

OFCOM BROADCAST AND ON DEMAND BULLETIN

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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.

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.

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.

Note to Broadcasters

Election programming

On 2 May 2019, local (and mayoral¹) elections will be taking place in some parts of England as well as local elections in Northern Ireland.

Ofcom reminds all broadcasters of the rules for election-related programming. In particular, broadcasters should ensure that they comply with Sections Five (Due Impartiality)² and Six (Elections and Referendums)³ of the Code, as well as the prohibition on political advertising contained in section 321 of the Communications Act 2003 and reflected in Section 7 of the BCAP Code.

As in previous years, following the removal⁴ of the concept of larger parties from our rules and to help broadcasters to take editorial decisions during election campaigns, we have published⁵ an annual digest of past electoral and current support ahead of the elections taking place on 2 May 2019. This also sets out the factors we consider when making decisions on election-related programming, including putting more weight on evidence of past electoral support than evidence of current support (e.g. opinion polls).

The rules in Section Six of the Code will apply when the "election period" commences. In the case of the English local (and mayoral) elections being contested on 2 May 2019, this period begins on 26 March 2019.

Ofcom will consider any breach arising from election-related programming to be potentially serious and will consider taking appropriate regulatory action, which could include the imposition of a statutory sanction.

If a complaint is made which raises a substantive due impartiality issue during the election period and in Ofcom's opinion the complaint, if upheld, might require redress before the

¹ In Bedford, Copeland, Leicester, Mansfield, Middlesbrough and North of Tyne region.

² See https://www.ofcom.org.uk/data/assets/pdf_file/0008/100115/broadcast-code-april-2017-section-5.pdf Ofcom's published Guidance to Section Five can be found at https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf

³ See https://www.ofcom.org.uk/data/assets/pdf_file/0009/100116/broadcast-code-april-2017-section-6.pdf Ofcom's published Guidance to Section Six can be found at https://www.ofcom.org.uk/data/assets/pdf_file/0034/99178/broadcast-code-guidance-section-6-march-2017.pdf

⁴ On 22 March 2017, Ofcom published its Statement (see https://www.ofcom.org.uk/data/assets/pdf_file/0030/98148/Due-impartiality-and-elections-statement.pdf) amending its rules in the areas of due impartiality, due accuracy, elections and referendums. In the Statement, we set out our decision to remove the concept of larger parties from Section Six of the Code and Ofcom's rules on Party Political and Referendum Broadcasts.

⁵ See https://www.ofcom.org.uk/data/assets/pdf_file/0017/112094/evidence-past-current-electoral-support-may-elections-2019.pdf

election, it will be considered by Ofcom's Election Committee⁶. In these cases, it will be necessary for Ofcom to act quickly to determine the outcome in a proportionate and transparent manner before the election, and broadcasters should be prepared to engage with Ofcom on short timescales.

For further information about the elections being contested on 2 May 2019, broadcasters should visit the Electoral Commission website at www.electoralcommission.org.uk

If broadcasters would find it helpful to discuss the rules in Sections Five and Six of the Code, they can contact Ofcom (OfcomStandardsTeam@ofcom.org.uk).

⁶ See Ofcom Election Committee's Terms of Reference <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/election-committee/terms-of-reference/>

Broadcast Standards cases

In Breach

George Galloway

Talk Radio, 27 July 2018, 19:00

Introduction

Talk Radio is a national digital speech radio station, the licence for which is held by Talksport Limited ("Talksport" or "the Licensee"). The *George Galloway* programme is typically broadcast on Fridays between 19:00 and 22:00 with Mr Galloway occasionally broadcasting at other times when covering for other presenters.

We received one complaint about the programme broadcast on 27 July 2018. The complainant claimed that the programme was "completely" biased about claims of anti-Semitism in the Labour Party.

During his introduction to the programme, Mr Galloway said:

"Jeremy Corbyn has this week been the victim of a crazed, unhinged assault by the agents of the powerful. A frenzied attack to destroy him for fear that he might win. The proximate method is the exploitation of deep-seated Jewish fear. Literally summoning up the demons of Nazism against Britain's finest anti-fascist. It doesn't get much more serious than that for all concerned. And when I say the agents of the powerful I mean from left to right, from the liberal to the far-right, I mean from The Guardian and Channel 4 News right across the spectrum. All guns blazing, all trained on one man, a man without a scintilla of racist or anti-Semitic feeling in his body, in his psyche. A man whose parents stood at Cable Street against fascism and anti-Semitism.

He's been attacked by newspapers that were supporting the Nazis at the time. He has been attacked by newspapers that were funding the British Union of Fascists at the time...The low point, you might be surprised to hear, but only if you've not been paying attention, was the package, I think they call them, on Channel 4 News last night when a child was interviewed, no parent or guardian nearby, and was allowed to say that she was being frightened in the playground by people who were telling her that her fate, as a Jewish schoolgirl, might be like the fate of Jewish schoolgirls in Germany and across Europe in the 1930s and 40s and the child was allowed to say that she believed that these things were a result of what Jeremy Corbyn had been saying. Any journalist, as opposed to a popinjay propagandist would have asked the schoolgirl 'what did Jeremy Corbyn say that could possibly have justified that?' But no question like that was forthcoming. It was left in the air that Corbyn must have said or must have done something so anti-Semitic that it was now frightening 13 year-old schoolgirls in London. It is a gigantic Goebbellian lie. Goebbels could not have bettered the package on Channel 4 News last night. The journalist in question was spoken to by us on Twitter and invited to answer for her conduct on our show this evening but she directed us to the Channel 4 News press team who haven't got back to us at the time of broadcast. I'm picking out Channel 4 News not because it's the worst news in Britain but because it's the least worst news in Britain. It, like The Guardian newspaper, serves the function of the lipstick on a pig. A pig that is the British media and political class that is frightening Jewish schoolgirls in London on a giant

Goebblian lie that Jeremy Corbyn not only hates Jews but that the existential future, the existence of Jewish life in Britain is threatened by this mild-mannered geography teacher in his woolly jumper, in his thread worn second-hand jackets...it is a lie so gigantic, that as Goebbels knew there will be some who will believe it. If you tell a lie, make it a big one and repeat it often enough. And as Malcolm X said, before you know it, the newspapers will have you hating the people that are standing up for you and loving the people who are doing you down. And that's exactly where we are today".

Shortly afterwards he said:

"Now on one level this [i.e. the accusations surrounding anti-Semitism against Jeremy Corbyn and the Labour Party] is because of Jeremy Corbyn's astounding success. The man for whom a special General Election was called just over 12 months ago so that Theresa May could wipe the Labour Party off the political map. Could consign Jeremy Corbyn to the dustbin of political history. That that didn't happen, that the reverse happened, and that this onslaught was launched at the precise moment, precise to the day moment, that Jeremy Corbyn moved into a four, in some polls five, point lead in the national opinion polls should, if you have a brain cell, tell you what this is really all about. This is not about Jews, it's not even about Israel, this is about destroying Jeremy Corbyn's potential to be Britain's Prime Minister. That's my point of view, I want to hear yours [telephone number given]".

Approximately 40 minutes after the start of the programme, Mr Galloway conducted an interview with Graham Bash from Labour Briefing, a "left-wing campaigning Labour Party organisation".

Mr Galloway said to Mr Bash:

"When Ed Miliband, himself Jewish, was leader of the Labour Party 64% of the Jewish community in Britain voted Conservative for political, for economic, for class reasons. The idea that a Party whose last leader was Jewish has become the Party of 1930s Germany because the mild-mannered Jeremy Corbyn took over is so absurd you wouldn't think the dogs in the street would fall for it, but there's plenty of people who are aren't there?"

Mr Bash responded:

"The main point about this is that it's [the accusations of anti-Semitism against Jeremy Corbyn and the Labour Party] mainly evidence-free. I'm not claiming that there's no anti-Semitism in the Labour Party because the Labour Party is part of society. But in my long experience, I've experienced anti-Semitism in the Labour Party directly on one occasion in 50 years, and I am sure it is under-represented in the Labour Party because most people join the Labour Party rightly or wrongly, in my opinion rightly, to change the world. They are anti-racist and if they are anti-racist it means that they oppose anti-Semitism. So, it is nonsense. There's no evidence for it at all. And it's part of a two-pronged attack in my opinion. Firstly, it's an attack by the pro-Israeli lobby who are trying to silence criticism, especially now, when hundreds of people – men, women, children, disabled journalists, are being shot in Gaza, when they are passing laws which are bringing Israel into an apartheid era on the one hand and on the other hand, those majority of Labour MPs who are determined to get rid of Jeremy Corbyn. They've done it from day one and they think that these anti-Semitism fake allegations is the way to do it. And we have to be definite, firm and sure in our response. And that is to support Jeremy and to oppose, by the way,

the examples in the IHRA definition¹ which is the issue at stake, which tries to conflate the evil of anti-Semitism with what I call a duty of anti-Zionism. And what we are seeing in today in Gaza is the traditional role of all colonial societies oppressing those who are fighting for their own independence and liberation. And all socialists of any stripe must be on the side of those fighting that colonial power. Is that anti-Semitic? No, I call it socialism”.

Following his conversation with Mr Bash, Mr Galloway read out the following tweet from a listener:

“Why are the media scared of Jeremy Corbyn? Wonder what fake news they’ll try next to get shot of him. Better not say anymore”.

Shortly afterwards, Mr Galloway spoke to a listener (“Chris”) whom he described as having a “contrary view” to his own. Chris said:

“The bit I was disagreeing about was saying that it wasn’t about Jews or it wasn’t about Israel...The Israeli lobby has a lot to do with it...The Israeli lobby are out to get Corbyn...”.

Mr Galloway responded:

“Well there’s no disagreement, Chris...The proximate cause for this week’s crisis, this current worst week of Corbyn’s leadership until the next one, was the need to stop him being in a position to win a General Election in Britain. Not just because of his views on the Middle East but because of his views on these three issues that you mentioned and more. His views on the British economy, his view on Britain’s role in the world, his views on the wars that our country has repeatedly been involved in...This is not a man that the rich and powerful in Britain are going to risk becoming the Prime Minister of Britain. And therefore they have used this entirely bogus – now I know it’s bogus, you know it’s bogus, most of the people listening to this show know it’s bogus, but most of the people listening to the other shows on this network, most of the people listening to all the other networks, most of the people reading all of the other newspapers don’t know that it’s bogus and that’s the trick, you see. They have conjured forth the demon of Nazism to use to destroy Britain’s principal anti-Nazi. Couldn’t make it up, Chris”.

Later in the programme, Mr Galloway read out a series of text messages from listeners. These included:

“George, I’m proud of your defence for Corbyn. However, it’s about time Corbyn stands up for himself. He needs to stop letting the mainstream media spread dangerous lies about him that could cause certain sheep to attack an innocent man like himself. If I was in Corbyn’s place, I would do an 11-hour speech in Parliament talking about his history fighting racism in all forms and explain his support for human rights and his rightful criticism of the far-right Israeli Government of Bibi Netanyahu who is committing human rights crimes as we speak. I would also mention the famous left-wing Jews who support Corbyn: Bernie Sanders, Jill Stein, Noam Chomsky etc”.

¹ International Holocaust Remembrance Alliance’s (“IHRA”) definition of anti-Semitism includes a number of examples of behaviour that may amount to anti-Semitism (<https://www.holocaustremembrance.com/working-definition-antisemitism>). See footnote 10 below for the full definition.

"Do you not think that the mainstream media are protesting a bit too much in their smears against Corbyn? If they had periodically accused Corbyn of benighted views then it may have had an impact, however they are now just a parody of themselves and the lies only play to their own echo chamber".

"The appalling attack on Corbyn from some of the mutineers behind him and smears from both sides of the House, but of course mainly the Tories, that he is an anti-Semite and their friends in the gutter press. JC [Jeremy Corbyn] is not only a great man and leader but someone worthy of the Labour Party, a true gentleman and – shock horror – a socialist. Please make him do a George Galloway and sue all and sundry for every penny they have got".

"The attack on Corbyn by all media shows the extent of corporate politics – they are afraid of the poor being given some power. I love Jez, and you of course GG".

"The liberal media establishment in the UK are trying to destroy any chance of Jeremy Corbyn becoming Prime Minister, exactly the same way the liberal media establishment in the USA are going hell-bent on destroying Donald Trump's presidency. These liberals are vicious, nasty people and will stop at nothing at destroying those they don't like".

Mr Galloway then took a call from a listener who said the "anti-Corbyn campaign" was "orchestrated by the Israeli government" because it did not want "a British Prime Minister who is sympathetic to Palestine and critical of Israeli war crimes". He said this was the reason for "this full-blown campaign, ridiculous campaign, calling Jeremy Corbyn an anti-Semite and a racist".

Shortly afterwards, Mr Galloway read out a series of text messages from listeners. These included:

"I'm a Tory voter and do not believe Jeremy Corbyn is anti-Jewish. Just because he's championed the two-state government in Israel/Palestine, which was agreed but never enforced by the UN many years ago. There's a difference between Jews, Israelis and Zionists..."

"There should be a word to describe people who throw around false accusations of anti-Semitism. Do these fools not appreciate that by crying wolf again and again at the patently blameless Jeremy Corbyn, their credibility will be completely devalued? It is of gross insult to the six million Jews who were slaughtered in the Holocaust to equate their fate to the self-styled predicament of their co-religionists in modern Britain".

Later in the programme a caller talked about *"the absolute scandalous way that Jeremy Corbyn is being portrayed... all these ridiculous headlines that keep coming out week after week"*. Mr Galloway said that *"luckily"* he (i.e. Mr Galloway) had a daily show that week *"otherwise nobody, and I mean nobody, in the mainstream media would have been defending Corbyn against the most unjust, indeed grotesque accusations that it's possible to imagine"*. Mr Galloway concluded the call as follows:

"The allegation this week is that Jeremy Corbyn represents an existential threat to Jewish life in Britain...And someone else made the comparison between the Labour Party in 2018 and early 1930s Germany. Now this is grotesque, obscene, absurd and rejected by huge numbers of, including the most prominent Jewish figures in Britain who are highly respected in Britain. Sir Stephen Sedley the high court judge rejects it; Professor Michael Rosen, the national treasure rejects it; professors; Professor Brian Klug; professors; scientists; jurists;...great figures in our literary field like Mike Rosen utterly reject it. But it's not aimed as I say at the Jewish population. It's aimed at the British population as a whole so that somehow they are made to feel like Corbyn is somehow some kind of toxic poison, political element. It is highly dangerous for everybody concerned".

Later, Mr Galloway read out and commented on the following text from a listener:

"A gutless coward who spends all evening and I mean all evening sending 25p texts by the dozen – I've asked you before 'Gutless-Coward', does 'Mrs Gutless-Coward' know that you're spending the household budget and all of your time listening to all of my shows and spewing out this: 'You say Corbyn is not anti-Semitic' – spelt wrongly – 'yet he associates with people who are. Also, a lot' – spelt wrongly – 'of your calls come across as ant, A-N-T, Semetic' – spelt wrongly".

Mr Galloway then described the listener as an *"ignorant moron"*.

Later in the programme a caller said to Mr Galloway:

"I'd like to talk about propaganda...a House of Commons committee found in 2016 that anti-Semitism is not more prevalent in the Labour Party than any other political party. But of course, that's not good enough because the Labour Party is a Party of equality. So, I'm glad to report that a recent survey held by the campaign against anti-Semitism found that anti-Semitic views in Labour had significantly reduced since Jeremy Corbyn became leader of the Party...In addition to that, George, the Party has taken concrete steps and introduced an anti-racist code of conduct in political parties and that code of conduct has been described as the gold standard of anti-racist conduct and it's been endorsed by 40 Jewish organisations around the world".

The caller admitted that the Labour Party's complaints process *"wasn't [previously] fit for purpose"*, but said that it now had an *"excellent new General Secretary, Jenny Formby"* who had *"completely overhauled"* it. He then contrasted *"all this progress in the Labour Party"* to the position in the Conservative Party. He added that the Conservative Chairman had recently been *"completely unable to even give a basic description of what the Tory Party's procedure of dealing with racism was"*. Mr Galloway said that would be *"no surprise to anyone who's ever met a 'bar-room bore' or a 'golf club bore, Gin and Tonic Tory'"*, adding that *"racism and anti-Semitism on the right [had] always been a 'thing'"* whereas he had never once met a racist during his 36 years in the Labour Party. The caller said *"neither have I"* and continued his point, saying:

"We have one Party, the Labour Party, where racism is reducing, and which is taking concrete steps to address racism. We have the Conservative Party where racism is increasing and rampant and the Party's arguably institutionally racist and yet the media is...virtually not reporting on it. Now that to me, George, indicates that propaganda is at play...".

The caller then said:

"What we are currently witnessing with the attacks on Jeremy Corbyn and the Labour Party are surrogates of a foreign government attempting to destabilise Her Majesty's Most Loyal Opposition in order to prevent the possibility of a Labour Prime Minister who will implement sanctions to end apartheid in Israel".

Later in the programme, Mr Galloway returned to the subject of anti-Semitism in the Labour Party. A caller said:

"...how can [Jeremy Corbyn] be an anti-Semite when he sat down with a Jewish group known as Jewdas² and ate lunch with them. If...a person hates black people he won't sit down and have lunch with them, will he George?"

Mr Galloway replied:

"...when Ralph Miliband³ was smeared in an anti-Semitic tirade by a daily newspaper in Britain, the most prominent denouncer of that complete farrago of untruths was Jeremy Corbyn. The idea that Jeremy Corbyn is a Jew-hater is just about the most grotesque allegation that I have ever heard".

Mr Galloway read out more texts from listeners including:

"They are not trying to turn the electorate away from Corbyn, they know they cannot achieve that. They are trying to break Corbyn himself. How must it feel for this poor man who is being accused of everything that he despises?"

Shortly afterwards, the programme ended.

Ofcom considered that the programme was dealing with a matter of major political or industrial controversy and a major matter relating to current public policy, namely, the policies and actions of the Labour Party and, in particular its leader, Jeremy Corbyn, in relation to anti-Semitism.

We therefore considered that this programme raised issues warranting investigation under the following Code 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".

² On 3 April 2018 attended a Passover meal with the left-wing Jewish group Jewdas.

³ The father of Ed Miliband, who had preceded Jeremy Corbyn as leader of the Labour Party.

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

Response

Initial representations – 8 October 2018

The Licensee described Talk Radio's “distinctiveness” as being derived in part from “its personality and opinion-led approach”. It considered that this played a role in shaping audience expectations for the station as well as its approach to due impartiality. It also described compliance with the Code as a “core value for Talk Radio” and said that having received Ofcom's request for comments in this case, it had:

- commissioned a report by a barrister specialising in media matters with a view to establishing the causes “of apparent shortcomings” with the *George Galloway* programme's compliance with Section Five of the Code;⁴ and
- implemented additional production support to “deliver additional immediate oversight and assurance of compliance” for the *George Galloway* programme.

Talksport said that the subject matter discussed in this programme was, in its opinion, a “lower profile issue” than the poisoning of Sergei and Julia Skripal⁵. However, it accepted that the programme was still dealing with a matter of “significant political controversy” and did not seek to argue that Rules 5.11 and 5.12 were not engaged in this case.

The Licensee said on reviewing the programme, it had concluded that “there were shortcomings in the way that this programme sought to preserve due impartiality”. It attributed this to the production team's “failure to identify the anti-Semitism row as a subject requiring careful treatment as a ‘major’ matter of political controversy, and above all due to the absence of guests, callers or internal Talk Radio contributors capable of articulating alternative viewpoints”. Talksport also accepted that although it considered a variety of viewpoints were included across Talk Radio's output as a whole during this period of time this “did not provide justification to Galloway in providing his own partial account”.

The Licensee also referred to the measures it had introduced as a result of Ofcom's investigation into the episode of *George Galloway* broadcast on 16 March 2018. In summary,

⁴ The Licensee provided Ofcom with a summary of this report, in which the author expressed the view that this programme failed to achieve due impartiality.

⁵ Ofcom has also conducted an investigation into whether an episode of *George Galloway* broadcast on 16 March 2018 complied with Rules 5.11 and 5.12. This programme was concerned with the poisoning of Sergei and Julia Skripal in Salisbury on 4 March 2018. We found the programme to be in breach of Rules 5.11 and 5.12. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0025/134755/Issue-371-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf

Talksport had told Ofcom on 11 May 2018 that it had taken the following steps "to ensure that differing views are expressed on air" during the *George Galloway* programme:

- a pre-recorded jingle would be broadcast at least once an hour and every time that a new subject is introduced. This would invite listeners to phone, text and email and challenge George Galloway's views;
- a producer had spoken to Mr Galloway about the need for dissenting voices to be heard. The Licensee said Mr Galloway had "agreed to invite contrary opinions from listeners";
- the producer of *George Galloway* was instructed to obtain a well-informed guest in each programme, whose views conflict with Mr Galloway's. The Licensee said that in the event that such a guest could not be booked, a Talk Radio presenter would be included in the programme to challenge Mr Galloway on his views and provide an alternative viewpoint; and
- specific guidance on the importance of balance was incorporated in pre-planned training that took place in May 2018.

The Licensee described to what extent the steps outlined above had been implemented ahead of and during this programme:

- on the first step outlined above, Talksport said that the jingle inviting listeners to challenge Mr Galloway's views was played out on four occasions during the programme;
- on the second step, the Licensee identified remarks made by Mr Galloway in which he invited callers with views different from his own to interact with the programme. These were:

at 19:05, Mr Galloway said *"It's got to be a two-way street – I need your views – not just to have you hear mine"*.

at 21:38, Mr Galloway read out a text expressing a view that Jeremy Corbyn *"spends a lot of time with people who are anti-Semitic"*; and,

at 21:55 Mr Galloway read out a text which stated *"why do you always cut off callers who are getting close to the truth?"*. The Licensee said Mr Galloway had responded by inviting the listener to call in and explain their view.

- on the third step, the Licensee said that it had invited a number of "dissenting voices" to appear on the programme, however, these invitations were not accepted. Talksport also acknowledged that the production team had not included an "internal voice to challenge Galloway on his views and provide an alternative viewpoint". Although the Licensee said that "considerable efforts were made to do so", it said that in the absence of an external guest being available, an internal contributor should have been added to the running order for the programme; and
- on the fourth step, the Licensee confirmed that the training seminar had taken place on 16 May 2018 as planned. It also said that "the importance of achieving due impartiality is a regular discussion item in Talk Radio's daily programme meetings" and that senior staff

meet regularly to review implementation of the principles that had been discussed in the training session.

In summary, Talksport considered that all of the measures it had introduced following Ofcom's investigation into the *George Galloway* programme broadcast on 16 March 2018 had been taken into account in this case. However, it recognised these measures had not been fully applied. It added that there had been a particular failure with regard to the third of the steps (the inclusion of a well-informed guest or Talk Radio presenter to provide an alternative voice). The Licensee also recognised that "the programme needs to do more to present itself as a welcoming forum for dissenting viewpoints from listeners".

Talksport also described a number of factors that it considered "reduced the level of consumer harm" in this case. These included: the actions taken by the *George Galloway* production team; that the issue discussed in this programme had, in the Licensee's opinion, "not attracted the same level of national coverage as the poisoning of Sergei and Julia Skripal"; and the wider programming context and audience expectations of the *George Galloway* programme.

In conclusion, the Licensee said that it considered that its commissioning of an external investigation demonstrated its determination "to identify and correct failings in how the *George Galloway* programme is approaching the due impartiality requirements". It also said it was capable of addressing the issues raised in this case without the need for Ofcom to take further regulatory action.

Further representations – 8 November 2018

Talksport provided further representations to Ofcom on 8 November 2018 in which it said it had implemented the recommendations made by the external investigation into the *George Galloway* programme. These included:

- the hiring of an Executive Producer who would take full responsibility for compliance on the show "for as long as is deemed necessary";
- holding compliance sessions at a minimum of once every six months for Talk Radio presenters and producers, specialising in understanding and implementation of Section Five of the Code;
- giving weekly updates of current Ofcom assessments and investigations at editorial meetings;
- producing pre- and post-programme compliance logs, detailing "opposing guests booked or approached and producer's on-air participation to present opposing views";
- ensuring "more creative [jingles] and presenter input to encourage opposing views"; and
- the introduction of audio clips to offer differing views.

The Licensee also said that senior staff had met with Mr Galloway and the programme production team to "impress the importance of Section Five compliance and the company's determination to introduce more diverse and opposing opinions in the programme".

In conclusion, the Licensee considered that as a result of the measures it had put in place it had "addressed the issues that have been raised [as a result of Ofcom's investigation in this case] and created new working practices that will ensure compliance, particularly with regard to Section 5, in this programme and throughout Talk Radio".

Preliminary View

Ofcom issued a Preliminary View that this programme was in breach of Rules 5.11 and 5.12 of the Code. Ofcom provided the Licensee an opportunity to provide representations in response to this Preliminary View.

Licensee's response to Preliminary View

The Licensee said that it accepted the programme was in breach of the Code and that the investigation had helped it to "identify enhancements to ensure compliance". It added that in January 2019, it had appointed an experienced Compliance Manager to strengthen its compliance processes. The Compliance Manager has oversight, in relation to all Talk Radio programmes, of the intended topics for discussion and the guests taking part, and reviews programmes "both off-air and after broadcast". Talksport said that if the Compliance Manager considers that due impartiality has not been maintained, "the topic will be returned to, to ensure alternative views are included".

The Licensee said that George Galloway had offered to refrain from discussing certain topics, and that this offer has been declined *pro tem* as, in its – and Ofcom's view – "It is of paramount importance that broadcasters and presenters continue to explore controversial subject matter even when...opinion becomes polarised".

The Licensee explained that it was "actively exploring ways [to] more clearly link timely programmes in which alternative views are presented, to ensure due impartiality is maintained across [its] service at all times". Talksport also said that it had removed all audio and video clips from this programme from its website, YouTube channels and social media.

Response from George Galloway

Ofcom recognises that there may be persons/bodies who may be directly affected by the outcome of Ofcom's investigation and determination of a complaint. Our procedures encourage broadcasters to seek to take account of and include such representations. Our procedures also note that where such persons/bodies provide representations to Ofcom directly, Ofcom will as appropriate take those representations into account. In this case, Ofcom considered it was appropriate to invite the presenter to make representations on the Preliminary View. Mr Galloway provided his representations direct to Ofcom.

Mr Galloway said that Ofcom should be "investigated for this quite scandalous waste of public money purchased by a single complainant". He also described Ofcom's investigation as an attempt "to silence the only presenter on British radio and television who is prepared to defend the leader of Her Majesty's Opposition in the teeth of industrialised prejudice and legalised lying when it comes to Mr Corbyn about which...Ofcom have precisely nothing to say". Mr Galloway went on to describe Julia Hartley-Brewer (the presenter of the breakfast show on Talk Radio) as "the visceral hater of Corbyn" and said that she had openly accused Jeremy Corbyn of being an anti-Semite and invited Mr Corbyn to sue her. Mr Galloway

described this as “the most blatant offence yet heard on British Radio” to which “Ofcom had precisely nothing to say”.

Mr Galloway also alleged that the Preliminary View demonstrated “just how deeply prejudiced [Ofcom] are against the Palestinian people, how abjectly [Ofcom] toe[s] the Israel-lobby line, and the contempt [Ofcom] implicitly feel[s] for the many millions of British tax-payers whose money [Ofcom is] abusing who agree with me on all the issues covered by [Ofcom's] investigation”.

In relation to the manner in which Mr Galloway had described some of the listeners who contacted him during this programme, Mr Galloway said “someone who writes a moronic vituperative slanderous sub-literate missive to a radio show can quite accurately be described as a moron”. He also said that someone who “writes dozens of moronic vituperative slanderous sub-literate missives to a radio show while studiously remaining anonymous can quite accurately be described as a gutless coward”.

In conclusion, Mr Galloway stated: “I am proud of my performance on this particular radio-show. The people who should be ashamed are Ofcom and its single complainant”.

Decision

Reflecting our duties under the Communications Act 2003⁶, 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”.

Ofcom is the UK's independent broadcast regulator. In performing our broadcast standards duties, we act independently from Government and politicians. We have conducted this case following our published procedures, which provide for a fair and transparent process. After listening to the entire programme, we assessed and investigated the programme against the rules in Section Five of the Code. We have taken careful account of the fact-specific context of the programme and of the representations made by both the Licensee and Mr Galloway. Ofcom underlines that it has no view on the subject being discussed in this programme (i.e. the policies and actions of the Labour Party (and in particular, of Jeremy Corbyn) in relation to anti-Semitism). Rather, Ofcom's investigation was solely concerned with whether this content complied with the Code, and in particular, the requirement to preserve due impartiality.

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

Ofcom must perform its duties in accordance with the right to freedom of expression set out in Article 10 of the European Convention of Human Rights. Freedom of expression is one of the essential foundations of a democratic society. 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 interference⁷. It applies not only to the content of information but also to the means of transmission or reception⁸. 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 protection of freedom of expression will normally be accorded, with the authorities having a particularly narrow margin of appreciation.

The Government's White Paper⁹ 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.

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 this programme, Ofcom has had careful regard to the Article 10 rights and relevant contextual factors.

In light of the above, we considered it was legitimate for the Licensee to broadcast a programme from a perspective that was largely supportive of Jeremy Corbyn in relation to allegations of anti-Semitic behaviour. However, to the extent that such a programme

⁷ *Lingens v Austria* (1986) 8 EHRR 407.

⁸ *Autronic v Switzerland* (1990) 12 EHRR 485.

⁹ 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 The motion put and agreed to at the end of the debate was: "[That this House has considered e-petition 228572 relating to an independent commission on televised election debates](#)".

examined a politically controversial matter, we considered that Talksport needed to comply with Section Five by ensuring due impartiality was preserved.

Application of Rules 5.11 and 5.12

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned a matter of major political or industrial controversy or a major matter 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 three-hour programme was almost entirely dedicated to discussion of the policies and actions of the Labour Party (and in particular, of Jeremy Corbyn) in relation to anti-Semitism. The programme was broadcast on 27 July 2018, following a period of intense scrutiny about the response of the Labour Party to allegations of anti-Semitic behaviour by Labour Party members and supporters as well as Mr Corbyn himself. For example, on 16 July 2018, an open letter by 60 British rabbis was published in The Guardian newspaper which alleged that anti-Semitism in the Labour Party was “severe” and “widespread”. The letter also called on the Labour Party to adopt in full the International Holocaust Remembrance Alliance’s (“IHRA”) definition¹⁰ of anti-Semitism¹¹. On 25 July 2018, three British Jewish newspapers (The Jewish Chronicle, Jewish News and Jewish Telegraph) published the same front page that alleged a government led by Jeremy Corbyn would pose an “existential threat to Jewish life”. In our view, the controversy surrounding the Labour Party’s (and in particular, Jeremy Corbyn’s) policies and actions in relation to anti-Semitism had been a significant issue of debate amongst politicians and the media at the time of broadcast of this programme.

For these reasons, we considered (and the Licensee agreed) that the programme was concerned with a matter of major political controversy and a major matter relating to current public policy i.e. the policies and actions of the Labour Party (and in particular, Jeremy Corbyn) in relation to anti-Semitism, and the Licensee was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code.

¹⁰ The IHRA’s working definition of anti-Semitism states: “Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities”. The definition is accompanied by guidance which sets out a number of contemporary examples of what could constitute anti-Semitism in public life and the media (see https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf). Jeremy Corbyn and the Labour Party had received considerable amounts of criticism, including from various sections of the UK Jewish community, for not adopting the IHRA definition and guidance in full.

¹¹ In September 2018, the Labour Party’s national executive committee adopted the IHRA’s definition of anti-Semitism (and associated guidance) in full (see footnote 16) along with a statement clarifying that freedom of speech on Israel will not be restricted.

Preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on this matter. 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.

Ofcom's Guidance¹² to Section Five of the Code makes clear 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.

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 have taken a number of contextual factors into account in considering the broadcaster's and audience's Article 10 rights. In particular, we acknowledged the representations made by the Licensee regarding the contextual factors about Talk Radio and the *George Galloway* programme. These included that Mr Galloway is the "maverick lone voice of the left compared to the majority of his fellow presenters" on Talk Radio, and that audiences expect a "personality and opinion-led approach". Mr Galloway made substantially the same point in his representations on Ofcom's Preliminary View. We therefore acknowledged listeners were likely to expect Mr Galloway to address controversial issues and to do so from a left-wing perspective that may generally be supportive of Jeremy Corbyn.

During the programme, as described above, Mr Galloway made frequent statements that were supportive of Jeremy Corbyn. They concerned various criticisms of Mr Corbyn (and by extension the party he leads, the Labour Party) in relation to anti-Semitism, and in particular Mr Corbyn and the Labour Party's response to allegations of anti-Semitic behaviour by Labour Party members and supporters as well as Mr Corbyn himself.

For example, Mr Galloway said the "*British media and political class*" were responsible for a "*giant Goebellian lie that Jeremy Corbyn not only hates Jews but that the existential future, the existence of Jewish life in Britain is threatened by this mild-mannered geography teacher in his woolly jumper...*". He went on to describe the allegations of anti-Semitism as "*an onslaught*" that was launched at the precise moment Mr Corbyn's polling had improved and

¹² https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf, paragraph 1.34

that they were *“not even about Israel, this is about destroying Jeremy Corbyn’s potential to be Britain’s Prime Minister”*. He also claimed that the *“rich and powerful in Britain”* had *“conjured forth the demon of Nazism to use to destroy Britain’s principal anti-Nazi [Jeremy Corbyn]”*. He described Mr Corbyn as *“a man without a scintilla of racist or anti-Semitic feeling in his body”*.

Mr Galloway’s guest, Mr Bash, made similar statements. He said the allegations of anti-Semitism were *“an attack by the pro-Israel lobby who are trying to silence criticism”* of the Israeli state, as well as *“those majority of Labour MPs who are determined to get rid of Jeremy Corbyn”*. He said the Labour Party *“are anti-racist and if they are anti-racism it means that they oppose anti-Semitism,”* and that *“the idea that Jeremy Corbyn is a Jew-hater is just about the most grotesque allegation that I have ever heard”*.

Statements similarly supportive of Jeremy Corbyn were made by callers who spoke to Mr Galloway or via tweets or text messages that were read out. For example:

“The Israel lobby are out to get Corbyn”;

“The attack on Corbyn by all media shows the extent of corporate politics – they are afraid of the poor being given some power”;

“The liberal media establishment in the UK are trying to destroy any chance of Jeremy Corbyn becoming Prime Minister...These liberals are vicious, nasty people and will stop at nothing at destroying those they don’t like”;

“There should be a word to describe people who throw around false accusations of anti-Semitism. Do these fools not appreciate that by crying wolf again and again at the patently blameless Jeremy Corbyn, their credibility will be completely devalued?”; and

“What we are currently witnessing with the attacks on Jeremy Corbyn and the Labour Party are surrogates of a foreign government attempting to destabilise Her Majesty’s Most Loyal Opposition in order to prevent the possibility of a Labour Prime Minister who will implement sanctions to end apartheid in Israel”.

We considered that these views were closely aligned with the views being espoused by Mr Galloway, i.e. they were highly supportive of the actions of Jeremy Corbyn and critical of those who had sought to challenge Mr Corbyn’s response to the allegations of anti-Semitism within the Labour Party.

In light of these statements, we considered whether, as required under Rule 5.12, an appropriately wide range of significant views were included and given due weight in this programme.

As highlighted in Ofcom's Guidance on Section Five of the Code, the broadcast of highly critical or supportive comments concerning the policies and actions of, for example, an individual or a political party, 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 or supportive. 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. How this is done is an editorial matter for the broadcaster. Given the degree to which the programme was supportive of Mr Corbyn, and taking into account that it was dealing with a matter of major political controversy, we would have expected alternative viewpoints on this matter to be appropriately reflected.

We acknowledged that the viewpoints of those critical of Jeremy Corbyn's response to the allegations of anti-Semitism were reflected, to a very limited extent, in the discussion in the programme. For example, Mr Galloway referred to an episode of *Channel 4 News* broadcast the previous evening in which Mr Galloway said a 13 year-old girl claimed that:

"she was being frightened in the playground by people telling her that her fate, as a Jewish schoolgirl might be like the fate of Jewish schoolgirls in Germany and across Europe in the 1930s and 40s and the child was allowed to say that she believed that these things were a result of what Jeremy Corbyn had been saying".

Furthermore, alternative viewpoints on the matter were also reflected, to a very limited extent, by the following text read out by Mr Galloway:

"You say Corbyn is not anti-Semitic...yet he associates with people who are".

However, in the overall context of the entire three-hour programme, we did not consider the above statements were sufficient to present an alternative view on the subject being discussed with due weight. Firstly, as discussed above, there was very strong alignment in the views of Mr Galloway and the vast majority of contributors to the programme. In addition, the text from a listener set out above was treated in a very different way by Mr Galloway to those contributions that aligned more with his own views. In this context, we had regard to Ofcom's guidance to Section Five of the Code which states:

"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".

We took into account that when reading out the text, Mr Galloway criticised the listener's spelling and called them a *"gutless coward"* and an *"ignorant moron"*. We recognise that there may be scope for presenters of 'phone-in' programmes to use provocative language to challenge listeners contacting the programme. However, in doing so, broadcasters must ensure that care is taken. In such circumstances, when dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters must still reflect an appropriately wide range of significant views and give those views due weight. We noted Mr Galloway's submission that in his opinion that it was correct to refer to the anonymous sender of multiple emails as *"a gutless coward"*. However, in Ofcom's view, Mr Galloway's reaction to the listener's text had the effect of dismissing and denigrating listeners who held views which differed from his own, and constituted a clear difference in

the treatment of views which did and did not align with Mr Galloway's own, which meant that this alternative viewpoint was given little weight in the programme.

We also took account of the Licensee's comments that it had invited a number of "dissenting voices" to appear on the programme, but they had declined. As Ofcom has made clear in previous decisions, and as the Licensee appeared to acknowledge, 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 impartiality¹³. 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)¹⁴. The Guidance gives examples of a number of editorial techniques which a broadcaster might consider employing, where alternative views are not readily available, to preserve due impartiality.

We were particularly concerned that the Licensee had told Ofcom on 11 May 2018, during our investigation into the edition of the *George Galloway* programme broadcast on 16 March 2018, that it was introducing a number of steps to improve the programme's compliance with due impartiality rules. These included, in circumstances where a guest with views differing to Mr Galloway's could not be booked to appear, inviting another Talk Radio presenter to challenge Mr Galloway and provide an alternative viewpoint. However, despite its undertakings to Ofcom on 11 May 2018 that it had taken extensive steps to improve the programme's compliance processes, Talksport acknowledged that it had failed to follow some of these new compliance processes in this programme broadcast only ten weeks later. Specifically, the Licensee acknowledged that a guest with views differing to Mr Galloway's could not be booked, but the Licensee had failed to include another Talk Radio presenter in the programme to reflect an alternative viewpoint and challenge Mr Galloway as required under Talksport's new compliance processes.

For all the reasons set out above, and taking account of the relevant contextual factors discussed above, we considered the programme had not included and given due weight to an appropriately wide range of significant views on the matter of how the Labour Party (and in particular Jeremy Corbyn) had responded to allegations of anti-Semitism in the Labour Party.

Preservation of due impartiality – clearly linked and timely programmes

Broadcasters can 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". In light of the Licensee's representations on this point, we next considered whether such alternative views were included in clearly linked and timely programmes and given due weight.

In its representations, Talksport said it considered a variety of viewpoints had been included across Talk Radio's output as a whole during this time but accepted that this "did not provide justification to Galloway in providing his own partial account". The Code is clear that content broadcast on the same service can only contribute to preserving due impartiality on matters

¹³ See paragraph 1.36, at: https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-codeguidance-section-5-march-2017.pdf

¹⁴ See footnote 13.

of major political and industrial controversy and major matters relating to current public policy in accordance with the Code if those programmes are clearly linked and timely. National radio broadcasters cannot preserve due impartiality by relying on what is broadcast across their services as a whole¹⁵. Because it cannot be guaranteed that someone in the audience for one programme will also have been watching or listening to the programme that precedes it or follows it, or is broadcast on the same day, 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.

Given the above, we did not consider that Talksport's broadcast of a variety of viewpoints across its output had the effect of reflecting an appropriately wide range of significant views in clearly linked and timely programmes.

Conclusion

We have taken careful account of the broadcaster's and audience's rights of freedom of expression and all the relevant contextual factors. We took into account the Licensee's acknowledgement that the programme had failed to comply with Rules 5.11 and 5.12. We also recognised the improvements that Talk Radio said it had made to its compliance processes. However, we remain concerned that despite the Licensee fully accepting that this programme was in breach of the Code and introducing "enhancements to ensure compliance", the presenter of the programme continued to express his pride about the content of the programme which may indicate an ongoing misunderstanding of the due impartiality requirements of the Code.

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 matter of major political controversy and major matter relating to current public policy dealt with in the programme.

Breaches of Rules 5.11 and 5.12

Ofcom's Decision is that these are serious breaches. Therefore, subject to receiving the Licensee's representations on this issue, we are minded to consider this matter for the imposition of a statutory sanction.

¹⁵ 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".

In Breach

George Galloway

Talk Radio, 6 August 2018, 19:00

Introduction

Talk Radio is a national digital speech radio station, the licence for which is held by Talksport Limited ("Talksport" or "the Licensee"). The *George Galloway* programme is typically broadcast on Fridays between 19:00 and 22:00 with Mr Galloway occasionally broadcasting at other times when covering for other presenters.

We received one complaint about the programme broadcast on 6 August 2018. The complainant alleged that there was nobody featured in the programme who disagreed with Mr Galloway's views on anti-Semitism in the Labour Party.

In his introduction to the programme Mr Galloway said:

"Can you imagine the brouhaha if Jeremy Corbyn had spoken of Jewish women's dress in the way that our erstwhile Foreign Secretary, Boris Johnson, spoke about a tiny number of Muslim women in this country?¹ I only need to pose that question to answer it. The entire British state and all sections of the media would be demanding his banishment from public life and are not doing so about Boris Johnson and that tells you, if you needed telling, the kind of double standards that are in play institutionally, systematically in the British media and political class".

Shortly afterwards he said:

*"After Corbyn's sensational General Election result last year in which he secured the biggest increase in Labour votes since Clement Attlee in 1945 [Tom] Watson² went quieter still. But now we are in the midst of a new coup against Jeremy Corbyn, based on reasons I shall turn to in a minute, Tom Watson has joined the mob. He put the boot in late on Saturday night in *The Observer* newspaper³, the pro war, anti-Corbyn *Observer* and said that Labour would suffer eternal shame and disappear into a vortex if it did not deal with the anti-Semitism he claimed Jeremy Corbyn was tolerating and enabling. This is a gigantic lie. Jeremy Corbyn has never facilitated or enabled anti-Semitism in the Labour Party. Indeed, he has fought anti-Semitism all of his life rather more energetically than Tom Watson who until recent times never did anything particularly energetically. But Corbyn has the scars. He fought the anti-Semites in Wood Green and elsewhere. His mother fought the anti-Semites at Cable Street in 1936 when they were jackbooted and dangerous and in their thousands marching on London's East End. Jeremy Corbyn has*

¹ On 5 August 2018, an article written by Boris Johnson MP was published in *The Daily Telegraph* in which Mr Johnson described the burka as "oppressive" and "ridiculous" (<https://www.telegraph.co.uk/news/2018/08/05/denmark-has-got-wrong-yes-burka-oppressive-ridiculous-still/>)

² The Deputy-Leader of the Labour Party.

³ <https://www.theguardian.com/politics/2018/aug/04/tom-watson-labour-antisemitism-eternal-shame>

nothing to learn from you, Tom Watson, about anti-Semitism and in any case, you already know all of that. You did what you did to please your masters, your pay masters. The people who fund you to an enormous extent. You are the one who has disappeared into a vortex, a vortex paid for by the Israel lobby in Britain...you did what you did, not because Jeremy Corbyn is an anti-Semite but because you want to be a part of the overthrow of Jeremy Corbyn”.

At 19:32, Mr Galloway read out a series of messages he had received from listeners. The first of these said Tom Watson should be “*out, out, out. JC [Jeremy Corbyn] is our man*”. This was immediately followed by another message which said, “*we will show Watson our backs and an empty room at Conference*”. The next messages Mr Galloway read out said:

“I feel so angry about the unfair attacks on Corbyn...Every time I try to focus on my own life there is another unfair smear and I come back to the computer in anger to defend Corbyn”.

“It's just been announced that all charges against Margaret Hodge are to be dropped. It seems that the Corbyn attackers can behave with impunity⁴”.

At 19:58 Mr Galloway read a text message from an anonymous listener that contacted the programme:

“Yes, Jezza [Jeremy Corbyn] did brilliantly at the last election, finishing second against a hapless government and a PM who fought a dismal campaign. You live in a fantasy world”.

After reading this message, Mr Galloway said:

“That's of course from the gutless coward who texts all night, every night, without giving his name and without the courage to call me”.

At 20:05 Mr Galloway spoke to Glyn Secker, the Secretary of Jewish Voices for Labour⁵. Mr Galloway started the discussion by asking Mr Secker what his view was on the decision to discontinue the investigation against Margaret Hodge. Mr Secker responded as follows:

“I'm astounded by that. Not only did she insult Corbyn by accusing him of being anti-Semitic, which is a gross accusation and completely false and a real slur against him, but actually she used the 'f' word in this sentence and that's been conveniently dropped by most of the newspapers covering this story. Imagine if it had been the other way around. If Corbyn had used such language against Hodge. Imagine the outcry...This is not a campaign against anti-Semitism in the Labour Party. It's a campaign against Corbyn. And it's a campaign against free speech on Israel, so there isn't a way of placating this

⁴ On the day of broadcast, it was announced that the Labour Party had concluded its disciplinary action against Labour MP Dame Margaret Hodge after she had called Jeremy Corbyn a “fucking anti-Semite and a racist”. (<https://www.independent.co.uk/news/uk/politics/labour-antisemitism-latest-margaret-hodge-investigation-jeremy-corbyn-confrontation-a8480301.html>)

⁵ Jewish Voices for Labour describes itself as a “network for Jewish members of the Labour Party”.

campaign and offering them one head after another, because they won't be satisfied until they have Corbyn's head, I'm afraid, or until we actually defeat this forced campaign and secure his position".

Mr Galloway then asked Mr Secker:

"There's also the news today that one of the editors of the Jewish News, one of the three newspapers, that in a carefully coordinated front page assault on Corbyn calling him an existential threat to Jewish life in Britain⁶, has said that the newspaper was wrong to use that phrase. Tell us about that..."

Mr Secker responded:

"He's [the Jewish News journalist] actually said it's repulsive. This is a dedicated anti-racist we're trashing. Just don't buy into it at all. And he is sticking by the pledge he made to his father who suffered persecution both from fascists and Stalinists and so on, he said that I will always commit myself to being truthful and as a journalist that is what he's doing and he's obviously put his job on the line at Jewish News because this is an amazing break to make with them but I think he's correct and I admire his principles".

Following the discussion with Mr Secker, Mr Galloway was joined by Labour MP Chris Williamson, whom Mr Galloway introduced as someone who *"would be a better deputy leader than Tom Watson"*. As with his conversation with Mr Secker, Mr Galloway opened the discussion with Mr Williamson by asking for his reaction to the news that the charges against Margaret Hodge had been dropped. Mr Williamson responded as follows:

"Well I'm surprised to say the least... Indeed many [members of the Labour Party] are incredibly angry about it...It's been clear from the outset that their [i.e. critics of Jeremy Corbyn] ultimate aim was to topple Jeremy Corbyn and I think they're trying to take out his praetorian guard one by one and ultimately their aim is to remove Jeremy".

Following this conversation, Mr Galloway took calls from a number of listeners to the programme. One caller said the anti-Semitism allegations were *"just a witch hunt around Jeremy Corbyn"*. The next caller described the claims against Mr Corbyn as: *"a smear of the worst kind. They have turned his greatest asset, i.e. an anti-racist campaigner, into his greatest weakness"*. The next caller claimed that *"the mainstream media made Jeremy Corbyn some racist anti-Semite"*.

Between 21:00 and 21:30 the discussion changed to focus on Donald Trump. After this, Mr Galloway read out the following listener message:

"...every single caller has agreed with Jeremy Corbyn and defended him. It's extremely encouraging, given that anybody at all can call in. Everybody's appalled by Watson".

He then took a call from a listener who said *"I have a reflection of last week's mainstream media...it made Jeremy Corbyn out to be some racist anti-Semite"*. He then referred to Mr Corbyn as *"the people's hero"*.

⁶ On 25 July 2018, three British Jewish newspapers (Jewish Chronicle, Jewish News and Jewish Telegraph) published the same front page that alleged a government led by Jeremy Corbyn would pose an "existential threat to Jewish life".

Shortly afterwards, Mr Galloway took a call from a listener who described Mr Corbyn as *"the guy who got me interested in politics again..."*. Mr Galloway followed this call by saying:

"Well look, Jeremy Corbyn is an honest and principled man. He has shortcomings, like we all do. He could have handled some things better, both in the recent-past and in the farther-away-past. But he's an honest and principled man. And if people in Britain really prefer Boris Johnson to Jeremy Corbyn, I'll be surprised. So, I'm ready to face the future with confidence..."

The final message Mr Galloway read out on the programme was from an anonymous listener that he referred to as *"the Rag-picker"*. Mr Galloway said:

"The Rag-picker says: "Left-wing Conspiracy Theories R Us" on Talk Radio tonight'. I've left the last word to you, Rag-picker, whoever you are. Anonymous, cowardly. Because I'm going to issue you a personal invitation to call me tomorrow night at 7 o'clock on The Mother of All Talk Shows and explain to me and the listeners what were the left-wing conspiracy theories that you heard here on the radio tonight. It's a genuine invitation and it personally to you, Rag-picker, whoever you are"

Ofcom considered that the programme was dealing with a matter of major political or industrial controversy and a major matter relating to current public policy, namely, the policies and actions of the Labour Party and, in particular its leader, Jeremy Corbyn, in relation to anti-Semitism.

We therefore considered that this programme raised issues warranting investigation under the following Code 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 requested comments from the Licensee on how this programme complied with these rules.

Response

Initial representations – 8 October 2018

The Licensee described Talk Radio's *"distinctiveness"* as being derived in part from *"its personality and opinion-led approach"*. It considered that this played a role in shaping audience expectations for the station as well as its approach to due impartiality. It also described compliance with the Code as a *"core value for Talk Radio"* and said that having received Ofcom's request for comments in this case, it had:

- commissioned a report by a barrister specialising in media matters with a view to establishing the causes “of apparent shortcomings” with the *George Galloway* programme’s compliance with Section Five of the Code;⁷ and
- implemented additional production support to “deliver additional immediate oversight and assurance of compliance” for the *George Galloway* programme.

Talksport said that the subject matter discussed in this programme was, in its opinion, a “lower profile issue” than the poisoning of Sergei and Julia Skripal⁸. However, it accepted that the programme was still dealing with a matter of “significant political controversy” and did not seek to argue that Rules 5.11 and 5.12 were not engaged in this case.

The Licensee said on reviewing the programme, it had concluded that “there were shortcomings in the way that this programme sought to preserve due impartiality”. It attributed this to the production team’s “failure to identify the anti-Semitism row as a subject requiring careful treatment as a ‘major’ matter of political controversy, and above all due to the absence of guests, callers or internal Talk Radio contributors capable of articulating alternative viewpoints”. Talksport also accepted that although it considered a variety of viewpoints were included across Talk Radio’s output as a whole during this period of time this “did not provide justification to Galloway in providing his own partial account”.

The Licensee also referred to the measures it had introduced as a result of Ofcom’s investigation into the episode of *George Galloway* broadcast on 16 March 2018. In summary, Talksport had told Ofcom on 11 May 2018 that it had taken the following steps “to ensure that differing views are expressed on air” during the *George Galloway* programme:

- a pre-recorded jingle would be broadcast at least once an hour and every time that a new subject is introduced. This would invite listeners to phone, text and email and challenge George Galloway’s views;
- a producer had spoken to Mr Galloway about the need for dissenting voices to be heard. The Licensee said Mr Galloway had “agreed to invite contrary opinions from listeners”;
- the producer of *George Galloway* was instructed to obtain a well-informed guest in each programme, whose views conflict with Mr Galloway’s. The Licensee said that in the event that such a guest could not be booked, a Talk Radio presenter would be included in the programme to challenge Mr Galloway on his views and provide an alternative viewpoint; and
- specific guidance on the importance of balance was incorporated in pre-planned training that took place in May 2018.

The Licensee described to what extent the steps outlined above had been implemented ahead of and during this programme:

⁷ The Licensee provided Ofcom with a summary of this report, in which the author expressed the view that this and other episodes of the programme failed to achieve due impartiality.

⁸ Ofcom has also conducted an investigation into whether an episode of *George Galloway* broadcast on 16 March 2018 complied with Rules 5.11 and 5.12. This programme was concerned with the poisoning of Sergei and Julia Skripal in Salisbury on 4 March 2018. We found the programme to be in breach of Rules 5.11 and 5.12.

- on the first step outlined above, Talksport said that the jingle inviting listeners to challenge Mr Galloway's views was played out on one occasion during the programme;
- on the second step, the Licensee said Mr Galloway had read out a tweet from a listener which stated that the programme was "full [of] left wing conspiracy theories". Mr Galloway had responded by inviting the listener to call in and explain their view;
- on the third step, the Licensee said that it had invited a number of "dissenting voices" to appear on the programme, however, these invitations were not accepted. Talksport also acknowledged that the production team had not included an "internal voice to challenge Galloway on his views and provide an alternative viewpoint". Although the Licensee said that "considerable efforts were made to do so", it said that in the absence of an external guest being available, an internal contributor should have been added to the running order for the programme; and
- on the fourth step, the Licensee confirmed that the training seminar had taken place on 16 May 2018 as planned. It also said that "the importance of achieving due impartiality is a regular discussion item in Talk Radio's daily programme meetings" and that senior staff meet regularly to review implementation of the principles that had been discussed in the training session.

In summary, Talksport considered that all of the measures it had introduced following Ofcom's investigation into the *George Galloway* programme broadcast on 16 March 2018 had been taken into account in this case. However, it recognised these measures had not been fully applied. It added that there had been a particular failure with regard to the third of the steps (the inclusion of a well-informed guest or Talk Radio presenter to provide an alternative voice). The Licensee also recognised that "the programme needs to do more to present itself as a welcoming forum for dissenting viewpoints from listeners".

Talksport also described a number of factors that it considered "reduced the level of consumer harm" in this case. These included: the actions taken by the *George Galloway* production team; that the issue discussed in the programme had, in the Licensee's opinion, "not attracted the same level of national coverage as the poisoning of Sergei and Julia Skripal"; and the wider programming context and audience expectations of the *George Galloway* programme.

In conclusion, the Licensee said that it considered that its commissioning of an external investigation demonstrated its determination "to identify and correct failings in how the *George Galloway* programme is approaching the due impartiality requirements". It also said it was capable of addressing the issues raised in this case without the need for Ofcom to take further regulatory action.

Further representations – 8 November 2018

Talksport provided further representations to Ofcom on 8 November 2018 in which it said it had implemented the recommendations made by the external investigation into the *George Galloway* programme. These included:

- the hiring of an Executive Producer who would take full responsibility for compliance on the show "for as long as is deemed necessary";

- holding compliance sessions at a minimum of once every six months for Talk Radio presenters and producers, specialising in understanding and implementation of Section Five of the Code;
- giving weekly updates of current Ofcom assessments and investigations at editorial meetings;
- producing pre- and post-programme compliance logs, detailing “opposing guests booked or approached and producer’s on-air participation to present opposing views”;
- ensuring “more creative [jingles] and presenter input to encourage opposing views”; and
- the introduction of audio clips to offer differing views.

The Licensee also said that senior staff had met with Mr Galloway and the programme production team to “impress the importance of Section Five compliance and the company’s determination to introduce more diverse and opposing opinions in the programme”.

In conclusion, the Licensee considered that as a result of the measures it had put in place, it had “addressed the issues that have been raised [as a result of Ofcom’s investigation in this case] and created new working practices that will ensure compliance, particularly with regard to Section 5, in this programme and throughout Talk Radio”.

Preliminary View

Ofcom issued a Preliminary View that this programme was in breach of Rules 5.11 and 5.12 of the Code. Ofcom provided the Licensee an opportunity to provide representations in response to this Preliminary View.

Licensee’s response to Preliminary View

The Licensee said that it accepted the programme was in breach of the Code and that the investigation had helped it to “identify enhancements to ensure compliance”. It added that in January 2019, it had appointed an experienced Compliance Manager to strengthen its compliance processes. The Compliance Manager has oversight, in relation to all Talk Radio programmes, of the intended topics for discussion and the guests taking part, and reviews programmes “both off-air and after broadcast”. Talksport said that if the Compliance Manager considers that due impartiality has not been maintained, “the topic will be returned to, to ensure alternative views are included”.

The Licensee said that George Galloway had offered to refrain from discussing certain topics, and that this offer has been declined pro tem as, in its – and Ofcom’s view – “It is of paramount importance that broadcasters and presenters continue to explore controversial subject matter even when...opinion becomes polarised”.

The Licensee explained that it was “actively exploring ways [to] more clearly link timely programmes in which alternative views are presented, to ensure due impartiality is maintained across [its] service at all times”. Talksport also said that it had removed all audio and video clips from this programme from its website, YouTube channels and social media.

Response from George Galloway

Ofcom recognises that there may be persons/bodies who may be directly affected by the outcome of Ofcom's investigation and determination of a complaint. Our procedures encourage broadcasters to seek to take account of and include such representations. Our procedures also note that where such persons/bodies provide representations to Ofcom directly, Ofcom will as appropriate take those representations into account. In this case, Ofcom considered it was appropriate to invite the presenter to make representations on the Preliminary View. Mr Galloway provided his representations direct to Ofcom.

Mr Galloway said that Ofcom should be "investigated for this quite scandalous waste of public money purchased by a single complainant". He also described Ofcom's investigation as an attempt "to silence the only presenter on British radio and television who is prepared to defend the leader of Her Majesty's Opposition in the teeth of industrialised prejudice and legalised lying when it comes to Mr Corbyn about which...Ofcom have precisely nothing to say". Mr Galloway went on to describe Julia Hartley-Brewer (the presenter of the breakfast show on Talk Radio) as "the visceral hater of Corbyn" and said that she had openly accused Jeremy Corbyn of being an anti-Semite and invited Mr Corbyn to sue her. Mr Galloway described this as "the most blatant offence yet heard on British Radio" to which "Ofcom had precisely nothing to say".

Mr Galloway also alleged that the Preliminary View demonstrated "just how deeply prejudiced [Ofcom] are against the Palestinian people, how abjectly [Ofcom] toe[s] the Israel-lobby line, and the contempt [Ofcom] implicitly feel[s] for the many millions of British tax-payers whose money [Ofcom is] abusing who agree with me on all the issues covered by [Ofcom's] investigation".

In relation to the manner in which Mr Galloway had described some of the listeners who contacted him during this programme, Mr Galloway said someone who "writes dozens of moronic vituperative slanderous sub-literate missives to a radio show while studiously remaining anonymous can quite accurately be described as a gutless coward".

In conclusion, Mr Galloway stated: "I am proud of my performance on this particular radio-show. The people who should be ashamed are Ofcom and its single complainant".

Decision

Reflecting our duties under the Communications Act 2003⁹, 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

⁹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<http://www.legislation.gov.uk/ukpga/2003/21/section/320>

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 is the UK's independent broadcast regulator. In performing our broadcast standards duties, we act independently from Government and politicians. We have conducted this case following our published procedures, which provide for a fair and transparent process. After listening to the entire programme, we assessed and investigated the programme against the rules in Section Five of the Code. We have taken careful account of the fact-specific context of the programme and of the representations made by both the Licensee and Mr Galloway. Ofcom underlines that it has no view on the subject being discussed in this programme (i.e. the policies and actions of the Labour Party (and in particular, of Jeremy Corbyn) in relation to anti-Semitism). Rather, Ofcom's investigation was solely concerned with whether this content complied with the Code, and in particular, the requirement to preserve due impartiality.

Ofcom must perform its duties in accordance with the right to freedom of expression set out in Article 10 of the European Convention of Human Rights. Freedom of expression is one of the essential foundations of a democratic society. 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 interference¹⁰. It applies not only to the content of information but also to the means of transmission or reception¹¹. 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 protection of freedom of expression will normally be accorded, with the authorities having a particularly narrow margin of appreciation.

The Government's White Paper¹² 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

¹⁰ *Lingens v Austria* (1986) 8 EHRR 407.

¹¹ *Autronic v Switzerland* (1990) 12 EHRR 485.

¹² 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

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.

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 this programme, Ofcom has had careful regard to the Article 10 rights and relevant contextual factors.

In light of the above, we considered it was legitimate for the Licensee to broadcast a programme from a perspective that was largely supportive of Jeremy Corbyn in relation to allegations of anti-Semitic behaviour. However, to the extent that such a programme examined a politically controversial matter, we considered that Talksport needed to comply with Section Five by ensuring due impartiality was preserved.

Application of Rules 5.11 and 5.12

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned a matter of major political or industrial controversy or a major matter 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 three-hour programme was almost entirely dedicated to discussion of the policies and actions of the Labour Party (and in particular, of Jeremy Corbyn) in relation to anti-Semitism. The programme was broadcast on 6 August 2018, following a period of intense scrutiny about the response of the Labour Party to allegations of anti-Semitic behaviour by Labour Party members and supporters as well as Mr Corbyn himself. For example, on 16 July 2018, an open letter by 60 British rabbis was published in The Guardian newspaper which alleged that anti-Semitism in the Labour Party was "severe" and "widespread". The letter also called on the Labour Party to adopt in full the International Holocaust Remembrance Alliance's ("IHRA") definition¹³ of anti-Semitism¹⁴. On 25 July 2018, three British Jewish newspapers (The Jewish Chronicle, Jewish News and Jewish Telegraph) published the same front page that alleged a government led by Jeremy Corbyn would pose an "existential threat to Jewish

¹³ The IHRA's working definition of anti-Semitism states: "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities". The definition is accompanied by guidance which sets out a number of contemporary examples of what could constitute anti-Semitism in public life and the media (see https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf). Jeremy Corbyn and the Labour Party had received considerable amounts of criticism, including from various sections of the UK Jewish community, for not adopting the IHRA definition and guidance in full.

¹⁴ In September 2018, the Labour Party's national executive committee adopted the IHRA's definition of anti-Semitism (and associated guidance) in full (see footnote 13) along with a statement clarifying that freedom of speech on Israel will not be restricted.

life". In our view, the controversy surrounding the Labour Party's (and in particular, Jeremy Corbyn's) policies and actions in relation to anti-Semitism had been a significant issue of debate amongst politicians and the media at the time of broadcast of this programme.

For these reasons, we considered (and the Licensee agreed) that the programme was concerned with a matter of major political controversy and a major matter relating to current public policy i.e. the policies and actions of the Labour Party (and in particular, Jeremy Corbyn) in relation to anti-Semitism, and the Licensee was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code.

Preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on this matter. 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.

Ofcom's Guidance¹⁵ to Section Five of the Code makes clear 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.

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 have taken a number of contextual factors into account in considering the broadcaster's and audience's Article 10 rights. In particular, we acknowledged the representations made by the Licensee regarding the contextual factors about Talk Radio and the *George Galloway* programme. These included that Mr Galloway is the "maverick lone voice of the left compared to the majority of his fellow presenters" on Talk Radio, and that audiences expect a "personality and opinion-led approach". Mr Galloway made substantially the same point in his representations on Ofcom's Preliminary View. We acknowledged listeners were likely to expect Mr Galloway to address controversial issues and to do so from a left-wing perspective that may generally be supportive of Jeremy Corbyn.

¹⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf, paragraph 1.34

During the programme, as described above, Mr Galloway made frequent statements that were supportive of Jeremy Corbyn. They concerned various criticisms of Mr Corbyn (and by extension the party he leads, the Labour Party) in relation to anti-Semitism, and in particular Mr Corbyn and the Labour Party's response to allegations of anti-Semitic behaviour by Labour Party members and supporters as well as Mr Corbyn himself.

For example, Mr Galloway said that the notion that Jeremy Corbyn was tolerating and enabling anti-Semitism was "*a gigantic lie*" and that "*Jeremy Corbyn has never facilitated or enabled anti-Semitism in the Labour Party*". He also said that Tom Watson had criticised Mr Corbyn's response to the allegations of anti-Semitism "*not because Jeremy Corbyn is an anti-Semite but because you [i.e. Mr Watson] want to be a part of the overthrow of Jeremy Corbyn*". He described the allegations against Mr Corbyn as a "*coup*". Later, Mr Galloway described Mr Corbyn as an "*honest and principled man*".

Mr Galloway's guest, Mr Secker, made similar statements. He said that Margaret Hodge had "*insult[ed] Corbyn by accusing him of being anti-Semitic, which is a gross accusation and completely false and a real slur against him*". Mr Secker also referred to the statement of a journalist of the Jewish News newspaper that "*This is a dedicated anti-racist we're trashing*". Mr Galloway's next guest, Labour MP Chris Williamson, said "*It's been clear from the outset that [critics of Mr Corbyn in relation to the anti-Semitism issue] ultimate aim was to topple Jeremy Corbyn and I think they're trying to take out his praetorian guard one by one and ultimately their aim is to remove Jeremy*".

Statements similarly supportive of Jeremy Corbyn were made by callers who spoke to Mr Galloway or via tweets or text messages that were read out, for example:

"[The anti-Semitism allegations are] just a witch hunt around Jeremy Corbyn".

"They [those making allegations of anti-Semitism against Jeremy Corbyn] have turned his greatest asset, i.e. an anti-racist campaigner, into his greatest weakness"; and,

"...every single caller has agreed with Jeremy Corbyn and defended him. It's extremely encouraging, given that anybody at all can call in".

We considered that these views were closely aligned with the views being espoused by Mr Galloway, i.e. they were highly supportive of the actions of Jeremy Corbyn and critical of those who had sought to challenge Mr Corbyn's response to the allegations of anti-Semitism within the Labour Party.

In light of these statements, we considered whether, as required under Rule 5.12, an appropriately wide range of significant views were included and given due weight in this programme.

As highlighted in Ofcom's Guidance on Section Five of the Code, the broadcast of highly critical or supportive comments concerning the policies and actions of, for example, an individual or a political party, 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 or supportive. 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. How this is done is an editorial matter for the broadcaster. Given the degree to which the

programme was supportive of Mr Corbyn, and taking into account that it was dealing with a matter of major political controversy, we would have expected alternative viewpoints on this matter to be appropriately reflected.

We acknowledged that the viewpoints of those critical of Jeremy Corbyn's response to the allegations of anti-Semitism were reflected, to a very limited extent, in the discussion in the programme. Mr Galloway referred to Dame Margaret Hodge's accusation that Mr Corbyn was a *"fucking anti-Semite and a racist"*. Mr Galloway also said that Mr Corbyn had *"shortcomings"* and *"could have handled some things better"*. Additionally, Mr Galloway made reference to Tom Watson's article in The Observer, which said that *"Labour would suffer eternal shame and disappear into a vortex if it did not deal with the anti-Semitism he claimed Jeremy Corbyn was tolerating and enabling"*.

Alternative viewpoints on the matter were also reflected, to a very limited extent, by text messages and tweets that were read out by Mr Galloway. Mr Galloway read out the following texts and tweets:

"Yes, Jezza [Jeremy Corbyn] did brilliantly at the last election, finishing second against a hapless government and a PM who fought a dismal campaign. You live in a fantasy world".

"Left-wing Conspiracy Theories R Us' on Talk Radio tonight".

However, in the overall context of the entire three-hour programme, we did not consider the above contributions were sufficient to present an alternative view on the subject being discussed with due weight. Firstly, as discussed above, there was very strong alignment in the views of Mr Galloway and the vast majority of contributors to the programme. In addition, the texts and tweets set out above were treated in a very different way by Mr Galloway to those contributions that aligned more with his own views. In this context, we had regard to Ofcom's guidance to Section Five of the Code which states:

"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".

We took into account that when reading out the texts and tweets, Mr Galloway treated them as follows:

- in response to the first message, Mr Galloway referred to the listener who sent that message as a *"gutless coward"*; and
- in response to the second message, Mr Galloway referred to the listener who sent that message as *"cowardly"*.

We recognise that there may be scope for presenters of 'phone-in' programmes to use provocative language to challenge listeners contacting the programme. However, in doing so, broadcasters must ensure that care is taken. In such circumstances, when dealing with matters of major political and industrial controversy and major matters relating to current public policy, broadcasters must still reflect an appropriately wide range of significant views

and give those views due weight. We noted Mr Galloway's submission that in his opinion that it was correct to refer to the anonymous sender of multiple emails as "a gutless coward". However, in Ofcom's view, Mr Galloway's reaction to the listeners' messages had the effect of dismissing and denigrating listeners who held views which differed from his own, and constituted a clear difference in the treatment of views which did and did not align with Mr Galloway's own, which meant that this alternative viewpoint was given little weight in the programme.

We also took account of the Licensee's comments that it had invited a number of "dissenting voices" to appear on the programme, but they had declined. As Ofcom has made clear in previous decisions, and as the Licensee appeared to acknowledge, 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 impartiality¹⁶. 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)¹⁷. The Guidance gives examples of a number of editorial techniques which a broadcaster might consider employing, where alternative views are not readily available, to preserve due impartiality.

We were particularly concerned that the Licensee had told Ofcom on 11 May 2018, during our investigation into the edition of the *George Galloway* programme broadcast on 16 March 2018, that it was introducing a number of steps to improve the programme's compliance with due impartiality rules. These included, in circumstances where a guest with views differing to Mr Galloway's could not be booked to appear, inviting another Talk Radio presenter to challenge Mr Galloway and provide an alternative viewpoint. However, despite its undertakings to Ofcom on 11 May 2018 that it had taken extensive steps to improve the programme's compliance processes, Talksport acknowledged that it had failed to follow some of these new compliance processes in this programme broadcast only ten weeks later. Specifically, the Licensee acknowledged that a guest with views differing to Mr Galloway's could not be booked, but the Licensee had failed to include another Talk Radio presenter in the programme to reflect an alternative viewpoint and challenge Mr Galloway as required under Talksport's new compliance processes.

For all the reasons set out above, and taking account of the relevant contextual factors discussed above, we considered the programme had not included and given due weight to an appropriately wide range of significant views on the matter of how the Labour Party (and in particular Jeremy Corbyn) had responded to allegations of anti-Semitism in the Labour Party.

Preservation of due impartiality – clearly linked and timely programmes

Broadcasters can 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". In light of the Licensee's representations on this point, we next considered whether such alternative views were included in clearly linked and timely programmes and given due weight.

¹⁶ See paragraph 1.36, at: https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-codeguidance-section-5-march-2017.pdf

¹⁷ See footnote 16.

In its representations, Talksport said it considered a variety of viewpoints had been included across Talk Radio's output as a whole during this time but accepted that this "did not provide justification to Galloway in providing his own partial account". The Code is clear that content broadcast on the same service can only contribute to preserving due impartiality on matters of major political and industrial controversy and major matters relating to current public policy in accordance with the Code if those programmes are clearly linked and timely. National radio broadcasters cannot preserve due impartiality by relying on what is broadcast across their services as a whole¹⁸. Because it cannot be guaranteed that someone in the audience for one programme will have also been watching or listening to the programme that precedes it or follows it, or is broadcast on the same day, 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.

Given the above, we did not consider that Talksport's broadcast of a variety of viewpoints across its output had the effect of reflecting an appropriately wide range of significant views in clearly linked and timely programmes.

Conclusion

We have taken careful account of the broadcaster's and audience's rights of freedom of expression and all the relevant contextual factors. We also took into account the Licensee's acknowledgement that the programme had failed to comply with Rules 5.11 and 5.12. We also recognised the improvements that Talk Radio said it had made to its compliance processes. However, we remain concerned that despite the Licensee accepting that this programme was in breach of the Code and introducing "enhancements to ensure compliance", the presenter of the programme continued to express his pride about the content of the programme which may indicate an ongoing misunderstanding of the due impartiality requirements of the Code.

¹⁸ 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".

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 matter of major political controversy and a major matter relating to current public policy dealt with in the programme.

Breaches of Rules 5.11 and 5.12

Ofcom's Decision is that these are serious breaches. Therefore, subject to receiving the Licensee's representations on this issue, we are minded to consider this matter for the imposition of a statutory sanction.

In Breach

Alan Brazil Sports Breakfast *Talksport, 18 December 2018, 08:45*

Introduction

Talksport is a national radio station providing a 24-hour speech service. It primarily features programming about sport as well as regular news bulletins. The licence for Talksport is held by Talksport Limited ("Talksport Ltd" or "the Licensee").

Alan Brazil Sports Breakfast is a weekday radio programme broadcast on Talksport between 06:00 and 10:00.

Ofcom received a complaint that Alan Brazil blamed a rat problem in Glasgow on the food storage practices of Asian people who had newly arrived in the city.

Shortly before the 09:00 news bulletin, Alan Brazil spoke with another presenter, Mike Graham, about what Mr Graham would be discussing on his programme on another of the Licensee's stations, Talk Radio at 10:00. Mr Graham said that one of the topics he would be discussing was food recycling, adding that in his neighbourhood "a new bin [had] arrived". He complained that "there's already about 55 foxes living there" and that "now they [i.e. the local council] want you to just dump all your food into a wheelie bin effectively and leave it there for a couple of weeks until somebody comes and tips it into the back of a lorry".

Mr Brazil then said:

"Talking about that, I don't know if I should say this. I was talking to someone the other day and he came down from a part of Glasgow in fact where my school was. And, umm, things have changed. Parts of cities have changed. Because different people move in. And there's a lot of people there let's say from Asian – you know from that part of the world. But they don't, with rice and stuff, they don't, they don't store it properly. And he was saying, he's social housing this guy, and he said you can't believe the rat infestation we've got there. What do you mean – how? And he was telling me people just a little bit ignorant when they come in, it's a little bit damp and stuff like that, and where they store the food and stuff, he said it's horrendous at the moment".

Mr Graham then continued to complain that in his neighbourhood food waste would "sit [in the new bins in the street] for days on end". He said, "imagine what it's going to be like in the summer, never mind the rats?", adding that he lived in "the centre of London" and that compost heaps were for farms. The conversation then turned to other topics.

We considered this content raised potential issues under the following Code rule:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...race...). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

Ofcom requested comments from the Licensee on how the programme complied with this rule.

Response

Talksport Ltd apologised for “the upset felt by [the person who had complained to Ofcom]”. It said it was “never [its] intention to upset or to offend [its] listeners, but clearly on this occasion [it had] got it wrong”.

The Licensee said that Alan Brazil's comments were part of an “unscripted” conversation with Mike Graham as the latter “‘teased’ his own show...”. It added that “Mr Brazil had no idea of what subjects might be introduced”. It further added that when Mr Brazil heard the topic of Mr Graham's show and of Mr Graham's own concerns, he “was moved to recall a recent conversation he had had with a local housing officer in his native Glasgow, and spontaneously repeated what he had been told”.

Talksport Ltd said that Mr Brazil's statement (“*talking about that, I don't know if I should say this*”) was “a signal to his producer that he was about to say something potentially problematic”. It said this would normally have “trigger[ed] the use of [its] ‘dump’ facility in the studio control room”, but this did not happen because “the usual breakfast show producer was on leave”.

The Licensee said that the next day, “following internal comments”, one of its compliance officers had reviewed the programme and taken “immediate and appropriate action”. It added that:

“The Wireless National Speech Radio Controller and the Head of talkSPORT [had] each discussed the inappropriate comments complained of with Alan Brazil and with the programme's production team to ensure that nothing of this nature will be broadcast on our air in future”.

It said that it had also “reviewed, with the wider...production team involved [when to use] the ‘dump’ button”. It added that it had “raised awareness” in this team of the “presenters' verbal ‘cues’ that should alert all producers to the possibility of a need [to use] the ‘dump’ button”.

Talksport Ltd said it had deleted the content from the ‘Listen Again’ feature on its website. It also accepted that Mr Brazil's remarks had been “ill-judged” and that they “should have been deleted [before broadcast] by use of the ‘dump’ button”. It further stressed that “there was absolutely no intent to cause any offence” and hoped the steps it had taken “will prevent any recurrence”.

The Licensee also provided representations on Ofcom's Preliminary View, which was to record a breach of Rule 2.3 in this case. It considered that we should have treated the matter as resolved on the basis of the “the swift and effective action [it] took to ensure that nothing of this nature would happen again”. It said this included “clear, unequivocal and comprehensive direction to both the presenter and the programme's production staff from station executives...on the imperatives of refraining from inappropriate comments and of the effective and responsible use of the ‘dump’ button”. It added that “as such, [it] believe[d] it [had shown] an unequivocal determination to resolve the issue and ensure compliance with the Ofcom Broadcasting Code in general and Rule 2.3 in particular going forward”.

Talksport Ltd added that as of January 2019 it had appointed “an experienced Compliance Manager, working full time, to further strengthen our processes”. It said she “attends ... production meetings...and has oversight of the intended topics for discussion and of the guests taking part”. It added that she also “reviews programmes both off-air and after broadcast”.

The Licensee also said that “Mandatory ‘refresher’ Compliance training sessions [had] begun and [were] being rolled out to all production personnel”.

Decision

Reflecting our duties under the Communications Act 2003¹, Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material in programmes.

Ofcom has taken account of the audience’s and the broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

Under the Equality Act 2010, Ofcom must also have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic, such as race or disability, and persons who do not share it.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, and the likely expectation of the audience.

Our guidance on offensive language in radio² states:

“Ofcom recognises that a substantial amount of radio output is devoted to the live reporting, discussion and analysis of news and current affairs issues. We recognise that there is a rich and welcome tradition of live, hard-hitting, speech-based current affairs content, featuring presenters (e.g. ‘shock jocks’) or other contributors, which may present challenging listening to some audience members. Consistent with the right to freedom of expression, Ofcom recognises the importance of broadcast content of this type, provided that any potential offence is justified by the context”.

We first considered whether Mr Brazil’s comments had the potential to cause offence. During a live discussion with another radio presenter, Mike Graham, about the disposal of food waste in cities, Mr Brazil, in recalling a conversation he had had about his home city of Glasgow with a local housing officer from there, said that “*parts of cities have changed*”. Mr Brazil then said that Asian immigrants to parts of Glasgow had caused a “*rat infestation*” by being “*just a little bit ignorant when they come in*”, by not storing rice and other food “*properly*”. In our view, these comments attributed a public health problem (a “*rat infestation*”) to a minority ethnic group (“*Asian*” people), protected by the Equality Act 2010, and so promoted a negative stereotype of Asian people as being ignorant and unhygienic. We therefore considered that the comments clearly had the potential to cause offence.

¹ <https://www.legislation.gov.uk/ukpga/2003/21/section/319>

² https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf

We took into account that various newspapers articles have reported the existence of a rat problem in Glasgow and given various causes for it ranging from: construction work driving rats into residential areas; waste practices at a retail park; the type and condition of the bins used for household waste collection; and missed waste collections by the council. Given this, we considered listeners would have found Mr Brazil's attribution of this problem solely to a single group of people to be particularly offensive. The likely level of offence, in our view, was exacerbated by Alan Brazil dismissively adopting generalised and unspecific labels, when making a significant accusation about the alleged actions of potentially large numbers of people, based solely on the fact that they are immigrants from a particular part of the world ("*Because different people move in. And there's a lot of people there let's say from Asian – you know from that part of the world*" and "*people [are] just a little bit ignorant when they come in*").

We went on to consider whether the potentially offensive content was justified by the context.

First, we considered the service on which the material was broadcast. Ofcom had regard to the rights to freedom of expression of the Licensee, Mr Brazil and the Talksport audience, and balanced these carefully against our duty to provide adequate protection for members of the public from offensive material. Ofcom acknowledged that it is essential that broadcasters have the editorial freedom to debate topics of public interest and to be permitted to broadcast provocative and offensive remarks. We considered that listeners to a talk radio show would be likely to expect to hear a variety of topics discussed, including challenging and controversial subjects.

We also considered the editorial context in which Mr Brazil made his comments. These comments appeared as Mike Graham spoke live to Mr Brazil, as a 'teaser' of his upcoming Talk Radio programme. Mr Graham discussed the food recycling situation in his London neighbourhood and problems associated with it, and therefore Mr Brazil's comments on food storage and a rat problem in Glasgow were of some relevance. However, we did not consider that this context justified Mr Brazil conveying a singular focus of blame for the rat problem in Glasgow on Asian immigrants or his reliance on hearsay in doing so (he recounted what "*someone*" who was "*social housing*" and "*down from...Glasgow*" had told him). We also took into account that there was no challenge from Mr Graham or elsewhere in the programme that sought to question Mr Brazil's focus on one ethnic group as being responsible for the rat problem in Glasgow, nor were Mr Brazil's comments otherwise contextualised, for example by a timely apology. We considered that, even taking into account the likely audience expectations for strong opinions and controversial discussion on Talksport, listeners would have expected greater contextualisation of Mr Brazil's comments, given their potential to offend.

Ofcom took into account the Licensee's acceptance that Mr Brazil's remarks had been "ill-judged" and that they "should have been deleted [before broadcast] by use of the 'dump' button", and steps it said it had taken to improve compliance. However, for all the reasons set out above, we considered that this content clearly had the potential to offend and that its inclusion was not justified by the context. These actions, whilst appropriate in the circumstances, were not in our view, sufficiently timely to mitigate the likely offence caused at the time of broadcast. Our Decision is therefore that this was a breach of Rule 2.3.

Breach of Rule 2.3

Not in Breach

News

Iran International, 22 September 2018, 12:00

Introduction

Iran International is a rolling news channel which also broadcasts current affairs. It is primarily aimed at Farsi-speaking Iranian communities both in Iran and across the world. The licence for Iran international is held by Global Media Circulation Limited ("GMCL" or "the Licensee").

Ofcom received four complaints about an interview included as part of Iran International's reporting on a militant armed attack which took place on 22 September 2018 in the Iranian city of Ahvaz. The complainants objected to the interview because they considered the interviewee was a spokesman for a "terrorist organisation" who claimed responsibility for the attack and who "praised" and "welcomed" it.

As the programme was broadcast in Farsi, Ofcom commissioned an English translation of the material and gave the Licensee an opportunity to comment on the accuracy of the translation. The Licensee had non-substantive comments on the accuracy of the translation which Ofcom took into consideration for the purposes of this investigation.

The breaking news within Iran on the day of the broadcast was an armed attack which took place in Ahvaz, the capital of the province of Khuzestan, in Southwestern Iran, during a military parade commemorating the 1980-1988 Iran-Iraq war. Khuzestan is home to Iran's Sunni Arab minority and Ahvaz is the regional centre of an ongoing dispute between the Ahwazi Arabs and the Iranian Government. Ahwazi separatists want an independent state stretching beyond the borders of Khuzestan.

Ofcom understands that there are various opposition groups which claim to represent the Arab population of Khuzestan, the most prominent being the Arab Struggle Movement for the Liberation of Ahvaz (or ASMLA) which claims to be militarily active in the region. We understand that this group is banned in Iran but operates in exile while claiming to have an active presence in the province through its military wing, the Mohiudin al Nasser Martyrs Brigade. The Al-Ahvaz National Resistance Movement, which was the group that the interviewee in the broadcast claimed to be responsible for the attack in Ahvaz (see below), is understood to have been a part of ASMLA. However, on 23 September 2018, the day after the attack on the military parade in Ahvaz, a statement made in the Hague, Netherlands, on the ASMLA website, denied responsibility for the attack, saying that the claim was made by a "group that was expelled from the organization since 2015"¹. According to the Licensee, the Al-Ahvaz National Resistance Movement is "sometimes regarded as the umbrella group" for separatist groups including the Al-Ahvaziyeh (or Al-Ahvaz) Movement. Although none of these groups are proscribed as a terrorist organisation within the UK or EU, we understand that they have carried out various acts of violence within Iran, and that there is a history of tension between them and the Iranian Government.

¹ <http://ahwazona.net/new/s/1808/ASMLA%E2%80%99S-OFFICIAL-STATEMENT-REGARDING-MILITARY-PARADE-ATTACK>

Iran International was reporting on the attack in Ahvaz, as it unfolded. The coverage started with video footage of what appeared to be the aftermath of the attack, showing civilians and soldiers walking and standing around cars and ambulances. The presenter introduced the item as the images were shown on a continuous loop:

"Today, due to an attack by a group of armed attackers on the Iranian Armed Forces' Parade in Ahvaz, a number [of people] were killed and dozens were injured. IRNA², the Iranian Government's official news agency, quoted an informed source as saying that 24 had been killed. It is also said that three of the attackers were killed and another one of them was injured and arrested. Fars news agency said the attackers aimed at attacking the podium, but they retreated following the reaction by the Iranian armed forces. The person in charge of the Islamic Revolution Guards Corps Devotees ["IRGC"] Base is among those killed".

As the presenter was speaking in a voiceover, more video footage was shown of the moment of the attack, including armed forces and civilians walking or running around and taking cover on the ground to avoid being hit, one soldier appeared to have been shot in the leg and was lying on the floor bleeding and gun shots could be heard being fired. This footage and the footage of the aftermath of the attack were played on a loop throughout this edition of the rolling news. The following captions were shown as the presenter was speaking:

"In a telephone call with Hassan Rouhani³, Russian President Vladimir Putin expressed condolences over the death of Iranian civilians and armed forces".

"Armed forces senior spokesman: Three of the attackers were killed and one was arrested; Tasnim⁴: Eight IRGC⁵ personnel killed in the shooting incident against the armed forces parade in Ahvaz".

"Zarif⁶ held supporters of terrorism responsible for Ahvaz shooting".

The presenter then said:

"Ya'ghub Hor al-Tostari, the spokesman of the Al-Ahvaziyeh Movement, supported this attack in an interview with Iran International TV and said no statement has been issued yet on claiming responsibility by that party. But in the interview with us he confirmed that the Al-Ahvaz National Resistance Movement, which includes a number of groups, has accepted the responsibility for this attack".

² Islamic Republic News Agency.

³ The President of the Islamic republic of Iran since 2013.

⁴ Private Iranian news agency.

⁵ The Islamic Revolutionary Guard Corps (or "IRGC") is a branch of Iran's Armed Forces founded after the 1979 Revolution on 22 April 1979 by order of Ayatollah Khomeini.

⁶ Muhammad Javad Zarif is the Iranian Foreign Minister.

A couple of minutes after the start of the programme, an interview with Ya'ghub Hor al-Tostari (or "YHT") was played in a recorded voiceover as the footage of the attack, as described above, was broadcast on a loop. The interview went as follows:

YHT: *"You see, when our nation, the Arab nation, is subjected to cruelty and oppression each day, when they transfer its water to other places, and it suffers from discrimination, extreme poverty, executions, mass executions and group arrests, there is no other choice but resistance. The Ahvaz National Resistance Movement has carried out operations in the past years against legitimate targets. I emphasize legitimate targets, such as the IRGC and places where there are no ordinary civilians. The Ahvaz National Resistance Movement carried out today's operation against legitimate targets, against the IRGC and the Islamic Republic's military forces –"* [interrupted by the reporter]

Unidentified male reporter: *"Mr Hor, so you confirm that the Al-Ahvaz movement carried out this attack?"*

YHT: *"I say the Ahvaz National Resistance Movement. The Ahvaz National Resistance Movement is the main [body]. I mean young people of Ahvaz carried out this operation as members of the movement and Martyr Mohidin al-Naser units⁷. No statement has been issued yet, but the Ahvaz National Resistance Movement carried out this operation".*

Unidentified male reporter: *"Does your organization approve of such an action?"*

YHT: *"We always have, since 2005 when we started our fight, our media, politics, human rights, as well as our armed fight against the military forces and legitimate targets such as oil pipelines and facilities, and also the IRGC and the Islamic Republic's military forces; we have continued these actions as long as no ordinary citizens are harmed I –"* [interrupted by the reporter]

Unknown male reporter: *"It is said in reports, Mr Hor, it is said in reports that people were shot at as well, and apparently some of them were injured".*

YHT: *"You see, in an official podium, this operation... First, let me correct that figure. Through field sources, I can confirm that more than 40 were killed. Our field sources confirmed that more than 40 were killed, and the target was the platform where the officials were. As you are aware, there are never any ordinary civilians in the officials' stand. Jazayeri, Khamenei's⁸ representative was there, two members of the Assembly of*

⁷ We understand the Martyr Mohidin al-Naser units to be the military wing of the Al Ahvaz National Resistance Movement.

⁸ Sayyid Ali Hosseini Khamenei has been Supreme Leader of the Islamic Republic of Iran since 1989.

Experts⁹, Heidari and Ka'bi, and also a group of IRGC officials were there. There were no ordinary civilians there and all the individuals who were there were officials and senior officials of the regime”.

During the interview, rolling captions were shown, including the following:

“Iraqi minister of interior condemned the attack”.

“Hassan E'temadi: ‘We condemned today’s shooting in Ahvas”.

“Iranian armed forces senior spokesman: Elements behind the ‘terrorist’ attack in Ahvaz today starting shooting at people with Kalashnikov and the weapons were hidden near the side of the parade earlier”.

“The so-called Al-Ahvaziyeh current's spokesman supported the attack”.

“A four-year old child was killed in the shooting incident on the armed forces’ parade”.

“Casualties of Ahvaz shooting incident taken to hospital”.

The presenter then introduced a pre-recorded interview with Kambiz Ghafouri “a journalist from Copenhagen” and asked him for his “reactions to the terrorist attack in Ahvaz”. Mr Ghafouri replied:

“This expansive attack has been condemned by the majority of known groups because we know that a child was targeted in this attack, civilians were attacked, journalists were attacked, and based on any criteria we should call this a terrorist attack. Official groups always condemn terror attacks. Even the Islamic Republic's opponents outside the country, such as the Republicans, Constitutionlists, and Secular Democrats who are holding a congress in Germany now, all condemned it. Foreign countries are condemning it one by one, such as Iran's neighbours, Pakistan, and other neighbours are condemning it. And then we need to look at what the stance of the countries of the Persian Gulf will be since some of those countries support the so-called Al-Ahvaz Movement. These will be known in the coming hours and days. Whether these key countries condemn it or not is very important for us, to see what hands outside the Iranian borders were probably involved in this terrorist attack”.

⁹ The Assembly of Experts has the power under the Iranian Constitution to appoint, monitor, and dismiss (if appropriate) the Supreme Leader.

The coverage of the attack continued in the studio, with one journalist, Ali Asghar Ramezanzpour, reporting on the latest developments, including the number of casualties. Mr Ramezanzpour, said:

"Names of some of those killed have been published. Of course, there are some contradictory reports on some of the names, and in fact, we will not go into the details on this until they are officially confirmed. In fact, the movement known as the Ahvaz National Resistance Movement that is said to have accepted responsibility for this operation, as quoted by one of the spokespersons for Al Ahvaz Movement who told us this, has not published any further information. Even though they have claimed that up to 40 have been killed, and what we have at a more expansive level is the continuation of condemnation of this operation inside and outside Iran".

The presenter interrupted Ramezanzpour saying:

"If you, if you allow me, I will mention some of the reactions. Iraq's Minister of the Interior has condemned the attack calling it a terrorist attack. Some officials of Afghanistan's government have also condemned this attack. Mr Vladimir Putin has also expressed condolences over the attack. We have also had reactions from Iranian officials, such as by Mohammad Javad Zarif who has said that they will respond to this attack soon, calling it a terrorist attack".

Another journalist invited in the studio, Mr Haroun Najafizadeh, also discussed the regional and global reactions to the attack. He said:

"Russian President Vladimir Putin has sent a message to his Iranian counterpart, Hassan Rouhani, and while expressing his condolences, he has called this a terrorist incident and has condemned it. He has said that Russia is ready to promote cooperation with Iran. We have reaction from Pakistan by the Foreign Ministry Spokesperson Mohammad Faisal, who also condemned the attack in the harshest terms. He said that brotherly relations between Iran and Pakistan will remain strong and Pakistan will stand by Iran under difficult conditions...We had a reaction from Iraq too. The Iraqi Minister of the Interior condemned the attack and said they stand by Iran in difficult times".

The condemnations of the attack by regional and international officials were repeated throughout the report, either by the journalists in the studio, or shown in captions.

At 12:14, the interview with Ya'ghub Hor al-Tostari was broadcast again, followed by the interview with Mr Ghafouri, and the analysis by the journalists in the studio, Mr Ramezanzpour and Mr Najafizadeh, as above.

As the news unfolded, at 12:30, the presenter said:

"moments ago, Reuters news agency announced that Daesh¹⁰ has claimed the responsibility for this attack".

¹⁰ Daish or ISIL (Islamic State of Iraq and the Levant) is a proscribed terrorist organisation. The UK Government's list of proscribed terrorist organisations dated 22 December 2017 states the following in relation to ISIL: "ISIL is a brutal Sunni Islamist terrorist group active in Iraq and Syria. The group adheres to a global jihadist ideology, following an extreme interpretation of Islam, which is anti-Western and promotes sectarian violence. ISIL aims to establish an Islamic State governed by Sharia law in the region and impose their rule on people using violence and extortion". See

The following news captions were then shown regularly throughout the rest of the programme:

"Daesh claimed responsibility for the attack on the armed forces parade in Ahvaz".

"The so-called Al-Ahvaziyeh current's spokesman supported the attack".

Immediately after, the presenter interviewed another journalist in the studio, Morteza Kazemian, who commented on Daesh claiming responsibility for the attacks. Mr Kazemian said:

"Unfortunately, we witnessed the death or injury of dozens of the country's citizens and well, this is the nature of terrorism, by which I mean there is no good or bad terrorism, or state or non-state terrorism. Whether it takes place by an establishment, or paramilitary forces, or opposition groups, it is reliance on violence and causing fear in achieving one's goals, which naturally, cannot be defended from a human rights or ethical point of view, because its essence would be taking the lives of innocent human beings".

The presenter then interviewed Hassan Shariatmadari, who was introduced as *"a political activist from Hamburg"*, via satellite link:

The presenter:

"Since Daesh has accepted the responsibility for this attack, can one say this indicates that the security umbrella in Iran has become weak and shows a kind of a security gap in Iran?"

Hassan Shariatmadari:

"Yes, you see they say you don't play like this with a weak foundation. The IRGC cannot set fire in the region, cooperate with Taliban and Daesh in Afghanistan, and want to establish a security umbrella inside Iran and assume that it would be safe from such terrors. Unfortunately, the IRGC will expand the scope of such terrors and terrorist attacks with its actions, if they treat Sunnis in such an unkind way, confront them, if they continue their pursuits in Syria, Yemen and other places. If Nasrallah says they have given him controlled missiles, of course, superpowers will also cooperate with Daesh so that it reacts. We want a considerate policy based on national interests and this system is incapable of doing so and reviewing its policies".

The presenter then asked Mr Shariatmadari's opinion on the Iranian reaction and that of other foreign countries condemning the attack. Mr Shariatmadari replied:

"Well, after all, terrorism by anyone should be condemned and sympathy should be expressed for the countrymen who were killed, and condolences should be offered to their families...The biggest reason for the current insecurity is the IRGC's adventurist policies in the region and that it has not been able to assess the level of its power. And it

has got into conflict with powers as a result of which it is getting weaker each day and it is weakening the country, yes”.

Another journalist in the studio, Maryam Moqaddam, then summarised how the attack had been discussed on social media. She said:

“Well, since this morning when reports on the armed attack on the armed forces' parade in Iran, in Ahvaz, were published, there has been an expansive wave of reactions to this attack on social media. The majority of these reactions were in condemnation of this incident”.

She then read out some of these messages posted on Twitter, whilst others were shown onscreen.

At 13:17, the presenter interviewed “Mr Arash”, who was introduced as an Ahvaz citizen, who gave his own eye-witness account of the attack. Mr Arash referred to the fact that at this stage, both Al-Ahvaz and Daesh had claimed responsibility for the attacks. He said:

“Then they said it was the Al-Ahvaz group. Even Khuzestan's Arabic-speakers rejected this because they do not have many supporters among Arabic-speakers, therefore, the government was taking advantage of this saying they are separatists. It was not providing them with facilities such as water, electricity, and this polluted air. On the other hand, they are armed by the Al-Ahvaz group. Then, there were reports saying it was Daesh. There is no Daesh in the Khuzestan Province's border with Iraq. I say so due to the fact that all the border cities of Iran and Khuzestan Province are Shi'a residing and the so-called Shi'a groups do not allow any non-Shi'a moves, like religious ceremonies or Sunni groups, such as Daesh appear. Therefore, the group that they announced is from Daesh is a lie. Everyone knows this. People have also realized this”.

Later, at 13:21, the Presenter said:

“I would like to draw to your attention to the fact that Iran's ambassador to the UK has condemned Iran International TV for its interview with the spokesman of the Al-Ahvaziyeh Movement about this attack, the terrorist attack that took place in Ahvaz during the Iranian armed forces' parade in Ahvaz. I would like to tell you that this interview took place within the framework of professional news work, and at the same time we invite any Iranian officials, and indeed welcome them, if willing, to talk about this issue. They will be given enough time to express their views. We are remaining with you with special coverage of the terrorist operation in Ahvaz that Daesh has claimed responsibility for”.

Ofcom considered this material raised potential issues under Rule 2.3 of the Code which states that:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”.

We therefore sought comments from the Licensee on how the programme complied with this rule.

Response

GMCL explained that the attack on an Iranian military parade in Ahvaz was “the main breaking news story for Iran International and other Farsi-language news channels” and that, “[a]s reports came in about the attack, Iran International spoke to Ya’ghub Hor al-Tostari, by phone”. It said that Ya’ghub Hor al-Tostari claimed that the Al-Ahvaz National Resistance Movement had carried out the attack. It added that “Mr al-Tostari is connected to another sub-group” but the Al-Ahvaz National Resistance Movement is sometimes regarded as the umbrella group” for separatist groups including the Al-Ahvaziyeh (or Al-Ahvaz) Movement, the group which Ya’ghub Hor al-Tostari said he was representing.

The Licensee acknowledged that “Mr Tostari sought to justify the attack by saying that the target was military” but argued that his statement was challenged with the reports that civilians had also been attacked. GMCL said that it had also interviewed a “respected Farsi-speaking journalist and commentator, Kambiz Ghafouri, who...said that most groups in the region condemned the attack, including many opponents of the Iranian government and several neighbouring countries”. It added that this was also “extensively reported in other aspects of the continuing coverage”. The Licensee also argued that it was “the act and the attempted justification” for the act that were offensive in this case “rather than the coverage”. It said that “presenting the facts of the attack, including the death of a small child, would...highlight any potential offensiveness not of the coverage but of the act in itself and the attempt to justify it”.

GMCL also argued that “Mr Tostari’s views, although strongly rejected and even vilified by the Iranian Government, do represent a significant and important insight into the separatist movement in Khuzestan”. It said that his views “were broadcast in a proper and relevant way in which they were balanced by other comments and criticisms”. It acknowledged that the nature of a terror attack may cause offence, but argued that “the context...needed to be explored in an impartial way”. GMCL added that it would “never give airtime to members of illegal or proscribed organisations, and did not in this case”.

The Licensee said that “the significance of the story in the region where it occurred made it of great importance and interest to Iran International’s audiences”. It argued that at “no stage in any of the coverage during the day and subsequently was there a suggestion that the channel was approving or promoting Mr Tostari’s views”. It said that his “opinions, and those of his movement, were put into careful context and challenged throughout the coverage”. GMCL said that the material may have been found offensive by “some” Iranian viewers in Iran and to the Iranian community across the world. However, it argued that the material would have been potentially highly offensive to the Iranian viewers in general, in Iran and to the Iranian community across the world.

GMCL said that the attack reported in this case was described in the broadcast as a terrorist attack, “because the editorial management regarded it as an event which targeted not just military but civilian victims and was an attack against the state (or government) of Iran”. It clarified, however, that “none of the Khuzestan separatist movement or splinter groups has ever been defined as a terrorist or proscribed organisation by the UK...or other western governments” and that they are defined as terrorist organisations “only by the Iranian government”.

The Licensee referred to the following interventions of several individuals throughout its live coverage following the attack to illustrate "how the Channel covered this fast moving news story":

- "Aliasghar Ramezanpoor, the Channel's head of news and current affairs, who was on set to provide reaction and context" summarising "the significance of the attack";
- "Senior reporter Haroun Najafizadeh [who] assessed the international and regional reaction as it was coming in";
- "interviews with political commentators and an activist, Hasan Shariatmadari, who condemned the attack before mentioning wider issues";
- the reporter Maryam Moqaddam, who assessed the "widespread social media reaction in Iran and around the Farsi speaking diaspora"; and
- the correspondent Morteza Kazemian, who "tracked the Iranian government reactions, and assessed the likely effect of the attack, whether it had been carried out by Islamic State (Daesh) or by the Ahvaz separatists". The Licensee said that he "included a sobering observation on what he felt the terror attack would mean across Iran".

The Licensee said that "the coverage of the story throughout the day reflected the human, political and strategic significance of the attack, as well as providing detailed information to viewers on a rapidly moving story with many elements, including the identification of who had carried out the attack". It added that at "every stage the channel's reporters and correspondents, and outside commentators, put the events into context, and made the gravity and seriousness clear throughout".

GMCL concluded that it "provides fair, balanced and impartial coverage, and abides by its published Editorial Guidelines", adding that it "covers the widest range of opinions of interest to all Iranians and Farsi speakers". It further added that although privately owned, "it is a public service news channel, and takes its responsibilities very seriously". The Licensee said that all of its senior journalists "have worked for organisations like the BBC, renowned production companies, or reputable newspapers or websites. They are neither 'pro' nor 'anti' regime". It added that it had received overall a positive response on the coverage of the attack and that "any criticism emanated from the Iranian government or its publications or known supporters".

Decision

Reflecting our duties under the Communications Act 2003¹¹, Section Two of the Code requires that generally accepted standards are applied to the content of television services so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

¹¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes for example: the editorial content of the programme, the service on which the material was broadcast, and the likely expectations of the audience. This rule places no restrictions on the subjects covered by broadcasters, or the manner in which such subjects are treated, as long as potentially offensive content is justified by the context.

We acknowledge that, at times, offence can be caused not just by the actual content of a programme but by the fact that people with very controversial views are given airtime. This is especially the case in news and current affairs programming, where broadcasters may decide to give coverage to, or interview, people or organisations with very controversial views as part of legitimate and comprehensive coverage of on-going news stories. However, the Code does not prohibit particular people from appearing on television and radio services just because their views or actions have the potential to cause offence. To do so would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information and ideas.

Further, broadcasters should be, and are, able to report on terrorist groups that pose potential terror threats internationally and domestically. Such reporting is clearly in the public interest. However, if people or organisations with highly controversial views are given the chance to articulate those views on television or radio, broadcasters must ensure that they comply with the Code by placing in context those views, including by challenging them as appropriate.

Ofcom first considered whether the material in this programme had the potential to cause offence.

Iran International News was reporting on the breaking news of an attack against the Iranian Armed Forces parade that was taking place on that day in Ahvaz, in the Western Iranian province of Khuzestan. As part of this coverage, footage of the attack was broadcast. The presenter then said:

"Ya'ghub Hor al-Tostari, the spokesman of the Al-Ahvaziyeh Movement, supported this attack in an interview with Iran International TV and said no statement has been issued yet on claiming responsibility by that party. But in the interview with us he confirmed that the Al-Ahvaz National Resistance Movement, which includes a number of groups, has accepted the responsibility for this attack".

The pre-recorded interview with Ya'ghub Hor al-Tostari was then broadcast, during which he appeared to confirm that *"the Ahvaz National Resistance Movement carried out today's operation against legitimate targets. Against the IRGC"*. He said that *"No statement has been issued yet, but the Ahvaz National Resistance Movement carried out this operation"*.

As explained in the Introduction, Ofcom understands that there are various ethnic Arab separatist groups (such as the Arab Struggle Movement for the Liberation of Ahvaz, the Al-Ahvaz National Resistance Movement and the Al-Ahvaziyeh, or Al-Ahvaz, Movement) opposed to the Iranian Government, who have been seeking an independent state in Khuzestan Province. We understand that within Iran, these groups have carried out various acts of violence and there is a history of tension between them and the Iranian Government.

As the interview was broadcast, footage of the attack as described above was shown on a continuous loop. When asked by the reporter who was interviewing him, whether his organisation approved of such action, Ya'ghub Hor al-Tostari replied:

"We always have since 2005 when we started our fight, our media, politics, human rights, as well as our armed fight against the military forces and legitimate targets such as oil pipelines and facilities, and also the IRGC and the Islamic Republic's military forces; we have continued these actions as long as no ordinary citizens are harmed".

In addition, Ya'ghub Hor al-Tostari sought to justify the killing of the Iranian armed forces by saying:

"You see, when our nation, the Arab nation, is subjected to cruelty and oppression each day, when they transfer its water to other places, and it suffers from discrimination, extreme poverty, executions, mass executions and group arrests, there is no other choice but resistance. The Ahvaz National Resistance Movement has carried out operations in the past years against legitimate targets".

We took the view that these statements were an unambiguous endorsement of the attack which had taken place in Ahvaz and killed several people. Ofcom considered that the endorsement of the attack on Iranian military forces by a person presented as *"the spokesperson"* of a militant separatist group would have been potentially highly offensive to Iranian viewers in Iran and to the Iranian community across the world. We considered the likely level of offence would have been exacerbated by the fact that the pre-recorded interview was broadcast twice. Further, given that Ya'ghub Hor al-Tostari was endorsing the attack, we considered further offence was likely to have been caused by the news confirmed in a caption while his interview was being broadcast, that a young child had been killed during the attack (*"a four-year old child was killed in the shooting incident on the armed forces' parade"*). The Licensee argued that the act and the attempted justification for the act that were offensive in this case *"rather than the coverage"*. It added that *"presenting the facts of the attack, including the death of a small child, would...highlight any potential offensiveness not of the coverage but of the act in itself and the attempt to justify it"*. We disagreed. In this case the news coverage of an act of violence, including an interview with an individual justifying that act of violence, in our view, clearly had the potential to be offensive to viewers. However, broadcasters are free to include such broadcast coverage, as long as any offence caused by the coverage is justified by the context.

We therefore went on to consider whether the broadcast of the content was justified by the context. As set out above, context includes for example: the editorial content of the programme, the service on which the material was broadcast, and the likely expectations of the audience.

This report was broadcast on Iran International, a rolling news channel which provides coverage and analysis of a range of news stories, including breaking news. As discussed above, Ofcom acknowledged the Licensee's editorial rationale for including the video featuring the attacks at the Iranian army base. There was clear justification for a channel targeting Iran and the Iranian community around the world to broadcast a report about an attack in Iran, which it was claimed within the broadcast output had been carried out by the Al Ahvaz National Resistance Movement, a militant separatist group in Iran. A specialist news programme seeking to analyse and report on the views and activities of this group was likely to be well within the audience's expectations for the channel. Although the statements

articulated by Ya'ghub Hor al-Tostari would have been objectionable and offensive to many, the issue was a legitimate topic for discussion in the context of the report of the attack against the Iranian military forces.

We considered the various other ways in which the Licensee provided context for the inclusion of Ya'ghub Hor al-Tostari's statements in the interview. Ya'ghub Hor al-Tostari sought to justify the legitimacy of the attack on Iranian military targets, by claiming that the targets were *"no ordinary civilians"*. We took into account, however, that the reporter interviewing him clearly challenged his views and emphasised the violent nature of the attack. For example, he said that *"people [i.e. civilians] were shot as well, and apparently some of them were injured"*. We also took into account the captions shown while the interview was being broadcast, including:

"Iraqi minister of interior condemned the attack".

"Hassan E'temadi: 'We condemned today's shooting in Ahvas'".

"A four-year old child was killed in the shooting incident on the armed forces' parade".

"Iranian armed forces senior spokesman: Elements behind the 'terrorist' attack in Ahvaz today starting shooting at people with Kalashnikov and the weapons were hidden near the side of the parade earlier".

In our view, this content helped to mitigate the potential offence because it emphasised the violent nature of the attack and the fact that it had been widely condemned as a *"terrorist"* attack.

Further context, in our view, was also provided by the interview with Kambiz Ghafouri *"a journalist from Copenhagen"*, which was broadcast after both of the occasions when the interview with Ya'ghub Hor al-Tostari was shown. Mr Ghafouri strongly condemned the attack as a *"terrorist attack"* in which *"a child was targeted...civilians...and journalists were attacked"* and said:

"Even the Islamic Republic's opponents outside the country, such as the Republicans, Constitutionalists, and Secular Democrats who are holding a congress in Germany now, all condemned it. Foreign countries are condemning it one by one, such as Iran's neighbours, Pakistan, and other neighbours are condemning it".

We considered Mr Ghafouri's statements provided considerable mitigation for the potential offence by referring to the violent nature of the attack and the widespread condemnation regionally and globally of the attack.

We also took into account other contributions from journalists and others who, in our view, provided further strong contextualisation to Ya'ghub Hor al-Tostari's statements, including from:

- journalist Haroun Najafzadeh, who gave a more detailed assessment of *“the regional and international”* condemnation of the attack;
- correspondent Morteza Kazemian, who provided an analysis of the implications for Iran that Daesh had also claimed responsibility for the attack, and also strongly denounced terrorism, whether *“it takes place by an establishment, or paramilitary forces, or opposition groups, it is reliance of violence and causing fear in achieving one’s goals, which naturally cannot be defended from a human rights or ethical point of view, because of its essence”*;
- Hasan Shariatmadari, who was introduced by the presenter as a *“political activist from Hamburg”*, who criticised the IRGC’s policies and actions in the region, but said *“terrorism by anyone should be condemned”*; and
- the journalist Maryam Moqaddam, who reported on *“the expansive wave of reactions to this attack on social media”* and explained that the *“majority of these reactions were in condemnation”*.

As the news unfolded, the presenter regularly updated viewers on the latest information on the attack from a variety of sources. These included: IRNA (the Iranian government’s official news agency), Fars News Agency, and Reuters reporting about the number of people killed or injured and Iranian officials confirming that the four people who had been identified as the attackers had been killed. In our view, this, and the captions referring to the condemnation of the attacks by various foreign countries, including by neighbouring countries to Iran, provided strong context to mitigate the potential offence caused by Ya’ghub Hor al-Tostari’s statements.

Given the above, we considered that there was sufficiently strong context to justify the potentially high level of offence that could have been caused by the broadcast of Ya'ghub Hor al-Tostari’s statements supporting the attack.

Ofcom’s Decision is therefore that generally accepted standards had been applied to the content in this case to provide adequate protection for viewers, and the potentially offensive material broadcast was justified by the context.

Not in breach of Rule 2.3

Broadcast Fairness and Privacy cases

Not Upheld

Complaint by South Tyneside Council

BBC Look North, BBC1, 27 March 2018, 13:30 and 18:30

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment in the programmes as broadcast made by South Tyneside Council ("the Council").

The programmes included a story about Labour MP, Emma Lewell-Buck, who claimed that the Council and the local Labour Party were using an allegation of elderly abuse made against her husband to "attack her". It also reported that the Local Government and Social Care Ombudsman ("LGSCO") had found failings in the Council's investigation into the allegations against Mrs Lewell-Buck's husband and that an independent social worker had found no evidence of abuse.

Ofcom considered that:

- In both reports broadcast on 27 March 2018, the Council's response was fairly reflected in the programmes and that material facts were not presented disregarded or omitted in a way that was unfair to the Council.
- The Council was given an appropriate and timely opportunity to respond to the allegations being made in the programmes.

Programme summary

On 27 March 2018, BBC1 broadcast two editions of its regional news programme, *BBC Look North*. The programmes featured a report about a claim made by the Labour MP, Mrs Lewell-Buck, that allegations of abuse made against her husband were being used against her by the local Labour party in attempt to force her to quit.

13:30 broadcast

The studio presenter introduced the story: "*Defiant: Labour MP Emma Lewell-Buck says people in her own party are trying to force her out*".

Later in the programme, as footage of Mrs Lewell-Buck was shown, the presenter said:

"An MP claims people in her own party are trying to force her out but, she says she won't quit. Emma Lewell-Buck has been the Labour MP for South Shields since 2013, but the local council claims that while working as a carer her husband, Simon Buck, abused an elderly man by failing to change an incontinence pad. Mr Buck strongly denies this, describing the allegation as entirely fictitious, with an independent social worker also finding no evidence of any abuse. And, a report by the local government ombudsman ruled administrative errors by the council meant Mr Buck hadn't been given a proper opportunity to defend himself. It also ruled that he had suffered injustice and should be

paid compensation by the council. Mrs Lewell-Buck says the council and some in her local party are using the issue to attack her”.

An excerpt from a pre-recorded interview with Mrs Lewell-Buck was then shown in which she said:

“This has come at massive personal cost to me but, you know, I will never, what kind of MP would I be if I sat back and said ok you can keep riding roughshod over my constituents and my members? I stayed to fight for them”.

The presenter concluded the report:

“Well, South Tyneside Council says there is no evidence there’s been any vendetta against Mr Buck or Mrs Lewell-Buck. The Labour Party says its taking this matter very seriously and is looking into the issues raised. And, there’s much more on this story on Look North at 6:30 tonight”.

There was no further reference to this story or the Council in the programme.

18:30 broadcast

The presenter introduced the story: *“Now, is one of our MPs on a collision course with some elements of her own party?”* and explained that Mrs Lewell-Buck had been the MP for South Shields since 2013. The presenter then said:

“...but, the local Labour council claims that while working as a carer her husband, Simon Buck, abused an elderly man by failing to change an incontinence pad. Mr Buck says there’s no evidence of any abuse. An independent social worker agreed on that point, and a report by the local government ombudsman found administrative errors by the council meant Mr Buck hadn’t been given a proper opportunity to defend himself and should be paid compensation. Well, now Emma Lewell-Buck says some people in her own party are using the issue as a way of trying to make her quit”.

The programme then included a pre-recorded report in which Mrs Lewell-Buck and her husband spoke to the programme’s reporter about the claims. Mr Buck said:

“Well, I completely refute the allegations made against me by the council. The incident they claim happened, did not happen at all. I’ve got the report from the independent social worker and it states: ‘there is no evidence to conclude that abuse occurred’. The Ombudsman investigated four times and found fault with the council causing injustice to myself”.

The reporter then asked Mr Buck about the allegation that he had not changed an incontinence pad of an elderly man and he responded: *“I mean, like I say, the independent social worker said there was no evidence”.*

The following conversation then took place between the reporter and Mrs Lewell-Buck:

Reporter: *“You said that some people in the party are using the allegations against Simon, against your husband, as a way of getting to you. What’s going on in the Labour party in South Shields?”*

Mrs Lewell-Buck: *There's some very toxic elements in our local council and in our party, locally. You don't have to dig deep to find it, I'm not the first MP to have had to deal with this. I am not one of anybody's and, I will not be controlled and, I will always stand up to bullies. And, the price I've had to pay for that is watch my husband's life and character, and career, be absolutely destroyed. This has come at massive personal cost to me, but, you know, I will never, what kind of MP would I be if I sat back and said ok you can keep riding roughshod over my constituents and my members? I stayed to fight for them.*

Reporter: *Obviously, this has put a great deal of pressure on you, have you ever thought about quitting because of this, of giving up?*

Mrs Lewell-Buck: *Yeah, I mean, this against my husband isn't the only thing that's happened. And, I think it's kind of very clear though what kind of character I am. I care about my constituents, I care about the good decent members in my party who have suffered and, I will always stay to get them justice and to make sure that the people in Shields who put their faith in me, get the very best. This cannot continue, this is absolute, this man's life is destroyed. But, he's not the first person I've come across whose life's been destroyed by this. The Labour Party need to take some serious action and they need to sort this out before more lives are ruined".*

The presenter and the reporter were then shown in the studio discussing the story and the "strong allegations" being made by Mrs Lewell-Buck and her husband. The presenter asked the reporter whether the Council and Labour Party had responded to these claims. The reporter described the situation as an "extraordinary falling out between an MP and some in her own party". He then said:

"In this case, it partly hinges on a strongly refuted allegation that an incontinence pad wasn't changed when it should have been. A local government ombudsman report did find administrative errors in the way a multi-agency panel conducted that inquiry into the allegations against Simon Buck. South Tyneside Council, though, says that it will not apologise or pay compensation to Mr Buck as it believes the allegation, the allegations against him, are true. As we've heard, Mr Buck denies them. But, this all has a long history, ever since being elected in 2013 Emma Lewell-Buck says some people in her party have been attempting to undermine her and this row is just the, involving her husband, is just the latest example of that. And, indeed the party in South Shields, and the South Shields constituency, has previously been suspended in part due to, shall we say, very strong disagreements between some members there. Now, that suspension has been lifted, but the Labour Party says it is now taking this issue very seriously and looking into the issues raised".

There was no further reference to this story, or the Council, in the programme.

Summary of the complaint and broadcaster's response

Complaint

a) The Council complained that it was treated unjustly or unfairly in the programmes because the programmes did not fairly represent the Council's position in the reports, which resulted in material facts being presented, disregarded or omitted in a way that was unfair. The Council said that only "passing reference" was made to its statement and significant pieces of information were omitted, despite the BBC being provided with the information. In particular, the Council complained that the programmes omitted to make clear that:

- The LGSCO reviewed the complaint and did not challenge the conclusions of the multi-agency panel of professionals that Mr Buck had committed abuse or suggest any procedural fault that would have impacted on the overall decision;
- The Council was acting in its role as safeguarding authority. The decision that Mr Buck was the perpetrator of elderly abuse was a decision of the multi-agency panel, not a decision of the Council. Professionals from a number of agencies heard the information about the alleged abuses and unanimously agreed that on an accumulation of evidence, Mr Buck had committed abuse; and,
- Mr Buck had a full opportunity to present his views, most latterly having his voice heard via an independent social worker. The independent social worker was not a decision maker. Her remit in the investigation was solely to ensure Mr Buck's views were represented at the reconvened meeting in respect of one element of only one of the allegations raised.

Further, the Council said that the way in which the report was presented suggested that the conclusions were part of an ongoing political dispute, rather than the result of a full and proper investigation of safeguarding alerts received by the Council.

b) The Council complained that it was not given an appropriate and timely opportunity to respond to the allegations made about it in the programmes. In particular, it said that the BBC had not informed it of the true nature and purpose of the programmes and the nature of the likely contributors. The Council said that, had it known, it would have responded to the BBC accordingly.

The Council said that it understood that the focus of the report would relate to the LGSCO's Public Interest Report. Instead, it said that the report focused on allegations about political disputes within the South Shields Labour Party. The Council also said that the BBC had not considered its circumstances as due to confidentiality requirements it was limited as to the information it could reveal and was unable to take part in an interview.

Broadcaster's response

The BBC said that the programmes were in the public interest and proper consideration was given to reflect all sides of the argument. It added that the programme makers were conscious of the need to be fair not only to the Council, but also to Mrs Lewell-Buck, Mr Buck and the LGSCO, which required making judgements about what should and should not be included. It said that for editorial and legal reasons, it would not have been appropriate for

the programme makers to have taken the statements of the Council entirely uncritically. The BBC said that it did not accept that the Council was misled as to the nature of the broadcasts, or that the programmes were unfair in how the Council's viewpoint was represented in the reports.

The BBC said that the programme makers properly reflected the overall view of the Council in the reports but, were under no obligation to go beyond what the weight of evidence would support. To have done so, it said, would have risked unfairness to Mr Buck and Mrs Lewell-Buck, and to the LGSCO.

The BBC said that the LGSCO's remit was not to reinvestigate the allegations made against "Mr Y" (i.e. Mr Buck) so, little significance attached to the fact that the report "did not challenge the conclusions" reached by the Council's process. It said that the scope of the report was made clear in the LGSCO's report which said: "we have examined the council's safeguarding investigation, its complaint handling, and its involvement of Mr Y in the process". As a result of the investigation, the LGSCO found that "the Council failed to provide Mr Y with information about safeguarding investigations against him, and failed to deal with his complaint", resulting in "injustice to Mr Y". It said that neither of the programmes complained of represented the LGSCO as finding that the Council had reached the wrong conclusions. It added that the suggestion that it had was clearly attributed in the programmes to Mr Buck and his wife, but it was incumbent on the programmes to accurately reflect the LGSCO's findings.

The BBC said that the 18:30 report stated that *"a local government Ombudsman report did find administrative errors in the way a 'multi agency panel' conducted that inquiry"*, which made clear that the panel had a distinct role in the matter. However, it said that it did not believe that it would have been accurate constitutionally, or in terms of the order of events, to represent the finding that Mr Buck was guilty of "elder abuse" as "not the decision of the Council". In constitutional terms, the BBC said that the LGSCO's report referred to the "Council" throughout as the body responsible and said that "all references to the Council in this report are in regard to its role as the safeguarding authority, acting as the responsible person for the multi-agency safeguarding board".

The BBC said that in terms of the order of events, the LGSCO's report recorded a meeting of the multi-agency panel on 30 September 2015, as a result of which it was decided that "Mr Y probably did swear at Mr C" and that "Mr Y's failure to change a continence pad...until prompted by Mr C's family, resulted in neglect" (the latter, the BBC said, being the basis for the Council's subsequent references to "elder abuse" on Mr Buck's part). It said that although the wording of the report ascribed these decisions to "the Council", it understood why the Council itself might take the view that the decision was in fact that of the panel, with the Council merely concurring. However, the BBC said that, by the time of the broadcasts the situation was different. It said that besides the report of the independent social worker, the Council also had in its possession the LGSCO's finding, and it chose to respond with a vigorous and public restatement of the view that Mr Buck was guilty of abuse and that he should not receive compensation for the administrative errors identified by the LGSCO.

The BBC said that on the accumulation of evidence, the programmes made clear that the Council considered Mr Buck was guilty of abuse and that its judgement was unaltered by the finding of the LGSCO. It said that it was worth noting that while the Council referred to "Mr Y" as an "elder abuser", the LGSCO's report gave grounds for significant doubt on the

strength of this assertion. It said that in the interests of fairness to the other parties involved, it was important that this was reflected in the broadcasts.

The BBC said that whatever weight the Council may have given to the allegations in its assessment of the balance of probabilities in Mr Buck's case, it remained to be established that they were true and that, if true, they constituted "elder abuse". It said that the allegations therefore could not be relied upon as justification for describing Mr Buck as an "elder abuser".

The BBC said that it accepted that the independent social worker was "not a decision maker", but said that she was not presented as such in either of the programmes complained of. It said, however, that the Council's characterisation of her role conflicted with the account given in the LGSCO's report, which said:

"Before the meeting [the multi-agency meeting of 12 June 2014] the Council instructed an independent social worker who met with Mr Y and completed a report on the facts of the case...The independent social worker concluded there was no evidence that abuse occurred and therefore neglect could not be substantiated.

Having considered all the evidence, including that of Mr Y and the independent social worker, the Council decided the incidents reported by Mr C's family did occur".

The BBC said that this made it clear that the independent social worker, far from being merely the representative of Mr Buck's views, had investigated the facts and had come to conclusions about them, and that the decision to disregard those conclusions was the Council's. The BBC said that it took no view on whether that decision was the right one, but it said that it believed that it was entirely fair for both programmes to present the conclusion that Mr Buck had abused an elderly person by failing to change an incontinence pad as a claim by the Council, a claim that was disputed by Mr Buck, and in conflict with the conclusions of the independent social worker.

The BBC said that the Council's position was made clear in both broadcasts. However, it said that the facts of the case were in dispute and that the programmes were entitled to raise questions about the Council's position based on the evidence available and, as a matter of fairness, had a duty to reflect the LGSCO's report and the claims of Mrs Lewell-Buck and her husband. Likewise, the broadcaster said that it was fair to reflect the fact that the LGSCO had found administrative errors in the investigation, resulting in injustice to Mr Buck.

The BBC said that the suggestion that the Council's conclusions were "part of an ongoing political dispute", was a claim made by Mr Buck and his wife and was accurately reported by the programme makers. It added that the BBC took no view on whether the suggestion was correct or not. It said that it was a matter of fact that there has been ongoing friction between Mrs Lewell-Buck and some local Labour Party members, which led to the suspension of the South Shields Constituency Labour Party ("SSCLP") for a period, that all except one of the councillors at the time represented Labour, and that the Leader of the Council was also a leading member of the SSCLP. The BBC added that it was also unusual for a Council to defy an LGSCO's ruling in this way. Under the circumstances, the BBC said it could see no unfairness in such reporting, in the context where it was also made clear that the Council disputed the suggestion.

The BBC said that it gave the Council both an appropriate and timely opportunity to respond to the allegations made about it in the programmes. It said that it had become aware of the LGSCO's report on 23 March 2018 and that on the same day, the reporter had made an exploratory telephone call to the Council. It said that the Council had explained that the report was going to the full Council on 26 March 2018 for a decision and that it would send over a copy of the full Council report and statement to the BBC. It said that after further consideration, the BBC decided not to broadcast the story at that point. In addition, the BBC said that the reporter wanted to try to speak to Mr Buck and Mrs Lewell-Buck as he considered, as a matter of fairness, he should record their side of the story.

On 26 March 2018, the BBC said that it received an unprompted email from the Council with a statement, prior to the reporter speaking to or interviewing with Mr Buck and Mrs Lewell-Buck. The statement provided said:

"South Tyneside Council has made a decision to refuse to apologise or pay compensation to Mr Y. We will not apologise or pay compensation to someone who has been found to be an elder abuser by a panel of multi-agency professionals and who has caused distress to vulnerable adults. The Council fully recognises the role of the Local Government and Social Care Ombudsman in this case and acknowledges his finding of administrative errors where the Council was acting as the administering body for investigations into the abuse of vulnerable people. We have already revised our procedures and will, as recommended, remind staff of the importance of making clear records of the reasons for decisions made by professionals and communicating in a timely manner".

The broadcaster said that at 11:00 on 27 March 2017, after interviewing Mr Buck and Mrs Lewell-Buck, the reporter had called the Council's press office. He told the press officer that he had just interviewed the couple and informed her about the nature of their allegations in relation to the Council and its actions after the release of the LGSCO's report. It said that a note of the conversation was taken by the reporter in which the press officer told the reporter: "we're not going to put anybody up for interview". The reporter then told the press officer that the couple had said that they believed the Council's response to the LGSCO's report, i.e. its refusal to apologise or pay compensation to Mr Buck, was further evidence of the Council involving itself in the row between Mrs Lewell-Buck and the local Labour Party. The press officer told the reporter that the Council would provide a statement that responded to this.

At 12:09 the same day, the BBC said that the Council provided the following statement in response to the reporter's enquiry:

"...The ombudsman confirmed from his report 'there is no evidence the Council had any vendetta against Mr Y or his wife'.

...The Council is responsible for ensuring all safeguarding alerts are considered and, where appropriate, investigated under the statutory multi-agency safeguarding framework and to take all necessary action to protect vulnerable adults in South Tyneside. The panel was made up of multiple-agencies who unanimously agreed abuse had occurred. Councillors were not involved in the process.

Also, in the Council meeting Cllr Dixon makes reference to this at 14:54 if useful www.southtyneside.gov.uk/boroughcouncil".

At 16:01, the BBC said that the Council's press officer phoned the reporter and said that, in the 13:30 broadcast: "there's nothing about the fact that the abuse has been upheld". The BBC said that the presenter had said, in introducing a clip of Mrs Lewell-Buck, "*but, the local council claims that while working as a carer her husband, Simon Buck, abused an elderly man by failing to change an incontinence pad*", and had said after the clip that "*South Tyneside Council says there is no evidence there has been any vendetta against Mr Buck or Mrs Lewell-Buck*". The BBC said that the reporter and press officer then discussed the status of the independent social worker, with the press officer stating that the independent social worker was "there to see how [Mr Buck's] case could be presented". The press officer also said that "it comes across as if he hasn't done anything". The Press Officer added that she would provide a further statement. The BBC said that at 16:36, the press officer provided the same statement as sent on 26 March 2018.

The broadcaster said that the introduction to the report broadcast at 18:30 said: "*the local Labour council claims that while working as a carer her husband, Simon Buck, abused an elderly man by failing to change an incontinence pad*", before setting out Mr Buck's denial, and the fact that the independent social worker had also found no evidence of abuse.

The BBC said that it believed the Council was given an appropriate and timely opportunity to respond. It said that the reporter made it clear when he contacted the Council that he had interviewed both Mr Buck and his wife Mrs Lewell-Buck and that this interview discussed the LGSCO's report, the Council's reaction to it, and the dispute with the local Labour Party. It said that the BBC's interview with the couple came after the full Council had held a debate on the LGSCO's report, and voted not to pay Mr Buck any compensation, nor to apologise as recommended by the LGSCO.

The BBC also said that the press officer gave no indication in the exchanges with the reporter that there was a confidentiality issue, or that the Council was in any way constrained by confidentiality requirements. There was therefore no basis on which the programme makers could have "considered its circumstances" in that regard. The BBC said that, in any event, it had difficulty in seeing why such a constraint should have applied. It said that the Council would have been aware, on 23 March 2018 (three days before the meeting of the full Council which publicly discussed the case of Mr Buck and the subsequent issuing of a statement in which the Council termed Mr Buck "an elder abuser"), the Shields Gazette newspaper carried a front page story identifying "Mr Y" as Mr Buck and included a statement from Mr Buck himself in which he confirmed the identification. The broadcaster said therefore that if there was any issue of confidentiality at the time of the press officer's exchanges with the reporter, it cannot have been in connection with safeguarding the identity of "Mr Y", as it was on public record that it was Mr Buck.

The BBC confirmed that although the reporter did not make a note of his own questions to the Council, he had a clear recollection of them, and the content could be "to a large extent inferred from the nature of the Council's responses". The BBC provided Ofcom with notes of the response given by the Council to the reporter's questions and, in particular, noting that the Council "refused to put anyone up for interview" (which indicated, the BBC said, that a request had been made), and its statement denying the Council's decision was part of a vendetta (which indicated that this claim had been put to the Council). The BBC added that the majority of contact between the reporter and the Council was conducted over the phone, with email the preferred means to provide official responses.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that the Council's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

Decision

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programmes as broadcast and transcripts of them, and both parties' written submissions.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) Ofcom considered the Council's complaint that it was treated unjustly or unfairly in the programmes because the programmes did not fairly represent the Council's position in the reports which resulted in material facts being presented, disregarded or omitted in a way that was unfair. The Council said that only "passing reference" was made to its statement and significant pieces of information were omitted, despite the BBC being provided with the information.

Practice 7.9 states:

"before broadcasting a factual programme..., broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation...".

Practice 7.13 states:

"Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner".

Ofcom first considered whether the programmes caused unfairness to the Council by omitting to make clear that the LGSCO reviewed the complaint and did not challenge the conclusions of the multi-agency panel of professionals that Mr Buck had committed abuse or suggest any procedural fault that would have impacted on the overall decision.

As set out in the "Programme summary" above, during the 13:30 broadcast, the reporter said that *"a report by the local government ombudsman ruled administrative errors by the council meant Mr Buck had not been given a proper opportunity to defend himself. It also ruled that he had suffered injustice and should be paid compensation by the council"*.

During the 18:30 broadcast, the newsreader said: *"a report by the local government ombudsman found administrative errors by the council meant Mr Buck hadn't been given a proper opportunity to defend himself and should be paid compensation"*. Mr Buck also said in interview that *"The Ombudsman investigated four times and found fault with the council causing injustice to myself"*. The reporter also said: *"A local government ombudsman report did find administrative errors in the way a multi-agency panel conducted that inquiry into the allegations against Simon Buck"*.

In Ofcom's view, in both broadcasts, viewers were not likely to have understood the reporter's statement to be a claim that the LGSCO's findings had challenged the decision made by the multi-agency panel. In our view, while the programmes did not explicitly state the role of the LGSCO, it clearly stated that the LGSCO had found that there had been procedural faults with the way in which the investigation had been carried out. At no point did the programmes state that the LGSCO had reviewed the merits of the case against Mr Buck, nor was it said that the LGSCO had found that the multi-agency panel had reached the wrong decision, or that the decision should be reversed. We considered that the wording in the programmes made it clear to viewers that the LGSCO had found failings in the way in which the investigation had been conducted, not that the findings of that investigation were wrong. Given this, we considered that the broadcaster had taken reasonable care to ensure that material facts in relation to the LGSCO's role had not been presented, disregarded or omitted in a way that was unfair to the Council in this regard.

We next considered whether the programmes omitted to make clear that the Council was acting in its role as safeguarding authority.

In the 13:30 broadcast, the report said that *"the local council claims that while working as a carer her husband, Simon Buck, abused an elderly man by failing to change an incontinence pad"*.

In the 18:30 broadcast, the presenter said: *"the local Labour council claims that while working as a carer her husband, Simon Buck, abused an elderly man by failing to change an incontinence pad"* and that these allegations had been made by the Council. The reporter later referred to a *"multi-agency panel"* having conducted the investigation.

In our view, these comments clearly attributed the allegation of "elder abuse" by Mr Buck to the Council and viewers were likely to have understood it had made the claims against Mr Buck. We did not consider, however, that viewers would have understood from the programmes that the Council had carried out the investigation into the claims. In particular, we took into account that the 18:30 broadcast made clear that a *"multi-agency panel"* had conducted the investigation. We took into account the broadcaster's

submissions that the LGSCO's report had referred to the Council as being the body responsible for having made the decision against Mr Buck and that, following the publication of the report, the Council had issued a public statement that Mr Buck was guilty of abuse and that it would not pay compensation or apologise to him. We therefore considered that even if it was the case that Council was only acting in a safeguarding role, the broadcaster had a reasonable basis on which to state that it was the Council who had claimed that Mr Buck had abused an elderly man. We therefore did not consider that material facts had been presented, disregarded or omitted in a way that was unfair to the Council in this respect.

We next considered whether the programmes omitted to make clear to viewers the independent social worker's role in the matter.

In the 13:30 broadcast, the presenter said that Mr Buck strongly denied the allegations of abuse, and that an independent social worker had also found *"no evidence of any abuse"*.

In the 18:30 broadcast, the presenter said that an independent social worker had agreed that there was *"no evidence of any abuse"*. Mr Buck also said in the programme that: *"I've got the report from the independent social worker and it states: 'there is no evidence to conclude that abuse occurred'"*. When questioned by the reporter about the allegation he had not changed an elderly man's incontinence pad, he said: *"like I say, the independent social worker said there was no evidence"*.

We took into account that at no point did the programmes explicitly state that the independent social worker was a decision maker. Nevertheless, we considered that viewers would have understood that, while not a decision maker, the independent social worker had investigated the allegations and concluded that there was no evidence of any abuse. However, we also took into account the broadcaster's submissions that the LGSCO's report set out the independent social worker's role in the investigation. In particular, the LGSCO's report stated that the Council had *"instructed an independent social worker who met with Mr Y and completed a report on the facts of the case"* and *"concluded there was no evidence that abuse occurred and therefore neglect could not be substantiated"*. Taking these factors into account, we considered that the broadcaster had taken reasonable care to ensure that material facts in relation to the social worker's role had not been presented, disregarded or omitted in a way that was unfair to the Council in this regard.

We then considered whether, overall, the reports suggested that the conclusions of the investigation into Mr Buck were part of an ongoing political dispute, rather than the result of a full and proper investigation.

Ofcom took into account that, in the 13:30 broadcast, Mrs Lewell-Buck said that *"the council and some in her local party are using the issue to attack her"*. However, we also took into account that the newsreader said that *"South Tyneside Council says there is no evidence there's been any vendetta against Mr Buck or Mrs Lewell-Buck"*.

The presenter said *"Emma Lewell-Buck says some people in her own party are using the issue as a way of trying to make her quit"*. Mrs Lewell-Buck also said that *"the council and some in her local party are using the issue to attack her"* and that there were some *"very toxic elements in our local council...you don't have to dig deep to find it, I'm not the*

first MP to have had to deal with this". The reporter then referred to the comments in the programme as "*strong allegations*" being made by Mrs Lewell-Buck and Mr Buck. The programme also said that the LGSCO had found procedural fault with the way the investigation was handled and that an independent social worker had found no evidence of abuse.

We considered that the comments in both broadcasts were clearly attributed to Mrs Lewell-Buck and her husband, and viewers would have understood from their comments that it was their own, personal view that the investigation into the allegations against Mr Buck was flawed, and that the allegations were being used by both the Labour-controlled Council and the local Labour Party to attack Mrs Lewell-Buck and force her to quit as MP. In particular, we took into account that the 18:30 broadcast included an extended interview with Mrs Lewell-Buck in which she referred to "*very toxic elements in our local council*" and that the "*Council...are using the issue to attack her*".

We took into account that the 13:30 broadcast also made clear reference to the Council's position that there was no evidence of this being part of any vendetta against Mr Buck or Mrs Lewell-Buck. Given this, we considered that the programme fairly reflected the Council's view and viewers would have understood that the Council did not consider this to be part of any vendetta.

We recognised that the 18:30 broadcast did not reflect the Council's statement that the allegations against Mr Buck were not part of any vendetta. Despite this omission, we considered that viewers would not have regarded Mrs Lewell-Buck and her husband's comments to be statements of fact about the Council's motivations, but rather their own personal opinion of the situation. We also considered that the programme fairly reflected the Council's view that it considered the allegations against Mr Buck were true and that it would not pay compensation to him or apologise and there was no suggestion in the report that there was any evidence of this being part of a vendetta. Given this, we did not consider that the omission of part of the Council's statement would have materially or adversely affected viewers opinions of the Council in a way that was unfair.

- b) The Council complained that it was not given an appropriate and timely opportunity to respond to the allegations made about it in the programmes. In particular, it said that the BBC had not informed it of the true nature and purpose of the programmes and the nature of the likely contributors. The Council said that, had it known, it would have responded to the BBC accordingly.

The Council said that it understood that the focus of the reports would relate to the LGSCO's Public Interest Report. Instead, it said that the reports focused on allegations about political disputes within the South Shields Labour Party. The Council also said that the BBC had not considered its circumstances as due to confidentiality requirements it was limited as to the information it could reveal and was unable to take part in an interview.

Practice 7.11 states:

"if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond".

We considered that the matter being discussed in the programmes which concerned the Council i.e. the outcome of an LGSCO's report into the handling of an investigation into claims being made about Mr Buck and an apparent political dispute between Mrs Lewell-Buck and, the Council and South Shields Labour Party. In our view this raised significant potential allegations. Therefore, to ensure fairness to the Council, it was incumbent on the programme makers to offer an appropriate and timely opportunity to the Council to respond to the claims, in accordance with Practice 7.11.

We took into account that it did not appear the Council was concerned about the length of time it had been given to respond to the claims but rather that it had not been given an appropriate opportunity to respond, i.e. it was not informed about the true nature and purpose of the programmes and nature of the likely contributions.

We therefore considered whether the key allegations in the programmes had been explained to the Council and whether it had been invited to provide a response. We took into account that all the programme makers' requests for a response to the allegations were made by phone, and that the Council provided its official responses by email.

The reporter first contacted the Council on 23 March 2018. We took into account the broadcaster's statement that this was an exploratory phone call about the LGSCO's report. At this point, it did not appear to Ofcom that the Council were fully aware of the allegations which may be made in the report.

On 26 March 2018, the Council provided an unsolicited statement in response to the LGSCO's finding. The Council was then contacted by the reporter by phone a couple of hours prior to the 13:30 broadcast on 27 March 2018. It was not clear to Ofcom from the phone notes provided by the BBC exactly what the Council was told about the claims that would be made in the programme. We took into account that in response, the Council provided a short statement by email in which it said that the LGSCO's report had confirmed that "there is no evidence the Council had any vendetta against Mr Y or his wife". It also set out the Council's responsibilities which included that any safeguarding issues were considered, and if appropriate, investigated under the statutory multi-agency safeguarding framework and that Councillors were not involved in the process. Given this, we considered that the reporter was likely, to some extent, to have explained to the Council that Mr Buck and Mrs Lewell-Buck had made claims about a political dispute, the role of the Council regarding its safeguarding responsibilities in the context of the investigation into Mr Buck, and that these claims may be included in the programme. The Council then contacted the reporter after the broadcast to discuss the 13:30 report and it subsequently provided the same response as it had provided on 26 March 2018.

Having examined the Council's responses, it was our view that the Council had been provided with an appropriate and timely opportunity to respond to the allegations made in the programmes. In particular, we considered that it was clear from the Council's responses that it had understood that the programmes would report on the claims made by Mr Buck and Mrs Lewell-Buck, and that it had referred specifically to these issues in its responses.

Taking all the above into account, we considered that there was no unfairness in the programmes as broadcast to the Council in this respect.

Ofcom has not upheld South Tyneside Council's complaint of unjust or unfair treatment in the programmes as broadcast.

Not Upheld

Complaint by Mr Santokh Singh Bahia, made on his behalf by Cape Hill Solicitors

Can't Pay? We'll Take It Away!, 5Star, 8 October 2017

Summary

Ofcom has not upheld this complaint by Mr Santokh Singh Bahia, made on his behalf by Cape Hill Solicitors, of unwarranted infringement of privacy in the programme as broadcast.

The programme included footage of Mr Bahia as he spoke with two High Court Enforcement Agents ("HCEAs") who were there to enforce a Writ of Control ("Writ") against him.

Ofcom considered that Mr Bahia had a legitimate expectation of privacy in relation to the broadcast of the footage of him without his consent. However, we also considered that his legitimate expectation of privacy did not outweigh the broadcaster's right to freedom of expression and the public interest. Therefore, Mr Bahia's privacy was not unwarrantably infringed in the broadcast of the footage included in the programme.

Programme summary

On 8 October 2017, 5Star broadcast an edition of *Can't Pay? We'll Take It Away!*, a series which follows HCEAs as they attempt to resolve debt disputes through negotiated settlements and asset seizures. The programme's narrator introduced the programme:

"Threats...Anger...Desperation...What happens when debt tracks you down? [footage of the complainant, Mr Bahia, in a shop was shown as he said: "you're robbing me, really"]. Up and down the UK... We see Britain's most resilient High Court Enforcement Agents [further footage of the complainant was shown as he said: "that's mine mate" and a HCEA responded: "leave that, leave that sir, leave it"]. Dealing with every debtors' worst nightmare...Because if you can't pay, they'll take it away".

This edition included a story about the complainant, Mr Bahia, who owed £10,496.67. The narrator explained that the HCEAs, Mr Garry Ball and Mr Matt Heighway, were in Halesowen, West Midlands. The narrator said:

"Five months ago, Mr Bahia was found guilty of fraudulently taking a deposit off the claimant towards the sale of a property".

Footage of the HCEAs as they arrived at a shop was shown and one of them explained:

"He sold his shop to somebody, took deposits off them, with no intention of actually selling the shop to them".

The narrator said:

"Mr Bahia was given a community service sentence and ordered to pay back the deposit plus court costs, but the money hasn't been paid. Now, Matt and Garry are here to get payment in full today".

Footage was shown of the HCEAs as they entered the shop, approached Mr Bahia, and informed him that they were HCEAs who were there to collect the money that he owed. Mr Bahia told the HCEAs that they should speak to his solicitor to which one of the HCEAs responded: *"I haven't met a solicitor yet who can override a High Court Writ"*. Mr Bahia then asked him if he could speak with his solicitor first, to which he agreed, and the HCEA provided him with a copy of the High Court Writ. Footage of Mr Bahia speaking on the phone to his solicitor was then shown. The HCEA explained to Mr Bahia that it was irrelevant whether Mr Bahia's solicitor considered that the money owed was correct, as the judgment order stated the amount owed.

The narrator explained that 30 minutes later, Mr Bahia's solicitor had called him back and then spoke to the HCEA. The narrator said:

"The solicitor says Mr Bahia is in the process of appealing against the court's decision".

The HCEA was shown speaking on the phone to Mr Bahia's solicitor and saying:

"Unfortunately, at this point in time, we've got a Writ against your client. I'm here to enforce this judgment I've got in front of me".

The following conversation between the HCEAs and Mr Bahia then took place:

Mr Ball: *"You need to start making efforts to raise some money, sir."*

Mr Bahia: *No, I'm saying I ain't got it now. I haven't got it on me."*

Mr Heighway: *What sort of money are you able to raise?*

Mr Bahia: *Now? Probably about £1,000. I'm looking at, that's like getting some people. I've only got about £50, £60."*

Mr Heighway: *Mr Bahia, I'm going to wait until 11 o'clock, that's 10 minutes. If you're able to get £3,000 then, I will speak to the client and we will look at putting the rest on an arrangement for you, alright, but for less than that, I'm removing goods. It's as simple as that. So, you do what you want for the next ten minutes, that's up to you, that's the deadline"*.

The narrator said:

"The clock is ticking, but instead of trying to raise the £3,000 Matt has asked for, Mr Bahia tries to strike another deal".

Mr Bahia explained to the HCEAs that he had a debit card which had £1,500 available on it. The narrator continued:

"Mr Bahia's time to try and raise funds is nearly up, but he's still attempting to negotiate with the agents".

The following conversation between Mr Bahia and Mr Heighway then took place:

Mr Bahia: *"Matthew, I'm a fair bloke. If I can get you, I can go and get you the 15[00] now, and if you come back, come back Monday."*

Mr Heighway: *I can't do that, ok.*

Mr Bahia: *I think I've made a very good offer to you, 15[00], and 15[00] Monday, or even tomorrow, here you are 15[00] tomorrow.*

Mr Heighway: *It needs to be today.*

Mr Bahia: *Not today, it's physically impossible.*

Mr Heighway: *Get inventory started and we'll get removal sorted".*

The narrator then explained:

"The deadline has come and gone. The agents now have no choice but to start an inventory of assets in the shop, [Mr Heighway said to Mr Bahia: Just let him [Mr Ball] past you for a second] but then Garry finds a box full of carrier bags hidden behind the counter".

As one of the HCEAs picked up the box, Mr Bahia went to grab the box and said: *"That's mine, mate"* and the HCEA responded: *"Leave that, leave that sir, leave it"*. The narrator described Mr Bahia as being *"agitated"*. The following conversation then took place:

Mr Bahia: *"I've got to get into it mate, to get a card out.*

Mr Heighway: *He'll give it back to you, if he needs to give you something out of it, that's fine. Whatever you do, don't obstruct the enforcement agent in his duty, ok, because that's a criminal offence and I'll call the police for that, alright? And, then they will attend because I'll call them.*

Mr Bahia: *It's all paperwork.*

Mr Heighway: *It's alright, that's fine.*

Mr Ball: *Sir, sir, just back off. It's bag after bag.*

Mr Bahia: *It's paperwork mate, that's what I'm saying.*

Mr Ball: *Is it quite important paperwork, because it's just full of bags?*

Mr Bahia: *That's what I'm saying".*

The narrator then said: *"But as Garry investigates the contents, he makes a surprising discovery"*. Mr Ball said: *"There's cash there, that's being seized"*. The narrator said: *"The bags appear to be stuffed with cash"*.

As the HCEA counted the money, his colleague said to Mr Bahia: *"What you need not to be doing is obstructing him, because I'll call the police"*.

The HCEAs explained to Mr Bahia that they had seized the cash and Mr Bahia responded: *"This ain't my money"*. The narrator then said: *"There appears to be thousands of pounds stuffed into numerous envelopes"*. The HCEA was shown as he counted the money. As Mr Bahia attempted to take the money, the following conversation took place:

Mr Ball: *"Sir, don't touch. Did we find it in the property?"*

Mr Bahia: *Yeah.*

Mr Ball: *Then it's seizable.*

Mr Bahia: *But, it's not my money.*

Mr Heighway: *So, what you doing with someone else's money here?*

Mr Bahia: *Because they leave it with me, the shopkeepers here, we've got a committee. Do you want them to turn up? Do you want them to turn up?"*

The narrator explained that Mr Bahia was *"getting increasingly agitated and threatening to call more people to the shop"*, so the HCEAs had decided to contact the police.

Footage was shown of one of the HCEAs calling the police and explaining why they required police presence. The narrator then said: *"This straightforward case has taken an unexpected turn"*. Footage of Mr Bahia was then shown as he said: *"You're robbing me, really"*.

Prior to a programme break, the narrator said:

"Surrounded by thousands of pounds of cash and with a possibility of a confrontation, Matt and Garry will have to do all they can to keep the situation under control".

Following the break, there was a recap of what had already happened in Mr Bahia's story.

Footage was then shown of police officers arriving and one of the HCEAs telling them that £6,830 of cash had been seized and that the reason they had contacted the police was because they were concerned for their own welfare.

The narrator said:

"...Mr Bahia hasn't shown them any proof the money doesn't belong to him, and the seized cash will cover almost £7,000 of Mr Bahia's debt, but there's still over £3,500 left to pay".

The following conversation then took place between Mr Bahia and one of the HCEAs:

Mr Heighway: *"You able to pay the rest of this debt, sir? Either now, or can you make arrangements to pay the rest of this balance?"*

Mr Bahia: *I can make arrangements.*

Mr Heighway: *Yes, what would that be?*

Mr Bahia: *I don't know, about £200 a month, £300 a month.*

Mr Heighway: *£200 a month?*

Mr Bahia: *£300 a month.*

Mr Heighway: *£300 a month".*

Footage was shown of the HCEA as he called his office to confirm whether the claimant would be willing to accept Mr Bahia's offer. The HCEA explained to Mr Bahia that the claimant was under no obligation to accept the offer and Mr Bahia said that he would contact the claimant directly. The HCEA then asked Mr Bahia what the claimant had said, and he responded: *"she says 'yeah, I'm happy'".* The HCEA then received a call from his office and he told Mr Bahia that the office had said: *"no offer of an arrangement coming from the client, she wants payment in full, and that's it".*

The narrator then said: *"The agents have now been on the premises for over three hours. After the lie about the claimant accepting his payment plan, Matt gives him a final ultimatum".*

The HCEA told Mr Bahia:

"If you can get two now, and the rest by Monday, then I'll not remove. There's the deal. You need to find money, or I'll organise removal and we'll get this shop emptied".

The narrator said: *"Faced with the prospect of losing the stock, Mr Bahia decides to pay up".* Footage was then shown of Mr Bahia as he paid the money. The narrator then said:

"The agents have collected almost nine of the £10,500 owed, but if Mr Bahia doesn't pay the remaining £1,500 pounds in four days' time, the agents will be back".

At the end of the programme, a caption said: *"Mr Bahia has paid the debt in full".*

There was no further reference to, or footage of, Mr Bahia in the programme. Mr Bahia was named in the programme and his face was shown unobscured.

Summary of the complaint and broadcaster's response

Complaint

Cape Hill Solicitors complained that Mr Bahia's privacy was unwarrantably infringed in the programme as broadcast because his face was shown unobscured in the programme. Mr Bahia said he felt "bullied and interrogated" by the HCEAs.

Broadcaster's response

Channel 5 said that it is not the law in the United Kingdom that people have a right not to be on television. Nor is it the law that footage or photographs of persons cannot be taken and then broadcast without their consent. The broadcaster said that what matters in each case is whether or not rights are being infringed, and, if they are, whether there are good reasons

for those rights to be infringed. Channel 5 said that this requires the balancing of the right of privacy against the right to freely broadcast matters of public interest.

In support of its position, Channel 5 referred to various judgments from the European Court of Human Rights¹. It said these established the factors that must be considered when conducting the balancing exercise between the competing Article 8 and Article 10 rights under the European Convention on Human Rights (i.e. the right to respect for private and family life and the right of freedom of expression). Channel 5 said that the decisive question is whether the broadcast is capable of contributing to a debate of public interest.

It said that the broadcast of the section of the programme concerning Mr Bahia was clearly capable of contributing to a debate of public interest, namely the manner in which civil judgments are enforced, the powers granted to HCEAs, the consequences of not paying proper attention to personal debts, and the way in which particular personal circumstances can, or should, play a part in the enforcement process². Where, as in this case, the subject matter of a broadcast contains information which is of public interest, and the broadcast of the material is capable of contributing to a debate of general interest, then this should be accorded significant weight when conducting the balancing exercise.

Channel 5 said that the form of the expression (i.e. broadcasting the unobscured footage of the interactions with the HCEAs) was also protected under Article 10 and that it is not for the national authorities to substitute their own views for those of the publisher/broadcaster³. It said that the way in which the story is presented is a matter of editorial judgment and increasing the interest of the story by giving it a human face was a legitimate consideration⁴.

When properly considered, Channel 5 said that the balancing equation must be between the heavily weighted public interest in broadcasting the programme, including the margin of appreciation to include footage of Mr Bahia unobscured, and "such Article 8 rights, if any, as might rise in relation to the footage".

Article 8 conferred a right to "respect" for privacy rather than an absolute right⁵ and it was neither possible, nor desirable, to seek to give individuals complete autonomous control over information that relates to them⁶. Further, and in accordance with Article 10(2), the right to freedom of expression should not be interfered with by a public authority unless such interference is lawful and necessary in a democratic society in the interests of, inter-alia, the

¹ Grand Chamber cases of *Von Hannover v Germany (No 2)* [2012] ECHR 228; *Axel Springer v Germany* [2012] EMLR 15; and *Couderc v France* [2015] ECHR 992.

² Channel 5 argued that this position was fortified by the decision of Arnold J in *Ali v Channel 5 Broadcasting* [2018] EWHC 298, which itself was an important recognition of the principle noted by Lord Rodger in *Von Hannover v Germany* [2004] EMLR 379 who held that: "...where the publication concerns a question 'of general interest', Article 10(2) scarcely leaves any room for restriction on freedom of expression".

³ *Jersild v Denmark* [1994] 19 EHRR 1.

⁴ *Khuja v Times Newspapers Ltd and others* [2017] UKSC 49.

⁵ *M v Secretary of State for Work and Pensions* [2006] 2 AC 91 (at para 83).

⁶ *O'Halloran v UK* [2008] 46 EHRR 21.

protection of the rights and freedoms of others. Channel 5 said that if a claimant had no reasonable expectation of privacy, Article 8 is not engaged, and the claim fails at the outset⁷.

Channel 5 said that the activities of HCEAs; the manner in which the law is utilised or ignored; the kinds of difficulties the HCEAs face when executing their duties; and the impact of the activities of HCEAs performing their duties on the lives of those who are affected by those duties, are all matters of public interest. In this case, the sequence in the programme which featured Mr Bahia concerned the activities of HCEAs conducting official court business, specifically executing a Writ permitting the seizure of goods, chattels and other property of Mr Bahia in order to satisfy a judgment debt.

Channel 5 said that the Writ authorised the HCEAs to enter the commercial premises where Mr Bahia was encountered by the HCEAs and seize any goods found in the premises, including stock, which could not be proven to be the property of a person other than Mr Bahia. It said that the HCEAs were successful in executing the Writ, as the programme demonstrated, despite Mr Bahia's attempts to obfuscate and impede. For all these reasons Channel 5 said it was appropriate and reasonable for it to include footage of Mr Bahia interacting with the HCEAs in the programme.

The broadcaster said that Mr Bahia was aware that he was being filmed openly by the camera crew with their large cameras, as well as by the body cameras worn by the HCEAs. He was told by the HCEAs that the footage they filmed on their body cameras could be made available for broadcast. He knew the programme and said that he had seen it, although he did not wish to appear on it himself.

Channel 5 said that it never intentionally infringed any legitimate right to privacy. In this case, none of the footage filmed on the body cameras with Mr Bahia present involved Mr Bahia doing or saying anything particularly private. The turning point in the enforcement process came when the HCEAs found bundles of cash that Mr Bahia had sought to hide from them. Bearing in mind that Mr Bahia had been found guilty of fraud and ordered to compensate his victim, the discovery of large sums of cash hidden in plastic bags, justified the filming of the enforcement action and Mr Bahia's part in that enforcement.

Channel 5 said that what happened during the enforcement, including the attendance and cooperation of the police officers, warranted the filming and broadcast of the segment with Mr Bahia identified in it.

While Mr Bahia may have preferred that he was not included in the broadcast programme, embarrassment and distress about that was insufficient to create enforceable privacy rights under Article 8; the law of privacy was not designed to protect the unduly sensitive.⁸ Nor does it prevent a person's image from being included in a television broadcast without his consent. Accordingly, there is no violation of any Article 8 right where, as in this case, the broadcast of an image of a person is part of the actual circumstances which are legitimately the subject of the broadcast. Channel 5 said that if it were otherwise the law of privacy would become an unacceptable chilling effect on free speech. Channel 5 also referred to an

⁷ *Murray v Express Newspapers plc* [2009] Ch 481 (at para 27); *Associated Newspapers Ltd v HRH the Prince of Wales* [2008] Ch 57; *McKennitt v Ash* [2008] QB 73 (at para 11).

⁸ Lord Hope in *Campbell v MGN Ltd*, *ibid*.

earlier Ofcom decision⁹. However keenly felt, Channel 5 said that Mr Bahia's reaction was insufficient to establish a breach of his Article 8 rights.

Channel 5 said that the execution of a Writ, wherever it occurs, is a public act which, in accordance with the law, the HCEAs are obliged to carry out. For the reasons already given, Channel 5 said there is a clear public interest in seeing the activities of the HCEAs in executing their official duties¹⁰ and in this case that extended to including shots of Mr Bahia in the broadcast where their inclusion demonstrates the difficulties the HCEAs face on a daily basis. As Mr Bahia was actively engaged in trying to obstruct the activities of the HCEAs by his deceptive behaviour about the hidden bundles of cash identifying him in the programme was a matter of real public interest as it showed how a particular individual's attitude and circumstances can affect the way in which the HCEAs seek the most apt resolution of their responsibilities.

The part of the programme which featured the complainant made several issues clear to the public, all of which Channel 5 felt it was in the public interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- when a Writ has been issued, goods and chattels which belong to anyone at the place where the debtor is found can be taken into possession by the HCEAs unless proof of ownership of those goods or chattels can be immediately produced or controlled goods orders can be placed over property as a surety for repayment agreements;
- failure to pay judgment debts, or failure to respond to calls from those collecting judgment debts, or failure to adhere to repayment agreements made, can lead to the property of the people other than the judgment debtor being seized; and,
- judgment debts cannot and should not be ignored.

Accordingly, the broadcast of the programme was entirely in the public interest and it was a matter for the programme makers and the broadcaster to decide what elements should be included in the broadcast¹¹. This included the manner in which the story of the enforcement of the Writ was told and the right under Article 10 to convey that story to viewers, including the right to choose which images to use and whether or not to identify Mr Bahia. Channel 5 said that the programme did not exceed what was necessary and appropriate to make viewers, who had their own Article 10 rights to see the story, understand the situation and the ramifications of what the HCEAs were doing.

For all these reasons, Channel 5 concluded that it did not believe that Mr Bahia's privacy was infringed in the programme as broadcast.

⁹ Complaint by Mrs B and Mr C (Issue 284 of Ofcom's Broadcast and On Demand Bulletin, 27 July 2015). This decision was published on our website:
https://www.ofcom.org.uk/data/assets/pdf_file/0018/50436/issue_284.pdf

¹⁰ As confirmed in *Ali*, *Ibid*.

¹¹ *O (A Child) v Rhodes (English PEN ors intervening)* [2016] AC 219, para 78: see *Campbell v MGN Ltd* [2004] 2 AC 457, and *In re Guardian News and Media Ltd* [2010] 2 AC 697". See also para 99 of *Campbell v MGN*.

Preliminary View

Ofcom prepared a Preliminary View that Mr Bahia's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties' written submissions and supporting material.

In Ofcom's view, the individual's right to privacy under Article 8 of the ECHR has to be balanced against the competing rights of the broadcaster's right to freedom of expression and the audience's right to receive information under Article 10. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In addition to this rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

Acting on behalf of Mr Bahia, Cape Hill Solicitors complained that Mr Bahia's privacy was unwarrantably infringed in the programme as broadcast because his face was shown unobscured in the programme. The complainant submitted that Channel 5 should have obscured his identity. Mr Bahia also said he felt "bullied and interrogated" by the HCEAs.

In considering Mr Bahia's complaint, we first assessed whether he had a legitimate expectation of privacy regarding the broadcast of footage of him included in the programme.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We took account of the material shown in the programme, as described in the "Programme summary" above. In particular, the programme named Mr Bahia and included unobscured footage of him as he interacted with the HCEAs in the shop where he worked. He was shown discussing the debt and his own financial circumstances with the HCEAs as he attempted to negotiate payment of the debt. The programme also revealed that he had been found guilty of a criminal offence.

Ofcom considered that the programme revealed information about Mr Bahia's financial situation. In particular, this related to his ability to repay the debt and the fact that he held large sums of money behind the shop counter. We took into account that the enforcement took place in a part of the shop which was accessible to the public although it did not appear that any members of the public were present at the time the enforcement took place. Given that Mr Bahia was identified, the programme revealed information about his conviction and the circumstances which had led to his debt and showed him discussing his financial circumstances, we considered that the inclusion of the material in the programme as broadcast constituted an interference with Mr Bahia's privacy rights.

We had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. It was not disputed by the broadcaster that the footage was included without Mr Bahia's consent. We therefore went on to consider whether the broadcast of this material was warranted under the Code.

The Code states that "warranted" has a particular meaning. This is that, where broadcasters wish to justify an infringement of privacy, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

We acknowledged that the public interest was engaged in broadcasting programmes that highlight the serious issue of debt and that the filming in this case showed the activities of the HCEAs while executing their official duties and the problems they encounter when seeking to enforce court orders. We also recognised that the inclusion of named or identifiable individuals may enhance that public interest by making the broadcast footage more accessible or engaging to the watching audience¹².

While the programme included information about Mr Bahia's financial situation and the circumstances which had led to the debt, Ofcom considered in this case that the interference with the complainant's right to privacy was limited and did not represent a significant intrusion into his private life. In particular, the footage did not capture any personal information which was not connected to the debt and enforcement process, or reveal anything else of a private and confidential nature. Information about his conviction was already a matter of public record. In weighing up the competing rights of the parties, we took

¹² [*In re S \(identification: Restrictions on Publication\)* \[2005\] 1 AC 593 \(at para 604\); *In re Guardian News & Media Ltd* \[2010\] 2 AC 697 \(at para 63\).](#)

into account that the footage showed Mr Bahia as he told the HCEAs that he had no funds to pay the debt, and subsequently, as he tried to obstruct the HCEAs from executing the Writ by attempting to prevent them from finding the hidden money in the shop.

Having taken all the factors above into account, Ofcom considered that, on balance, the interference with the complainant's rights to privacy in this case was not of a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme makers.

For all the reasons set out above, Ofcom considered that Mr Bahia's privacy was not unwarrantably infringed in the programme as broadcast.

Ofcom has not held Mr Bahia's complaint, made on his behalf by Cape Hill Solicitors, of unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by M Law LLP on behalf of Mr Darius Burge *Can't Pay? We'll Take It Away!, Channel 5, 13 September 2017*

Summary

Ofcom has not upheld this complaint made by M Law LLP on behalf of Mr Darius Burge of unwarranted infringement of privacy.

The programme included footage of Mr Burge, and both the exterior and the interior of his home, as Mr Burge spoke with two High Court Enforcement Agents ("HCEAs") who were there to enforce a Writ of Control ("Writ") against Mr Abbas Kadar and GHG Organisation Limited ("GHG") whose registered office had been given as the complainant's address. All of the footage shown in the programme of the interior of Mr Burge's home was recorded by the body cameras worn by the HCEAs but belonging to the programme makers.

Ofcom considered that Mr Burge had a legitimate expectation of privacy in relation to the filming and the subsequent broadcast of the footage of him without his consent. However, we also considered that his legitimate expectation of privacy did not outweigh the broadcaster's right to freedom of expression and the public interest. Therefore, Mr Burge's privacy was not unwarrantably infringed in both the obtaining and broadcast of the footage included in the programme.

Programme summary

On 13 September 2017, Channel 5 broadcast an edition of *Can't Pay? We'll Take It Away!*, a series which follows HCEAs as they attempt to resolve debt disputes through negotiated settlements and asset seizures.

In this programme, HCEAs, Mr Gary Brown and Mr Cona Jackson, were in East Molesey, south west London, to recover almost £11,500 owed by a small business, GHG. Footage of the HCEAs as they drove to the registered address of the company was shown, and the programme's narrator said:

"But, the address on the Writ appears to be residential and not commercial, so the agents suspect this could be the home of company director, Abbas Kadar".

The HCEAs noticed a car which was parked outside the property and the narrator explained that if the car belonged to Mr Kadar, it could be seized to offset the debt if no offer of payment was made.

Footage of the HCEAs as they knocked on the door was shown and the complainant, Mr Darius Burge, answered. Mr Brown asked Mr Burge if he could come into the property and Mr Burge agreed. Once inside the property, the following conversation took place:

Mr Brown: *"My name's Gary Brown. I'm an enforcement agent, this is my colleague, Cona Jackson. I'm basically here with a High Court Writ against GHG Organisation Limited, is that yourself? Is that your company?"*

Mr Burge: *No, no.*

Mr Brown: *It's not?*

Mr Burge: *We are a firm of accountants.*

Mr Brown: *Ok.*

Mr Burge: *GHG Organisation Limited...*

Mr Brown: *Are they one of your clients?*

Mr Burge: *One of my clients.*

Mr Brown: *Can I see confirmation of that please?*

Mr Burge: *What confirmation?*

Mr Brown: *Confirmation that you're not GHG.*

Mr Burge: *Ok, can you go out? I'll get you my papers.*

Mr Brown: *Ok, I'm going to wait inside the property until I've had that proof, ok?*

Mr Burge: *I'm not happy about this.*

Mr Brown: *You may not be happy sir, but that's the way it is I'm afraid".*

The narrator then said:

"It appears that the debtor company has used their accountant's address as their registered office. It's common business practice to do this for the purpose of receiving mail, but Gary needs to see proof that he isn't the debtor they're looking for".

The conversation between Mr Brown and Mr Burge continued:

Mr Brown: *"Regarding this visit, I need to be satisfied that you are not...*

Mr Burge: *If you leave the house, I will get you...*

Mr Brown: *I'm not going to leave the house.*

Mr Burge: *In that case, I'm not providing anything. You cannot stand...*

Mr Brown: *Then I'll look around the house.*

Mr Burge: *No, you cannot.*

Mr Brown: *Sir, don't touch me. Don't touch me.*

Mr Burge: *Leave this house.*

Mr Brown: *I'm not leaving the house.*

Mr Burge: *I said I would provide the proof.*

Mr Brown: *Then provide the proof and make things easier.*

Mr Burge: *Stay there.* [Mr Burge entered his office and tried to close the door on Mr Brown].

Mr Brown: *Sir, don't try and close doors on me. Ok. You're not helping the situation by acting the way you are".*

Mr Burge's wife, whose face was obscured, then entered the room and asked what was going on and Mr Burge told her to call the police. Mr Burge's wife then asked Mr Brown whether they needed permission to enter people's premises and he said they did not. The conversation between Mr Burge and Mr Brown continued:

Mr Burge: *"I asked you to go back there. Why won't you go back there?*

Mr Brown: *Because you tried to close the door on me.*

Mr Burge: *I have to go in there to get some stuff. I don't know what will happen.*

Mr Brown: *Then, please do that".*

In an interview to camera, Mr Brown said:

"When somebody's asking you to leave, they don't want you looking around and they're just causing you problems, it's usually for one reason, and that's because they have something to hide".

The narrator then said:

"Despite the man's defensiveness, Gary and Cona won't leave until they're sure he isn't Abbas Kadar".

Mr Brown asked to see Mr Burge's identification to confirm he was not Mr Kadar. Mr Burge provided Mr Brown with his passport and Mr Brown confirmed he was not the person who was the subject of the debt.

The narrator then said:

"The man, Mr Burge, isn't the debtor after all, but his behaviour has raised the agents' suspicions that there's more to this story than meets the eye".

The following conversation between Mr Burge, Mrs Burge and Mr Brown took place:

Mr Burge: *"So, you've got my proof? What else do you want?*

Mr Brown: *Proof they're not trading from here.*

Mrs Burge: *Do you understand what a registered office is?*

Mr Brown: *I do. It's usually an accountant's, but sometimes those accountants double up as trading addresses".*

The narrator then said:

"But, as Mr Burge goes into his office to find paperwork, Gary spots a figure behind the glass".

Footage was then shown of Mr Burge as he entered his office and Mr Brown as he followed him. The footage showed that there was another person present in the office, later identified as the debtor, Mr Kadar. Mr Brown asked him his name and whether he had any identification. Mr Kadar refused to answer Mr Brown's questions. Mr Burge then asked Mr Jackson, who was also in the office, to leave. Mr Brown continued to ask Mr Kadar questions, which he refused to answer.

Mr Jackson then left the office and went outside to take a photograph of Mr Kadar through the window and check it against photographs on his social media accounts. Mr Jackson showed Mr Brown a photograph of Mr Kadar and both the HCEAs agreed that the person in the office was likely to be Mr Kadar. Mr Kadar then confirmed his identity to the HCEAs.

The HCEAs then asked Mr Kadar the reason he was at the property and he said:

"To see the accountants. This isn't our trading address, this is our accountant's address and I feel awful about the position they're in".

The narrator said:

"It may be a coincidence that the agents have found Mr Kadar here today, but the Writ can now be enforced".

Mr Brown then explained the situation to Mr Kadar and the way in which the matter could be resolved. Mr Burge and his wife could be seen in the background. The HCEAs questioned Mr Kadar about the car outside the property and he confirmed that it belonged to his wife and was a lease vehicle. The HCEAs then asked to see inside the car and Mr Kadar told them that they could not look inside. At this point, Mr Burge asked Mr Kadar and the HCEAs to leave his property as he needed to *"crack on with work"* and Mr Kadar requested for them to have five more minutes. The narrator said:

"Under pressure to get the agents out of his accountant's house, Mr Kadar makes a U-turn".

Mr Kadar offered to split the amount into three equal payments over three weeks, which the HCEAs refused to accept. Mr Kadar then spoke off-screen with Mr Burge and when he returned, he told the HCEAs that he would make the payment in full. While Mr Kadar made the payment, Mr Burge and his wife were shown. Once the payment was completed, Mr Burge said: *"you've been paid now, can you please leave?"*. The HCEAs were then shown leaving the property.

No further footage of, or reference to, Mr Burge was included in the programme.

Summary of the complaint and broadcaster's response

Complaint

- a) M Law complained that Mr Burge's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because Mr Burge was filmed without his consent. M Law said that Mr Burge made it clear from the outset that the premises were the registered offices of GHG and that he did not want to be filmed. Mr Burge also asked the HCEAs to leave the house once he informed them that the house was the registered office of GHG, and they refused.

M Law said that Mr Burge did not consent to the entry into his house by the HCEAs. M Law added that as Mr Burge had nothing to do with the debt, the HCEAs had no legal authority to be on the premises from "the moment that they were informed that the registered office of GHG was not the premises at which GHG was based".

- b) M Law also complained that Mr Burge's privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without his consent. M Law said that Channel 5 should not have featured Mr Burge or, alternatively, it should have taken steps to obscure his identity.

M Law said that any public interest in the broadcast of the programme following the actions of the HCEAs could only be claimed to the extent that it related to the actions and activities of GHG and Mr Kadar, whose debt was the subject of the programme. It said that there was no basis for the infringement of Mr Burge's privacy, who expressly did not consent to appearing in the programme both at the time of the filming and in subsequent correspondence. M Law said that if Channel 5 was of the view that the subject matter of the programme was in the public interest, it should have ensured that Mr Burge's privacy was not unwarrantably infringed. It said that this could have been achieved by obscuring his identity; by not naming him and by taking reasonable steps to disguise the location. M Law said that, as a result of the broadcast of the programme, Mr Burge had suffered "substantial distress" and damage to his reputation.

Broadcaster's response

Channel 5 said that it is not the law in the United Kingdom that people have a right not to be on television. Nor is it the law that footage or photographs of persons cannot be taken and then broadcast without their consent. The broadcaster said that what matters in each case is whether or not rights are being infringed, and, if they are, whether there are good reasons for those rights to be infringed. Channel 5 said that this requires the balancing of the rights of privacy against the right to freely broadcast matters of public interest.

In support of its position, Channel 5 referred to various judgments from the European Court of Human Rights.¹ It said these established the factors that must be considered when conducting the balancing exercise between the competing Article 8 and Article 10 rights under the European Convention on Human Rights (i.e. the right to respect private and family

¹ Grand Chamber cases of *Von Hannover v Germany (No 2)* [2012] ECHR 228; *Axel Springer v Germany* [2012] EMLR 15; and *Couderc v France* [2015] ECHR 992

life and the right of freedom of expression). Channel 5 said that the decisive question is whether the broadcast is capable of contributing to a debate of public interest².

It said that the broadcast of the section of the programme concerning Mr Burge was clearly capable of contributing to a debate of public interest, namely the manner in which civil judgments are enforced, the powers granted to HCEAs, the consequences of not paying proper attention to personal debts, and the way in which particular personal circumstances can, or should, play a part in the enforcement process. Where, as in this case, the subject matter of a broadcast contains information which is of public interest, and the broadcast of the material is capable of contributing to a debate of general interest, then this should be accorded significant weight when conducting the balancing exercise.

Channel 5 said that the form of the expression, i.e. broadcasting the unobscured footage of the interactions with the HCEAs, was also protected under Article 10 and that it is not for the national authorities to substitute their own views for those of the publisher/broadcaster³. It said that the way in which the story is presented is a matter of editorial judgement and increasing the interest of the story by giving it a human face was a legitimate consideration⁴.

The broadcaster said that the Article 10 rights of it and the programme makers to impart, and the audience to receive, the information in *Can't Pay? We'll Take It Away* must weigh heavily in the balancing exercise. It said that there must be "very weighty" privacy interests at stake if any restriction is to be placed on those Article 10 rights.

Channel 5 said that this should not be taken as suggesting that its Article 10 rights (and those of the audience) automatically take priority over any Article 8 right enjoyed by Mr Burge – neither right trumps the other. However, it said that, in the particular circumstances of this case, and the fact that the broadcast was capable of contributing to a debate of general interest, as opposed to other broadcasts where, say, the purpose of the broadcast is light entertainment or popular comedy and does not contribute to a topic of public interest or debate, the case law establishes that "very weighty" privacy interests must be at stake if the intense focus on the interaction of the rights will swing against the Article 10 considerations.

When properly considered, the balancing equation must be between the heavily weighted public interest in broadcasting the programme, including the margin of appreciation to include footage of Mr Burge unobscured, and "such Article 8 rights as might arise in relation to the footage".

*Campbell v MGN Ltd*⁵ provided clear authority for this. In that case, the photographing of Ms Campbell, by a camera of which she was unaware, was not, of itself, a breach of her privacy. This was because she was not engaged in any private activity when the photos were taken:

² It said that in *Re Guardian News and Media Ltd*² Lord Rodgers observed that the weight to be attached to the competing interest would depend on the facts of the particular case and that "where the publication concerns a question 'of general interest', article 10(2) **scarcely leaves any room for restrictions on freedom of expression: *Petrina v Romania*...**" (emphasis added by Channel 5).

³ *Jersild v Denmark* [1994] 19 EHRR 1.

⁴ *Khuja v Times Newspapers Ltd and others* [2017] UKSC 49.

⁵ [2004] 2 AC 457.

she was walking along a public road⁶. Channel 5 noted Lord Hope and Lady Hale both observed that the activity photographed must be private⁷.

Article 8 conferred a right to “respect” for privacy rather than an absolute right⁸ and it was neither possible, nor desirable, to seek to give individuals complete autonomous control over information that relates to them⁹. Further, and in accordance with Article 10(2), the right to freedom of expression should not be interfered with by a public authority unless such interference is lawful and necessary in a democratic society in the interests of, inter-alia, the economic well-being of the country, the prevention of disorder, and for the protection of the rights and freedoms of others. Channel 5 said that if the claimant had no reasonable expectation of privacy, Article 8 is not engaged, and the claim fails at the outset¹⁰.

Channel 5 said that the activities of HCEAs; the manner in which the law is utilised or ignored; the kinds of difficulties the HCEAs face when executing their duties; and the impact of the activities of HCEAs performing their duties on the lives of those who are affected by those duties, are all matters of public interest. In this case, the sequence in the programme which featured Mr Burge concerned the activities of HCEAs conducting official Court business, specifically executing a Writ permitting the seizure of goods, chattels and other property of Mr Kadar and GHG, who made no complaint about the filming or the broadcast, in order to satisfy a judgment debt. It said that Mr Burge’s home address was also the address from which he traded as a Chartered Accountant and which he permitted GHG to use as its registered address.

For all these reasons Channel 5 said it was appropriate and reasonable for it to include footage of people interacting with the HCEAs in the programme. Channel 5 added, however, that each case is assessed on its own facts, and matters such as the unusual vulnerability of a particular person or situation could impact on decisions to include particular footage in particular programmes. Channel 5 said that it never intentionally infringed any legitimate right to privacy.

Channel 5 said that the execution of a Writ issued by the High Court is a public matter, it is not a private matter. The interactions involving HCEAs at Mr Burge’s home were not a part of any private life protected by Article 8 of the ECHR. However, communications about those interactions are protected by Article 10 of the ECHR.

⁶ *Ibid*, Lord Nicholls at para 73: “In the present case, the pictures were taken without Ms Campbell’s consent. That in my opinion is not enough to amount to a wrongful invasion of privacy. The famous and even the not so famous who go out in public must accept that they may be photographed without their consent, just as they may be observed by others without their consent. As Glesson CJ said in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 185 ALR 1, 13, para 41: **‘Part of the price we pay for living in an organised society is that we are exposed to observation in a variety of ways by other people.’**” (Emphasis added by Channel 5).

⁷ *Ibid*, Lord Hope, para 93 and 94; Lady Hale, para 154.

⁸ *M v Secretary of State for Work and Pensions* [2006] 2 AC 91 (at para 83).

⁹ *O’Halloran v UK* [2008] 46 EHRR 21.

¹⁰ *Murray v Express Newspapers plc* [2009] Ch 481 (at para 27); *Associated Newspapers Ltd v HRH the Prince of Wales* [2008] Ch 57; *McKennitt v Ash* [2008] QB 73 (at para 11).

The Writ authorised the HCEAs to enter the complainant's house and seize any goods in the premises which could not be proven to be the property of GHG or a person other than Mr Kadar. It said that Mr Burge alleged that GHG merely used his home as its registered address, but, despite numerous requests, he provided no evidence to that effect. It added that, more importantly, when the HCEAs informed Mr Burge of the purpose of their visit, he did not immediately inform them that Mr Kadar, the director of GHG, was present, and apparently working, in his home office. It said that Mr Burge sought to deny the HCEAs access to his home office to prevent them from encountering Mr Kadar. Further, it said that Mr Burge was, then, obstructing the HCEAs in the execution of their duties.

Channel 5 said that there was no breach of any privacy rights of Mrs Burge involved in the HCEAs recording their activities by using body cameras, especially as at no time were the cameras hidden or concealed. It said that even if it were otherwise, Campbell¹¹ is clear authority for the proposition that covert filming does not, of itself, breach Article 8.

In any event, Channel 5 said that Mr Burge was told that he was being filmed by the body cameras worn by the HCEAs and that the footage might be made available to Channel 5 for potential broadcast. It said that this information was later repeated to the complainant's wife, Mrs Burge:

Mr Brown: *"Just so you're aware, madam, these cameras are for our own legal protection, we've got a Channel 5 film crew outside as well that are filming a documentary called Can't Pay? We'll Take It Away! Now, they have access to the footage on here as well but ultimately, it's not down to us or them whether the footage gets used. Ok, they can give you some contact details for Brinkworth Films, which is the production company, and they can answer some questions.*

Mrs Burge: *So, are you saying we're likely to be on the tv?*

Mr Brown: *That's not down to me to decide, it's the production company that...*

Mrs Burge: *Well can I have their contact details?"*

Channel 5 said that while the body cameras were owned by the production company, they were not imposed on the HCEAs who would have worn them when attending the enforcement whether the production team were present or not. Therefore, whether or not the programme was in production, the interaction between Ms Burge and the HCEAs would have been filmed by the HCEAs.

All footage filmed, whether by the camera crew or body cameras, was thoroughly reviewed by the programme makers to determine whether or not there was sufficient public interest in the filmed material, given the editorial context of *Can't Pay? We'll Take It Away!*, to consider including the footage in a broadcast. After that initial review, Channel 5 said that the footage was reviewed at least twice more by senior members of the production team to consider the content, the context and the relevant public interest. The footage was then cut for the purposes of broadcast and reviewed by the programme makers' independent lawyer to ensure the cut complied with Ofcom's Broadcasting Code and the "general law". The cut was then reviewed by a senior member of the Channel 5 Commissioning team as well as a

¹¹ [2004] 2 AC 457.

senior member of the Channel 5 Content Legal Advice team. It was only after all those separate considerations had occurred that the decision to broadcast was made.

This was the identical process that would be undertaken if a production company were obtaining access to footage filmed by the HCEAs before the production company became aware of the existence of the footage. Channel 5 said that the footage of Mr Burge had been scrutinised and considered in exactly the same way as it would have been had the production company not been present and the HCEAs were wearing their own body cameras.

In Channel 5's view, although Mr Burge was unhappy about the presence of the cameras, and never gave consent to being filmed, this was insufficient to render the filming objectionable. Mr Burge was told soon after the HCEAs arrived at her property that the programme makers were filming for broadcast on Channel 5. While Mr Burge was in his home, he also conducts business from his home. If Mr Burge had provided documentation which established that his home/business address was merely the registered office of GHG, as the HCEAs repeatedly asked him to do, the HCEAs would have left the premises and filming would have ceased. This was a point made clear to Mr Burge, but he made no effort to provide the relevant documentation.

Channel 5 said that Mr Burge invited the HCEAs inside his house and then spent time trying to get them to leave to prevent them from encountering Mr Kadar, his client, and the person the HCEAs wanted to speak with about the debt owed by GHG. Channel 5 submitted that it is clearly a matter of public interest when justice is sought to be obstructed and Mr Burge's attempts to keep Mr Kadar away from the HCEAs justified the filming.

When the HCEAs eventually gained access to Mr Burge's office and discovered Mr Kadar, they were able to affect the proper execution of the Writ. This part of the filming occurred in Mr Burge's office which, given the presence of Mr Kadar, was not a private place but one to which any client or prospective client could have access.

While Mr Burge may have preferred that he was not included in the broadcast programme, embarrassment and distress about that was insufficient to create enforceable privacy rights under Article 8; the law of privacy was not designed to protect the unduly sensitive¹². Nor does it prevent a person's image from being included in television broadcasts. Accordingly, there was no violation of any Article right where, as in this case, the broadcast of an image of a person is part of the actual circumstances which are legitimately the subject of the broadcast. Channel 5 said that if it were otherwise the law of privacy would become an unacceptable chilling effect on free speech. Channel 5 also referred to an earlier Ofcom decision¹³. However keenly felt, Mr Burge's reaction was insufficient to establish a breach of his Article 8 rights.

Channel 5 said that execution of a Writ, wherever it occurs, is a public act which, in accordance with the law, the HCEAs are obliged to carry out. For the reasons already given, Channel 5 said there is a clear public interest in seeing the activities of the HCEAs in

¹² Lord Hope in *Campbell v MGN Ltd*.

¹³ Complaint by Mrs B and Mr C (Issue 284 of Ofcom's Broadcast and On Demand Bulletin, 27 July 2015). This decision was published on our website:

https://www.ofcom.org.uk/_data/assets/pdf_file/0018/50436/issue_284.pdf

executing their official duties. The public interest extends to including shots of Mr Burge in the broadcast where their inclusion demonstrates the difficulties the HCEAs face on a daily basis and, in particular, how the particular individual's attitude and circumstances can affect the way in which the HCEAs seek the most apt resolution of their responsibilities.

Again, Channel 5 said that Mr Burge was actively engaged in trying to obstruct the activities of the HCEAs by his deceptive behaviour about the presence of his client, Mr Kadar, on the premises. Mr Burge knew from the first moments of his interaction with the HCEAs that they would want to speak with Mr Kadar about the Writ they sought to execute, and that he did all he could to prevent them from discovering Mr Kadar was present.

The part of the programme which featured the complainant made several issues clear to the public, all of which Channel 5 felt it was in the public interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- when a Writ has been issued, goods and chattels which belong to anyone at the place where the debtor resides can be taken into possession by the HCEAs unless proof of ownership of those goods or chattels can be immediately produced or controlled goods orders can be placed over property as a surety for repayment agreements;
- significant costs can be incurred if the various stages of the execution of the Writ are breached;
- failure to pay judgment debts, or failure to respond to calls from those collecting judgment debts, or failure to adhere to repayment agreements made, can lead to the property of the people other than the judgment debtor being seized, disrupting home life;
- being honest and co-operative with the HCEAs can lead to officially sanctioned arrangements being made which see the Debtor and Creditor at least partially satisfied with the resolution; and
- judgment debts cannot and should not be ignored.

The broadcaster said that the broadcast of the programme was entirely in the public interest and by including the footage that was shown, the programme did not exceed what was necessary and appropriate to make viewers understand the situation and the ramifications of what the HCEAs were doing. Channel 5 said that the law affords a margin of appreciation to the broadcast: once the public interest is engaged what elements should be included in a broadcast, including the identification of individuals is a matter for the programme makers and the broadcaster.

It submitted that in *O (A Child) v Rhodes (English PEN ors intervening)*¹⁴ the Supreme Court set aside an injunction granted by the Court of Appeal restraining the publication in an autobiographical book of "graphic accounts" of certain events likely to cause distress to the author's infant son on the basis that this was contrary to principle¹⁵.

¹⁴ [2016] AC 219.

¹⁵ Ibid, para 78 "...The court has taken editorial control over the manner in which the father's story is expressed. A right to convey information to the public carries with it a right to choose the language in which it is expressed in order to convey the information most effectively: see *Campbell v MGN Ltd* [2004] 2 AC 457, and *In re Guardian News and Media Ltd* [2010] 2 AC 697" (emphasis added by Channel 5). See also para 99 of *Campbell v MGN*.

In this case, the manner in which the story of the enforcement of the Writ was told was within the editorial control of the programme makers and Channel 5 and the Article 10 right to convey that story to viewers, who had their own Article 10 rights to see the story, which included the right to choose which images to use and whether or not to identify the individuals involved.

Channel 5 said that if Mr Burge had immediately informed the HCEAs that Mr Kadar was present on the premises, it is more likely than not that there would have been no editorial need to identify Mr Burge in the programme. It was Mr Burge's attempts to obstruct the HCEAs which meant that it was necessary, in an editorial sense, to identify him to show his part in delaying the resolution of the debt owed by GHG, a debt which was paid by Mr Kadar who, at all relevant times, was in Mr Burge's home office. It said that Mr Burge's own actions resulted in his identification in the programme.

In conclusion, Channel 5 said that it did not believe that Mr Burge's privacy was infringed by either the making of the programme or its broadcast.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Mr Burge's complaint, made on his behalf by M Law, should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View. The parties' representations are summarised below, insofar as they are relevant to the complaint entertained and considered by Ofcom.

Complainant's representations

M Law said that Mr Burge accepted that there may be a public interest story of following the HCEAs going about their work, and that in obtaining the footage for inclusion in the programme, in order for Channel 5 to tell that story, it was necessary that Mr Burge's right to privacy be infringed. It added that Mr Burge also recognised that, with such footage obtained, the logistical and editorial difficulties in not featuring Mr Burge or his home at all would be difficult to overcome in order to present the particular story as filmed in any meaningful way. It said, however, that Mr Burge's concern related to the decision taken by Channel 5 not to take steps to obscure his identity constituted an unwarranted infringement of his privacy.

M Law said that Ofcom had not addressed whether the fact that Mr Burge was identifiable, and named, constituted an unwarranted infringement of his privacy. It said that Ofcom does not refer to the fact Channel 5 had deliberately chosen to disguise the identity of Mr Burge's wife, who runs the accountancy firm with Mr Burge. It said that Ofcom should weigh up Mr Burge's right to privacy against the public interest, not in including Mr Burge in the programme, but rather, in not obscuring his face and in choosing specifically to name him and his business. It said that from the Preliminary View it did not appear that Ofcom had undertaken this exercise, or to the extent that it had, the decision reached was wrong. It submitted that Ofcom should uphold Mr Burge's complaint of unwarranted infringement of privacy on the basis that he was named, and no steps were taken to conceal his identity.

M Law said that the public interest lies in telling the story of the HCEAs' attempt to enforce debts. It added that it understood that there was a public interest in telling the story of the HCEAs' attempts to recover money from Mr Kadar, and that to a limited extent this story should include Mr Burge and his family home (that being the registered address of the

company owing the debt). It said that the question which remained for Ofcom to decide was whether the public interest trumped Mr Burge's right to privacy and his wish not to be filmed in his family home and be included in the programme as broadcast. It said that on the one side of the scale sat Mr Burge's right to privacy and to family life, and on the other side of the scale sat not the story of the HCEAs' attempt to enforce judgements on a day to day basis, but rather the public interest in the public knowing the identity of Mr Burge. It said that the balancing exercise can only lead to one conclusion: the public interest in knowing the identity of the accountant responsible for GHG's accounts must be outweighed by his right to privacy and family life. To this end, it is crucial to consider that Mr Burge's involvement in this matter was only brought about as a result of him carrying out his job as a professional accountant and could in no way be responsible for the arrival of the HCEAs at his door. It submitted that it was simply a result of poor due diligence which led the HCEAs to seek to enforce at that address in the first place. It added that had this been a live broadcast, Mr Burge's unedited inclusion would have been unavoidable. However, in any edited broadcast, Mr Burge's right to privacy and family life should have been given due weight.

M Law said Channel 5 argued that Article 10 protects the right of the audience "to receive information and ideas without interference", and that this extended to the right to editorial control. It said that, applied to the fact of this case, it did not believe that the principles of Article 10 should extend to the identification of Mr Burge in the programme for the following reasons.

The right to receive information and ideas without interference is not absolute but must factor in the right to privacy. Assuming that Mr Burge's inclusion was necessary, the way for the editors to properly respect Mr Burge's right to privacy and to family life, on the facts of the case, would be for the programme makers to anonymise his identity to the extent that was reasonable and practical.

The information and ideas, which attract the public interest, and which it is suggested should be received "without interference", pertain to Mr Kadar. It said that even on Channel 5's own definition of public interest debate, Mr Burge was incidental to the story. The story would have been told and broadcast without Mr Burge's being there at all, as such, the identification of Mr Burge was an embellishment and could not be said to be necessary.

Against this background, taking into account an individual's right to privacy in the editorial process cannot constitute "interference" for the purpose of the correct interpretation of the right to freedom of expression. "Interference" in such context means attempts to curtail freedom of expression. It said that Mr Burge does not suggest in these representations that the expression of the story of the HCEAs be interfered with, merely that he be anonymised.

M Law said that Channel 5 had justified the 'editorial need' to reveal Mr Burge's name and fully feature him in the programme on his perceived role in obstructing justice – i.e. upon his failure to inform the HCEAs of Mr Kadar's presence. It said it was clear that this, rather than any Article 10 right of the audience to avoid interference, was what Channel 5 had based its decision on. It added that this was clear from the fact that Mr Burge's wife also featured in the programme, yet her face was blurred, and she was not identifiable, except by association to her husband. Indeed, there was no reason why she, and many more individuals caught up in similar tales of 'documentary' television who do not consent to appearing, should have their faces blurred and not her husband should not, save for her husband's perceived obstruction of the HCEAs.

M Law said that Mr Burge did not inform the HCEAs that the debtor was present on the premises. They uncovered this themselves. It said that the reason Mr Burge did not do this was because he is an accountant with professional duties of confidentiality to his clients. Had Mr Burge informed the HCEAs of the whereabouts of Mr Kadar, Mr Kadar would have had grounds for discontent, and GHG possibly grounds for a formal complaint to the regulator. Although Ofcom had acknowledged this duty of confidentiality in its Preliminary View, it had not been taken into account by Ofcom when it balanced the respective Article 8 and Article 10 rights. Rather, Ofcom appeared to have agreed with Channel 5 that Mr Burge's own actions resulted in his being identified in the programme.

M Law also said that HCEAs are not police officers, with all their requisite powers which might impose an obligation on Mr Burge to inform them of the presence of Mr Kadar in his home which would override his professional obligations. It said that while it is true that Mr Burge did not cooperate with the HCEAs, he did not obstruct justice. It said that obstruction of justice would have extended only to a refusal to allow the HCEAs to enter the premises in order to exercise the warrant. However, Mr Burge had permitted the HCEAs entry to his home.

Therefore, rather than obstructing justice Mr Burge was simply doing what would be expected of a professional in his position. M Law said that the programme did not make clear that Mr Burge had duties of confidentiality to his client, and as such, he was presented as being in some way complicit when this was not the case. In fact, had the HCEAs left without discovering Mr Kadar, Mr Burge would likely have advised his client of the need to satisfy the debt, or to seek formally to overturn the Court Order. The fact that Mr Burge should be presented in this manner, without in any way explaining the conflict in which he found himself, or his duty to Mr Kadar, goes to the degree of infringement of privacy and the distress caused.

M Law also commented on the case law which Channel 5 had referred to which it said was not analogous to Mr Burge's situation. It said by way of example:

- *Re Guardian News and Media Ltd* supported the newspaper's right to reveal the names of alleged terrorists who otherwise were seeking anonymity. It said that it was hard to envisage an example of the public interest more pertinent than that of the threat of a terrorist attack: the suggestion that the principles of such a case should extend to warrant the infringement of the privacy of an accountant in his family home who did not consent to inclusion within the programme and who was acting in accordance with his professional obligations of confidentiality to his client, was clearly flawed.
- *Jersild v Denmark* was also not comparable as it concerned an interview with an extreme right-wing group in Denmark and so the freedom of expression outweighed the public interest because the public interest in the subject matter was undeniable.
- *Campbell v MGN Ltd* also did not assist. Naomi Campbell is a public figure of international renown, who was already in the public eye and whose expectation of privacy does not compare to Mr Burge, particularly under circumstances of clear public interest.

It said that with the exception of one case (*O (A Child) v Rhodes*) the individual bringing the complaint was the same person whose story carried the public interest.

M Law concluded that it did not believe the public interest in identifying Mr Burge in the programme was sufficient to outweigh his right to privacy and family life, which Ofcom had

recognised as being engaged. It added that the enhanced value in identifying Mr Burge was negligible, as evidenced by the fact Mr Burge's wife was not identified and by the fact that in many other programmes, third parties are not identified, and by the fact that Channel 5 acknowledged that had Mr Burge revealed Mr Kadar's location, he would not have been identified. M Law said that the reason Mr Burge was identified was because Channel 5 considered he was in some way complicit. To take this into account ignored Mr Burge's professional obligations which prevented him from revealing Mr Kadar's location, under circumstances where Mr Kadar was unwilling to identify himself. It also said that the case law cited by Channel 5 does not appear relevant to Mr Burge's case and is unhelpful to the determination of the issue given that each case must be decided on its own facts.

Broadcaster's representations

Channel 5 said that although M Law referred to Mr Burge's right to privacy and family life, their representations emphasised that throughout the encounter Mr Burge was acting in his professional capacity as an accountant for GHG. Channel 5 said that Article 8 provides a right to respect for a person's private and family life, their home and their correspondence. It does not protect individuals in their business capacity. Channel 5 cited Mr Justice Eady in *Browne v Associated Newspapers Ltd* [2007] EWHC 202 (QB) in support of this¹⁶. It said that as M Law made clear that Mr Burge was acting throughout in his professional rather than personal capacity, it was difficult to see how Article 8 could or would be said to be engaged in the circumstances and it did not believe that he could be said to have a legitimate expectation of privacy.

Channel 5 said that at no point had it suggested that the decision to identify Mr Burge "was based on his perceived role in obstructing justice – rather than on any Article 10 right of the audience...". It said that it had submitted that, once it was accepted the programme made a contribution to a debate of general importance, in other words, was a matter of public interest, Article 10 scarcely leaves any room for restrictions on freedom of expression and the editorial latitude or discretion allowed to the programme maker and allowed Channel 5 to decide on the focus of the story and what relevant information to include to illustrate it. It said that those were matters for the broadcaster rather than Ofcom or M Law. It said that Ofcom can only intervene if, as a matter of proportionality, what is included is unjustifiable, but it has to start that investigation recognising, and having real regard to, the editorial discretion.

Channel 5 said that Mr Burge, by his actions in trying to keep the HCEAs out of his office, made the HCEAs suspicious that he had something to hide and that there was more to the story than met the eye, which turned out to be the presence of his client. Mr Burge effectively made himself part of the story which he would not otherwise have been and that is why he remained unblurred. It was legitimate for the programme to include footage of Mr Burge unblurred. It added that, as was clear from the case law on this issue, Article 10 protects not only the substance, but the form in which the information is conveyed, and this

¹⁶ Eady J referred in his judgment to the report of the Calcutt Committee in 1990 which excluded the following from being regarded as being personal information: "...concerning an individual in relation to his conduct in the way of any trade, business, calling or profession, or in relation to his carrying out any functions or duties attaching to, or to his suitability for, any office or employment (including elective office...".

includes broadcasts about identifiable individuals. Channel 5 said that the case law was summarised in *Re Guardian News and Media Ltd and others*¹⁷.

Channel 5 concluded by saying that Mr Burge's identity was not an "embellishment" as suggested by M Law but was relevant and his inclusion in the programme was within the editorial discretion of the programme makers and Channel 5 when telling this particular story which it is accepted was a matter of public interest.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

We carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties' written submissions and supporting material. We also examined the unedited footage of the HCEAs' visit to Mr Burge's home as well as the unedited footage filmed by the programme makers. We also took careful account of the representations made by both parties in response to being given the opportunity to comment on Ofcom's Preliminary View on the complaint. After careful consideration of the representations, we considered that the points raised did not materially affect the outcome of Ofcom's Preliminary View to not uphold the complaint.

In Ofcom's view, the individual's right to privacy under Article 8 of the ECHR has to be balanced against the competing rights of the broadcaster's right to freedom of expression and the audience's right to receive information under Article 10. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In addition to this rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

¹⁷ [2010] UKSC 1, paras 63 to 65.

- a) Ofcom considered Mr Burge's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

Ofcom had regard to Practices 8.5, 8.7 and 8.9 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.7 states that if an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

We assessed the extent to which Mr Burge had a legitimate expectation of privacy in the particular circumstances in which the relevant material was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

The unedited footage showed that most of the filming of Mr Burge was carried out by the body cameras worn by the HCEAs. In particular, Mr Burge was filmed inside his home as he discussed his personal circumstances with the HCEAs including that he ran a firm of accountants from his home, that the debtor business was one of his clients, that the registered office of the debtor's company (and other companies) was listed as his address and that he had a duty of confidentiality towards his clients.

Mr Burge was also filmed as he interacted with his wife about the matter and discussed whether he should contact the police. Mr Burge and his wife also revealed that they were the only people who lived at the house, that they owned the house and that one of the vehicles outside the property belonged to them.

There was also another person present in Mr Burge's office when the HCEAs visited and it was later established that this person was the director of the debtor business. Following this, Mr Burge explained to the HCEAs that it was his "*busiest day of the year*", i.e. the deadline for company tax returns, and that he needed to "*crack on with his work*". Mr Burge was filmed as he asked his client and the HCEAs, who remained in the living room of his house, to leave the property on a number of occasions. On each occasion, they refused to leave until the matter was resolved. Further, the HCEAs spoke to the director of the debtor company in the presence of Mr Burge and his wife about the prospect of items being removed in order to settle the debt, including a computer which Mr Burge said belonged to him. Footage was also captured of Mr Burge as he became frustrated and agitated about the fact he was being filmed by the HCEAs' body cameras and that the HCEAs were present in his home. The living room, kitchen and Mr Burge's home office were all filmed, together with personal belongings.

We considered that from the outset of filming Mr Burge was aware of, and had asked about, the presence of the broadcast cameras used by the camera crew to film the HCEAs and that he had made it clear that he did not want to be filmed. In particular, Mr Burge said: "*I'm not speaking on camera*". One of the HCEAs then asked to come inside to discuss the matter further and Mr Burge pointed to the HCEAs' body cameras. The HCEAs initially explained that the body cameras were "*for our safety*" and that the camera crew outside were following them and filming for the Channel 5 programme

Can't Pay? We'll Take It Away! The HCEAs also explained the reason they were at the property. Then, following a prompt from one of the programme makers, one of the HCEAs said to Mr Burge:

"...So, we've got cameras on. Channel 5, the production company, Brinkworth Films, they also have access to this. They decide whether this footage gets used or not. Okay? Not me, not him and not the film crew".

At this point, Mr Burge did not ask any further questions about the programme makers' access to the footage. We recognised that for approximately one minute, Mr Burge may not have been aware of the full significance of the body cameras and that the programme makers had access to the footage. However, Mr Burge was aware from the outset that he was being filmed by both the broadcast cameras and the body cameras. In addition, during the period where he may not have been fully aware of the significance of the body cameras, he did not disclose anything private or sensitive about himself or disclose anything which he would not have otherwise revealed about his identity in order to explain his relationship to his clients. In light of this, while there may have been a moment where Mr Burge did not fully comprehend the significance of the body cameras, we did not consider that this would have had a material impact in the context of this case.

Ofcom recognises that a person may have a legitimate expectation of privacy in relation to activities of a private nature undertaken in their workplace, particularly if that workplace is also their family home.

In this case, we took into account that Mr Burge was approached by the HCEAs at his house, where his accountancy firm was also based, to enforce a debt which was in one of his client's names and related to a company whose registered office was listed as his address. He was questioned by the HCEAs about who he was and his relationship with the debtor company. Mr Burge explained that he had a duty of confidentiality to his clients and because of this that he felt unable to fully cooperate and engage with the HCEAs and did not want to speak in front of the cameras. Nevertheless, he was obliged to respond to the HCEAs questions relating to his own circumstances while being filmed by the body cameras.

We took into account that the nature of Mr Burge's business meant that clients not only visited his address for the purpose of seeking or obtaining professional advice and accountancy services from Mr Burge, but that some of those clients, such as the debtor business in this case, also used it as their registered office. Mr Burge was filmed as he told the HCEAs that he was married and lived with his wife at the property and as he disclosed information regarding the ownership of the house. We also took into account that the living room and kitchen were filmed as well as his office and various personal belongings.

Taking these factors into account, we considered that the filming of Mr Burge inside the property constituted an intrusion into his private and family life and was of a sufficient nature to give rise to a legitimate expectation of privacy.

There was no dispute between the parties that Mr Burge's consent was not obtained in connection with the filming of him. Therefore, it was not necessary for Ofcom to consider this point further. We therefore went on to consider whether the infringement

of the legitimate expectation of privacy of Mr Burge was warranted on the particular facts of this case.

The Code states that “warranted” has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

Ofcom carefully balanced Mr Burge's rights to privacy with regard to the obtaining of the footage with the broadcaster's right to freedom of expression.

We took into account Channel 5's argument that there was a public interest in the filming of the footage. It said that the filming showed the activities of the HCEAs while executing their official duties and that these included attempting to establish whether there were any goods at the premises that could not be proven to be the property of the debtor or his company and their interaction with Mr Burge as a consequence. Channel 5 said that the public interest also included obtaining footage which showed when justice is sought to be obstructed and that, in this case, Mr Burge was obstructing the HCEAs in the execution of their duties and sought to prevent them from encountering the debtor. We also took account of Channel 5's submission that the enforcement of the debt was a public matter and that there is a clear public interest in seeing the activities of the HCEAs, the kinds of difficulties they face and the impact of their activities on the lives of those who are affected in the course of executing their official duties. We also considered Channel 5's submission that any right to privacy claimed by Mr Burge was outweighed by Channel 5's Article 10 right to communicate, and the public's right to receive, information concerning matters of public interest, such as the activities of the HCEAs carrying out their official duties, and that there must be “very weighty” privacy interests at stake if any restriction is to be placed on those Article 10 rights.

We acknowledged that the public interest was engaged in broadcasting programmes that highlight the serious issue of debt and that the filming in this case showed the activities of the HCEAs while executing their official duties and the problems they encounter when seeking to enforce court orders, as well as the difficulties experienced by people in the position of Mr Burge who are not themselves the debtor. Ofcom also accepted that Channel 5 had editorial discretion in the tone and way it told the story and that its editorial discretion extended to the decision to include the private information, but only if the inclusion of the private information at issue was justified in the public interest. Therefore, having satisfied itself that Mr Burge had a legitimate expectation of privacy, Ofcom intensely focused on the weight of the comparative rights under Articles 8 and 10 that are in issue in order to decide where the balance lies in these particular circumstances.

On the facts of this case, we did not consider the level of the intrusion was significant. Although footage of Mr Burge had been obtained within the family home it did not reveal anything private or sensitive about Mr Burge, who disclosed only very limited information about himself and his living and working arrangements. Further, Mr Burge was not the debtor and the discussions with the HCEAs did not concern his own situation

or that of his wife and at no point did he or Mrs Burge discuss their own financial affairs. Instead, once it had been established that the debtor was at the property, the filming focused on the financial negotiations which took place in the living room between the debtor and the HCEAs. Mr Burge was not present and returned later only to ask the HCEAs and his client to leave the property. It was also relevant that Mr Burge chose to run his accountancy practice from home, that he received his clients at his home and that the debtor and other clients used that address for the registered office address of their companies. We also took into account that the filming did not include any particular focus on personal belongings within Mr Burge's home (which comprised of general household items and furniture) or on any of the files and paperwork in Mr Burge's office.

On the facts of this case, we considered that the level of interference with the legitimate expectation of privacy of Mr Burge was not sufficient as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme maker.

Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances. The footage was obtained while the programme makers accompanied the HCEAs in carrying out their duties. While we took into account that Mr Burge objected to the filming of him, we also considered that it was obtained openly and that Mr Burge was aware in all circumstances that he was being filmed, both by the crew and by the body cameras worn by the HCEAs, and that the footage could be used for potential broadcast. We also considered that while the programme makers continued to film inside Mr Burge's house even after it had been established that he was not the debtor, the filming did not focus on Mr Burge, his wife, or the interior of his property. Instead, it focused on the debtor, and the financial negotiations with him. We considered too that there was no attempt to try to obtain further footage of Mr Burge or to gather further information about him once his connection to the matter had been established. Taking into account the public interest justification in obtaining the footage, i.e. learning about the HCEAs' work and the enforcement process, we considered that the means of obtaining the material had been proportionate.

Having taken all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Mr Burge outweighed his legitimate expectation of privacy in relation to the filming of him and the interior of his home.

Therefore, Ofcom considered that there was no unwarranted infringement of Mr Burge's privacy in connection with the obtaining of the footage of him for inclusion in the programme.

- b) Ofcom next considered M Law's complaint that Mr Burge's privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without his consent. M Law said that Channel 5 should not have featured Mr Burge or, alternatively, it should have taken steps to obscure his identity.

We had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

We assessed whether Mr Burge had a legitimate expectation of privacy regarding the broadcast of footage of him included in the programme. We applied the same objective test as set out in head a) above.

As set out in the "Programme summary" above, we took account of the material shown in the programme. In particular, Mr Burge was shown as he interacted with the HCEAs as he discussed the evidence the HCEAs needed as proof that his address was solely the registered address of the debtor company. It also showed the director of the debtor company, who happened to be in Mr Burge's office at the time of the visit, as he eventually revealed his identity to the HCEAs and negotiated payment for the debt inside Mr Burge's home. Mr Burge's face was not obscured in the programme and he was named.

For the reasons set out in head a) above, Ofcom considered that the footage revealed information about Mr Burge's living and working arrangements including that he was married, that he lived with his wife and, that he ran his accountancy practice from his home. We took into account Channel 5's representations in response to Ofcom's Preliminary View that Mr Burge was acting in his professional capacity and that Article 8 does not protect individuals in their business capacity. However, we considered that the programme did not simply show Mr Burge acting in his business capacity and revealed information relating to his private and family life. We took into account the submissions made on behalf of Mr Burge that Channel 5 should have taken steps to obscure Mr Burge's identity. Mr Burge's main contention was that he was identifiable in the programme, rather than that any of the information that was revealed was particularly private or sensitive. Given that Mr Burge was identifiable and taking account of the fact that the programme included footage of him as he interacted in his home, we considered that the inclusion of the material in the programme as broadcast constituted an interference with Mr Burge's privacy rights.

It was not disputed by the broadcaster that the footage was included without Mr Burge's consent. We therefore went on to consider whether the broadcast of this material was warranted under the Code.

We again carefully balanced Mr Burge's right to privacy regarding the inclusion of the relevant footage in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. We also took into account that the footage identified Mr Burge and depicted him in his home as he interacted with the HCEAs. Footage of his home and personal belongings was also shown.

As above in head a) we took into account Channel 5's argument and its representations that there was a public interest in broadcasting the footage in that it showed the activities of the HCEAs and the difficulties they face while executing their official duties. We also took into account Channel 5's view that the programme did not exceed what was necessary and appropriate to enable viewers to understand the situation and the ramifications of what the HCEAs were doing.

As previously, we acknowledged that the public interest was engaged in broadcasting programmes that highlight the issues of debt and that the programme showed the activities of the HCEAs while executing their official duties and the problems they encounter when seeking to enforce court orders. We also recognised that the inclusion

of named or identifiable individuals may enhance that public interest by making the broadcast footage more accessible or engaging to the watching audience¹⁸. In this particular case, we considered that there was a public interest in the programme including the story about Mr Burge, whose client had used his address as his registered office and happened to be there when the HCEAs visited and as they tried to establish Mr Burge's connection to the debtor. This was because it illustrated the processes, difficulties the HCEAs face and the impact the enforcement process can have on people like Mr Burge who are not themselves the debtor.

In weighing up the competing rights of the parties, Ofcom took into account the circumstances in which the footage was obtained and that, other than the interior of Mr Burge's home, it did not appear that the programme had included any information which could be considered private or sensitive. In particular, while the programme showed and identified Mr Burge and included footage of the interior of Mr Burge's home, we did not consider it represented a significant intrusion into his private life. We noted that the sequences in which he featured were predominantly at the start of the enforcement process when the HCEAs first arrived at his house and were attempting to verify Mr Kadar's connection to the address and to satisfy themselves that Mr Burge was not the debtor they were looking for. Mr Burge also appeared in some of the later footage when he could be seen in the background and could be heard asking the HCEAs and Mr Kadar to leave his house and to continue the enforcement process outside. Other than revealing Mr Burge's identity, we did not consider that any of the footage in which Mr Burge appeared revealed anything particularly private or sensitive about him. We also took into account that although Mr Burge's belongings were shown, they comprised general household items and furniture and similarly did not reveal anything particularly private or sensitive about Mr Burge. Likewise, although files and paperwork could be seen in Mr Burge's office, no personal information or anything of a private and confidential nature was revealed. As previously, we also considered it relevant that Mr Burge chose to run his accountancy practice from home, that he received his clients at his home and that they had the facility to use that address as the registered office address for their companies.

We carefully considered the submissions made by M Law in its representations on Ofcom's Preliminary View concerning the decision taken by Channel 5 not to take steps to obscure Mr Burge's identity and noted, by contrast, that Channel 5 had taken steps to obscure the identity of his wife. We noted M Law's submission that Mr Burge had a professional duty of confidentiality to his client and that his client would have had grounds for discontent, and possibly also grounds for a formal complaint to the regulator, if Mr Burge had informed the HCEAs of his whereabouts. We took into account M Law's argument that the balancing exercise between the parties' respective rights under Article 8 and Article 10 required Ofcom to balance Mr Burge's right to privacy and to family life against the public interest in knowing the identify of Mr Burge, and not against the story of the HCEAs' attempt to enforce judgments on a day to day basis. We also acknowledged Channel 5's submission that Mr Burge had effectively made himself part of the story as a result of the way in which he responded to the HCEAs' questions when they first arrived at the property and that this had aroused the HCEAs' suspicions and led to their eventual discovery of Mr Kadar on the premises.

¹⁸ *In re S (identification: Restrictions on Publication)* [2005] 1 AC 593 (at para 604); *In re Guardian News & Media Ltd* [2010] 2 AC 697 (at para 63).

Focussing intensely on the parties' respective rights, Ofcom carefully balanced the private information revealed about Mr Burge, as described above (i.e. his identity, his house and the interior shots of his living room, kitchen and office, and their contents), against the public interest in broadcasting that information. We considered that Mr Burge had a legitimate expectation of privacy in the information that was revealed about him in the programme but, given that the programme did not reveal anything particularly private or sensitive about Mr Burge, that the broadcast of that information was not a significant intrusion into his privacy. As we have acknowledged previously, we considered that the public interest was engaged in highlighting the issues of debt and following the HCEAs going about their work. We noted that this was also acknowledged by M Law in its representations on Ofcom's Preliminary View. Nevertheless, it was important in this case for Ofcom to consider whether that public interest extended to identifying Mr Burge in the programme.

In assessing this question, we acknowledged that, as a professional accountant, Mr Burge had obligations towards his client. We also acknowledged that the HCEAs had a duty to execute a writ that named a debtor at Mr Burge's address and that in order to carry out their duties they needed to establish Mr Burge's identity and that he was who he said he was. They also needed to understand, how he was connected to the person named on the writ and to be certain that his property was not a trading address for the debtor. In Ofcom's view, the way in which Mr Burge responded was relevant to considering the public interest in identifying him as these questions and the underlying evidence were intrinsic to the HCEAs' ability to enforce the writ. It was significant in this context that both the programme and the unedited footage showed that Mr Burge was happy to confirm that the debtor was his client but that he was unwilling to cooperate further, by providing the evidence the HCEAs required, unless they left the property.

Taking all these factors into account, including the limited extent of the intrusion into Mr Burge's legitimate expectation of privacy, we considered that there was a public interest in the broadcaster being able to show Mr Burge. As a professional accountant whose client had used his office as its registered office, his conversations with the HCEAs and the full extent of his interactions with them were intrinsic to the public interest in showing the activities of the HCEAs as they sought to locate and enforce a court order against his client.

Having taken all the factors above into account, Ofcom considered that, on balance, the interference with the rights to privacy of the complainant in this case was not of a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme makers.

For all the reasons set out above, Ofcom considered that Mr Burge's privacy was not unwarrantably infringed in the programme as broadcast.

Ofcom has not upheld Mr Burge's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 4 and 17 March 2019 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

Investigations conducted under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

Programme	Service	Transmission date
World at One	BBC Radio 4	15/02/2018

For more information about how Ofcom conducts investigations about content standards on BBC broadcasting services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 4 and 17 March 2019 because they did not raise issues warranting investigation.

Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

Programme	Service	Transmission Date	Categories	Number of complaints
Facejacker	4Music	23/02/2019	Race discrimination/offence	1
Rude Tube: 200% Cats	4Music	01/03/2019	Animal welfare	1
ABP News Live	ABP News	04/03/2019	Crime and disorder	1
Wives with Knives (trailer)	CBS Reality	18/02/2019	Violence	1
Channel 4 News	Channel 4	20/02/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	25/02/2019	Violence	8
Channel 4 News	Channel 4	01/03/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	05/03/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	08/03/2019	Due impartiality/bias	3
Child Genius	Channel 4	25/02/2019	Race discrimination/offence	1
Child Genius	Channel 4	27/02/2019	Generally accepted standards	1
Countdown	Channel 4	06/03/2019	Transgender discrimination/offence	1
Couples Come Dine with Me	Channel 4	14/02/2019	Generally accepted standards	1
Crufts 2019	Channel 4	09/03/2019	Scheduling	1
Derry Girls	Channel 4	12/03/2019	Religious/Beliefs discrimination/offence	1
Dispatches: The Brexit Millionaires	Channel 4	11/03/2019	Materially misleading	1
Elle (trailer)	Channel 4	11/03/2019	Generally accepted standards	1
Gogglebox	Channel 4	08/03/2019	Offensive language	6
Gogglebox	Channel 4	08/03/2019	Religious/Beliefs discrimination/offence	1
Hollyoaks	Channel 4	25/02/2019	Generally accepted standards	1
Hunted	Channel 4	14/02/2019	Materially misleading	3
Leaving Neverland: Michael Jackson and Me	Channel 4	06/03/2019	Generally accepted standards	4

Programme	Service	Transmission Date	Categories	Number of complaints
Leaving Neverland: Michael Jackson and Me	Channel 4	06/03/2019	Materially misleading	180
Leaving Neverland: Michael Jackson and Me	Channel 4	07/03/2019	Generally accepted standards	1
Leaving Neverland: Michael Jackson and Me	Channel 4	07/03/2019	Materially misleading	50
Skint Britain: Friends Without Benefits	Channel 4	20/02/2019	Materially misleading	1
Skint Britain: Friends Without Benefits	Channel 4	04/03/2019	Materially misleading	1
Sunday Brunch	Channel 4	24/02/2019	Offensive language	2
The Big Narstie Show	Channel 4	04/03/2019	Generally accepted standards	1
The Great Celebrity Bake Off for Stand Up to Cancer	Channel 4	05/03/2019	Generally accepted standards	1
The Last Leg	Channel 4	08/03/2019	Generally accepted standards	2
The Last Leg	Channel 4	08/03/2019	Materially misleading	2
Edwardian Britain in Colour	Channel 5	02/03/2019	Generally accepted standards	1
Flight MH370 5 Years On: The Mystery Continues	Channel 5	10/03/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	25/02/2019	Due impartiality/bias	1
Meghan and the Markles: A Family at War	Channel 5	01/03/2019	Generally accepted standards	1
Nightmare Tenants, Slum Landlords	Channel 5	01/03/2019	Offensive language	1
Plane Wreck: Draining the Ocean	Channel 5	10/03/2019	Generally accepted standards	1
Restless Legs Syndrome: The New Cure?	Channel 5	06/03/2019	Materially misleading	15
Sunny Bunnies	Channel 5	02/02/2019	Dangerous behaviour	1
The Jeremy Vine Show	Channel 5	25/02/2019	Generally accepted standards	1
Mr. Bean: The Animated Series	CITV	11/03/2019	Sexual material	1
Project Z	CITV	27/02/2019	Scheduling	1
Project Z	CITV	03/03/2019	Scheduling	1
Project Z (trailer)	CITV	09/03/2019	Scheduling	1

Programme	Service	Transmission Date	Categories	Number of complaints
Teen Titans Go	CITV	09/03/2019	Violence	1
Superscoreboard	Clyde 1	21/02/2019	Religious/Beliefs discrimination/offence	4
Inside Politics	CNN	03/03/2019	Offensive language	1
Swallowed by the Sea: Ancient Egypt's Greatest Lost City	Discovery History	14/02/2019	Advertising minutage	1
Man Versus Food	Dmax	16/02/2019	Animal welfare	1
Celebs Go Dating	E4	07/03/2019	Race discrimination/offence	1
Celebs Go Dating	E4	10/03/2019	Gender discrimination/offence	1
Celebs Go Dating	E4	11/03/2019	Sexual material	1
Hollyoaks	E4	28/02/2019	Animal welfare	1
Postman Pat: The Movie	E4	02/03/2019	Race discrimination/offence	1
The Hangover Games	E4	26/02/2019	Generally accepted standards	1
Triple 9	Film4	24/02/2019	Generally accepted standards	1
Craig Martin	Funky SX	23/02/2019	Commercial communications on radio	1
Broadcast competition	Heart (Four Counties)	28/01/2019	Competitions	1
Breakfast with Ed and Gemma	Heart (West Midlands)	29/01/2019	Animal welfare	1
Tom's Drive Time Show	Heart FM	07/01/2019	Competitions	1
Forged in Fire	History Channel	26/02/2019	Scheduling	1
Meri Unsuni Kahani	HUM TV	24/02/2019	Drugs, smoking, solvents or alcohol	1
Lunchtime with Barry Reilly	Irvine Beat FM	21/02/2019	Religious/Beliefs discrimination/offence	1
Cold Feet	ITV	04/02/2019	Generally accepted standards	1
Coronation Street	ITV	22/02/2019	Sexual orientation discrimination/offence	7
Coronation Street	ITV	25/02/2019	Offensive language	1
Coronation Street	ITV	27/02/2019	Generally accepted standards	1
Coronation Street	ITV	27/02/2019	Offensive language	1
Coronation Street	ITV	01/03/2019	Violence	3
Coronation Street	ITV	04/03/2019	Offensive language	2

Programme	Service	Transmission Date	Categories	Number of complaints
Coronation Street	ITV	04/03/2019	Race discrimination/offence	1
Coronation Street	ITV	04/03/2019	Undue prominence	1
Coronation Street	ITV	04/03/2019	Violence	31
Coronation Street	ITV	07/03/2019	Generally accepted standards	2
Dancing on Ice	ITV	20/01/2019	Generally accepted standards	1
Dancing on Ice	ITV	10/03/2019	Generally accepted standards	4
Emmerdale	ITV	27/02/2019	Generally accepted standards	16
Emmerdale	ITV	28/02/2019	Generally accepted standards	10
Emmerdale	ITV	01/03/2019	Generally accepted standards	7
Emmerdale	ITV	04/03/2019	Generally accepted standards	40
Emmerdale	ITV	05/03/2019	Generally accepted standards	5
Emmerdale	ITV	06/03/2019	Generally accepted standards	3
Emmerdale	ITV	07/03/2019	Generally accepted standards	1
Emmerdale	ITV	08/03/2019	Gender discrimination/offence	3
Emmerdale	ITV	12/03/2019	Generally accepted standards	5
Endeavour	ITV	03/03/2019	Generally accepted standards	3
Good Morning Britain	ITV	07/01/2019	Generally accepted standards	1
Good Morning Britain	ITV	08/02/2019	Generally accepted standards	1
Good Morning Britain	ITV	18/02/2019	Due impartiality/bias	2
Good Morning Britain	ITV	18/02/2019	Religious/Beliefs discrimination/offence	63
Good Morning Britain	ITV	27/02/2019	Generally accepted standards	1
Good Morning Britain	ITV	01/03/2019	Scheduling	23
Good Morning Britain	ITV	01/03/2019	Sexual material	1
Good Morning Britain	ITV	05/03/2019	Race discrimination/offence	1
Good Morning Britain	ITV	06/03/2019	Sexual material	1
Good Morning Britain	ITV	13/03/2019	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
ITV News	ITV	08/02/2019	Generally accepted standards	1
ITV News	ITV	21/02/2019	Materially misleading	1
ITV News	ITV	01/03/2019	Due impartiality/bias	1
ITV News	ITV	07/03/2019	Generally accepted standards	1
ITV News	ITV	08/03/2019	Offensive language	1
ITV News	ITV	12/03/2019	Generally accepted standards	1
ITV News	ITV	13/03/2019	Generally accepted standards	1
Jackpot Joy Bingo's sponsorship of Loose Women	ITV	08/03/2019	Sponsorship credits	1
James Martin's Saturday Morning	ITV	02/03/2019	Dangerous behaviour	1
London Tonight	ITV	07/03/2019	Due impartiality/bias	1
Loose Women	ITV	22/01/2019	Gender discrimination/offence	1
Loose Women	ITV	25/02/2019	Generally accepted standards	1
Loose Women	ITV	28/02/2019	Generally accepted standards	1
Lorraine	ITV	25/02/2019	Generally accepted standards	2
Lorraine	ITV	05/03/2019	Materially misleading	3
Lorraine	ITV	07/03/2019	Materially misleading	4
Lorraine	ITV	12/03/2019	Generally accepted standards	1
Midsomer Murders	ITV	10/03/2019	Violence	3
Out There	ITV	23/02/2019	Disability discrimination/offence	3
Programming	ITV	05/03/2019	Competitions	1
Specsavers audiologists' sponsorship of afternoons on ITV	ITV	08/03/2019	Sponsorship credits	1
The BRIT Awards 2019	ITV	20/02/2019	Sexual material	50
The Chase	ITV	28/02/2019	Generally accepted standards	1
The Chase	ITV	01/03/2019	Advertising/editorial distinction	1
The Chase	ITV	11/03/2019	Competitions	1
The Jeremy Kyle Show	ITV	01/03/2019	Race discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
The Jeremy Kyle Show	ITV	04/03/2019	Offensive language	1
The Junk Food Experiment	ITV	27/02/2019	Materially misleading	1
The Kyle Files	ITV	04/03/2019	Generally accepted standards	1
The Kyle Files	ITV	04/03/2019	Scheduling	2
The Voice UK	ITV	23/02/2019	Generally accepted standards	1
The Widow (trailer)	ITV	12/03/2019	Generally accepted standards	1
This Morning	ITV	25/02/2019	Race discrimination/offence	1
This Morning	ITV	28/02/2019	Materially misleading	1
This Morning	ITV	28/02/2019	Race discrimination/offence	2
This Morning	ITV	01/03/2019	Race discrimination/offence	1
This Morning	ITV	04/03/2019	Sexual material	1
This Morning	ITV	05/03/2019	Materially misleading	1
This Morning	ITV	05/03/2019	Offensive language	1
This Morning	ITV	06/03/2019	Generally accepted standards	1
This Morning	ITV	07/03/2019	Generally accepted standards	25
Through the Keyhole	ITV	23/02/2019	Generally accepted standards	1
Webuyanycar.com's sponsorship of Dancing on Ice	ITV	17/02/2019	Sponsorship	1
Who Wants to Be a Millionaire	ITV	01/03/2019	Other	1
Who Wants to Be a Millionaire	ITV	07/03/2019	Other	1
You've Been Framed	ITV	16/02/2019	Animal welfare	1
ITV News Anglia	ITV Anglia	01/03/2019	Materially misleading	1
ITV News Central	ITV Central	20/02/2019	Animal welfare	1
ITV News Calendar	ITV Yorkshire	24/02/2019	Due accuracy	1
Ibiza Weekender	ITV2	03/03/2019	Generally accepted standards	1
Carry on Behind	ITV3	03/03/2019	Gender discrimination/offence	1
Scott and Bailey	ITV3	04/03/2019	Generally accepted standards	1
Sam & Billie Faiers: The Mummy Diaries	ITVBe	07/11/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Sam & Billie Faiers: The Mummy Diaries	ITVBe	06/03/2019	Materially misleading	1
Outsiders	Kanal 11 (Sweden)	20/02/2019	Generally accepted standards	1
Eddie Mair	LBC 97.3FM	28/02/2019	Race discrimination/offence	1
Iain Dale	LBC 97.3FM	28/02/2019	Generally accepted standards	1
James O'Brien	LBC 97.3FM	28/02/2019	Race discrimination/offence	1
James O'Brien	LBC 97.3FM	05/03/2019	Generally accepted standards	2
James O'Brien	LBC 97.3FM	08/03/2019	Due impartiality/bias	1
James O'Brien	LBC 97.3FM	11/03/2019	Generally accepted standards	1
Matt Stadlen	LBC 97.3FM	10/03/2019	Generally accepted standards	1
News	LBC 97.3FM	13/03/2019	Sexual material	1
Nick Ferrari	LBC 97.3FM	28/02/2019	Gender discrimination/offence	1
Nigel Farage	LBC 97.3FM	03/03/2019	Materially misleading	1
Ring Rees-Mogg	LBC 97.3FM	08/03/2019	Due impartiality/bias	1
Shelagh Fogarty	LBC 97.3FM	26/02/2019	Disability discrimination/offence	1
Shelagh Fogarty	LBC 97.3FM	26/02/2019	Gender discrimination/offence	1
Shelagh Fogarty	LBC 97.3FM	07/03/2019	Race discrimination/offence	1
Steve Allen	LBC 97.3FM	01/03/2019	Materially misleading	1
Tom Swarbrick	LBC 97.3FM	25/02/2019	Generally accepted standards	1
Tom Swarbrick	LBC 97.3FM	11/03/2019	Generally accepted standards	1
Cash Register Competition	Moray Forth Radio FM	13/02/2019	Competitions	1
Programming	Movies4men	08/03/2019	Gender discrimination/offence	1
MTV Charts	MTV	15/02/2019	Scheduling	1
News	NDTV 24X7	04/03/2019	Hatred and abuse	1
Waseem Abbasi Show	New Vision TV	16/02/2019	Generally accepted standards	1
Salvage Hunters	Quest	13/02/2019	Nudity	1
Programming	Sheffield Live	13/02/2019	Due impartiality/bias	1
All Out Politics	Sky News	29/01/2019	Due impartiality/bias	1
All Out Politics	Sky News	25/02/2019	Due impartiality/bias	2

Programme	Service	Transmission Date	Categories	Number of complaints
All Out Politics	Sky News	26/02/2019	Due impartiality/bias	1
Breakfast with Mee	Sky News	06/03/2019	Gender discrimination/offence	1
Brexit Crisis: Live from Westminster	Sky News	27/02/2019	Due impartiality/bias	1
Press Preview	Sky News	28/02/2019	Advertising placement	1
Press Preview	Sky News	02/03/2019	Due accuracy	1
Sky News	Sky News	23/02/2019	Materially misleading	1
Sky News	Sky News	24/02/2019	Generally accepted standards	1
Sky News	Sky News	26/02/2019	Materially misleading	1
Sky News	Sky News	05/03/2019	Due accuracy	1
Sky News	Sky News	05/03/2019	Generally accepted standards	1
Sky News	Sky News	06/03/2019	Disability discrimination/offence	1
Sky News FYI	Sky News	03/03/2019	Due impartiality/bias	1
Sky News Tonight	Sky News	26/02/2019	Due impartiality/bias	1
The Pledge	Sky News	21/02/2019	Race discrimination/offence	1
Live Carabao Cup Final	Sky Sports Main Event	24/02/2019	Generally accepted standards	1
Sky Sports News	Sky Sports News	16/01/2019	Race discrimination/offence	5
STV News at 6	STV	01/03/2019	Other	1
Who Wants to be a Millionaire	STV	07/03/2019	Materially misleading	1
James Whale featuring Ash	Talk Radio	18/02/2019	Religious/Beliefs discrimination/offence	1
Julia Hartley-Brewer	Talk Radio	15/02/2019	Generally accepted standards	1
Jim White (trailer)	Talksport	06/02/2019	Race discrimination/offence	1
The Real Housewives of Orange County	TV3 Sweden	21/02/2019	Nudity	1
The Danish Girl	TV8 Sweden	21/02/2019	Gender discrimination/offence	1
Impossible Engineering	Yesterday	14/03/2019	Other	1
True Evil: The Making of a Nazi – Adolf Eichmann	Yesterday	13/02/2019	Materially misleading	1

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

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

Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

Programme	Service	Transmission Date	Categories	Number of complaints
Doctor Who	BBC 1	15/11/2018	Religious/Beliefs discrimination/offence	1
University Challenge	BBC 1	28/01/2019	Generally accepted standards	1
Death and Nightingales	BBC 2	28/11/2018	Materially misleading	1
Programming	BBC channels	n/a	Other	1
Programming	BBC channels	Various	Due accuracy	1
Programming	BBC channels	Various	Due impartiality/bias	1

For more information about how Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf

Complaints assessed under the Procedures for investigating breaches of rules for On Demand programme services

Service provider	Categories	Number of complaints
All 4	Protection of under 18s	1

For more information about how Ofcom assesses complaints about on demand services, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts or an on demand service that does not fall within the scope of regulation.

Programme	Service	Transmission Date	Categories	Number of complaints
All Together Now	BBC 1	02/03/2019	Outside of remit	1
BBC News	BBC 1	05/03/2019	Due impartiality/bias	1
Panorama	BBC 1	n/a	Outside of remit	20
Zoe Ball	BBC Radio 2	11/03/2019	Outside of remit	1
Leaving Neverland: Michael Jackson and Me	Channel 4	n/a	Outside of remit	4
The Last Leg	Channel 4	08/03/2019	Outside of remit	1
Advertisement	Channel 5	02/03/2019	Advertising content	1
Advertisement	Dave	28/02/2019	Advertising content	1
Non-editorial (subscription)	Eleven Sports (UK)	02/03/2019	Non-editorial	1
Radio Scarborough	Facebook	02/03/2019	Outside of remit	1
Advertisement	ITV	23/02/2019	Advertising content	1
Advertisement	ITV	01/03/2019	Advertising content	1
Advertisement	ITV	03/03/2019	Advertising/editorial distinction	1
Advertisement	ITV	09/03/2019	Advertising content	1
Advertisement	ITV	12/03/2019	Advertising content	1
Advertisement	ITV	14/03/2019	Advertising content	1
Dancing on Ice	ITV	10/03/2019	Outside of remit	3
Good Morning Britain	ITV	12/03/2019	Outside of remit	1
Advertisements	Kanal 5 (Sweden)	09/03/2019	Advertising content	1
Doomsday Preppers	Netflix	05/03/2019	Protection of under 18s	1
n/a	North Manchester FM	n/a	Other	1
Advertisement	Now 80s	14/03/2019	Advertising content	1
Advertisement	NOW TV	10/03/2019	Advertising content	1
Big Little Lies	NOW TV	11/03/2018	Access services	1
Movies and Sky TV channels	NOW TV	10/12/2018	Access services	1
Non-editorial (subscription / technical issues)	Rakuten TV	14/02/2019	Non-editorial	1
Advertisement	Sky Sports Main Event	04/03/2019	Advertising content	1
Non-editorial (technical and subscription)	Tennis TV	05/03/2019	Non-editorial	1

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	Twitch	14/02/2019	Advertising content	1
BBC Radio 5 Live	Twitter	12/03/2019	Outside of remit	1
Programming	Various	12/03/2019	Outside of remit	1
Newsnight	YouTube	13/03/2019	Outside of remit	1

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

BBC First

The BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the independent regulator of the BBC.

Under the BBC Agreement, Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision (the 'BBC First' approach).

The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
All Together Now	BBC 1	02/03/2019	Sexual orientation discrimination/offence	1
BBC News	BBC 1	28/02/2019	Due impartiality/bias	1
BBC News	BBC 1	01/03/2019	Due impartiality/bias	1
BBC News	BBC 1	04/03/2019	Due accuracy	1
BBC News	BBC 1	04/03/2019	Generally accepted standards	1
BBC News	BBC 1	07/03/2019	Generally accepted standards	1
BBC News	BBC 1	13/03/2019	Due impartiality/bias	1
BBC Spotlight	BBC 1	11/03/2019	Promotion of products/services	1
Casualty	BBC 1	09/03/2019	Generally accepted standards	2
EastEnders	BBC 1	10/02/2019	Nudity	1
EastEnders	BBC 1	04/03/2019	Generally accepted standards	2
Match of the Day	BBC 1	23/12/2018	Promotion of products/services	1
Question Time	BBC 1	07/02/2019	Due impartiality/bias	1
Question Time	BBC 1	28/02/2019	Due impartiality/bias	1
South Today	BBC 1	12/02/2019	Generally accepted standards	1
The Andrew Marr Show	BBC 1	10/03/2019	Generally accepted standards	1
The Greatest Dancer	BBC 1	23/02/2019	Generally accepted standards	1
The One Show	BBC 1	03/03/2019	Due impartiality/bias	1
Sportscene	BBC 1 Scotland	10/03/2019	Due impartiality/bias	1
BBC News Special – Brexit Delay Vote	BBC 2	14/03/2019	Due impartiality/bias	1
MotherFatherSon	BBC 2	06/03/2019	Offensive language	3
Newsnight	BBC 2	12/03/2019	Due impartiality/bias	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Newsnight	BBC 2	12/03/2019	Generally accepted standards	1
Politics Live	BBC 2	08/03/2019	Due impartiality/bias	1
Politics Live	BBC 2	11/03/2019	Due impartiality/bias	1
Politics Live	BBC 2	15/03/2019	Generally accepted standards	1
Saturday Kitchen	BBC 2	02/03/2019	Generally accepted standards	1
The Parkinsons Drug Trial – a Miracle Cure?	BBC 2	07/03/2019	Generally accepted standards	1
BBC News	BBC channels	01/01/2019	Due impartiality/bias	1
Programming	BBC channels	28/02/2019	Due impartiality/bias	1
Programming	BBC channels	06/03/2019	Due impartiality/bias	1
Programming	BBC channels	Various	Due impartiality/bias	1
Question Time	BBC iPlayer	21/02/2019	Due impartiality/bias	1
This Time with Alan Partridge	BBC iPlayer	12/03/2019	Generally accepted standards	1
Afternoon Live	BBC News Channel	14/03/2019	Due impartiality/bias	1
BBC News	BBC News Channel	04/03/2019	Race discrimination/offence	1
BBC News	BBC News Channel	07/03/2019	Due accuracy	1
BBC News	BBC News Channel	12/03/2019	Due impartiality/bias	1
BBC News	BBC News Channel	13/03/2019	Due impartiality/bias	1
BBC News	BBC News Channel	14/03/2019	Due impartiality/bias	1
BBC News Special – Brexit Vote	BBC News Channel	12/03/2019	Due impartiality/bias	2
Dateline London	BBC News Channel	02/03/2019	Due impartiality/bias	1
Victoria Derbyshire	BBC News Channel	04/03/2019	Due impartiality/bias	1
Alice Levine	BBC Radio 1	01/03/2019	Race discrimination/offence	1
May Jama	BBC Radio 1	09/03/2019	Race discrimination/offence	1
Nick Grimshaw	BBC Radio 1	05/03/2019	Animal welfare	1
Radio 1 LOL-a-thon	BBC Radio 1	05/03/2019	Generally accepted standards	1
Radio 1's 24-Hour LOL-a-thon with Scott & Chris	BBC Radio 1	06/03/2019	Generally accepted standards	1
Radio 1 Breakfast with Greg James	BBC Radio 1 iPlayer	04/03/2019	Generally accepted standards	1
The 1Xtra Breakfast Show with Dotty	BBC Radio 1Xtra	07/03/2019	Violence	1
Poetry Please	BBC Radio 4	10/03/2019	Sexual material	1
Profile: Luciana Berger	BBC Radio 4	23/02/2019	Due accuracy	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Today	BBC Radio 4	17/12/2018	Materially misleading	1
World at One	BBC Radio 4	14/03/2019	Due accuracy	1
The Podcast Hour	BBC Radio 4 Extra	08/03/2019	Gender discrimination/offence	1
5 Live Sport	BBC Radio 5 Live	10/03/2019	Generally accepted standards	1
Emma Barnett	BBC Radio 5 Live	27/02/2019	Race discrimination/offence	1

Investigations List

If Ofcom considers that a broadcaster or service provider may have breached its codes, rules, licence condition or other regulatory requirements, it will start an investigation.

It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster or service provider has done anything wrong. Not all investigations result in breaches of the codes, rules, licence conditions or other regulatory requirements being recorded.

Here are alphabetical lists of new investigations launched between 4 and 17 March 2019.

Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Service	Transmission date
Breakfast Show	Harbour Radio	21/02/2019
The Phil Mack International Country Show	Keep It Country	03/02/2019
The Seventies	Sky Arts	29/01/2019

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to:

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

Investigations launched under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS¹

Programme	Service	Transmission date
World at One	BBC Radio 4	15/02/2018

For more information about how Ofcom conducts investigations about content standards on BBC broadcasting services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf

¹ The opening of this investigation should have been listed in Issue 360 of the Bulletin but was omitted due to an administrative error.

Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Service	Transmission date
Judge Rinder's Crime Stories	ITV	07/01/2019

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf

Investigations launched under the Procedures for the consideration and adjudication of BBC Fairness and Privacy complaints

Programme	Service	Transmission date
BBC Breakfast News	BBC 1	18/04/2018
Watchdog	BBC 1	18/04/2018 and 25/04/2018
Watchdog	BBC 1	23/05/2018
You and Yours	BBC Radio 4	18/04/2018

For information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints on BBC Broadcasting Services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0003/100101/Procedures-for-the-consideration-and-adjudication-of-Fairness-and-Privacy-complaints.pdf

Investigations launched under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed Service
107.8FM Limited	Your FM
Alpha Radio Ltd	Vintage Music Radio
Future Media Network Ltd	A1 TV

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf