generally be matters of political or industrial controversy or matters of current public policy which are “of the moment” and of national, and often international, importance, or are of similar significance within a smaller broadcast area.

The programme focused on a discussion about US Government policy and actions in Syria, including its continued military presence in Syria and the US led airstrikes on 14 April 2018 against three government sites in Syria in response to the suspected chemical weapon attack on the Syrian town

¹³³ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>; and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

of Douma a week earlier. The UK and France took part in the airstrikes and, with the US, claimed that chlorine and, possibly, a nerve agent were released by the Syrian Army. The Syrian Government and the Russian Federation deny that chemical weapons were used and claim that evidence was fabricated.

Discussion in the programme concerned possible reasons for US Government policy in Syria and questioned the legality and justification of the US military's presence and actions there. For example, Mr Lavelle stated that:

- the US was in Syria *"illegally under international law"*;
- as far as he was concerned *"it was a false flag operation with this chemical weapons attack"*;
- the US airstrikes of 14 April 2018 were *"just political theatre, it wasn't actually a military strike, it was political theatre"*; and
- *"the US is stubborn, and it works as a negative force in Syria, it doesn't allow for a peace process to move forward. Any time that peace could possibly break out in Syria, well Ash Carter¹³⁴ comes around and bombs. Or just when a major city is liberated from terrorists, supported by foreigners, Oh, we have a chemical weapons attack here"*.

We considered that at the time the episode was broadcast, the US Government's foreign policy in Syria, including the airstrikes on 14 April 2018, were subjects of intense debate and political controversy both in the UK and internationally, and were of both national and international importance.

For these reasons, we considered that the programme was concerned with matters of major political or industrial controversy and major matters relating to current public policy and the Licensee was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code.¹³⁵

The preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on these matters. The Code makes clear that "due" means adequate or appropriate to the subject and nature of the programme. "Due impartiality" does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience and the extent to which the content and approach are signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

¹³⁴ Ashton Carter, US Secretary of Defense, February 2015 to January 2017.

¹³⁵ The Licensee also made representations questioning why Ofcom considered Rules 5.11 and 5.12 to be applicable in this case, when in the past we had applied Rule 5.5 to broadcasts which dealt with the Syrian conflict. We have responded to this point in our decision on the 13 April 2018 edition of *Crosstalk* at page 91 and do not repeat this reasoning here.

We took into account the arguments that the Licensee had made about relevant contextual factors in this case. The programme was broadcast on a channel that, as TV Novosti said, aims to: “make available an alternative point of view on world events”, “cover stories overlooked or underreported by the mainstream media”, and acquaint “international audiences with a Russian viewpoint on major global events”. We also took into account the Licensee’s representations that “audiences were likely to be familiar with the format of *Crosstalk*”, described as a “political and highly polemical program[me] reacting to news events with a variety of opinions”, and the presenter Peter Lavelle’s “provocative” style of mocking and ridiculing particular views when appropriate. It described *Crosstalk* as “intentionally position[ing] itself as an alternative to the western media echo chamber” in order to “question narratives about politics and current affairs principally found in the western world” and hold governments, politicians and the media to account. TV Novosti also relied on the fact that Mr Lavelle “wear[s] [his] politics on [his] sleeve for all to see” and that viewers would have been aware of his political standpoint and will recognise he holds “very strong views on many topics”. The Licensee also argued that audience expectations were “shaped” by its editorial approach and viewers therefore “turn to RT exactly for the reason that it does not resemble the approach of British national broadcasters”, as they “want to hear the Russian point of view from a Russian channel, unfiltered by a British broadcaster”.

We have taken a number of contextual factors into account in considering the broadcaster’s and audience’s Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, Ofcom acknowledged that viewers of RT, and of programmes like *Crosstalk*, were likely to expect the channel to address controversial issues, and to reflect major global events from a Russian point of view. We also acknowledged that it was likely to have been in line with audience expectations for programmes such as *Crosstalk* to comment critically on various political issues and to robustly challenge what could be seen as the Western perspective on such issues, including in this case the policies and actions of the US Government and its allies on the Syria conflict. TV Novosti argued that as the dominant narrative was widely disseminated by most if not all other media outlets/broadcasters, it was not necessary for *Crosstalk* to repeat that perspective explicitly. However, as we mention earlier in our general discussion on the statutory framework, the Code requires due impartiality to be preserved on matters of political and industrial controversy and matters relating to current public policy. In particular, when dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters are required to take additional steps in order to preserve due impartiality, namely to reflect an appropriately wide range of significant views and to give those views due weight.

At the start of the programme, the presenter offered three possible US Government “goals” in Syria: “*Partition? War for war’s sake? Or a means to sticking it to Iran and Russia?*” and concluded that “*All are poorly thought out options*”. At no point in the programme did any of the guests challenge this conclusion. Rather, Mr Makki said that “*Washington has really had nothing of a coherent strategic policy in Syria for many years ...we’ve had four/five years of Washington ...not really understanding exactly where it’s going with its strategy*”. Mr Porter agreed, saying “*...as Danny [Mr Makki] just said, there has been no coherent strategy...*”. Mr Cherkaoui said, “*I think there is no disagreement that President Trump lacks a coherent strategy or an after-attack plan*”.

In addition to these unanimous criticisms of what was portrayed as the incoherence in US foreign policy, Mr Lavelle described US Government policy and actions in Syria as: “*illegal[...]*”; “*political theatre*”; and being a “*negative force in Syria*”. There were numerous other, similar criticisms. For example:

- Mr Porter said he “*couldn’t agree more*” with Mr Lavelle that the airstrikes of 14 April 2018 were “*just political theatre*” and Mr Cherkaoui referred to “*...a combination of performative politics à*

la Trumpism, if we can say it that way, and also piecemeal tactics whenever Trump runs into a problem he has to figure out the theatrics of politics in front of the cameras”;

- Mr Makki stated that: *“the US has betrayed [the Kurds]”, “just left them” and “allowed Turkey to literally eat up all of this Kurdish territory in the North of Syria”;* and that *“Trump has set a very dangerous precedent now in Syria”* through the airstrikes of 14 April 2018; and
- Mr Cherkaoui said *“...this is the second attack on Syria [the airstrikes of 14 April 2018] and Assad may go back and use the chemical weapons once again. So, there is no pragmatism in the way that Trump handles his decision of going to war”.*

In light of the largely aligned views presented by the host and guests, which were critical of US foreign policy and actions in Syria, we considered whether, as required under Rule 5.12, an appropriately wide range of significant views were included and given due weight in the programme.

As highlighted in Ofcom's Guidance on Section Five of the Code, the broadcasting of highly critical comments concerning the policies and actions of, for example, any one state or institution, is not in itself a breach of due impartiality rules. It is essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical. However, as envisaged by section 320 of the Act – which is given effect by Rules 5.11 and 5.12 - a broadcaster must maintain an appropriate level of impartiality in its presentation of major matters of political controversy. Given the nature and amount of criticism of the US Government on its policy and actions in Syria, we would have expected an alternative viewpoint on the issue to be appropriately reflected, such as a viewpoint providing the justification for the US military action and presence in Syria¹³⁶.

According to TV Novosti, it was difficult to “work out” and then give ‘due weight’ to the viewpoint of the US Government on its foreign policy in Syria because its strategic aims were “unclear” and because President Trump's administration had regularly made contradictory remarks on it. However, the US White House website had published¹³⁷ a full statement by President Trump following the US airstrikes of 14 April 2018, less than a week prior to the programme's broadcast, in which he set out the reason for and purpose of the airstrikes and the US military presence in Syria. For example, he said:

- “The purpose of our actions tonight is to establish a strong deterrent against the production, spread, and use of chemical weapons”;
- “In 2013, President Putin and his government promised the world that they would guarantee the elimination of Syria's chemical weapons. Assad's recent attack — and today's response — are the direct result of Russia's failure to keep that promise”;
- “In Syria, the United States — with but a small force being used to eliminate what is left of ISIS — is doing what is necessary to protect the American people. Over the last year, nearly 100 percent of the territory once controlled by the so-called ISIS caliphate in Syria and Iraq has been liberated and eliminated”;

¹³⁶ Ofcom's Guidance explains that ‘significant views’ could include the viewpoint of nation states whose policies are considered to be ‘major matters’ (paragraph 1.58).

¹³⁷ See: <https://www.whitehouse.gov/briefings-statements/statement-president-trump-syria/>

- “The United States has also rebuilt our friendships across the Middle East. We have asked our partners to take greater responsibility for securing their home region, including contributing large amounts of money for the resources, equipment, and all of the anti-ISIS effort. Increased engagement from our friends, including Saudi Arabia, the United Arab Emirates, Qatar, Egypt, and others can ensure that Iran does not profit from the eradication of ISIS”; and
- “America does not seek an indefinite presence in Syria under no circumstances. As other nations step up their contributions, we look forward to the day when we can bring our warriors home...”.

In our view, this reflected the US Government’s publicly stated view on the matters discussed in this programme at the time of broadcast.

The Licensee argued that insofar as the aims of US foreign policy were reasonably clear, the US Government’s viewpoint was adequately reflected and given due weight. We acknowledged that the programme did make limited reference to the US Government’s viewpoint. For example, Mr Lavelle’s opening words referred to President Trump’s goal to withdraw American troops from Syria¹³⁸ and Mr Porter later commented that Mr Trump had repeatedly expressed this desire and to “*have a very strict time limit on the war against ISIS*”¹³⁹. In Ofcom’s view, in the context of the programme as a whole, these brief references to the US Government’s official position were not given due weight and did not provide sufficient challenge to the criticism of the US Government’s policy and actions in Syria. They did not present an alternative view on this matter in an objective or impartial way, but rather were used to bolster the presenter’s and guests’ criticisms that President Trump and parts of his administration were divided and incoherent on whether to withdraw American troops from Syria. For example, the presenter’s opening reference to President Trump’s goal to withdraw troops was immediately followed by his statement:

“The foreign policy blob surrounding him says differently. So, what are exactly Washington’s goals in Syria? Partition? War for war’s sake? Or a means to sticking it to Iran and Russia? All are poorly thought out options”.

TV Novosti further argued that the programme reflected the US foreign policy position regarding the strategic purpose of the US military presence in Syria as set out by Nikki Haley, the US Ambassador to the United Nations, when Mr Lavelle said:

“[Nikki Haley] made it very clear that the US presence in Syria is aimed at Iran. She was very clear about that”.

We acknowledged this statement and Mr Lavelle’s follow-up statement (“*people in the White House didn’t like her saying it*”), could be argued to be indirect references to the viewpoint of the US Government. However, we considered this part of the programme in context:

PL: *“Ok, let me go back to Mohammed in Doha. Nikki Haley¹⁴⁰, she says she’s not confused, I think she’s confused all of the time. She made it very clear that the US*

¹³⁸ “US President Donald Trump says he wants American troops to leave Syria. The foreign policy blob surrounding him says differently”.

¹³⁹ “Now today you have Trump as everyone knows really expressing repeatedly the desire to get out of Syria and to have a very strict limit on the war against ISIS. And the military saying ‘No, we can’t do that’.

¹⁴⁰ US Ambassador to the United Nations.

presence in Syria is aimed at Iran, she was very clear about that. Of course people in the White House didn't like her saying it but she said she's not confused. Is this really what it's really all about? Is it because of the political, the status quo in Syria, where other actors are creating political facts and the US is just occupying. Is, are they really turning in a different direction, is this really what it is all about? Is focusing in on Iran?"

MC: *"Well, I think that Nikki Haley is not the only US official in the Trump administration who is confused—".*

[PL laughs]

The reference to Nikki Haley's statement that the US presence in Syria was "aimed at Iran" immediately followed Mr Lavelle's description of her as "*confused all of the time*", which in our view had the effect of being dismissive of the view she presented. We considered that the references to Nikki Haley and the US Government were made in the context of Mr Lavelle's and Mr Cherkaoui's ongoing critique of the policies and actions of the US Government, and accordingly did not reflect an alternative view of the US Government with due weight.

TV Novosti also argued the programme included some positive discussion of US policy in a global context, such as Mr Porter's comments on President Trump's negotiations with North Korea, for example "*... definitely I think that Trump now moving in the direction that is hopeful on peace with North Korea and that is quite an astonishing turn of events*". We acknowledged that this statement reflected a positive view on President Trump's direction on North Korea. However, this could not be considered a reflection of an alternative viewpoint on the US Government's position on Syria.

The Licensee also argued that where there were criticisms made on the theme of "geopolitical concerns", these were "levelled not at US policy inconsistency but at multiple participants". It cited the following statement by Mr Lavelle:

*"...what we really need now, and I mean this **for all players**, because my primary issue is peace and having peace settlements, okay. You are going to need a lot of finesse, a lot of patience"*
[emphasis added by the Licensee].

We disagreed with this line of argument. We considered the above statement in the context of the exchange between Mr Lavelle and Mr Cherkaoui in which it occurred, which was as follows:

MC: *"—or doesn't know how to paraphrase the intentions of Trump and I think now that we are at the situation that is a combination of performative politics à la Trumpism, if we can say it that way, and also piecemeal tactics whenever Trump runs into a problem he has to figure out the theatrics of politics in front of the cameras. The difference between what is said in front of the cameras and what is done, or executed, in the field, in particular in Syria, is huge. And I think now we have been talking about the rise of anti-Americanism, I think now we have to pay attention to something new – the waning confidence in Washington by Middle-easterners and now it becomes like a great power that has lost its focus and also, probably, Trump has put so much on his plate that he can't handle now. We have the future escalation next month with Iran and the nuclear deal and we have the upcoming summit with North Korean leaders, so much to deal with and I think now Trump has probably lowered the expectations of the public in this region of the world by embracing so many adventures, and then he cannot deliver much – What the main*

concern is about if Trump and the Kremlin loses their grip on both. The Iranians on one hand and the Israelis on the other hand, that's when it's going to be a messy joke and I don't think that Trump will be able to figure out what to do next".

PL: *"Danny, Mohammed brought up a really good point because there's so many festering issues, particularly in the Middle East and on a broader scale with North Korea. The US doesn't have grasp on the situation. One of the things I have noticed with this administration is that there's so many War hawks, so many military people, and then you have Pompeo¹⁴¹ coming in, not exactly a man of very great tact in diplomacy. What we really need now, and I mean this for all players, because my primary issue is peace and having peace settlements. You're going to need a lot of finesse, you're going to need a lot of patience and, to date, this administration doesn't exhibit any of the above".*

We considered the main focus of criticism in this exchange remained the US, not just in terms of inconsistency, but also accusations that President Trump and the US Government lacked "tact", "finesse" "focus", "grasp", and "patience". The presenter's criticism of "all players" was made generally, in reference to geopolitical issues in both the Middle East and Syria. Therefore, we did not consider this one statement presented an alternative viewpoint on the matter of US foreign policy regarding Syria sufficiently or with due weight.

The Licensee additionally referred to the challenge it had faced in obtaining contributions. As Ofcom has made clear on numerous occasions, where an alternative viewpoint is needed to maintain impartiality, inviting contributors to participate who then refuse to do so is not sufficient to preserve due impartiality¹⁴². If a broadcaster cannot obtain an interview or a statement on a particular viewpoint on a matter of political controversy, then it "**must** find other methods of ensuring that due impartiality is maintained" (emphasis added)¹⁴³. 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 impartiality¹⁴⁴.

TV Novosti also said Mr Lavelle's questions were "intended to provoke and prompt debate". A presenter reflecting alternative viewpoints by posing challenging questions is one technique which may assist licensees in preserving due impartiality. However, in this case, we did not consider that the presenter sufficiently countered or challenged the views expressed by the guests.

For the reasons given above and taking account of the relevant contextual factors discussed above, we did not consider that an "appropriately wide range of significant views" (Ofcom's emphasis) on the matter of US foreign policy on Syria was adequately represented within this programme and given due weight.

¹⁴¹ Mike Pompeo, US Secretary of State.

¹⁴² See paragraph 1.36, at: https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf.

¹⁴³ Ibid.

¹⁴⁴ See paragraphs 1.60 and 1.37, at: https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf. We have explained above why we do not consider that the editorial techniques employed by the broadcaster in this case were sufficient to ensure due impartiality was maintained.

Due impartiality in clearly linked and timely programmes

We next considered whether such views were included in clearly linked and timely programmes and given due weight.

In this case, the Licensee said that *Crosstalk* was “integrally linked both in subject and content to the current news of the day” and that typically RT news presenters “make ‘a link’ or an ‘intro’ to the *Crosstalk* programmes which connects the news to *Crosstalk*...”. It added that the US position on the Syrian conflict was referred to within news items broadcast on the same day as *Crosstalk* including those shown immediately before and after. In TV Novosti’s view, by including additional material “in timely linked news bulletins, RT ensured that a wide range of significant viewpoints were included and given due weight, and that due impartiality was preserved”.

We acknowledge the challenges that can be faced by rolling news channels in ensuring compliance with the Code. However, as discussed earlier in the general contextual factors, television services such as RT cannot preserve due impartiality by relying on what is broadcast across their service as a whole¹⁴⁵. It is possible for television services such as RT to preserve due impartiality, in the context of Rule 5.12, in clearly linked and timely programmes. However, because it cannot be guaranteed that a person watching one programme will have been watching the programme that precedes it or follows it, the broadcaster must take steps to ensure that the two programmes are “clearly linked”.

Therefore, even if other programmes that have been broadcast do deal with the same subject matter and contain relevant alternative viewpoints, these contextual factors alone are not sufficient to ensure that due impartiality is preserved, particularly where the matter concerned is a major matter within the scope of Rules 5.11 and 5.12. This is because without an explicit link viewers may not be aware of the other programmes. We acknowledge that there may be particular challenges including explicit links to other programmes in pre-recorded content. However, we do not consider these challenges are insurmountable. For example, broadcasters could include links to other programmes in a continuity announcement broadcast over the end credits of the pre-recorded programme or in a prominent caption or slate superimposed over the pre-recorded content. We would expect such a link to include a reference to the fact that the linked programme deals with the same matters as the programme in question.

We did not consider the programmes cited by TV Novosti were clearly linked to this edition of *Crosstalk*. There was no material included in this edition of *Crosstalk* which referred to, and so potentially linked it to, any other RT broadcasts, including the news bulletins to which the Licensee referred. This was particularly significant in the context of a programme which concerned major matters of political controversy and meant that *Crosstalk* viewers would not have been aware that these programmes might include alternative viewpoints on the issues discussed in *Crosstalk*.

On a related matter, TV Novosti argued that a relevant contextual factor in this case was what programmes were broadcast before and after the edition of *Crosstalk* in this case. However, for the

¹⁴⁵ As we made clear in our December 2013 *Syrian Diary* Decision (see https://www.ofcom.org.uk/data/assets/pdf_file/0025/45745/obb244.pdf), due impartiality can only be preserved across a whole service in the case of non-national radio services. Specifically, section 320(1)(c) of the Act requires: “the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on...matters [of matters of political or industrial controversy; and matters relating to current public policy]”. Section 320(4)(b) states that the requirement contained in section 320(1)(c) “is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole”.

reasons given in our consideration of common contextual factors above, we considered it appropriate to put much less weight on this contextual factor compared with other contextual factors. This is because the due impartiality rules envisage that if a broadcaster is seeking to preserve due impartiality by reflecting alternative viewpoints in linked programming, this should be made clear to the audience on air.

Given the above, we did not consider that TV Novosti had reflected, and given due weight to, an appropriately wide range of significant views in clearly linked and timely programmes.

In this case, we have taken careful account of the broadcaster's and audience's rights of freedom of expression and all the relevant contextual factors. For all the reasons set out above, Ofcom's decision is that the Licensee failed to include, and give due weight to, an appropriately wide range of significant viewpoints in relation to the relevant matters of major political controversy and major matters relating to current public policy dealt with in the programme.

Breaches of Rules 5.11 and 5.12

In Breach

News, 18 March 2018, 08:00

Introduction

During monitoring, we assessed a news item in the above programme that reported on the Syrian conflict. A news presenter started the item (with a caption: "*Ghouta*¹⁴⁶ *Exodus*") by saying:

"Nearly 70,000 civilians have left Syria's enclave of eastern Ghouta through evacuation routes, from the start of the Russia brokered humanitarian pause in February. Since the army launched its operation against militants, the area has seen, by far, the biggest exodus of civilians".

The programme cut to a pre-recorded package on the displacement of civilians in Ghouta. Over footage of people leaving the enclave on foot the following captions were shown:

"Thousands flee from Eastern Ghouta"

"As second humanitarian corridor opens".

A clip of RT's Arabic correspondent, shown standing by civilians leaving Ghouta, was then played. She spoke in Arabic with a voiceover in English:

"Thousands of civilians are leaving Ghouta right now via the humanitarian corridor you can see behind me. The passage has been recently opened by Syrian forces. It's allowing crowds of civilians, many of them are children, to leave [the] embattled area".

Further footage of civilians leaving Ghouta was shown with the following caption: "*Civilians cross on foot to Syrian army positions*".

Over a picture of a mortar shell on rubble, a caption said: "*They say militants shelled the corridors*".

This was followed by a clip of a man and then a woman, who were apparently leaving Ghouta. They spoke in Arabic with a voiceover in English:

Man: *"Terrorists used people as human shields there, they wouldn't let us flee, they hid behind our backs".*

Woman: *"We wanted to leave a year and a half ago, but they wouldn't let us".*

Over a montage of images of UN vehicles; people apparently seeking shelter from shelling in ruined buildings and first aid packages, the following captions were shown:

"Fighting hampers aid deliveries".

"Convoy of 25 trucks enters besieged area".

"Civilians say the aid wasn't reaching them".

¹⁴⁶ At the time of broadcast, Eastern Ghouta in Syria was an enclave that had been controlled by Syrian rebel factions.

Footage was then shown of a man lying on a stretcher, speaking in Arabic, with a voiceover in English:

"I don't remember the last time I ate. We didn't have food in our village. The militants took everything that the humanitarian convoys delivered".

A clip was then shown of another man speaking in Arabic, with a voiceover in English:

"The aid was given only to certain groups. Most of the medical aid was sold. It was from humanitarian agencies and the UN and was distributed in Ghouta under the supervision of our Government, but the militants were selling it".

Footage was then shown of a Red Cross vehicle driving down a ruined urban street, with the following caption: *"Red Cross Chief travels to Eastern Ghouta"*.

A clip of the President of the International Red Cross Peter Mauer was played who said:

"Quite impressive, also to see that at the end of the day what is lacking is the trust between the parties to the conflict, also the consideration of the needs of the civilian population".

Footage was then shown of shelled buildings with the following caption: *"UN Special Envoy for Syria welcomes brief ceasefire in Douma¹⁴⁷".*

This was followed by the UN special Envoy to Syria, Staffan de Mistura, saying:

"Let's hope that therefore the ceasefire holds, because that has been at least one good news among very bad news".

The pre-recorded segment then ended with footage of tanks driving along a ruined street, with the following caption shown: *"But there's still no end to the humanitarian crisis in sight"*.

The news presenter (with a caption *"Toxic Pretext"*) then said:

"Meanwhile militants are preparing to stage chemical attacks in the country to give the US a pretext to attack the Government, that is according to Russia's defence ministry".

The news presenter then introduced RT correspondent Murad Gazdiev who appeared to be standing outside the Russian Defence Ministry (with a caption *"Russian MOD: Chemical provocations will be used to strike Syrian Govt"*). He said:

"Representatives of the Russian Armed Forces have said they have information, reason to believe, that the United States at its Al-Tanf base in Syria has been preparing squads of rebel fighters to stage a chemical provocation, a chemical weapons attack in the south of Syria, in Daraa which borders Jordan and Israel. They've been provided, allegedly, as many as 20 tons of chlorine, as well as detonators. Defence officials have said that this attack will be blamed on the Syrian Government and will be used as an excuse by the United States and its allies to strike at Bashar al-Assad, his Government and his military directly".

While Mr Gazdiev was speaking, further footage from eastern Ghouta was shown, including of civilians chanting at a tank as it drove down a busy street, and rebel fighters holding guns.

¹⁴⁷ A town in Eastern Ghouta.

A clip was shown of Sergey Rudskoy, Chief of Operations for the Russian Army. He spoke in Russian, with a voiceover in English:

"The provocations mentioned will be used as a pretext for the United States and its allies to conduct airstrikes against military and state infrastructure in Syria. We are seeing that such strikes are being prepared by warships in the Mediterranean, the Red Sea and in the Persian Gulf".

Murad Gazdiev was shown speaking to camera:

"At the same time, speaking in Astana, Sergei Lavrov, the Russian Foreign Minister said that the Syrian conflict is beginning to look less like a proxy war than a direct confrontation".

A clip was shown of Mr Lavrov speaking in Russian, with an English voiceover:

"There are US special forces on the ground, they are no longer denying this. They are accompanied by the British, French and special forces from other countries. It's not a proxy war anymore, but rather a direct involvement in the war. We condemn their illegal presence on Syria's territory. The US-led coalition is not legitimate from the UN point of view either. We are pragmatic people, and we understand that we should not engage in armed conflict with them".

While Mr Lavrov was speaking, the following captions were shown:

"Russian MOD: Chemical provocations will be used to strike Syrian Govt"

"Russian Foreign Minister: Syrian war is direct not proxy conflict"

The programme then cut back to the studio. The news presenter (with a caption "Toxic Pretext") then said:

"Chemical weapons and their alleged use by President Assad have dominated a UN Security Council meeting this week, even though the talks were supposed to focus on relief efforts for Ghouta. And the US Envoy even went so far as to issue threats".

Footage was shown of Nikki Haley, the US Ambassador to the United Nations, speaking at the UN Security Council in New York:

"We also warn any nation that is determined to impose its will through chemical attacks and inhuman suffering, most especially the outlaw Syrian regime, the United States remains prepared to act if we must. In the past 16 days, there have been three separate allegations of chlorine gas attacks".

The following text appeared next to the footage of Nikki Haley: "The US remains prepared to act", while the following caption was shown along the bottom of the screen: "US Ambassador to UN: Prepared to act against Damascus if we must".

Footage was shown of Vassily Nebenzya, the Russian Ambassador to the United Nations, speaking in Russian in response to Ms Haley at the UN Security Council, with a voiceover in English:

"We understand that the goal of this disinformation campaign is to manipulate public opinion –".

The following text appeared next to the footage of Vassily Nebenzya:

"Goal of Disinfo campaign – Manipulate public opinion".

Mr Nebenzya continued:

"—and convince people that the Syrian Government is using chemical weapons. But we have reasonable concerns that there are preparations to stage fake chemical attacks—"

The following text appeared next to the footage of Vassily Nebenzya:

"Preparations to stage chemical attacks".

Mr Nebenzya continued:

"In order to later accuse the Assad Government. And according to our data, on the 5th of March, the Al Nusra¹⁴⁸ terrorists used chlorine in eastern Ghouta, injuring 30 people".

While Mr Nebenzya was speaking, the following caption was shown along the bottom of the screen:

"Russia to UN: Staged chemical attacks being planned in Syria".

Footage was shown of tanks driving along ruined streets in eastern Ghouta, while the news presenter in a voice-over said the following (with a caption: *"US pushes the UN to demand a 30-day ceasefire in militant held Ghouta"*):

"The US Envoy, strangely enough, pushed the security council to demand a 30-day ceasefire in eastern Ghouta, which is where Government forces and Russian forces are currently battling terrorists. Nikki Haley then unleashed a barrage of accusations against [Syrian] Government allies".

Footage was shown of Nikki Haley speaking at the UN Security Council:

"This is no ceasefire, this is the Assad regime, Iran and Russia continuing to wage war against their political opponents".

Footage was shown of Vassily Nebenzya speaking in Russian, with a voiceover in English, in response to Ms Haley at the UN Security Council:

"Last time I promised to count how many times the US Envoy would mention Russia during her statement. I counted: It's 22".

A video montage was broadcast which consisted of repeated clips of Nikki Haley saying the words "Russia" or "Russian" during her remarks at the UN Security Council. Each time that Ms Haley said the words "Russia" or "Russian", an on-screen counter increased by one to a final total of 22 while the sound of a drum beat was also broadcast.

Footage was shown of Vassily Nebenzya speaking in Russian, with a voiceover in English, in response to Ms Haley at the UN Security Council:

¹⁴⁸ The Al Nusra front is a militant Islamist group fighting against the Syrian Government.

"It's [Ms Haley's mentions of Russia] done for political purposes only and not out of care for civilians".

This was accompanied by the following caption:

"Russia to UN: US Envoy mentions Russia 22 times in her speech".

The news item ended.

It was Ofcom's view that the programme was dealing with a matter of major political or industrial controversy and major matters relating to current public policy, namely, the political debate surrounding the ongoing conflict in Syria and specifically the views and/or actions of the United States and Russian Governments.

We therefore considered that this programme raised issues warranting investigation under the following rules:

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".

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".

We asked the Licensee how the programme complied with these rules.

Initial Response

General

The Licensee made several "background points" about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10.

The applicability of Rules 5.11 and 5.12

The Licensee made the following specific submissions on how the relevant programme complied with the Code.

At the outset, TV Novosti questioned why Ofcom applied Rules 5.11 and 5.12 in this case, when "in the past Rule 5.5¹⁴⁹ was applied to programmes relating to the topic of Syria".

¹⁴⁹ Rule 5.5 states "Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole".

Notwithstanding the above, TV Novosti made representations on how it believes due impartiality had been preserved in the programme.

Due impartiality in the programme

The Licensee accepted that this news item dealt with matters of political controversy concerning the conflict in Syria, adding that the viewpoints of the Russian and US Governments were "obviously significant" and therefore their respective positions needed to be reflected. It added that the news item was divided into three parts.

The Licensee said the first part focused on the exodus of civilians from eastern Ghouta, including first-hand accounts from people who had fled the region. This piece reflected the views of UN Special Envoy for Syria, Staffan de Mistura and the President of the International Committee of the Red Cross Peter Mauer. TV Novosti argued that this part of the report focused on the human tragedy of the exodus and there was no matter of political controversy involved which required another viewpoint to be reflected to maintain due impartiality. It added the material was allowed to speak for itself to enable viewers to come to their own conclusion.

The Licensee described the second part of the news item as "a story which... reflected a Russian viewpoint on the Syrian conflict". It reported the Russian Army allegation that the US military were arming and preparing rebel fighters in Syria to stage a chemical weapon attack in the south of the country, to give the US a pretext to launch military airstrikes against the Syrian Government. The Licensee argued that this story had been "largely ignored by the Western mainstream media" and TV Novosti had decided to cover it in accordance with RT's stated aims to reflect a Russian perspective. It added the source for this story was the Chief of Operations of the Russian Army and confirmed by Russia's Foreign Minister. TV Novosti stated its belief that this part of the news item did not specifically require another viewpoint to maintain due impartiality as it was "clearly speculative" and was designed to present a viewpoint not represented in the mainstream media. It added it would not have been appropriate for it to have approached "either the militant extremists in Syria...or the US Government for comment on a news story which did not in itself deal with a matter of political controversy".

TV Novosti accepted the third part of the news item "clearly" dealt with a matter of political controversy, in focusing on the political debate surrounding "whether or not the Syrian Government forces used chemical weapons against civilians, and if so, how Western Governments (and in particular the US Government) should respond". The Licensee added that one prominent forum for this debate was the United Nations Security Council, and this part of the news item covered latest developments in that discussion. Therefore, TV Novosti said this part of the news item featured the US Ambassador to the United Nations "to serve as an alternative to Russian views" on the political debate over the conflict. It added that the item featured two clips from US Ambassador Nikki Haley's speech which lasted approximately 30 seconds and two of the Russian Ambassador Vassily Nebenzya which lasted approximately 34 seconds. The Licensee argued that while Ofcom guidance "is that 'due impartiality' is not about specific measures of time in referring to counterinterviews, these clips showed a relatively precise temporal balance of views of the respective positions of each Government". It also said that this part of the news item featured the viewpoint of the US Government Ambassador Haley through captions which read:

"U.S. Ambassador to UN: Prepared to Act Against Damascus If We Must", and in large font on the screen, "The U.S. Remains Prepared to Act"; and

"US pushes UN to demand 30-day ceasefire in militant-held Ghouta" (This caption was broadcast while the news presenter spoke about the ceasefire demanded in Ghouta by the US Government).

The Licensee also said that two additional text headlines were displayed on screen during the news item to help preserve due impartiality:

"U.S. ambassador to UN: prepared to act against Damascus if we need to"; and

"U.S. pushes UN to demand 30-day ceasefire in militant-held Ghouta".

TV Novosti argued that the news item "did not criticise or support the actions of nation-states", adding that "it distanced itself from the Russian Government's point of view by attributing their statements with the use of the following phrases: *"That is according to Russia's Defence Ministry..."*; *"allegedly"*; and *"Defence officials have said"*.

Contextual factors relevant to this programme

The Licensee also cited various contextual factors that it felt were relevant in this case:

- Nature of the subject and type of programme and channel: TV Novosti said the conflict in Syria is "highly controversial" and it is well known that Russia is an ally of the Assad regime. It therefore argued that "given the Russian-centric position of the channel, it is not surprising that its perspective is given appropriate prominence during the item". It added that the subject matter of the programme was a news report of a Russian position on chemical attacks and US intentions in Syria and the programme was "clear it was reporting a Russian point of view". It also added the US position was articulated by the US envoy to the UN and was there for the viewer to see and hear in two extracts;
- Likely expectation of audience and extent to which the content and approach is signalled to the audience: The Licensee argued its news is aimed at an audience that wants and expects expected a different perspective on world events. It said the provision of alternative perspectives on Syria was "not out of line" with expectations of RT's audience. TV Novosti added that the perspective of the UK and US Governments on chemical warfare in Syria is extensively covered by the UK media. Therefore, it said there was "all the more need for people to hear contrary or questioning views". It added that viewers of the news item would not have expected it to cover the entire scope of the Syrian conflict, which is "exceedingly complex", and this news item was an update on the then Russian perspective on the unfolding situation. It added that likely expectations of RT's audience are were shaped by several factors such as RT's explicit mission to provide "alternative perspectives on current affairs" and acquaint "international audiences with a Russian viewpoint on major events" and that this mission is explicitly signalled on the RT website; and
- Right to freedom of expression and the role of journalism: The Licensee argued that this was a report featuring an alternative perspective on what was underreported/not covered by mainstream media. It referred to Ofcom's research which "demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience", and said that while the British version of RT has more UK-related news than the international version, it is still a global channel and is clearly seen by the audience as such.

Preliminary View

Ofcom issued a Preliminary View that the edition of *News* broadcast on 18 March 2018 at 08:00 was in breach of Rules 5.1, 5.11 and 5.12 of the Code and invited TV Novosti's representations on the Preliminary View. The Licensee provided written and oral representations on the Preliminary View.

Response to Preliminary View

The Licensee made general representations about factors common to all the Preliminary Views which are summarised earlier at pages 10 to 18.

In addition, in its written representations TV Novosti disagreed with Ofcom's Preliminary View and said that we had failed to distinguish between the due impartiality requirements under Rule 5.1 and the more onerous requirements of Rules 5.11 and 5.12, arguing that Ofcom should provide "separate and distinct reasoning". It noted that Ofcom "provided no reasoned contrast" between this programme, and the *Syrian Diary* decision", which was on the same topic, but that Ofcom had only applied Rule 5.5¹⁵⁰ to *Syrian Diary*.

Quoting Ofcom's Preliminary View, the Licensee said "'due impartiality' does not...mean an equal division of time must be given to every view". In addition, it said that "nor can it mean that every point of view must be given equal weight in one programme...". It argued that this was particularly the case given the dominant narrative in the UK media at the time and that viewers of the RT News programme were very likely to be watching news programmes on other channels that presented the Western perspective to the Syrian conflict.

Referring to Section 1.34 of the Ofcom Guidance¹⁵¹, the Licensee said that "the broadcasting of highly critical comments concerning the policies of a state (here, the US), or supportive of another state (here, Russia) is not of itself a breach of the requirement of due impartiality...". It added that this guidance "recognise[d] that it is 'essential' that current affairs programmes are able to take a position, even if that is a highly critical one". It also said that "the rights contained in Article 10 [of the European Convention on Human Rights] are there to enable controversial views such as these to be published without unjustified interference".

TV Novosti stated that Ofcom could not "in substance have properly taken into account [the broadcaster's and audience's rights of freedom of expression]" in reaching its Preliminary View. It added:

"The nub of Ofcom's reasoning is that by broadcasting a programme which enabled viewers to see Ambassador Haley's speech to the UN...but which then criticised her through the use of so-called 'dismissive' language and the 'montage' referred to above, and by broadcasting the views of the Russian defence authorities, RT acted 'In Breach' of the Code".

It said that this was an unlawful approach that "render[ed] illusory the right to free speech and the particular deference owed to political free speech and pa[id] lip service to a broadcaster's right to take a position that is highly critical of the actions of a state".

¹⁵⁰ See Ofcom's Decision *Syrian Diary*, Issue 244 of Ofcom's Broadcast Bulletin, 16 December 2013
https://www.ofcom.org.uk/_data/assets/pdf_file/0025/45745/obb244.pdf

¹⁵¹ See footnote 6.

In its oral representations on Ofcom's Preliminary View, the Licensee said that it relied on all its written representations, and in addition emphasised the following contextual factors:

- the "dominant narrative" in UK media at the time was supportive of a US and Western perspective and critical of the Russian perspective on the Syrian conflict; and,
- viewers expectations for this programme would have been to have obtained the Russian perspective on events in Syria and/or one that questioned the "more dominant narrative".

The Licensee considered that Ofcom had not established that audiences were likely to have been harmed by the criticism of the US Government in the programme.

Decision

Reflecting our duties under the Act¹⁵², Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.1 requires that "news, in whatever form must be reported with due accuracy and presented with due impartiality".

Rule 5.11 states that: "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".

Rule 5.12 states that: "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".

The obligation to preserve due impartiality in news applies to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy.

We considered it was legitimate for the Licensee to broadcast a news item exploring recent developments in the ongoing conflict in Syria, and specifically the views and/or actions of the US and Russian Governments in relation to this conflict. We recognised that it is essential that programmes subject to the due impartiality requirements in Section Five are able to explore and examine issues and take a position even if that is highly critical. We also recognised that while broadcasters are required to include and give due weight to an appropriately wide range of significant views, they may debate and discuss such views¹⁵³.

We took into account TV Novosti's view that the conflict in Syria is "highly controversial"; that it is well known that Russia is an ally of the Syrian Government; and that therefore the audience would expect to be given a Russian perspective on this subject. We acknowledged that the programme was made in the context of an ongoing, highly controversial issue, namely, the views and/or actions of the US and Russian Governments in relation to the conflict in Syria. We also considered that the RT audience would expect to be given a Russian perspective on this subject. In light of the above, and in

¹⁵² See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>; and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

¹⁵³ Ofcom Guidance Notes, section 5, paragraph 1.59.

line with the broadcaster's right to freedom of expression and the audience's right to receive information (as detailed earlier in the general discussion on the statutory framework and freedom of expression and not repeated here), we considered it legitimate for the Licensee to broadcast a news programme that examined and explored the humanitarian impact of the fighting in Syria and the ongoing political debate regarding the actions of nation states in the unfolding situation on the ground, subject to the application of Section Five of the Code.

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case. The obligation under Rule 5.1 to preserve due impartiality in news applies to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy. News includes news bulletins, news flashes and daily news magazine programmes.

The item in question was broadcast as part of a news programme. We considered it clearly constituted news, and the Licensee did not dispute this. Therefore Rule 5.1 applied.

Ofcom also considered whether further requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned matters of major political or industrial controversy or major matters relating to current public policy.

The Code says that matters of major political or industrial controversy and major matters relating to current public policy will vary according to events, but these will generally be matters of political or industrial controversy or matters of current public policy which are "of the moment" and of national, and often international, importance, or are of similar significance within a smaller broadcast area.

As outlined above, this section of the news programme focused on key events unfolding in the Syrian conflict:

- the exodus of civilians fleeing the fighting in Ghouta;
- allegations that the US military was equipping and training rebel fighters to stage a chemical weapons attack in southern Syria which would then be used as a pretext for US military airstrikes; and,
- the ongoing international debate on the Syrian conflict at the United Nations Security Council.

We considered that these recent developments, and the role of both the Russian and US Governments in the Syrian conflict, were subjects of international debate and political controversy that were of both national and international importance.

The Licensee questioned why Ofcom applied Rules 5.11 and 5.12 in this case, when "in the past Rule 5.5 was applied to programmes relating to the topic of Syria", and referred to a previous Ofcom decision on RT News from 2012 in support of this submission¹⁵⁴. While that decision did relate to a RT news bulletin about the Syrian conflict, in that case we considered the programme under Rule 5.1

¹⁵⁴ See https://www.ofcom.org.uk/data/assets/pdf_file/0018/46701/obb217.pdf

(which states “news, in whatever form, must be reported with due accuracy and presented with due impartiality”) and not Rule 5.5.

However, we have previously considered other RT programmes dealing with the topic of the Syrian conflict under Rule 5.5, namely in the *Syrian Diary* decision¹⁵⁵. *Syrian Diary* was a documentary featuring the experiences of a group of Russian journalists as they accompanied a group of Syrian Army soldiers during the Syrian conflict. This programme was broadcast in March 2013, two years after the start of the Syrian conflict. Although it was clearly an important matter, we did not consider at the time that it fell within the definition of a “major matter” for the purposes of the Code.

By contrast, and as set out above, we considered that at the time of the news broadcast in this case, there was intense international interest in the conflict in Syria. The actions of rebel fighters and the policies and actions of the Syrian, Russian and US Governments attracted widespread international scrutiny. It is therefore, our view that the events in eastern Ghouta, the allegations about use of chemical weapons and the political debate surrounding them were highly controversial and of a significant level of international importance.

For these reasons, we considered that the programme was also concerned with matters of major political or industrial controversy and major matters relating to current public policy and the Licensee was further required to preserve due impartiality in accordance with Rules 5.11 and 5.12 of the Code.

The preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on these matters. The Code makes clear that “due” means adequate or appropriate to the subject and nature of the programme. “Due impartiality” does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience and the extent to which the content and approach is signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

We took into account the arguments that the Licensee had made about relevant contextual factors in this case. The programme was broadcast on a channel that, as TV Novosti said, aims to: “make available an alternative point of view on world events”; “cover stories overlooked or underreported by the mainstream media”; and acquaint “international audiences with a Russian viewpoint on major global events”. TV Novosti also pointed to the likely audience expectations to RT, which it argued are “shaped” by its editorial approach. It said the provision of alternative perspectives on Syria in this news item was “not out of line” with expectations of RT’s audience. TV Novosti added that the perspectives of the UK and US Governments on chemical warfare in Syria are extensively covered by the UK media. Therefore, it said there was “all the more need for people to hear contrary or questioning views”. It added that viewers of the news item would not have expected it to cover the entire scope of the Syrian conflict, which is exceedingly complex, and this news item was an update on the then Russian perspective on the unfolding situation.

¹⁵⁵ See https://www.ofcom.org.uk/_data/assets/pdf_file/0025/45745/obb244.pdf

We have taken a number of contextual factors into account in considering the broadcaster's and audience's Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, we acknowledged that viewers were likely to expect programmes on the channel to address controversial issues, and to do so from a Russian perspective. We also acknowledged that it was likely to have been in line with audience expectations for the channel to scrutinise the various political issues surrounding the conflict in Syria, including in this case the policies and actions of the US Government. TV Novosti argued that, as the dominant narrative was widely disseminated by most if not all other media outlets/broadcasters, it was not necessary for this news programme to repeat that perspective explicitly. However, as we mention above, the Code requires due impartiality to be preserved on matters of political and industrial controversy and matters relating to current public policy. In particular, when dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters are required to take additional steps in order to preserve due impartiality, namely to reflect an appropriately wide range of significant views and to give those views due weight.

We considered the news item reported on recent developments in the Syrian conflicts (focusing in particular on the humanitarian crisis in Eastern Ghouta and allegations about the use of chemical weapons) in a way which largely reflected the views of the Syrian Government and its allies, in particular Russia. For example, we took into account the following statements:

"Nearly 70-thousand civilians have left Syria's enclave of eastern Ghouta through evacuation routes, from the start of the Russia brokered humanitarian pause in February".

"Meanwhile, militants are preparing to stage chemical attacks in the country to give the US a pretext to attack the Government. That is according to Russia's defence ministry".

"Chemical weapons and their alleged use by President Assad have dominated a UN Security Council meeting this week, even though the talks were supposed to focus on relief efforts for Ghouta. And the US Envoy even went so far as to issue threats".

In accordance with paragraph 1.12 of Ofcom's published guidance¹⁵⁶ to section Five of the Code, in order to preserve impartiality during this news item on what was a 'major matter', alternative views on the Syrian conflict and the above allegations were needed.

In its representations, TV Novosti gave its view as to whether alternative viewpoints were required in each of the three parts of the news item. The Licensee argued that where the news item included allegations that *"militants are preparing to stage chemical attacks in the country to give the US a pretext to attack the Government"*, these criticisms did not specifically require another viewpoint to maintain due impartiality as this part of the item was *"clearly speculative"* and was designed to present a viewpoint not represented in the mainstream media. In Ofcom's view, however, this was a

¹⁵⁶ "In reporting on particular news items, the broadcaster should take account of all relevant facts, including the nature of the coverage and whether there are varying viewpoints on a particular item. For example, if a news item includes criticism of individuals or organisations, then broadcasters should consider whether they need to reflect the viewpoints of the individuals or organisations being criticised, within their news output as appropriate and in a proportionate way and/or reflect any refusal to comment of that individual or organisation".

serious allegation against the US Government on a matter of major political controversy and was clearly attributed to senior figures in the Russian military and Government. We therefore considered that it was necessary for alternative views to be reflected in the news item as appropriate in order to ensure due impartiality was maintained. TV Novosti also argued that "it distanced itself from the Russian Government's point of view by attributing their statements with the use of the following phrases: *"That is according to Russia's Defence Ministry..."*; *"allegedly"*; and *"Defence officials have said"*. However, in Ofcom's view, reporting the allegations made by Russian officials against the US Government and attributing them accurately did not negate the need for this news item to reflect and give due weight to the viewpoint of the US Government.

We considered that this was one news item which consisted of three linked segments that all related to the overall topic of the ongoing conflict in Syria:

- the first segment reported on the humanitarian crisis relating to the exodus of civilians from Eastern Ghouta;
- the second segment dealt with serious allegations against the US Government and its military, namely that the US military was training and arming rebel fighters in order for them to carry out a chemical weapons attack in southern Syria, which would then be used by the US Government and its allies as a pretext to take military action against the Syrian Government; and
- the third segment dealt with the political debate at the United Nations Security Council on events in Syria.

We therefore considered the three segments of the news item as a whole.

The Licensee accepted that that the viewpoint of the US Government was "obviously significant" and therefore its position needed to be reflected. Ofcom emphasises that broadcasters have the right to exercise editorial freedom when covering news stories, so long as they comply with the Code. TV Novosti was free to broadcast a report containing criticisms of the US Government position, as outlined by officials from the Russian Defence Ministry and the Russian Ambassador to the United Nations. However, given the application of Section Five and the additional requirements for programmes which concern matters of major political controversy, this report required significant alternative viewpoints to be given sufficient weight.

We acknowledged that the programme did reflect to some extent the viewpoint of the US Government, by the inclusion of two extracts of footage of the US Ambassador to the United Nations Nikki Haley, speaking at the United Nations Security Council. However, we considered that overall, the US Government's position was not given due weight in the news item. For example, the news presenter used what, in our view, was dismissive language to describe Ms Haley's intervention at the UN Security Council:

"The US Envoy, strangely enough, pushed the Security Council to demand a 30-day ceasefire in Eastern Ghouta, which is where government forces and Russian forces are currently battling terrorists. Nikki Haley then unleashed a barrage of accusations against government allies".

Further, following these extracts the news item contained a sequence featuring the Russian Ambassador to the United Nations, Vassily Nebenzya, and Ms Haley. Mr Nebenzya was shown saying:

"Last time I promised to count how many times the US Envoy would mention Russia during her statement. I counted: It's 22".

A video montage was then broadcast which consisted of repeated clips of Nikki Haley saying the words "Russia" or "Russian" during her remarks at the UN Security Council. Each time that Ms Haley said the words "Russia" or "Russian", an on-screen counter increased by one to a final total of 22 whilst the sound of a drum beat was also broadcast. Vassily Nebenzya was then shown saying:

"It's [Ms Haley's mentions of Russia] done for political purposes only and not out of care for civilians".

This was accompanied by the following caption:

"Russia to UN: US Envoy mentions Russia 22 times in her speech".

In considering this content, we noted that Ofcom's published Guidance states that:

"As part of treating viewpoints with 'due weight' a broadcaster may debate and discuss such views. However, broadcasters must not dismiss or denigrate such viewpoints and include them in a programme simply as a means to put forward their own views"¹⁵⁷.

As explained above, while there is no requirement for every point of view to be treated equally by the broadcaster, we considered the language and the editorial treatment in this sequence, when assessed in the round, were both dismissive and denigratory and in our view this would have had the effect of significantly undermining the statements of Ms Haley and her authority in the eyes of viewers. We therefore considered that the viewpoint of the US Government was not given due weight by the inclusion of these extracts.

We also considered the use of captions in the programme. TV Novosti argued that it had featured the viewpoint of the US Government through various captions, such as the following:

"U.S. Ambassador to UN: Prepared to Act Against Damascus If We Must".

"The U.S. Remains Prepared to Act".

"US pushes UN to demand 30-day ceasefire in militant-held Ghouta".

The Licensee also said that two additional text headlines were displayed on screen during the news item to help preserve due impartiality:

"U.S. ambassador to UN: prepared to act against Damascus if we need to"; and,

¹⁵⁷ See https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf, paragraph 1.59.

"U.S. pushes UN to demand 30-day ceasefire in militant-held Ghouta".

Graphics or captions are editorial techniques which can contribute to the preservation of due impartiality. However, as we made clear in our December 2016 *Crosstalk* Decision¹⁵⁸ involving TV Novosti, whether graphics or captions do in fact maintain due impartiality in any specific programme will depend on all the relevant circumstances, such as the duration and nature of the programme and its subject matter, and the presence of any other factors in the programme which may contribute to helping to maintain due impartiality. We caution broadcasters against assuming that they can preserve due impartiality where required by solely or largely including graphics and captions. This is because, depending on the circumstances, captions or graphics may not enable sufficient weight to be given to an alternative view. Further, when ensuring that matters of major political and industrial controversy and major matters relating to current public policy are treated with due weight, we consider that the relative size and prominence and limited content within on-screen captions and graphics will make it significantly more difficult for broadcasters to ensure compliance with Rule 5.12. This is particularly the case if the broadcaster is seeking to preserve due impartiality where required by solely or largely including graphics and captions.

In this case, the Licensee relied on several captions and text headlines (described above) which referred to different aspects of the situation in Syria. These were part of a number of captions and also text displayed as a banner graphic in the manner of 'rolling news' headlines. Each caption or text graphic was shown only for a few seconds at any one time and the captions covered a number of different topics (including the Syrian conflict, for example, as well as North Korea, the Russian Presidential election and the Skripal affair) as well as referring viewers to the RT website and Twitter account.

Ofcom acknowledges that these graphics and captions did, to a limited extent, reflect the viewpoint of the US authorities. However, considering these graphics and captions and their prominence in the context of the news item as a whole, , the short-form nature of their content, the limited time they were on screen, and that the subject was a matter of major political controversy, we did not consider that they were sufficient to reflect the US authorities' viewpoint with due weight or otherwise provide sufficient alternative views to the presentation of the Russian Government's policies and actions regarding the Syrian conflict. In reaching this conclusion, we also considered that the content of the captions would also have been undermined by the same factors that undermined the viewpoint expressed by Ms Haley more generally, as discussed above.

Taking account of the relevant contextual factors discussed, we did not consider that an appropriately wide range of significant viewpoints on the relevant matters of major political and controversy and major matters relating to current public policy were adequately represented within this programme and given due weight as required under Rules 5.11 and 5.12, and taken overall, due impartiality was not preserved during the news item as required under Rule 5.1.

In this case, we have taken careful account of the broadcaster's and audience's rights of freedom of expression and all the relevant contextual factors. For all the reasons set out above, Ofcom's decision is that the Licensee failed to include and give due weight to an appropriately wide range of significant viewpoints in relation to the relevant matters of major political controversy and major matters relating to current public policy dealt with in the programme.

Breaches of Rules 5.1, 5.11 and 5.12

¹⁵⁸ See Ofcom's Decision *Crosstalk*, 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

Not in Breach

News, 30 March 2018, 18:00

Introduction

During monitoring, we assessed a news item in the above programme which reported on the visit of Saudi Arabia's Crown Prince Mohammed bin Salman to the United States. A news presenter started the news item (with a caption: "*Prince Charming*") by saying:

"The Saudi Crown Prince is on a two-week tour of the United States. He's already met Donald Trump in the White House, where lucrative arms deals were on the table. But he's also meeting other big names, among them: SpaceX Chief Executive Elon Musk; Apple boss Tim Cook; and Microsoft co-founder Bill Gates. TV host and media mogul Oprah Winfrey's also getting some face time with Mohammed Bin Salman, as are the Clintons and Barack Obama. But it's not just Democratic party elites either, former President George W. Bush is also meeting the royal. As well as hanging out with American celebrities and politicians, the Saudi Crown Prince is, in addition, giving interviews to a number of US media outlets and these include: the New York Times; The Wall Street Journal; Washington Post; and The Atlantic, as well as Time and Vanity Fair. And to coincide the crown Prince's visit, a special 97-page ad-free magazine dedicated to praising the Saudi Kingdom has hit shelves of US stores. RT's Caleb Maupin got his hands on a copy".

During the presenter's opening remarks a caption was shown: "*Saudi Crown Prince meets with U.S. celebrities, media in PR blitz*".

The programme cut to reporter and political analyst Caleb Maupin in a studio holding a copy of "The New Kingdom", the magazine referred to by the news presenter. Caleb Maupin said:

"It's slick, glossy and a certain Government in the Arabian Peninsula says it has nothing to do with it. On newsstands across America you can get copies of 'The New Kingdom'".

Another caption was shown: "*Magazine praising Saudis released in U.S amid Crown Prince's visit*".

Caleb Maupin continued:

"It's a magazine all about Saudi Arabia and how it's a happy place that's open for business. American Media Incorporated, the print conglomerate that published this, has a CEO who actually says that he's a personal friend of Donald Trump. Now the Saudi Kingdom says that they had no role in financing it. Apparently American Media Inc just feels very passionate about global politics. We decided to have a chat with legal and media analyst Lionel, to see what he thinks of the sudden appearance of this pro-Saudi glossy".

Caleb Maupin ("CM") then discussed the magazine "The New Kingdom" with Legal and Media analyst Michal William Lebron who broadcasts under the name of Lionel ("L"):

CM: *"So, interesting publication we've got here, 'The New Kingdom'. Now it talks about how Saudi Arabia's a key ally of the United States in the fight against terrorism, leaves out the fact that they have been supporting extremist groups in Syria, what do you make of that?"* [front cover of the magazine was shown, with the words "Our Closest Middle East Ally Destroying Terrorism" circled]

- L: *"This is not an encyclopaedia of Saudi Arabia, it's brilliant, and most Americans will read this and say this is fantastic. Very frankly, I don't think you're going to be seeing too many aspects of a pro-Saudi Arabian glossy talking about the darker sides of the area".*
- CM: *"Sure, I mean, it talks about their romantic landscapes, it talks about their beautiful traditional ceremonies, [pages of the magazine were shown], doesn't really get into the public beheadings that go on still".*
- L: *"Do you think there is any chance of that? I mean, I understand that. But not only that, treatment of women, go through that, you know, we've had lately comments of Saudi Arabia with 9/11, you're not going to see this, but remember the only way this will ever work is when you have a country, as of ours, where people know [stage whisper] nothing".*
- CM: *"Is it a coincidence, you think, that the Crown Prince is currently on his two-week tour of the United States at the same time this hits the shelves?"*
- L: *"Absolutely not. Of course not. There's no such thing as a coincidence. It's brilliant. But look at what's happening. [pages of the magazine were shown, with images of the Crown Prince meeting Donald Trump] Look at how he's being presented: 32 year-old, he's almost like the Prince Harry; young; hipper; meeting with people, apparently – remember America loves a rock star. If you're trying to win America over, this is the way to do it, because remember, we don't know anything, we don't read anything, we don't know anything about history, but just give us a rock star and we're in".*
- CM: *"Now the Saudis say they have nothing to do with this coming out".*
- L: *"Course not".*
- CM: *"Nothing to do with it – do you buy that?"*
- L: *"Look, I know what you're saying. You're saying, somehow, the National Enquirer or somebody benefitted maybe in the backing. I don't know, who am I to say? I think though that for somebody to, on their own, for no particular reason, come up with this extremely expensive, look at the quality of this, look at the colours, on their own gratuitously? Just to do it? I think that's less than likely. This is a very, very expensive proposition".*

During this discussion, a caption was shown: *"Magazine praising Saudis released in U.S. amid Crown Prince's visit".*

The programme then cut back to the news presenter in the studio, who said (with a caption: *"Prince Charming"*):

"Amnesty International has mocked Saudi Arabia's PR blitz, pointing to Riyadh's record of rights abuses".

The programme then showed a video by the human rights group Amnesty International, which included the following statements:

"To attract foreign investors, Saudi Arabia wanted to improve its image. To achieve this, they had a few options to consider:"

" – Stop beheading people". [A picture apparently showing a man preparing to behead another man kneeling down was shown].

" – Stop lashing people". [A picture of several men in military uniform apparently beating a figure lying on the ground, with long sticks was shown].

" – Stop imprisoning human rights defenders". [A picture showing two figures in a prison corridor was shown].

" – Stop killing civilians in Yemen". [A picture of a large explosion behind a desert town was shown].

" – Hire a PR Agency". [A picture of a besuited man smiling was shown].

"Guess which one they chose?"

"Saudi Arabia, don't mistake public relations for human rights".

The news item then ended.

We considered that this news item raised issues warranting investigation under the following rule:

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

We therefore asked the Licensee how the programme complied with the due impartiality requirement within this rule.

Initial Response

General

The Licensee made several "background points" about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10.

Due impartiality in the programme

TV Novosti said that this news item was presented against the background of the visit of Saudi Arabia's Crown Prince Mohammed bin Salman to the United States. It said to ensure that due impartiality was preserved within the news item, an appropriate range of views would include the Saudi Arabian viewpoint and the American viewpoint, adding that Ofcom permits broadcasters to use editorial discretion when presenting news stories with due impartiality. It further added that Ofcom has acknowledged in its published guidance that (in the Licensee's words) "the absence of an alternative viewpoint does not inevitably mean that due impartiality has not been maintained".

The Licensee said that the news item was divided into three parts:

- The first part of the news item was “non-controversial”, presenting a factual report on the nature of the Crown Prince’s visit. This reflected the American perspective on the Prince’s visit; that he was going to “be welcomed and embraced” by key Democrat and Republican political figures, and members of “the celebrity elite”. TV Novosti said the caption during the opening of the segment (“*Prince Charming*”) reflected the positive US perspective on the visit and listed the key American figures the Prince was expected to meet during his two-week tour. It added the presenter also listed the prominent American media outlets to which the Prince was expected to give interviews, and during this section a ticker displayed the following statement: “*Saudi Crown Prince meets with U.S. Celebrities, Media in PR Blitz*”.
- The second part of the news item focused on the “US publication of a glossy, promotional ad-free magazine” called “The New Kingdom” which promoted a “positive view” of Saudi Arabia. The Licensee said this part of the news item was “framed with the Saudi viewpoint before any critical commentary”. It added that the reporter introduced this segment with a summary of the magazine which was positive: “*It’s a magazine all about Saudi Arabia and how it’s a happy place that is open for business*”. He also relayed comment from the Saudi administration, “albeit implicitly” by saying: “*A certain Government in the Arabian Peninsula says it has nothing to do with it*”, while direct comment was also provided with the presenter’s words: “*Now, the Saudi Kingdom says they have no role in financing it*”. The Licensee’s submissions then turned to the short interview with an American lawyer and media commentator known as “Lionel” (Michael William Lebron). In essence, the Licensee argued that this part of the programme balanced negative and positive perspectives on Saudi Arabia. For example:
 - the reporter referred to “*positive aspects featured in the magazine*” e.g. “*romantic landscapes*”, “*beautiful traditional ceremonies*” (an image depicting traditional dress and ceremonies was displayed) and “*the Prince himself*” (likened to Prince Harry). However, the presenter also commented that the magazine “*doesn’t really get into public beheadings*”. The Licensee submitted this comment was “*to provide context*”;
 - an image of the magazine’s cover was shown, with the headline “*Our Closest Middle East Ally Destroying Terrorism*”. The Licensee submitted this reflected the US’s “*on the whole positive view of Saudi Arabia*” which “*balances the point simultaneously expressed by the interviewee, who comments...that the magazine omits any reference to Saudi Arabia’s support for extremist groups in Syria*”; and,
 - an image from the magazine showing the Prince and President Trump shaking hands was displayed during comments about the magazine’s omissions of other features of Saudi policy which are “*frequently and widely criticised*”, such as “*public beheadings and the mistreatment of women*”. The Licensee added that the image in turn reflected the US perspective “*that it has an enduring and positive relationship with the Crown Prince and Saudi Arabia and demonstrated the US endorsement of them*”.

TV Novosti added that during the critique of the magazine, the following caption provided a “factual” viewpoint and a “neutral” summary of this news story: “*Magazine Praising Saudis Released in U.S. amid Crown Prince’s visit*”.

The third part of the news item presented a 30-second clip by a “renowned and respected” non-governmental organisation Amnesty International which provided a commentary on Saudi Arabia’s human rights record. The Licensee argued that the clip provided a “different perspective” from that

of TV Novosti and therefore, during the broadcast of the clip, the text on screen read: "*courtesy of Amnesty International*" to clearly provide the viewer with an indication of who articulated this view. The Licensee further argued that the perspective of Amnesty International was intended to provide a "counterpoint to the media blitz surrounding" the Prince's visit to the US. It added that in the first part of this news item, the presenter said: "*Amnesty international has mocked Saudi Arabian PR blitz pointing to Riyadh's record of rights abuses*". In TV Novosti's view, this provided a "counterpoint to the glossy magazine and the glitzy royal visit", adding the Amnesty International criticisms were "implicit rather than 'statements'".

The Licensee said that in ensuring the broadcast of an appropriately wide range of significant views and giving them due weight, it had followed advice from Ofcom indicating that alternative views can be presented in the form of captions or graphics, so long as it is visible in some way. Therefore, it said throughout the broadcast, three banner messages were displayed over seven times: "*Prince Charming*"; "*Saudi Crown Prince meets with U.S. celebrities, media in PR blitz*" and "*Magazine praising Saudis released in U.S. amid Crown Prince visit*". TV Novosti said these graphics informed viewers that the American perspective on the royal visit was very positive.

Due impartiality in other programmes

The Licensee said the Saudi viewpoint was included in an edition of *Crosstalk* broadcast on 29 March 2018, in which Sami Hamdi, Editor-in-Chief of International Interest was a guest. It said that within the programme he expressed pro-Saudi viewpoints and defended its perspective on various global issues. TV Novosti argued this programme provided balance to what RT broadcast in this news item.

Contextual factors relevant to this programme

The Licensee also cited various contextual factors that it felt were relevant in this case:

- Type of channel: TV Novosti said that said RT bills itself as an alternative perspective with an emphasis on a Russian viewpoint, which is intended to be challenging. It argued Ofcom has a statutory duty to further the interest of citizens in relation to communications matters, and RT contributes to the range of media voices available and the plurality of democratic debate;
- Audience expectations: RT news is aimed at an audience wanting a different perspective on world events and who accordingly has an expectation of receiving a different viewpoint when watching the channel. The Licensee said it is "highly unlikely" that the provision of alternative perspectives on Saudi policy in this case was out of line with audience expectations; and,
- Right to freedom of expression and the role of journalism: TV Novosti said that the "overwhelmingly positive glossy" magazine omitted what "some perceive to be the Saudi Government's support of terrorism and its human rights record". It added it was important to recognise that the editorial purpose of parts two and three of the news item was to present a view to "critique and fill in information that the magazine leaves out". It said the purpose of the third part of the news item, which included the Amnesty International clip, was to provide a "counterpoint to the media blitz surrounding the Prince's US visit described in part one". Finally, the Licensee said several of the criticisms in the item were implicit rather than a "statement" about Saudi Arabia.

Preliminary View

Ofcom issued a Preliminary View that the edition of *News* broadcast on 30 March 2018 at 18:00 was not in breach of Rules 5.1 of the Code and invited TV Novosti's representations on the Preliminary View.

Response to Preliminary View

The Licensee chose not to provide either written or oral representations on the Preliminary View.

Decision

Reflecting our duties under the Act¹⁵⁹, Section Five of the Code requires that the impartiality requirements are met.

Rule 5.1 states that: "news, in whatever form, must be reported with due accuracy and presented with due impartiality".

We acknowledged that it was legitimate for the Licensee to broadcast a news item exploring the visit of Saudi Arabia's Crown Prince Mohammed bin Salman to the United States, provided it ensured that due impartiality was preserved.

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case. The obligation under Rule 5.1 to preserve due impartiality in news applies to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy. News includes news bulletins, news flashes and daily news magazine programmes.

The item in question was broadcast as part of a news programme. We considered it clearly constituted news, and the Licensee did not dispute this. Therefore Rule 5.1 applied.

The preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality. The Code makes clear that "due" means adequate or appropriate to the subject and nature of the programme. "Due impartiality" does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience and the extent to which the content and approach is signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

¹⁵⁹ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

We took into account the arguments that the Licensee had made about relevant contextual factors in this case. The programme was broadcast on a channel that, as TV Novosti said, aims to: “make available an alternative point of view on world events”; “cover stories overlooked or underreported by the mainstream media”; and acquaint “international audiences with a Russian viewpoint on major global events”. TV Novosti also pointed to the likely audience expectations to RT, which it argued are “shaped” by its editorial approach. The Licensee therefore argued that viewers “turn to RT exactly for the reason that it does not resemble the approach of British national broadcasters” and want to hear the Russian point of view from a Russian channel, “unfiltered by a British broadcaster”. We also took into account the Licensee’s submission that the news item presented a “fair counterpoint” to the magazine, which “only presents pro-American and Saudi views”.

We have taken a number of contextual factors into account in considering the broadcaster’s and audience’s Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, we acknowledged that viewers were likely to expect news programmes on the channel to address controversial issues, and to do so from a Russian perspective.

We considered that the news item (incorporating the three segments) as a whole was reporting on the manner in which the Saudi Arabian Government was seeking to project itself and its policies internationally. The narrative arc of the item started with the introductory references to the Saudi Crown Prince’s visit to the US as part of a “PR blitz”. This was accompanied by the captions “*Prince Charming*” and “*Saudi Crown Prince meets with U.S. celebrities, media in PR blitz*”. In the second segment the reporter and his guest, in surveying the contents of the promotional magazine called “The New Kingdom”, commented on the various positive references to the life and landscapes of Saudi Arabia, as well as its relationship with the U.S. This interview was accompanied by the captions “*Magazine praising Saudis released in U.S. amid crown prince’s visit*”. This theme continued when the news presenter referred to “*Saudi Arabia’s PR blitz*” when introducing the Amnesty International video:

“Amnesty International has mocked Saudi Arabia’s PR blitz, pointing to Riyadh’s record of rights abuses”.

Further, the Amnesty International video that followed framed its references to various policies and actions by the Saudi Arabian Government as options for “*improv[ing] its image*” in order to “*attract foreign investors*”. The video concluded by suggesting that that government had “*Hire[d] a PR Agency*”, and said the Saudi Arabian Government should not “*mistake public relations for human rights*”.

We took into account that during the news item there were various statements which could be described as critical of the policies and actions of the Saudi Arabian Government. For example, the Amnesty International video included the following statements: “*Stop beheading people*”; “*Stop lashing people*”; “*Stop imprisoning human rights defenders*”; and “*Stop killing civilians in Yemen*”. In addition, during the discussion about the promotional magazine called “The New Kingdom”, the magazine was variously described as: “*leav[ing] out the fact that [the Saudi Arabian Government] have been supporting extremist groups in Syria*”; not mentioning “*the darker sides of the area*”; not “*really get[ting] into the public beheadings that go on still*” in Saudi Arabia”; and not mentioning the “*treatment of women*” in Saudi Arabia.

Ofcom’s published Guidance on Rule 5.1 of the Code¹⁶⁰ states that “...if a news item includes criticism of individuals or organisations, then broadcasters should consider whether they need to

¹⁶⁰ https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf, paragraph 1.12.

reflect the viewpoints of the individuals or organisations being criticised, within their news output as appropriate and in a proportionate way and/or reflect any refusal to comment of that individual or organisation". The Guidance also states that "[b]roadcasters can criticise or support the actions of particular nation-states in their programming, as long as they, as appropriate, reflect alternative viewpoints on such matters".

We took into account, by way of background context, that a number of the policies and actions attributed to the Saudi Arabian authorities, about which critical references were made in the programme, broadly reflected the legal and constitutional state of affairs within Saudi Arabia on issues such as capital punishment and the treatment of women. As such, in the context of this news item, we did not consider that these statements specifically required the Licensee to provide an alternative viewpoint. This was particularly so given that we were not considering the news item under Rules 5.11 and 5.12.

In our view, the critical references to the Saudi Government's policies and actions had to be considered in the context of the overarching and central theme of the news item, which, as discussed above, concerned the manner in which the Saudi Government was seeking to project itself and its policies internationally through the visit of the Saudi Crown Prince to the US. We considered that these critical references primarily served to reinforce the point made throughout the news item that the magazine promoted a positive view of Saudi Arabia which omitted certain aspects of the Saudi government's policies. For instance, the Amnesty International video was framed in terms of Amnesty International "*mock[ing] Saudi Arabia's PR blitz*".

We therefore considered whether the Licensee had preserved due impartiality on the issue of the manner in which the Saudi Arabian Government was seeking to project itself and its policies internationally, and in particular the Saudi Crown Prince's visit to the US. In our view, the news item did appropriately reflect alternative viewpoints and provide appropriate context, in several ways.

The news item began reporting in a factual manner about the visit of Saudi Arabia's Crown Prince Mohammed bin Salman to the United States. It reported details of the large number of US politicians and celebrities that the Crown Prince would be meeting and reflected the US perspective as being positive and welcoming of the Crown Prince.

We considered Lionel's responses to the interviewer's questions in the second segment explained why it would not be expected that negative aspects of Saudi Arabia's human rights record and involvement in regional conflicts would be included within the magazine "*The New Kingdom*":

CM: *"So, interesting publication we've got here, 'The New Kingdom'. Now it talks about how Saudi Arabia's a key ally of the United States in the fight against terrorism, leaves out the fact that they have been supporting extremist groups in Syria, what do you make of that?"*

L: *"This is not an encyclopaedia of Saudi Arabia, it's brilliant, and most Americans will read this and say this is fantastic. Very frankly, I don't think you're going to be seeing too many aspects of a pro-Saudi Arabian glossy talking about the darker sides of the area".*

CM: *"Sure, I mean, it talks about their romantic landscapes, it talks about their beautiful traditional ceremonies, [pages of the magazine are shown on screen], doesn't really get into the public beheadings that go on still".*

L: *"Do you think there is any chance of that? I mean, I understand that. But not only that, treatment of women, go through that, you know, we've had lately comments of Saudi Arabia with 9/11, you're not going to see this, but remember the only way this will ever work is when you have a country, as of ours, where people know [stage whisper] nothing".*

CM: *"Is it a coincidence, you think, that the Crown Prince is currently on his two-week tour of the United States at the same time this hits the shelves?"*

L: *"Absolutely not. Of course not. There's no such thing as a coincidence. It's brilliant..."..*

In the above exchange, Lionel gave his view that it was no coincidence that the Crown Prince's visit and the publication of the promotional magazine *"The New Kingdom"* happened at the same time. However, we also took into account that before and during the discussion about the promotional magazine, it was made clear three times that the Saudi Arabian Government had denied any involvement with the production of this magazine, as follows:

"...a certain Government in the Arabian Peninsula says it has nothing to do with it".

"Now the Saudi Kingdom says that they had no role in financing it".

"Now the Saudis say they have nothing to do with this coming out".

Additionally, during this part of the news item, Lionel spoke in positive terms about the visit of Crown Prince Mohammed bin Salman to the US as follows:

"Look at how he's being presented: 32 year-old, he's almost like the Prince Harry; young; hipper; meeting with people, apparently – remember America loves a rock star. If you're trying to win America over, this is the way to do it, because remember, we don't know anything, we don't read anything, we don't know anything about history, but just give us a rock star and we're in".

We also considered the use of captions or banners. We took into account the Licensee's argument that it had relied on previous Ofcom guidance "that one way of presenting the alternative view is in the form of graphics". The Licensee referred to the following captions shown during the news item:

"Saudi Crown Prince meets with U.S. celebrities, media in PR blitz".

"Magazine praising Saudis released in U.S amid Crown Prince's visit".

"Prince Charming".

Graphics or captions are editorial techniques which can contribute to the preservation of due impartiality. However, as we made clear in our December 2016 *Crosstalk* Decision¹⁶¹ involving TV Novosti, Ofcom underlines that whether graphics or captions do in fact maintain due impartiality in any specific programme will depend on all the relevant circumstances, such as the duration and nature of the programme and of the matter of political controversy, and the presence of any other factors in the programme which may contribute to helping to maintain due impartiality. We caution broadcasters against assuming that they can preserve due impartiality where required by solely or largely including graphics and captions. This is because, depending on the circumstances, captions or graphics may not enable sufficient weight to be given to an alternative view.

We considered whether the use of these captions in tandem with the other content discussed above contributed to the preservation of due impartiality in this case. In our view, these captions would have been likely to have been seen by viewers as being broadly factual and/or positive statements about the Crown Prince's visit to the US and the manner in which the Saudi Arabian Government was seeking to project itself and its policies internationally. We considered that these captions would not, on their own, have been sufficient to counter the opposing views in this case. However, , taken together and considered in context alongside the other content in the whole news item, as discussed above, and taking into account that we were not treating this subject as a matter of major political and industrial controversy or a major matter relating to current public policy, it was our view that they made some further contribution to due impartiality being preserved.

In this case, we have taken careful account of the broadcaster's and the audience's right to freedom of expression and all the relevant contextual factors. We considered that TV Novosti had appropriately reflected alternative viewpoints and provided appropriate context in this case. For all the reasons set out above, Ofcom's decision is that due impartiality was preserved in this programme on the discussion about the manner in which the Saudi Arabian Government was seeking to project itself and its policies internationally.

Not in breach of Rule 5.1

¹⁶¹ 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.

In Breach

News, 26 April 2018, 08:00

Introduction

During monitoring, we assessed a news item in the above programme which reported on the issue of the Ukrainian Government's position on Nazism and the treatment of Roma Gypsies.

A news presenter started the news item (with a caption: "*Face of nationalism*") by saying:

"Amnesty International is demanding that the Ukraine government investigate an attack on a Roma Gypsy camp in the capital Kiev".

Amateur footage was shown of what appeared to be Roma Gypsy families fleeing from a group of men, while the presenter continued:

"Last week a nationalist group destroyed the camp, children were reportedly injured in the incident. People fled, while their tents and other belongings were burnt. The attackers also used teargas and, reportedly, guns".

A full-screen graphic was broadcast, with the logo of Amnesty International and the following text, which was also read out in commentary (some words were highlighted as indicated below):

*"Currently **no one** can be sure that he won't become the next victim of the **swarm of radicals**. They shield themselves with patriotism and caring for the public, but actually they're **terrorizing ordinary people** – Oksana Pokalchuk, Director of Amnesty International Ukraine".*

*"Romani Gypsies came later here and then left, **they left a lot of rubbish** behind, and the **authorities just burnt it afterwards** – Andrey Krischenko, Kiev Police Chief".*

A banner at the bottom of the screen said:

"Nationalists burn down Roma camp forcing people to flee from the area".

The presenter, speaking in the studio, then said (with a caption: "*Lviv education department organised painting contest devoted to Nazi*"):

"Well, police in Kiev say that there were no reports of violence and the fires were simply part of a clean-up operation.

Meanwhile, authorities in another city in Ukraine have opened a painting contest to mark the creation of a Nazi division in the country during the second world war. In the contest, youngsters are asked to draw something linked to Ukrainians who volunteered for the Nazi unit, and there's a cash prize for the best one. Let's cross live now to discuss this issue with writer and political commentator Avigdor Eskin. Avigdor, welcome to the programme. Quite extraordinary, just reading this out. It begs the question, why do authorities in the Ukrainian city even want to celebrate a Nazi unit?"

Due to a technical issue, the interview with Avigdor Eskin could not take place. After dealing with another (unrelated) news item, the presenter returned to the news item on Ukraine, carrying out the following interview by video-link with Avigdor Eskin:

Presenter: *"Alright, just to cross back now to our Ukraine story for some live reaction. Just to recap. In a city in Ukraine, authorities have opened a painting contest to mark the creation of a Nazi division in the country during the second world war. In the contest, youngsters are asked to draw something linked to Ukrainians who volunteered for the Nazi unit. And there's a cash prize for the best one. Quite extraordinary really. Let's get reaction, as I say, and cross to writer and political commentator, Avigdor Eskin. Avigdor, welcome, hopefully we can hear you a bit better this time. Why do authorities, quite simply, in the Ukrainian city [of Lviv], want to celebrate what is clearly a Nazi unit?"*

As the presenter started speaking, the following captions appeared:

"Face of nationalism"

"Amnesty demands Ukraine probe attack on Gypsy camp in Kiev"

*"[Facebook logo]
Lviv's Department of Education and Science
Drawing Contest
Students 14-18 Y.O.
Lviv's Department of Education and Science
Theme: Ukrainian volunteers in the 1st Galician Nazi Army
Reward: up to \$114"*

Avigdor Eskin: *"Because Ukraine, not since yesterday, is promoting glorification of Nazism on the level of their government, and this is what is important. You have fringe Nazi groups in many countries, but Ukraine passed special legislation to glorify their Nazi war criminals. People don't know about it. I mean, it's prohibited by the law to criticise [inaudible]. Listen, let me remind you of something, a few years ago there was a contest for Holocaust cartoons in Tehran. The whole world was really furious about it. Now I expect from people now to be furious about what's happening in Lviv, it's outrageous. I see that only Russia and Israel is ready to protest, but we are talking about something that is absolutely inconceivable that the government officially promotes glorification of Nazism and this time it's very sinister cynicism. They went for the children, they want their children to praise their Nazi past. Now, you have to know, and you know it of course in Ukraine, 95% of Ukrainians who fought against Nazism and they took out of the whole of the Ukrainian population these 5% of criminals, second world war criminals, and are trying to make them like a national myth. I mean, it's a danger, not only for Ukraine, of course for Jewish population of Ukraine, Russian population of Ukraine. But it's also a danger that this will spread in other countries in eastern Europe and elsewhere. And we must not stand idle by that".*

Presenter: *"Well that's the thing, you know, it needs to be pointed out almost every family in the Soviet Union lost a loved one during the war of course. Just to another point Avigdor, if you heard our story earlier about the Roma Gypsy camp, which was allegedly attacked in Kiev. Amnesty International, the rights group, fear that it's not*

only Roma people in danger in Ukraine, other minorities are vulnerable as well. Is the Ukrainian Government doing enough to protect these people?"

Avigdor Eskin: *"I suppose that on a local level some policemen will try to prevent open violence, but when the government and parliament officially praise and glorify Nazis, how can you expect anything else? And I said actually, 'They first came to Jews', as Dietrich Bonhoeffer¹⁶² said, 'But then they came to others. But when they came to me it was too late'. I mean, people in the West should not be silent about it. They should know that this is not just an incident with gypsies and others, this is a government policy, this a policy promoted by the Ukrainian government, this is what makes it terrible, this is what makes it dangerous and this is what makes it absolutely inconceivable. Again, when Tehran did it the whole world was furious and rightly so, I expect the same reaction now to what is happening in Ukraine, now in Lviv".*

Presenter: *"Alright, we're just right out of time. Avigdor Eskin, writer, political commentator, thanks so much for your thoughts this hour".*

The news item then ended.

We considered that this news item raised issues warranting investigation under the following rule:

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

We therefore asked the Licensee how the programme complied with this rule.

Initial Response

General

The Licensee made several "background points" about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10

Due impartiality in the programme

TV Novosti said this news item, entitled *The Face of Nationalism*, was presented in two separate, but related parts. It added that, following Ofcom's guidance, an appropriate range of views would include: the position of the Ukrainian Government and authorities on the first news item; and the view of Lviv's Department of Education on the second news item. It further considered that due impartiality was maintained within this news item, with alternative viewpoints appropriately and adequately included. It argued the reports followed Ofcom's guidance that broadcasters can criticise or support the actions of particular nation-states in their programming, as long as they, as appropriate, reflect alternative views on such matters.

The first part of the news item discussed Amnesty International's call for alleged attacks by Ukrainian nationalists on Roma camps in Kiev to be investigated by the Ukrainian Government. The Licensee said that this part of the news item included "a clear and emphatic statement" from the Ukrainian police, providing the following alternative view to the one held by Amnesty International, to ensure due impartiality was maintained:

¹⁶² Dietrich Bonhoeffer was a German pastor and anti-Nazi activist who died in 1945.

“Police in Kiev said that there were no reports of violence and the fires were simply part of a clean-up operation”.

TV Novosti added that a quote from the Kiev police chief, Andrey Krischenko, was also shown on screen which read:

“Romani gypsies came here and then left. They left a lot of rubbish behind, and the authorities just burnt it afterwards. We didn't receive any complaints from gypsies about violence. We won't let anyone dismantle these temporary camps”.

TV Novosti explained the second sentence of the police statement was cut off prematurely, “due to an inadvertent timing/technical error”, adding that the first sentence of Mr Krischenko's quote was displayed on screen alongside the presenter's summary of the events which had taken place at the camp. The Licensee argued this “adequately and appropriately” represented the viewpoint of the police as an alternative to that of Amnesty International.

The second part concerned a painting contest in Lviv, where the Department of Education had launched a competition “asking school children to draw something linked to Ukrainians who volunteered to fight in a Nazi unit in the Second World War”. This part included a live interview with writer and political commentator Avigdor Eskin, who spoke on both subjects. TV Novosti said the art competition, organised by the Lviv Department of Education and Science, made clear that it wanted children to draw volunteers from the 1st Galician Nazi Army and would award prizes for the best pictures. It said this was discussed by the presenter while a quote from the Lviv Department of Education and Science was displayed in a caption. The Licensee added the Lviv Department of Education and Science's Facebook post shown in the caption made clear that the contest was “celebratory” in tone, and the programme made clear that that the “celebration” had been condemned by the Jewish community.

TV Novosti said the news item also included the views of the writer and commentator Avigdor Eskin. It said that to ensure his comments were contextualised, Mr Eskin underlined that not all Ukrainians were Nazis during the Second World War and instead the vast majority had fought against them, by saying:

“Now, you have to know, and you know it of course that in Ukraine there were 95% of Ukrainians who fought against Nazism”.

The Licensee said that Mr Eskin went on to “contextualise the attitudes and actions of the Ukrainian authorities towards anti-Semitic violence, and violence against ethnic and minority groups”. When responding to a question about the actions of the Ukrainian Government to protect vulnerable people, the Licensee said Mr Eskin commented fairly, indicating not all Ukrainian officials condoned these events, saying: “on some local level some policemen will try and prevent violence”. TV Novosti said while Mr Eskin commented briefly on the alleged attack at the Roma camp near Kiev, his main concern as a spokesperson for Jewish people was anti-Semitism in Ukraine. It added it was in this context that he described the Lviv painting contest as “outrageous”. It said that while Mr Eskin expressed his concerns about manifestations of anti-Semitism in Ukraine, he did not say that a majority of Ukrainians were anti-Semitic.

According to the Licensee, the news item reflected a “general concern about the growth of official support for some expressions of anti-Semitism in Ukraine”. To illustrate this, the Licensee:

- referred to an April 2018 newspaper article which reported that over 50 members of the US Congress had written to the US Deputy Secretary of State to protest against Ukrainian legislation which, in their letter, they said “glorifies Nazi collaborators”. The newspaper article further reported that the letter had said it was “particularly troubling that much of the Nazi glorification in Ukraine was government-supported”; and
- said that, in 2015, the Ukrainian Parliament had passed a law that “criminalizes denying the ‘heroism’ of some of these allies of Nazi Germany, which oversaw the near annihilation of the region’s” Jewish people. It explained that Mr Eskin referred to this legislation in his interview.

Contextual factors relevant to this programme

TV Novosti also cited various contextual factors that it felt were relevant in this case:

- Nature of the subject: the “protection of minority groups was a topic worthy of reporting”, and the programme was “drawing attention to two separate instances of potential mistreatment by minority groups”;
- Type of programme and channel: RT “comments on world events from a Russian point of view”, and the news item “illustrated an alternative perspective on what was underreported and not covered by the mainstream media”. The Licensee said that given Russia had fought against Nazi Germany, that the Ukrainian Government is “glorifying the 5% who supported Nazism is indeed something to report on”. It added that RT contributes to the range of media voices available and the plurality of democratic debate.
- Likely expectation of audience: the channel has an audience that wants and expects a different perspective on current affairs and knows RT to be a place to go for views and opinions that are not given prominence by mainstream broadcasters; and
- Right to freedom of expression and the role of journalism: this news item covered an “important topic” and the Licensee, in accordance with its right to freedom of expression is “permitted to interpret news events as it sees fit, as long as it complies with the Code”.

The Licensee subsequently made further representations to Ofcom. It said that Ofcom had not made clear in its request for comments under Rule 5.1 what its concerns were about the news item. TV Novosti said its assumption was that the news item “may have been about comments critical of policies and actions of Ukrainian authorities concerning anti-Semitism and the glorification of Nazism, including by legislation and encouraging students in Lviv to use Nazi symbols and uniforms in the explicitly positive context in their paintings drawn for the contest described”.¹⁶³

The Licensee said that the “shocking fact is that the Lviv competition encouraged and rewarded children to seek out, read, and embrace material created by and in praise of Nazism”. It provided Ofcom with the following documents which it said illustrated this point:

- a copy of a set of stamps which TV Novosti said had been issued “recently” to commemorate the 75th anniversary of the 14th Galician Division. It explained that the stamps “show the Division’s

¹⁶³ In response to the Licensee’s further representations, we explained that we considered our opening letter had described the nature of our concerns, on which the Licensee had already provided comprehensive and relevant representations.

crest and clearly celebrate it. It was the 14th Waffen Grenadier Division of the SS, also known as DD Galicia Division”;

- a copy of the announcement of the winners of the drawing contest on the Lviv Department of Education and Science website, including several drawings. The Licensee said that “the announcement of members of the jury’s assessment contains...and commends a drawing of a soldier, superimposed on the [14th Galician] Division’s crest. That crest also contains the initials of the First Galician Division inscribed on what appears to be a representation of the Iron Cross”. TV Novosti said that it was “readily apparent that the student’s drawing was copied from the contemporary poster” of World War II [see below] which included an “anti-Semitic cartoon” and text¹⁶⁴ which it argued the student would have “in no doubt” read; and
- a copy of the World War II poster referred to immediately above.

TV Novosti said that “RT can only wonder what, in the context of this investigation by Ofcom, Ofcom regards as the alternative viewpoint that is necessary and appropriate”. It also argued that “RT is surely absolved of a duty to invite an apologist onto its programme to attempt to justify such a project or assert merits of a Wassen-SS Division”.

Preliminary View

Ofcom issued a Preliminary View that the edition of *News* broadcast on 26 April 2018 at 08:00 was in breach of Rules 5.1 of the Code and invited TV Novosti’s representations on the Preliminary View. The Licensee provided written and oral representations on the Preliminary View.

Response to Preliminary View

The Licensee made general representations about factors common to all the Preliminary Views which are summarised earlier at pages 10 to 18.

In addition, in its written representations TV Novosti disagreed with Ofcom’s Preliminary View which it said was “entirely irrational”. On the first item in the news bulletin (regarding the Roma Gypsy camp in Kiev), the Licensee reiterated that the statement made by the police should have been taken into account by Ofcom as an “alternative viewpoint”, and said that in the circumstances it was impossible to understand what more should have been done by RT to reflect the official viewpoint of the Ukrainian authorities in relation to the attack, which was simply one of denial that any attack had taken place. The Licensee referred to Ofcom’s Guidance on Rule 5.1 which states that “There is no requirement on broadcasters to provide an alternative viewpoint in all news stories”.

TV Novosti said it had repeatedly asked Ofcom to explain what it would regard as an appropriate alternative viewpoint to the views expressed in this programme, and that Ofcom had failed to articulate its position in this respect. It argued that, if the content in this programme was found in breach for failing to include an alternative view, it would be incumbent on Ofcom to identify the substance of what that view should have been, with sufficient particularity to enable RT to respond meaningfully.

¹⁶⁴ The English translation of the Ukrainian text in the poster was as follows: “AWE-INSPIRING HOUR CAME / BRINGING GLIMPSE OF HOPE / IT’S UKRAINE RISING / AGAINST BOLSHIEVISM / WHAT’S THE DUST IN THE AIR AFAR? / WHAT’S GOING ON OUT THERE? / IT’S THE BRAVE STALIN FLEEING / ALONG WITH HIS YIDS”.

On the second item reported on in the programme (the painting contest in Lviv), the Licensee acknowledged Ofcom's Preliminary View that it was not necessary for the Licensee to have "represented a viewpoint that defended Naziism or anti-Semitism or the Wassen [sic] SS-Division" in order to preserve due impartiality in the news item. It argued however that Ofcom did not explain "how these facts had to be 'appropriately contextualised so as to preserve due impartiality'", nor did it explain "what more it believes RT should have done to meet the requirements of the Code".

TV Novosti said that in its Preliminary View, Ofcom had acknowledged that due impartiality can be achieved purely via contextualisation, but that it had given little credit to the context of the subject matter. It argued that, in this programme, TV Novosti had provided factual accounts of both stories, and noted that an official decree by the Ukrainian Government had resulted in glorifying Naziism, which was the clear factual context of Mr Eskin's critique, responding to this as a Jewish person. It said that giving a platform to someone to stand up for "objectionable activities" would have caused offence to RT's audience, and violated the Code, specifically with respect to the "degree of harm or offence likely to be caused", which, it notes, is a relevant consideration in the Code.

Finally, TV Novosti said that given the nature of the two news items, and that Ofcom has accepted that the facts were accurately reported, the way in which they were dealt with in the programme was appropriate and that finding a breach of the Code would therefore be "unjustified, procedurally unfair and irrational".

In its oral representations on Ofcom's Preliminary View, the Licensee relied on all its written representations, and in addition emphasised the following contextual factors:

- regarding the references in the news item to the Roma Gypsy camp, the programme had made "abundantly clear" that the official response of the Ukrainian Government was to deny that an attack had taken place. In the Licensee's view, it was still unclear what more it should have done to adequately reflect the Ukrainian authorities' position; and,
- in relation to the news item about the painting competition in Lviv, the Licensee said that, as Ofcom was not seeking to dispute the accuracy of the news story and had "expressly disavowed the idea the Lviv authorities should be given a chance to say that a competition which glorifies Nazism was somehow acceptable", it did not understand what more it needed to do to ensure compliance with the Code.

Decision

Reflecting our duties under the Act¹⁶⁵, Section Five of the Code requires that the impartiality requirements are met.

Rule 5.1 states that: "news, in whatever form, must be reported with due accuracy and presented with due impartiality".

We acknowledged it was legitimate for the Licensee to broadcast a news item exploring the Ukrainian authorities' policies and actions towards minority groups including the Jewish and Roma Gypsy communities, provided it ensured that due impartiality was preserved.

¹⁶⁵ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case. The obligation under Rule 5.1 to preserve due impartiality in news applies to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy. News includes news bulletins, news flashes and daily news magazine programmes.

The item in question was broadcast as part of a news programme. We considered it clearly constituted news, and the Licensee did not dispute this. Therefore Rule 5.1 applied.

The preservation of due impartiality

Ofcom went on to assess whether due impartiality was preserved in the news item. In judging whether due impartiality has been preserved in any particular case, the Code makes clear that "due" means adequate or appropriate to the subject and nature of the programme. "Due impartiality" does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content and the extent to which the content and approach is signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

We took into account the arguments that the Licensee had made about relevant contextual factors in this case. The programme was broadcast on a channel that, as TV Novosti said, aims to: "make available an alternative point of view on world events"; "cover stories overlooked or underreported by the mainstream media"; and acquaint "international audiences with a Russian viewpoint on major global events". TV Novosti also pointed to the likely audience expectations to RT, which it argued are "shaped" by its editorial approach.

We have taken a number of contextual factors into account in considering the broadcaster's and audience's Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, we acknowledged that viewers were likely to expect news programmes on the channel to address controversial issues, and to do so from a Russian perspective.

During this news programme, a news item was broadcast that included:

- references to an alleged attack that had taken place by a "nationalist group" on a Roma Gypsy camp in the Ukrainian capital Kiev. In this part of the news item it was reported that Amnesty International was "demanding that the Ukraine Government investigate" the attack on the Roma Gypsy camp;
- references to the Department for Education of the city of Lviv, which, it was reported, had "opened a painting contest to mark the creation of a Nazi division in the country during the Second World War"; and,

- an interview with the writer and political commentator, Avigdor Eskin, in which he discussed the painting competition in Lviv and also referred more widely to the policies and actions of the Ukrainian Government in relation to minority groups.

We considered that the news item extrapolated from the two localised incidents reported on (the alleged attack on the Roma Gypsy camp in Kiev and the painting contest in Lviv) to make serious allegations against the Ukrainian authorities, as well as criticise their policies and actions, on which the authorities were likely to have had a view. For example:

- Mr Eskin said that: *"Ukraine...is promoting glorification of Nazism"; "Ukraine [had] passed special legislation to glorify their Nazi war criminals"; "the [Ukrainian] government officially promotes glorification of Nazism";*
- when asked if the Ukrainian Government was *"doing enough"* to protect *"minorities"* in Ukraine, Mr Eskin replied that *"people in the West...should know that this is not just an incident with Gypsies and others, this is a government policy, this a policy promoted by the Ukrainian government, this is what makes it terrible, this is what makes it dangerous and this is what makes it absolutely inconceivable"*.
- Mr Eskin also sought to draw a parallel between the Ukrainian Government's policies and actions towards minorities in Ukraine and the atrocities committed by the Nazis during the Second World War by referring to a well-known statement made by Dietrich Bonhoeffer, a German pastor and anti-Nazi activist. Mr Eskin said: *"They first came to Jews', as Dietrich Bonhoeffer said, 'But then they came to others. But when they came to me it was too late'"*.

We acknowledged that there was some reflection of the viewpoint of the Ukrainian police in the news item. For example, there were the following statements about the attack on the Roma Gypsy camp:

"Police in Kiev said that there were no reports of violence and the fires were simply part of a clean-up operation".

"Romani Gypsies came here and then left. They left a lot of rubbish behind, and the authorities just burnt it afterwards" (Statement by Kiev police chief, Andrey Krischenko).

In addition, during the interview with Mr Eskin, he was asked: *"Is the Ukrainian government doing enough to protect these people [i.e. minorities]?"*. He replied:

"I suppose on a local level some policemen will try to prevent open violence".

Mr Eskin's statement could be construed as reflecting a positive view about the actions of some elements of the Ukrainian police in relation to the use of violence against minorities. However, he immediately went on to make an unfavourable comparison with the Ukrainian Government and Parliament by saying:

"...but when the [Ukrainian] government and parliament officially praise and glorify Nazis, how can you expect anything else".

Therefore, although there was some reflection of the viewpoint of the Ukrainian police within the news item, there was no content that could be described as reflecting the viewpoint of the Ukrainian Government on the serious accusations 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. By omitting any alternative viewpoints on these issues, these accusations remained unchallenged. Despite the fact that we were not assessing this programme under Rules 5.11 and 5.12, given the nature and gravity of these statements, we considered that a viewpoint representing the position of the Ukrainian Government had to be appropriately reflected and/or sufficient factual context provided to ensure due impartiality was maintained.

The Licensee outlined the various ways, in its view, it had reflected alternative viewpoints in this news item and therefore preserved due impartiality. For example, in the first part of the news item on the nationalists’ attack of the Gypsy camp, it argued that the presenter’s reference to the police saying that “*that there were no reports of violence and the fires were simply part of a clean-up operation*” represented a “clear and emphatic statement” from the Ukrainian police and provided “an alternative view to the one held by Amnesty International”. TV Novosti said that, due to a technical problem in the first part of the item on the camp, “the second statement of the police statement was cut off prematurely onscreen”. We emphasise that our assessment of whether due impartiality is achieved in a particular programme is based on the content that was actually broadcast, but we accept that the inclusion of comment from the Kiev police chief provided an alternative view on the incident in the Roma Gypsy camp. However, and more importantly, in this case we did not consider that even if the police statement had been included in full, it would have been sufficient to reflect the position of the Ukrainian Government on the broader accusations made against it by Mr Eskin in his interview in the later part of the programme.

TV Novosti argued that it was clear, from the featuring on screen of “the Lviv Department of Education and Science’s Facebook post” that the painting contest was “‘celebratory’ in tone” and that “the ‘celebration’ had been condemned by the Jewish community”. We did not consider however that a reference to the Facebook page of the Lviv Department of Education and Science was sufficient to represent the view of the Ukrainian Government and its authorities on the serious accusations made against it, including that the government glorifies Nazism and discriminates against ethnic minorities.

The Licensee also argued that Mr Eskin’s concern as a spokesperson for Jewish people was anti-Semitism in Ukraine. It added that, while Mr Eskin expressed his concerns about manifestations of anti-Semitism in Ukraine, he did not say that a majority of Ukrainians were anti-Semitic. However, we considered that Mr Eskin’s remarks on this issue (“*in Ukraine there were 95% of Ukrainians who fought against the Nazism*”) was a reference to Ukraine during the Second World War and we therefore did not consider that was sufficient to provide appropriate challenge to Mr Eskin’s overall highly critical statements about the current policies of the Ukrainian Government.

We also took into account the Licensee’s argument that the news item reflected a “general concern about the growth of official support for some expressions of anti-Semitism in Ukraine”. The Licensee provided various documents which it considered supported the accuracy of the statements made in the programme about the drawing contest celebrating the 14th Waffen Grenadier Division of the SS. It referred to a newspaper article published in 2018 in which it was reported that over 50 members of the US Congress had written to the US Deputy Secretary of State to protest against Ukrainian legislation, which, they said, “glorifies Nazi collaborators”. TV Novosti also referred to the fact that in 2015, the Ukrainian Parliament adopted a law that “criminalizes denying the ‘heroism’ of some of these allies of Nazi Germany”. Our concerns in this case were not about the accuracy of the statements made in the programme about the Ukrainian Government. Rather, our concern was

whether sufficient challenge to the strong accusations against the Ukrainian Government's policies and actions was presented so as to preserve due impartiality.

In its representations, the Licensee argued that it could not reasonably be expected to represent the viewpoint defending Nazism and anti-Semitism or "to invite an apologist onto its programme to attempt to...assert [the] merits of a Wassen-SS Division". For the avoidance of doubt, we emphasise that we did not consider that in order to preserve due impartiality in this case it would have been necessary for the Licensee to have represented a viewpoint that defended Nazism or anti-Semitism or the Wassen SS-Division in the news item. In these circumstances, given the serious allegations made about the Ukrainian Government's policies and actions in relation to minority groups, we considered that alternative viewpoints needed to be reflected (such as the Ukrainian Government's response to those accusations), and/or those allegations needed to be appropriately contextualised so as to preserve due impartiality. The lack of any viewpoint representing that of the Ukrainian Government meant that the serious accusation of the glorification of Nazism at a state-wide level in Ukraine went unchallenged, and consequently viewers were not provided with a duly impartial report about this issue.

We took into account the arguments that the Licensee had made about relevant contextual factors in this programme. For example, it said that "the protection of minority groups was a topic worthy of reporting" and the programme "illustrated an alternative perspective on what was underreported and not covered by the mainstream media". The Licensee further considered that the news item contained factual accounts of both stories, which provided "clear factual context to any direct critique made by Mr Eskin". We acknowledge that the news item reported on matters that were in the public interest. However, we did not consider the nature of the subject matter of the item, or the limited background information provided about the alleged attack on the Roma Gypsy camp and the Lviv painting contest, were sufficient on their own to contextualise the serious criticisms made of the Ukrainian Government during the news item in a way which maintained due impartiality.

In this case, we have taken careful account of the broadcaster's and the audience's right to freedom of expression and all the relevant contextual factors. For the reasons set out above, our view is that the news item did not provide sufficient challenge in relation to the criticism of the policies and actions of the Ukrainian Government, for example by appropriately representing the viewpoint of the Ukrainian Government on these issues, and/or providing sufficient factual context. Therefore, the report was not presented with due impartiality.

Breach of Rule 5.1

Not in Breach

News, 4 May 2018, 08:00

Introduction

During monitoring, we assessed a news item in the above programme which reported on the issue of fracking in the UK. A news presenter began the news item (with a caption stating: "FAULT LINE" and a backdrop stating: "ACTIVISM OR EXTREMISM?") by saying:

"A UK police monitoring group has forced the British authorities to release its counterterrorism training materials, after years of court battles. The document reveals that anti-fracking activists are considered as extremists, much like radical Islamists or Neo-Nazis, and, they say, are treated accordingly".

Footage was then shown of anti-fracking protesters apparently being removed by police officers from demonstration sites. This included images of: an elderly female protester being removed by three police officers; protesters being forcibly restrained on the ground; and a protester in a wheelchair being dragged backwards, in his wheelchair, and on to the ground, with him being pulled by a police officer out of his wheelchair. While the protester in the wheelchair was being tackled, an unseen female voice said: *"What are you doing, he hasn't done anything, he hasn't done anything"*.

After 25 seconds of the footage, a video of Bob Dennett, Co-founder of Frack Free, was shown on screen next to the continuing footage of police officers tackling anti-fracking demonstrators. Mr Dennett said:

"They're [i.e. the UK authorities] trying to suppress any form of dissent, or disagreement, with their policies, which is hardly democratic. And they're trying just trying to prevent us from free speech, basically. You know, we have a right to free speech, we have a right to peaceful protest and they're doing everything they can to suppress it".

The news presenter, speaking in the studio, then said:

"Fracking is a method of gas extraction where a high-pressure mixture of water and chemicals is pumped into rock to release gas. It's considered by many environmental groups to be dangerous, as the chemicals used in the process are likely to contaminate both the soil and groundwater. There have also been claims of fracking-induced earthquakes and tremors".

This was accompanied by graphics illustrating the fracking process, and footage of fracking taking place.

The news presenter continued:

"Well those fighting for the extraction method to be banned are categorised as domestic extremists, that's how they're included in a framework of the British counterterrorism programme known as Prevent, and protestors are being monitored by anti-terror agencies. Anti-fracking activist Joseph Corre believes that government resources are being diverted from the real threats".

Footage was then shown of Joseph Corre saying:

"It puts a large question mark over the integrity of the police and their investigations into terrorism as a whole. I mean are they supposed to be fighting terrorists or are they spying on every grandmother up and down the country who doesn't want fracking on her doorstep? I mean, the thing, the definition of this domestic extremist is defined by the idea that they are not just prepared to use, to demonstrate their human rights by protesting, it's about crossing that line from protesting into violence. The actual facts are that during these fracking protests the only violence, so far, has been committed by both the security companies working for the fracking companies and the police themselves".

The news item then ended.

During the programme, captions were shown on screen, including the following that referred to the issue of fracking:

- *"Fault Line";*
- *"Activism to Extremism 'Police are trying to suppress any dissent'";*
- *"Fracking gas extraction widely seen as environmental threat";*
- *"UK 'Prevent' programmes targets anti-fracking movement"*
 - Activists categorised as 'domestic extremists'
 - Seen as a threat to property
 - Monitored by anti-terror agencies

Source: Metpol UK Home Office"; and

- *"Activism to extremism: 'Police supposed to be watching real terrorists'".*

We considered that this news item raised issues warranting investigation under the following rule:

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

We therefore asked the Licensee how the programme complied with this rule.

Initial Response

General

The Licensee made several "background points" about the nature of the RT service, the expectations of its audience and previous guidance it had received from Ofcom regarding due impartiality as summarised earlier on pages 8 to 10.

Due impartiality in the programme

TV Novosti said it was not clear from Ofcom's letter requesting comments in this case "what material in this news item is required to be presented with due impartiality" and requested that

Ofcom provide more clarity.¹⁶⁶ Nonetheless, the Licensee went on to make representations on the basis that the potential issue under Rule 5.1 of the Code was “whether this news item as a whole presented the Home Office training documents (insofar as they concerned anti-fracking activists) and the actions of the UK authorities against such activities unfairly”.

TV Novosti said that “[t]he purpose of the news item is to discuss the UK Government training materials which had been disclosed and to provide a different perspective on anti-fracking activism, which had been categorised by the UK Government as ‘domestic extremism’”. As the editorial purpose of the news item was to discuss the alternative perspectives to the one of the UK Government, less time was devoted to the content of the Home Office’s report.

The Licensee acknowledged that an appropriate range of viewpoints would include the position of the UK Government in relation to fracking activism but referred to Ofcom’s Guidance which sets out that there is no requirement on broadcasters to provide an alternative viewpoint in all news stories or all issues in the news but all news stories must be reported with due accuracy and presented with due impartiality i.e. impartiality adequate or appropriate to the subject. It argued that the viewpoint of the UK Government was “adequately and appropriately” represented in the item, and referred to the following examples:

- quotes of points discussed in the Home Office training documents displayed on screen and quoted by the presenter, who said *‘The document reveals that anti-fracking activists are considered extremists much like radical Islamists or neo-Nazis’*;
- captions were broadcast (the statement *“ACTIVISTS CATEGORISED AS ‘DOMESTIC EXTREMISTS’; SEEN AS A THREAT TO PROPERTY; MONITORED BY ANTI-TERROR AGENCIES”* appeared on the screen while *“UK ‘PREVENT’ PROGRAMME TARGETS ANTI-FRACKING MOVEMENT. Source: Metpol UK Home Office”* appeared at the top of the screen);
- the presenter summarised “key points set out in the UK Government report” in the following statements:
 - *“While those fighting for the extraction method to be banned are categorised as ‘domestic terrorists’; that’s how they’re included in the framework of the British counter-terrorism program, known as the ‘Prevent’”*; and
 - *“protesters are being monitored by anti-terror agencies”*.

TV Novosti argued that the news item itself illustrated an alternative perspective on what was underreported and not covered by the mainstream media. This included first-hand accounts from activists through interviews and footage from demonstrations. For instance, an interviewee raises the question as to whether protesters were crossing that line from protesting into violence. The Licensee argued that this was an “important perspective to voice as a way to probe and question the legitimacy of government powers which have the potential to limit human rights”.

The Licensee also said that the question *“ACTIVISM OR EXTREMISM”* was displayed on screen in large graphics on the backdrop to the presenter at the beginning of the item. This aimed “to attract attention to the potential difference of opinion on the matter, a widely used and accepted practice

¹⁶⁶ This issue was also raised by the Licensee in a letter of 29 June 2018. We responded on 3 July 2018, explaining that, in our opening letter, we had described the nature of the content which was of concern, as well as the scope of our investigation, both in terms of the rules of the Code engaged and the matters at issue. The Licensee was able to make detailed representations on the matters under investigation.

in journalism, to preserve due impartiality". It also argued that during the news item, the banner, "FAULT LINE", at the bottom of the screen "alludes to fracking's geological method and emphasises division of opinion on the topic".

Due impartiality in other programmes

TV Novosti said that "later that morning" RT broadcast another news item on fracking which included the viewpoints of law enforcement and ambulance staff in addition to that of the Home Office. It argued that it was an editorial decision to include more alternative viewpoints to supplement the viewpoint set out in the Home Office training materials, to further ensure due impartiality, through the following statement "*Law Enforcement and Ambulance staff say...that the activists are feigning injury for the cameras and making false claims over police brutality*".

Contextual factors relevant to this programme

The Licensee also cited various contextual factors that it felt were relevant in this case, including¹⁶⁷:

- Nature of subject: "the details in the UK Government report [about anti-fracking activists] were highly controversial and the suggestion that the UK Government's guidance restricts democratic rights is a legitimate point to explore in the public interest" and "is not a discussion that the regulator should condemn";
- Type of programme and channel: The "news item itself illustrated an alternative perspective on what was underreported and not covered on by the mainstream media". The Licensee also considered that "RT is broadcast worldwide, intended for viewers of many different cultures and political views, and it comments on world events from a Russian point of view". It referred to Ofcom's research which "demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience"; and,
- Likely expectation of audience and extent to which the content and approach is signalled to the audience: RT is "aimed at an audience that wants (and expects) a different perspective on world events". While the British version of RT (RT UK) "has more UK-related news than the international version, it is still a global channel and is clearly seen by the audience as such".

Preliminary View

Ofcom issued a Preliminary View that the edition of *News* broadcast on 4 May 2018 at 08:00 was in breach of Rule 5.1 of the Code and invited TV Novosti's representations on the Preliminary View. The Licensee provided written and oral representations on the Preliminary View.

Response to Preliminary View

The Licensee made general representations about factors common to all the Preliminary Views which are summarised earlier at pages 10 to 18.

In addition, in its written representations to Ofcom, the Licensee stated that Ofcom's Preliminary View was "not justified" and the news report was not in breach of Rule 5.1 of the Code.

¹⁶⁷ The Licensee made some of these submissions by cross-referring to its submissions in relation to an investigation into an item broadcast on RT News on 26 April 2018

In assessing the issue of due impartiality, the Licensee said that the context of the programme had to be taken into account. In this case the purpose of the news item was the UK Government's 'Prevent' programme report and the UK Government's actions against fracking activists. The viewpoint of the Government was therefore "largely encapsulated in the [Government] report itself". Further, the report did not involve a matter of major public controversy or current public policy. Accordingly, there was no requirement in the Code "to include 'an appropriately wide range of significant view' in the programme". In addition, the Code did not require "balance" in the presentation of the news item as Ofcom had "wrongly suggested" in its Preliminary View.

The Licensee then set out again how the news report ensured different viewpoints were presented:

- at the outset the "very first background caption" which was "prominently displayed" in the middle of the screen was "ACTIVISM OR EXTREMISM". This caption made clear there were two points of view on the matter;
- this caption was also displayed at the same time as the words at the foot of the screen "FAULT LINE" which again reflected "this division of views"; and,
- other captions shown during the news item referred to the Home Office report "which (among other matters) set out the Government position that fracking protestors posed a threat to property".

The Licensee noted that Ofcom had acknowledged in its Preliminary View that these graphics and captions did reflect to a limited extent the viewpoint of the UK authorities but, nonetheless, Ofcom had concluded that they were not sufficient in providing the UK authorities' viewpoint. In the Licensee's view, Ofcom failed to take account of the presenter's explanation in the news item that: "those fighting for the extraction method to be banned were categorised as 'domestic extremists'; that's how they're included in the framework of the British counter-terrorism programme". The Licensee added that the weight to be given to a particular viewpoint was a matter of editorial judgment, noting that under Ofcom's Guidance on Section Five, "it is an editorial matter for the broadcaster as to how it presents news with due impartiality".

Finally, the Licensee said that as the whole news item amounted to only three minutes, "in a short news item such as this, dealing with a topic that did not engage the requirements of Rules 5.11 and 5.12, Ofcom should be very slow indeed to find that editorial judgment about the use of captions failed to do enough to meet the 'due impartiality' requirement of the Code". In TV Novosti's view "no further steps were mandated by the "due" impartiality requirement of Rule 5.1 of the Code".

In its oral representations on Ofcom's Preliminary View, the Licensee said that it relied on all its written representations, and in addition emphasised the following factors:

- given the brevity of the news item and the fact that it was not dealing with a matter of major political controversy or major matter relating to current public policy, TV Novosti considered the demands to ensure due impartiality were lower; and,
- the captions and graphics included in the news item had made the viewpoint of the UK authorities clear.

Decision

Reflecting our duties under the Act¹⁶⁸, Section Five of the Code requires that the impartiality requirements are met.

Rule 5.1 states that: “news, in whatever form, must be reported with due accuracy and presented with due impartiality”.

In light of the Licensee's right to freedom of expression and the audience's right to receive information (as detailed earlier in the general discussion on the statutory framework and freedom of expression and not repeated here), we considered it was legitimate for the Licensee to broadcast a news item exploring the UK authorities' approach under counterterrorism measures to dealing with anti-fracking activists, provided it ensured that due impartiality was preserved.

Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case. The obligation under Rule 5.1 to preserve due impartiality in news applies to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy. News includes news bulletins, news flashes and daily news magazine programmes.

The item in question was broadcast as part of a news programme. We considered it clearly constituted news, and the Licensee did not dispute this. Therefore Rule 5.1 applied.

The preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on these matters. The Code makes clear that “due” means adequate or appropriate to the subject and nature of the programme. Due impartiality does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content and the extent to which the content and approach are signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code, is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience, and the effect on viewers who may come across the programme unawares.

We considered the arguments that the Licensee had made regarding relevant contextual factors in this case. We took into account that the programme was broadcast on a channel that, as TV Novosti said, aims to: “make available an alternative point of view on world events”; “cover stories overlooked or underreported by the mainstream media”; and acquaint “international audiences with a Russian viewpoint on major global events”. We also took into account TV Novosti's argument that the likely audience expectations to RT are “shaped” by its editorial approach. Specifically, it said that the “news item itself illustrated an alternative perspective on what was underreported and not covered on by the mainstream media”. It added that a different perspective on anti-fracking activism included first-hand accounts from activists through interviews and footage from demonstrations.

¹⁶⁸ See: <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

The Licensee therefore argued that viewers “turn to RT exactly for the reason that it does not resemble the approach of British national broadcasters” and want to hear the Russian point of view from a Russian channel, “unfiltered by a British broadcaster”.

We have taken a number of contextual factors into account in considering the broadcaster's and audience's Article 10 rights (see the discussion on general contextual factors earlier and not repeated here). In particular, we acknowledged that viewers were likely to expect news programmes on the channel to address controversial issues, and to do so from a Russian perspective.

During this news programme there were various statements that were critical of the policies and actions of the UK authorities (and, to a lesser extent, fracking companies). These included statements on which the authorities were likely to have had a view. For example:

- statements that the UK authorities were “*trying to suppress any form of dissent*”, “*trying to prevent [activists] from free speech*” and “*doing everything they can to suppress it*”. These were reinforced by an on-screen banner which said “*Activism to extremist: Police are trying to suppress any dissent*”;
- the statement that “*during these fracking protests the only violence, so far, has been committed by both the security companies working for the fracking companies and the police themselves*”. This was reinforced by the 25 seconds of footage showing police forcibly removing anti-fracking protesters; and,
- statements which questioned the UK authorities' classification of anti-fracking activists as “*extremists*”, and their inclusion in the Prevent programme. The presenter summarised Joseph Corre's view as “*government resources are being diverted from the real threats*”. Joseph Corre then said:

“It puts a large question mark over the integrity of the police and their investigations into terrorism as a whole. I mean are they supposed to be fighting terrorists or are they spying on every grandmother up and down the country who doesn't want fracking on her doorstep. I mean, the thing, the definition of this domestic extremist is defined by the idea that they are not just prepared to use, to demonstrate their human rights by protesting, it's about crossing that line from protesting into violence”.

- This view was reinforced by an on-screen banner which said: “*Activism to extremism: Police supposed to be watching real terrorists*”.

In Ofcom's view, the discussion about these matters required the viewpoint of the UK authorities to be reflected properly or sufficient context to be provided to ensure due impartiality was maintained. We therefore carefully considered the different editorial elements within this news item. In particular, we took account of the fact that the news item, which was about the way in which the UK authorities had classified and were dealing with anti-fracking activists, did not concern a matter of major political and industrial controversy or a major matter relating to current public policy. As such, the Licensee would not be required to take the same approach to providing challenge to any critical views as would be the case in a news item that was subject to the ‘major matter’ rules in the Code (5.11 and 5.12).

TV Novosti argued that the presenter summarised the key points of the report. The presenter commented:

"...Well those fighting for the extraction method to be banned are categorised as domestic extremists, that's how they're included in a framework of the British counterterrorism programme known as Prevent, and protestors are being monitored by anti-terror agencies..."

During this statement some captions (as set out further below) were displayed on screen. On that basis, the Licensee submitted that the viewpoint of the UK Government was "prominently featured" in this part of the item.

We acknowledged that this part of the programme did present certain factual information about the UK authorities' approach to anti-fracking activists and domestic terrorism. Therefore, although these factual references were not sufficient to preserve due impartiality on their own, they contributed to ensuring that appropriate challenge was provided to the critical comments put forward in the report as a whole. This was especially the case given the fact that it was not dealing with a matter of major political controversy or major matter relating to current public policy.

We also considered the use of captions and graphics which were shown during the news item. Specifically, we noted:

- graphics quoting factual excerpts from the Home Office report such as "ACTIVISTS CATEGORISED AS 'DOMESTIC EXTREMISTS', 'SEEN AS THREAT TO PROPERTY' and 'MONITORED BY ANTI-TERROR AGENCIES';
- the caption "ACTIVISM OR EXTREMISM" which appeared as a backdrop and a banner and the Licensee said attracted attention to the "potential difference of opinion on the matter" and preserved due impartiality; and,
- the caption "FAULT LINE" at the start of the report which indicated there was a difference of opinion on fracking.

Graphics or captions are editorial techniques which can contribute to the preservation of due impartiality. However, as we made clear in our December 2016 *Crosstalk* Decision¹⁶⁹ involving TV Novosti, Ofcom underlines that whether graphics or captions do in fact maintain due impartiality in any specific programme will depend on all the relevant circumstances, such as the duration and nature of the programme and of the matter of political controversy, and the presence of any other factors in the programme which may contribute to helping to maintain due impartiality. We caution broadcasters against assuming that they can preserve due impartiality where required by solely or largely including graphics and captions.

We acknowledged that these captions and graphics reflected the viewpoint of the UK authorities, but only to a limited extent (insofar as they alerted the audience to a difference of opinion and presented factual information about what was contained in the documents which were the subject of the report). It was our view, therefore, that they would not, on their own, have provided sufficient challenge to opposing viewpoints in this case. However, when considered in context alongside the other content in the whole news item, as discussed above, including the fact that it was not dealing with a matter of major political controversy or major matter relating to current public policy, the use of captions and graphics did contribute towards preserving due impartiality in this case (i.e.

¹⁶⁹ 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.

reflecting the UK authorities' viewpoint or otherwise countering or challenging the various critical statements included in the report by the contributors).

In this case, we have taken careful account of the broadcaster's and the audience's right to freedom of expression and all the relevant contextual factors. For the reasons set out above, it is our decision that the news item did sufficiently challenge the criticisms of the policies and actions of the UK authorities with regard to anti-fracking activists (and, to a lesser extent, fracking companies). Therefore, the report was presented with due impartiality.

Not in breach of Rule 5.1

Next steps: Ofcom is minded to consider these seven breaches for statutory sanction

Ofcom considers the 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. **Therefore, subject to receiving the Licensee's representations on this issue, Ofcom is minded to consider these breaches for the imposition of a statutory sanction.**

If, after consideration of the Licensee's further representations, Ofcom decides to consider these breaches for sanction, Ofcom will follow the process set out in our published procedures for statutory sanctions in broadcast cases¹⁷⁰. In accordance with those procedures, Licensees have the opportunity to make written and oral representations before Ofcom reaches any decision as to whether to impose a sanction and if so what form that sanction should take.

Ofcom has a range of statutory sanctions at its disposal. Any sanction we impose will be proportionate and fair, taking into account all the relevant circumstances, the Licensee's representations and any relevant previous cases.

¹⁷⁰ https://www.ofcom.org.uk/_data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf