

**Sanction: Decision by Ofcom**

**Sanction: to be imposed on Abu Dhabi Media Company PJSC**

Non-confidential version – redacted for publication [X]

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**For material broadcast on Abu Dhabi Channel on 22 June 2017<sup>1</sup>.**

**Ofcom’s Sanction Decision against:** Abu Dhabi Media Company PJSC (“ADMC”) in respect of its service **Abu Dhabi Channel** (previously TLCS001660BA/2).<sup>2</sup>

**For:** Breaches of the Ofcom Broadcasting Code (the “Code”):<sup>3</sup>

Rule 7.1: “Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes”; and,

Rule 8.1: “Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted”.

**Decision** To impose a financial penalty (payable to HM Paymaster General) of **£125,000 (one hundred and twenty-five thousand pounds)**.

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<sup>1</sup> [Ofcom’s Adjudication](#) published on 23 November 2020 in issue 415 of the Broadcast and On Demand Bulletin.

<sup>2</sup> ADMC surrendered its TLCS Licence with effect from 1 January 2021.

<sup>3</sup> The version of the Code which was in force at the time of the broadcast took effect on 3 April 2017.

### Executive Summary

1. Abu Dhabi Channel is a global news and current affairs satellite television channel produced in Abu Dhabi (one of seven emirates that make up the United Arab Emirates “UAE”) and funded by Abu Dhabi Media, the official media organisation of the Government of Abu Dhabi. The licence for Abu Dhabi Channel in the UK was held by Abu Dhabi Media Company PJSC (“ADMC”), and was surrendered with effect from 1 January 2021. ADMC did not hold any other broadcasting licences in the UK.
2. On 22 June 2017 Abu Dhabi Channel broadcast the programme *Confessions of a Qatari intelligence agent to damage the reputation of the UAE* which reported on allegations that that Qatari Security Service was creating fake social media accounts and websites and using them to “slander” the UAE. The programme alleged that Mr Hamad Mohammed Ali Al-Hammadi, a Qatari intelligence officer, was involved, and included footage of Mr Al-Hammadi speaking about himself and his role and alleged involvement in crimes against the UAE.
3. In March 2018 Mr Rodney Dixon QC complained to Ofcom on Mr Al-Hammadi’s behalf about unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

### Ofcom’s Adjudication

4. In [Ofcom’s Adjudication](#) (“the Adjudication”) published on 23 November 2020 in issue 415 of the Broadcast and On Demand Bulletin, Ofcom found that the programme had breached Rules 7.1 and 8.1 of the Code.
5. The Adjudication set out the reasoning as to why Ofcom upheld the complaint of unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.
6. Ofcom put ADMC on notice in the Adjudication that it considered these breaches to be serious, and that it would consider them for the imposition of a statutory sanction.

### Licence surrender

7. On 20 December 2020, the Licensee informed Ofcom that it would no longer be making its licensed service, Abu Dhabi Channel, available in the UK after 31 December 2020 and it surrendered its Licence with effect from 1 January 2021.
8. Ofcom has the power to impose a penalty relating to breaches of the Code during the period in which a Licensee held a broadcasting licence notwithstanding the fact that the Licensee has surrendered its licence and is no longer broadcasting.<sup>4</sup>

### The Sanction Decision

9. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (the “Sanctions Procedures”)<sup>5</sup>, Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on ADMC in this case. Ofcom has reached a decision that a sanction is merited in this case since the breaches were serious for the reasons set out in paragraphs 35 to 41 below.
10. Ofcom’s Decision is that the appropriate sanction is to impose a financial penalty of **£125,000 (one hundred and twenty-five thousand pounds)** on ADMC. This paper sets out the basis for

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<sup>4</sup> Section 346(3) of the Communications Act 2003

<sup>5</sup> [The Sanctions Procedures](#).

Ofcom's Decision on the type and level of sanction, taking into account all the relevant material in this case and the Penalty Guidelines.<sup>6</sup>

### **Legal Framework**

#### **Communications Act 2003 and Broadcasting Act 1996**

11. Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 (the "2003 Act"), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure, among other matters, the application to all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both:
  - unfair treatment in programmes included in such services; and
  - unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.<sup>7</sup>
12. Under section 107 of the Broadcasting Act 1996 (as amended) ("the 1996 Act"), Ofcom has a duty to draw up, and from time to time review, a code giving guidance as to principles to be observed, and practices to be followed, in connection with the avoidance of:
  - a) unjust or unfair treatment in programmes; or
  - b) unwarranted infringements of privacy in, or in connection with the obtaining of material included in, such programmes.
13. Further, under section 110(1) of the 1996 Act, Ofcom has a duty to consider and adjudicate on complaints which relate to either unjust or unfair treatment in programmes, or unwarranted infringements of privacy in, or in connection with the obtaining of material included in, such programmes. Such complaints are collectively referred to as "fairness complaints" by virtue of section 110(4) of the 1996 Act.
14. Reflecting Ofcom's duties under section 107 of the 1996 Act, Sections 7 and 8 of the Code set out the principles and practices drawn up by Ofcom in connection with the avoidance of unfair treatment and unwarranted infringement of privacy.
15. In performing these duties, Ofcom must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and, among other things, the need to secure that the application in the case of television and radio services of standards relating to unfair treatment in programmes and unwarranted infringements of privacy is in the manner that best guarantees an appropriate level of freedom of expression.<sup>8</sup>

#### **Human Rights Act 1998**

16. Under section 6 of the Human Rights Act 1998, as a public authority Ofcom has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights ("the Convention"). In particular, in the context of this case, Ofcom has taken account of the related rights under Article 8 and 10 of the Convention.
17. Article 8 of the Convention provides for a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". Article 8(2) of the Convention states that there shall be no interference by a public authority with the exercise of this right except such as is in

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<sup>6</sup> See footnote 4.

<sup>7</sup> Section 3(2)(f) of the 2003 Act.

<sup>8</sup> Sections 3(3) and 3(4)(g) of the 2003 Act

accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

18. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster's freedom to impart and the audience's right to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1)).<sup>9</sup> It applies not only to the content of information but also the means by transmission or reception.<sup>10</sup> And while subject to exceptions, the need for any restriction must be established convincingly.<sup>11</sup> The exercise of these freedoms may be subject only to conditions and restrictions which are "prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary" (Article 10(2)). Decisions in the European Court of Human Rights make clear that there is little scope for restrictions on freedom of expressions 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.
19. Ofcom must exercise its duties in the light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.
20. In Ofcom's view, the individual's right to privacy under Article 8 of the Convention has to be balanced against the competing right of the broadcaster and of the audience to freedom of expression under Article 10 of the Convention. 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 in the individual case. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.
21. The interference with Article 10 attendant on imposing a statutory sanction in relation to findings of breaches of due impartiality requirements may, where appropriate and proportionate in the circumstances of the case, be justified by the need to achieve these legitimate aims. In order to be proportionate, any interference must be the minimum necessary to promote the legitimate objective pursued.

#### **Remedial action and penalties**

22. Under section 326 of the 2003 Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing observance, in connection with the provision of that service and in relation to programmes included in the service, of the code made by Ofcom under section 107 of the 1996 Act. In the case of a television licensable content service ("TLCS") licence, Condition 20(5) of the licence requires the licensee to ensure that the provisions of any code made under section 107 of the 1996 Act are complied with.
23. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the 2003 Act insofar as relevant to the case. In this case, because the Licence has been surrendered, the only relevant power available to Ofcom is the power to impose a financial penalty under section 237 of the 2003 Act in respect of

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<sup>9</sup> *Lindens v Austria* (1986) 8 EHRR 407

<sup>10</sup> *Autronic v Switzerland* (1990) 12 EHRR 485

<sup>11</sup> *Steel & Morris v UK* (2005) EMLR 15

the breaches of the Code during the period in which a Licensee held a broadcasting licence.<sup>12</sup> The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and five per cent of the qualifying revenue from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force.

### **Background – The Adjudication**

24. In the Adjudication, Ofcom found that the programme broadcast by ADMC on Abu Dhabi Channel on 22 June 2017 breached Rules 7.1 and 8.1 of the Code. The Adjudication set out the reasons as to why Ofcom upheld the complaint made on behalf of Mr Al-Hammadi of unjust or unfair treatment and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and the programme as broadcast.
25. In summary, the programme which was the subject of the Adjudication included a report on allegations that the Qatari Security Service was creating fake social media accounts and websites and using them to “slander” the UAE, and reported that Mr Al-Hammadi, a Qatari intelligence officer, was involved. The programme included footage of Mr Al-Hammadi, obtained via a “confidential third party source”, in which he spoke about his role in the Qatari Security Services. In the footage, he explained how he had been tasked to purchase smart phones and SIM cards in the UAE which were then used by the Qatari Digital Administration to “insult the United Arab Emirates” and “to slander the United Arab Emirates”. Mr Al-Hammadi also identified by name two other members of the Qatari Security Services who he said were also involved. The report explained that Mr Al-Hammadi was arrested, charged and sentenced to 10 years imprisonment for his involvement but that he was subsequently pardoned by the Emirati President.
26. In relation to Rule 7.1, Ofcom considered that the context in which the footage of Mr Al-Hammadi was shown in the programme, would have been understood by viewers as an admission by Mr Al-Hammadi of crimes against the UAE and in particular, his involvement in the Qatari plot to undermine and create a false impression of the UAE. Ofcom considered that, given the admission to crimes and disclosures made by Mr Al-Hammadi in his capacity as an agent of the Qatari Security Services, viewers may have perceived him to have betrayed his nation state, as well as colleagues within the Qatari Security Services. The programme therefore had the clear potential materially and adversely to affect viewers’ opinions of Mr Al-Hammadi.
27. ADMC said it had not been involved in the commissioning or the filming of the footage and had instead been provided with the footage by a “confidential third-party source”. ADMC said that at the time of broadcasting their programme, it was not aware of any material facts which could have impacted its decision to broadcast the footage and that it did not take any specific steps to ascertain the circumstances in which the footage was filmed. ADMC also took no steps in order to satisfy itself that Mr Al-Hammadi had been informed about, for example, the nature and purpose of the programme or why he had been asked to contribute. Ofcom therefore considered that it was clear that the broadcaster had not obtained Mr Al-Hammadi’s informed consent to contribute to the programme nor taken any steps to verify whether such consent had been obtained.
28. Further, it did not appear to Ofcom that ADMC had taken appropriate steps to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Al-Hammadi. Despite the sensitive nature of the disclosures made by Mr Al-Hammadi in the programme relating to crimes against the UAE in his position as an officer of the Qatari Secret

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<sup>12</sup> By virtue of Section 346(3) of the 2003 Act, a person’s liability to have a penalty imposed under section 237 of the 2003 Act in respect of acts or omissions of that person while a holder of a Broadcasting Act licence is not affected by that Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty.

Services, ADMC did not make enquiries about the provenance of the footage, including the extent to which Mr Al-Hammadi's confession was consistent with other public statements he had made. The programme also made no reference to Mr Al-Hammadi's contention that he was forced to provide the confession under duress and on the promise of being released and that he raised these complaints with the UAE court. The inclusion of these details could have provided viewers with context for his confession and the extent to which it could be relied upon. Ofcom considered these were serious omissions especially taking account of the very serious nature of the case set out against Mr Al-Hammadi, the weight that was placed on Mr Al-Hammadi's confession in the programme and the potential implications for Mr Al-Hammadi being shown to make such a confession. Ofcom considered that ADMC presented the footage of Mr Al-Hammadi in such a way that there was no reason for viewers to question the validity of his confession or criminal conviction which resulted in unfairness to Mr Al-Hammadi.

29. Ofcom also found that the complainant had not been provided with an appropriate opportunity to respond to the claims made in the programme.
30. For these reasons (as detailed further in the Adjudication), Ofcom concluded that the broadcast of the programme had resulted in unfairness to Mr Al-Hammadi and that ADMC was therefore in breach of Rule 7.1 of the Code.
31. In relation to Rule 8.1, Ofcom considered that Mr Al-Hammadi had a legitimate expectation of privacy, in circumstances where he was filmed in a location that appeared private, and disclosed information of a highly sensitive nature. For the reasons set out above, Mr Al-Hammadi had not provided his informed consent to being filmed or for the footage to subsequently be included in the broadcast programme. Ofcom acknowledged that the programme reported on serious matters which would have been of significant public interest, namely Mr Al-Hammadi's conviction in the UAE and allegations that the Qatari Secret Service was involved in setting up false social media accounts and websites and using them to "slander" the UAE. However, Ofcom did not consider that the public interest warranted filming Mr Al-Hammadi in such a sensitive situation, nor broadcasting the highly sensitive footage of his admission and disclosures, without having taken any measures to verify the circumstances which had led to the interview and to confirm that his consent had been obtained. For these reasons (as detailed further in the Adjudication), Ofcom found that ADMC had unwarrantably infringed Mr Al-Hammadi's legitimate expectation of privacy and that ADMC was therefore in breach of Rule 8.1 of the Code.
32. Ofcom stated in the Adjudication that the contraventions of Rules 7.1 and 8.1 of the Code were serious and were being considered for the imposition of a statutory sanction.

#### **Ofcom's Preliminary View to impose a Statutory Sanction**

33. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
34. Ofcom issued a Preliminary View ("the Sanction Preliminary View") that we were minded to impose on ADMC a statutory sanction in the form of a financial penalty. Ofcom sent a copy of the Sanction Preliminary View to ADMC on 12 March 2021 and gave it the opportunity to provide written and oral representations on it. ADMC wrote to Ofcom on 8 April 2021 and confirmed that it did not wish to submit any written representations on the Sanction Preliminary View. ADMC also chose not to make oral representations.

**Ofcom's Decision on the imposition of a Statutory Sanction**

35. We set out below Ofcom's Decision that it is appropriate to impose a statutory sanction for the breaches and on the type and level of sanction to be imposed on ADMC, taking into account all relevant material and the Penalty Guidelines.<sup>13</sup>

36. We first considered whether the breaches were serious, deliberate, reckless, or repeated.

**Serious nature of the breaches**

37. As set out above, Ofcom has a specific duty to put in place principles and practices which are designed to protect against unjust or unfair treatment in programmes and unwarranted infringements of privacy in, or in connection with the obtaining of material included in, such programmes. We are also under a specific duty under section 326 of the 2003 Act to include conditions in TLCS licences which ensure that licensees observe these principles and practices. Where a licensee contravenes these conditions, Ofcom has specific powers to impose sanctions on it, including a financial penalty or the revocation of the licence. It follows that a licensee's failure to observe the principles and practices set out in the Code has the potential to be serious and may justify the imposition of a statutory sanction. Ofcom recognised that ADMC surrendered the licence for the Abu Dhabi Channel service, effective from midnight on 31 December 2020. However, under section 346(3) of the 2003 Act, the liability of the person to have a penalty imposed on them is not affected by that person's licence having ceased (for any reason) before the imposition of the penalty.

38. In general, contraventions of Rules 7.1 and 8.1 may be serious breaches because they have the potential to have a direct adverse impact on the rights of individuals who are either featured in, or have been directly affected, by a programme and have the potential to cause harm to individuals affected by such breaches.

39. In Ofcom's view the breaches in this case were serious because of the nature of the content filmed and broadcast in relation to Mr Al-Hammadi and the omissions by ADMC found by Ofcom in its breach findings. Specifically:

- a) The programme included footage of Mr Al-Hammadi, an officer of the Qatari secret service, making highly sensitive disclosures against his own interests about his involvement in a plot by Qatar to undermine and create a false impression of the UAE and about the identity of other Qatari agents;
- b) ADMC did not take any measures to verify the circumstances in which Mr Al-Hammadi had been filmed nor did it make any enquiries about the provenance of the footage;
- c) ADMC had not obtained Mr Al-Hammadi's informed consent to contribute to the programme nor taken any steps to verify whether such consent had been obtained;
- d) ADMC did not make any enquiries to ascertain whether Mr Al-Hammadi's confession was consistent with other public statements he had made;
- e) ADMC did not consider it necessary to contact Mr Al-Hammadi to offer him an opportunity to comment on the programme in advance of broadcast and there was no evidence that it had attempted to do so; and
- f) As a result of these failures, ADMC failed to exercise reasonable care to ensure that material facts in relation to the footage were not presented, omitted or disregarded in a way that was unfair to Mr Al-Hammadi.

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<sup>13</sup> See footnote 4.

40. We considered that the failure by ADMC to comply with Rules 7.1 and 8.1 of the Code resulted in significant unfairness to Mr Al-Hammadi and a serious and unwarranted infringement of his privacy.
41. In light of the above, Ofcom's Decision is that the breaches of Rules 7.1 and 8.1 are serious, warranting the imposition of a statutory sanction. The following paragraphs set out our assessment of the sanction that we have decided is appropriate and proportionate to impose.

**Imposition of sanction**

42. As set out in paragraphs 22 and 23 above, Ofcom has powers to impose a statutory sanction on TLCS licensees under sections 236 to 239 of the 2003 Act. Because ADMC has surrendered its TLCS licence, only the power to impose a financial penalty under section 237 of the 2003 Act is available to Ofcom in this case.
43. The maximum penalty which may be imposed on ADMC in this case is whichever is the greater of £250,000 and 5 per cent of the qualifying revenue<sup>14</sup> from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force. Based on the most recent data available about ADMC's qualifying revenue, the maximum penalty that Ofcom could impose in this case is  $\pounds 0$ .
44. Ofcom's Penalty Guidelines state (in paragraph 1.11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty".
45. Ofcom's Decision is that notwithstanding the surrender of ADMC's licence, a financial penalty is appropriate and proportionate to reflect the serious nature of the Code breaches and to act as an effective deterrent against non-compliance with the Code for other licensees.

**Factors taken into account in determining the amount of a penalty**

46. In considering the appropriate amount of a financial penalty for the Code breaches in this case, Ofcom took account of the specific relevant factors set out at paragraph 1.12 of the Penalty Guidelines as set out below.

**The seriousness and duration of the contravention**

47. Ofcom regards the breaches in this case as serious for the reasons set out in paragraphs 35 to 41 above. As a licensee, ADMC was responsible for ensuring that the material it broadcast complied with Section 7 of the Code to avoid the unjust or unfair treatment of individuals in programmes and with Section 8 to avoid unwarranted infringements of privacy. We were particularly concerned that ADMC did not take any measures to verify the circumstances in which Mr Al-Hammadi had been filmed nor make any enquiries about the provenance of the footage, despite the sensitivity of the disclosures made by Mr Al-Hammadi. We were also concerned with the potential impact the broadcast would have had on viewers' opinions of Mr Al-Hammadi given that insufficient steps were taken by ADMC to fairly represent material facts in the broadcast programme.

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<sup>14</sup> Qualifying revenue consists of all payments received, or due to be received, either by the licensee or by any person "connected" to that licensee, for the inclusion of advertisements or programmes in the licensed service, or in respect of charges made for the reception of programmes included in that service. It also includes any sponsorship monies received in relation to the inclusion of programmes in the licensed service.



48. The fact that the programme resulted in serious unfairness to Mr Al-Hammadi and gave rise to a serious and unwarranted infringement of Mr Al-Hammadi's legitimate expectation of privacy was also of particular concern to Ofcom. In light of the circumstances in which ADMC received the footage and the sensitive nature of its content, it is reasonable to expect a responsible broadcaster would take steps to satisfy itself that the content was compliant with Sections 7 and 8 of the Code. ADMC failed to take any action to: verify the circumstances in which Mr Al-Hammadi had been filmed; obtain Mr Al-Hammadi's informed consent to the filming and broadcast of the footage or verify whether such consent had been obtained; or make reasonable enquiries to ensure that material facts had not been presented, disregarded or omitted from the programme in a way that was unfair to Mr Al-Hammadi. Further, it did not consider it necessary to provide Mr Al-Hammadi with an opportunity to comment on the allegations in the programme before broadcast and there was no evidence that it had done so.
49. Ofcom considered that these were serious omissions that indicated a comprehensive failure by ADMC to have appropriate regard to its regulatory obligations towards Mr Al-Hammadi under Sections 7 and 8 of the Code.
50. The programme was broadcast on 22 June 2017 and according to the complaint was re-broadcast several times.<sup>15</sup>

*The degree of harm, whether actual or potential, caused by the contravention*

51. The inclusion of the footage of Mr Al-Hammadi's apparent confession in the broadcast programme had the potential to be very harmful to Mr Al-Hammadi since it would have given viewers the impression that he had betrayed his nation state and colleagues at the Qatari Secret Services by disclosing his involvement as an officer of the Qatar secret service in a Qatari plot to discredit the UAE and naming other Qatari agents. By failing to verify that Mr Al-Hammadi had given informed consent to the filming and to make enquiries as to the circumstances in which the footage was filmed and whether material information had been presented, omitted or disregarded in a way that was unfair to Mr Al-Hammadi, ADMC materially and adversely affected viewers' opinions of Mr Al-Hammadi in a way that was unfair and an unwarranted infringement of his privacy.
52. We also took account of information in the complaint about the impact of the contraventions on Mr Al-Hammadi. The complaint stated that Mr Al-Hammadi's confession was obtained by torture and was untrue and that he believed the "harrowing ordeal" to be behind him after his release by the UAE authorities in 2015. The broadcast by ADMC of the programme with the footage of the confession in 2017 is described as a "complete shocking surprise" to Mr Al-Hammadi, that caused him "much concern and distress".<sup>16</sup>
53. For these reasons, we considered that the contraventions had the clear potential to cause serious harm to the complainant.

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

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

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

55. In obtaining the footage of Mr Al-Hammadi from a third party, ADMC did not itself take any steps to ascertain the circumstances in which Mr Al-Hammadi had been filmed in order to satisfy

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<sup>15</sup> Section 4a, Complaint made on behalf of Mr Hamid Ali Mohammed Ali Al-Hammadi, 25 January 2018.

<sup>16</sup> Section 4a, Complaint made on behalf of Mr Hamid Ali Mohammed Ali Al-Hammadi, 25 January 2018.

itself that Mr Al-Hammadi had been informed about the nature and purpose of the programme, or why he had been asked to contribute or that he had been provided with any other information listed in Practice 7.3. On that basis, it did not appear to Ofcom that the broadcaster had taken sufficient steps to obtain Mr Al-Hammadi's informed consent to contribute to the programme, nor taken any steps to verify whether such consent had been obtained. We considered this to be a serious failure of compliance.

56. In addition, Ofcom had significant concerns that ADMC presented the confession by Mr Al-Hammadi in such a way that would have led viewers to believe that there was no reason to question the validity of his confession or conviction, in circumstances where ADMC had cause to doubt this was so. In particular, Ofcom considered that there were particular features of the footage that should have led the broadcaster to make further enquiries about it. The footage showing the apparent willingness of Mr Al-Hammadi to make highly sensitive disclosures against his own interests should have resulted in the broadcaster, if it was exercising reasonable care, making enquiries about the provenance of the footage, including the extent to which Mr Al-Hammadi's confession was consistent with other public statements he had made. However, ADMC did not make any such enquiries and did not refer in the programme to facts that called into question the reliability of Mr Al-Hammadi's confession in the broadcast footage, such as Mr Al-Hammadi's contention that he was forced to provide the confession under duress and on the promise of being released, and that he had raised these complaints with the UAE courts during his trial. The broadcaster also considered it unnecessary to give Mr Al-Hammadi an opportunity to respond to the programme in advance of broadcast and there is no evidence that it attempted to do so.

57. We considered that these comprehensive failings indicated that compliance processes for ensuring that individuals are not subject to unjust or unfair treatment or unwarranted infringements of privacy were, in respect of this programme, either absent or inadequate.

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

58. We had no evidence that these contraventions were deliberate or that senior managers at ADMC knew that the contraventions would occur. However, for the reasons set out at paragraphs 47 to 50 and 55 to 57 above, we considered that there was a comprehensive failure by ADMC to have appropriate regard to its regulatory obligations towards Mr Al-Hammadi under Sections 7 and 8 of the Code and that this was indicative of absent or inadequate compliance procedures.

59. The fact that the Licensee does not appear to have to put in place adequate compliance procedures to prevent the contraventions in this case from occurring may indicate a reckless disregard of the Code, in particular Rules 7.1 and 8.1. As stated above, ADMC said that it had received the footage from a 'confidential third-party source' and, as also noted above, it appears that the broadcaster made no enquiries to ascertain the circumstances in which the footage of Mr Al-Hammadi was filmed. Further, notwithstanding the sensitivity of the disclosures made by Mr Al-Hammadi as an officer of the Qatari secret services, ADMC made no enquiries as to whether he had given his informed consent to the filming and the broadcast of the programme. In our view, a reasonably prudent licensee would also have turned its mind to the possibility that Mr Al-Hammadi may have had a legitimate expectation of privacy, in circumstances in which he was being filmed, making statements of a highly sensitive nature. Despite this, the Licensee does not appear to have taken any steps in order to ensure compliance with Rule 8.1.

60. In our view, the Licensee ought to have been aware of the potential issues arising from the filming and broadcast of this footage. By failing to have adequate compliance procedures in

place, it acted recklessly and without due regard to the possibility that it might breach the relevant Rules.

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

61. It appears that ADMC only became aware of the potentially serious issues raised by this particular programme following Mr Al-Hammadi's complaint to Ofcom.
62. ADMC has provided no further information or evidence to Ofcom that its compliance processes have significantly changed since the complaint was brought to its attention or that it took any specific steps to prevent further breaches of this nature prior to the surrender of its licence.

Any steps taken for remedying the consequences of the contravention

63. There is no evidence that ADMC has taken any action to remedy the adverse consequence for Mr Al-Hammadi resulting from their contraventions.

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

64. Ofcom has previously found ADMC in breach of Section 5 of the Code. The breach related to a current affairs programme focusing on the findings of a report by the United Nations Office of the High Commissioner for Human Rights on the impact of the Gulf crisis on human rights in the region which, in 2018 was found by Ofcom to have breached the requirement for due impartiality under Rule 5.5 of the Code.<sup>17</sup>
65. Ofcom found ADMC in breach of Rules 7.1 and 8.1 the Code in relation to a programme broadcast six days after this programme about Mr Al-Hammadi. The breach findings related to the obtaining and broadcast of footage of an interview with Dr Al-Jaidah, who was said to be a leader and funder of, and participant in, an alleged terrorist organisation. As in this case, Ofcom found that ADMC failed to make any enquiries about the provenance of the footage or whether Dr Al-Jaidah had consented to the filming and the broadcast of the footage in the programme, and that it disregarded or omitted material facts in a way that was unfair to Dr Al-Jaidah and failed to provide him with an opportunity to comment on the allegations in the programme before broadcast.<sup>18</sup>

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

66. Ofcom found ADMC in breach of Condition 20(1)(e) of its TLCS licence as a result of repeated failures to provide specified information required for the purposes of Ofcom's adjudication of Mr Al-Hammadi's complaint.<sup>19</sup> We said that the breach impeded Ofcom's ability to consider and adjudicate on Mr Al-Hammadi's fairness complaint.
67. ADMC admitted that it had breached the conditions of its TLCS licence by refusing to provide the information, saying that it had done so to protect the identity of its source. However, in its correspondence with ADMC, Ofcom had made clear that ADMC was not required to disclose the identity of any confidential third-party sources and so held that ADMC had not justified its failure to provide the information.

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<sup>17</sup> [Ofcom's Decision](#) published on 2 July 2018 in issue 357 of Ofcom's Broadcast Bulletin.

<sup>18</sup> [Ofcom's Adjudication](#) published on 9 November 2020 in issue 414 of Ofcom's Broadcast and On Demand Bulletin.

<sup>19</sup> [Breach of Licence Condition 20\(1\)\(e\)](#) of the Television Licensable Content Service licence held by Abu Dhabi Media Company PJSC (licence number TLCS001660) published on 7 October 2019 in issue 388 of the Broadcast and On Demand Bulletin.

## Precedent

68. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases. Each case is decided on its own facts. In reaching our Decision in this instance Ofcom has considered these previous cases and to the extent we consider them relevant, we have taken them into account.
69. Ofcom considered five previous decisions in which financial penalties had been imposed for breaches of Rules 7.1 and 8.1. Three of the five decisions are now over five years old and were decided under previous versions of the Penalty Guidelines.<sup>20</sup> Ofcom's new Penalty Guidelines place greater emphasis on deterrence. Ofcom had regard to past precedents to the extent they are relevant but may depart from them, depending on the facts and the context of the current case. In particular, we will not regard the amounts of previously imposed penalties as placing an upper threshold on the amount of any penalty and will set higher penalties if we consider that appropriate to ensure effective enforcement against the contraventions under consideration and to deter future breaches.
70. The five previous decisions summarised below are considered relevant because they share some similarities with this case, although in each case there are also some differences.
71. **8 March 2021, Star China Media Limited ("SCML")**<sup>21</sup> – Ofcom imposed a penalty of £100,000 on the licensee for breaches of Rules 7.1 and 8.1.<sup>22</sup> The sanction related to two programmes. The first programme, broadcast in 2013, reported on the arrest of the complainant, Mr Humphrey, and included footage of him appearing to confess to a criminal offence. A follow up programme, broadcast in 2014, reported on the complainant's subsequent indictment and included footage of him apologising for having committed the offence.
72. Ofcom found that the footage had been filmed and broadcast without consent and that the broadcaster presented the confession and apologies by Mr Humphrey as being genuine, voluntary, in his own words and sufficient to conclude (in advance of trial) that Mr Humphrey had committed criminal offences, in circumstances where the licensee had cause to doubt this. In this case, Ofcom found that the licensee had inadequate compliance procedures to prevent the contraventions and that the breaches represented a serious and repeated failure of compliance on the part of the licensee during this period in that the same or similar serious compliance errors were involved in the broadcast of both programmes. Ofcom found that that there was no evidence that the breaches were deliberate or reckless and took account of information from the Licensee about action it had taken since Ofcom's investigation to enhance its compliance processes.
73. **25 January 2018, Al Arabiya News Channel ("Al Arabiya News")**<sup>23</sup> - Ofcom imposed a penalty of £120,000 on the licensee and directed it to broadcast a statement of Ofcom's findings and not to repeat the material found in breach again, for breaches of Rules 7.1 and 8.1. The programme reported on an attempt made in 2011 by a number of people including the complainant, Mr Mashaima, to change the governing regime in Bahrain. It included an interview with Mr Mashaima, filmed while he was in prison, in which he made confessions in relation to the circumstances which had led to his arrest and conviction, which Mr Mashaima said had been obtained under torture.

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<sup>20</sup> The current version of [the Penalty Guidelines](#) came into force on 14 September 2017. Previous versions of the Penalty Guidelines were in effect, respectively, from December 2003, 13 June 2011 and 3 December 2015.

<sup>21</sup> [8 March 2021, Star China Media Limited sanction decision](#)

<sup>22</sup> On 4 February 2021, Ofcom revoked the Licence for CGTN to broadcast in the UK after its investigation concluded the licence was wrongfully held by SCML. Therefore, only the power to impose a financial penalty under section 237 of the 2003 was available in this case.

<sup>23</sup> [25 January 2018, Al Arabiya News Channel FZ-LLC sanction decision](#)

74. Ofcom found that the footage had been filmed and broadcast without consent and that the broadcaster had failed to take action to ensure that material facts had not been omitted in a way that was unfair to Mr Mashaima. Ofcom held that Mr Mashaima's case was well-publicised and the broadcaster would or ought to have been aware at the time of broadcast that the footage may not have accurately or fairly represented Mr Mashaima's account of events. Ofcom found that there had been serious compliance failings and that the broadcaster had acted recklessly without due regard to the risk that it would contravene the relevant rules of the Code.
75. **1 December 2011, Press TV Limited ("Press TV")**<sup>24</sup> - Ofcom imposed a penalty of £100,000 on the licensee and directed it to broadcast a statement of Ofcom's findings and not to repeat the material found in breach again, for breaches of Rules 7.1 and 8.1. This case concerned the filming and broadcast of interview footage of Mr Maziar Bahari, a journalist, in the context of a television news item critical about the presentation by some media outlets of an attack on the Basij base in Tehran, Iran during post-election demonstrations. In the footage, Mr Bahari admitted that he had sent a report about the attack to Channel 4 News and to Newsweek magazine. Viewers were not informed that the footage of Mr Bahari had been filmed by Press TV under duress, while he was being detained in prison.
76. Ofcom considered that it should have been clear to Press TV that Mr Bahari was giving an interview under duress and to which he did not consent. Ofcom said it should have been obvious to Press TV that the omission of these material facts was unfair and that the filming and broadcast of this interview constituted an unwarranted infringement of his privacy. It found that Press TV's failure to adopt and apply any compliance procedure in such circumstances demonstrated that it had not paid any regard to its obligations under the Code.
77. Ofcom found that the filming and broadcast exposed Mr Bahari in a vulnerable state and could have potentially damaged his career as a journalist, as well as serving to increase his distress. Ofcom also took into account that Press TV had broadcast the footage of Mr Bahari again two days after the adjudication recording the breaches and that, in its representations, it had given no indication that it acknowledged the contraventions or regretted them. Ofcom found the breaches in this case to be serious and deliberate.
78. **3 April 2009, The British Broadcasting Corporation ("BBC")** - Ofcom imposed a penalty of £80,000 for breaches of Rule 8.1. The case concerned two editions of *Russell Brand*, a radio broadcast, in which offensive references, including in recorded telephone calls, were made to the actor Andrew Sachs and his granddaughter, which resulted in their privacy being unwarrantably infringed. Ofcom found that the infringements were of the most serious nature as a result of the disclosure of information in the programme which was highly personal, intimate and sensitive in relation to the complainants who were clearly identifiable. Ofcom found that there had been a series of errors which had resulted in the serious failure of compliance. It also took into account the action the BBC had taken to mitigate the offence and damage caused by the breaches.
79. **20 June 2006, Kiss FM Radio Limited ("Kiss FM")** - Ofcom imposed a penalty of £75,000 for breaches of Rules 7.1 and 8.1 following a radio broadcast of a recorded telephone call between the presenter and a member of the public, who had inadvertently left his telephone number on the presenter's voicemail, believing it to be his Human Resources ("HR") officer's voicemail. The presenter then returned the complainant's call posing as the HR officer. The telephone call was recorded and broadcast without consent. Ofcom said the broadcast was devoid of any public interest justification and could have had a serious impact on the individual. It said the material clearly went beyond acceptable bounds and described the contravention as an abject failure of compliance and management.

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<sup>24</sup> [1 December 2011, Press TV Limited sanction decision](#)

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

80. As set out in our Penalty Guidelines, the central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. While ADMC does not present a risk of non-compliance since it has surrendered its licence and is no longer making its service available in the UK, Ofcom is also concerned to ensure that enforcement of the Code acts as a wider deterrent to the industry. Accordingly, it has considered what would be an appropriate and proportionate deterrent, if ADMC had continued to broadcast, taking into account its size and turnover.
81. In reaching its Decision on the imposition and level of a sanction in this case, Ofcom has taken account of ADMC's qualifying revenue for its most recent accounting period for which information is available.<sup>25</sup>
82. For all the reasons set out above, Ofcom considers it is proportionate to impose a financial penalty on ADMC of £125,000 (one hundred and twenty-five thousand pounds).

**Decision**

83. In order to achieve Ofcom's central objective of deterrence, we have carefully considered the nature and level of statutory sanction that should be imposed. In doing so, we have taken account of the particular seriousness of the breaches, ADMC's size and financial position, and relevant precedent cases. We have also had regard to our legal duties, as set out in the Adjudication, including the need to ensure that any sanction we impose is proportionate, consistent and targeted only at cases where action is needed.
84. Having regard to all the factors referred to above, Ofcom has decided that the most appropriate and proportionate sanction for these breaches of Rule 7.1 and Rule 8.1 is a financial penalty of **£125,000 (one hundred and twenty-five thousand pounds)** (payable to HM Paymaster General).

**Ofcom**  
**6 May 2021**

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<sup>25</sup> This is for the year ending 31 December 2019. ADMC informed Ofcom on 14 April 2021 that it was unable to provide its qualifying revenue for the year ending 31 December 2020.