

**Sanction: Decision by Ofcom**

**Sanction: to be imposed on Star China Media Limited**

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**For material broadcast on CCTV News on 27 August 2013 and 14 July 2014<sup>1</sup>.**

**Ofcom’s Sanction Decision against:** Star China Media Limited (“SCML” or the “Licensee”) in respect of its service **CCTV News** (previously TLCS000575BA/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 **£100,000 (one hundred thousand pounds)**.

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<sup>1</sup> [Ofcom’s Adjudication](#) published on 6 July 2020 in issue 406 of the Broadcast and On Demand Bulletin.

<sup>2</sup> Ofcom revoked the Licence on 4 February 2021 under section 238(4) of the Communications Act 2003 and Condition 28(2)(a) of the Licence on the basis that SCML had ceased to provide the CGTN service and, in the circumstances, it was appropriate to revoke the Licence. The reasons for Ofcom’s decision are set out in the [Notice of Revocation](#).

<sup>3</sup> The version of the Code which was in force at the time of the broadcast took effect on 21 March 2013. While the Code has been updated since this issue of the Code, Sections Seven and Eight of the Code were not amended.

## **Executive Summary**

1. CCTV News was renamed as China Global Television Network (CGTN) on 31 December 2016, and the service continued to operate under the same licence. The licence for the provision of the CGTN service was held by Star China Media Limited (“SCML” or “the Licensee”) until 4 February 2021 when the Licence was revoked by Ofcom. The service was broadcast by satellite in the UK. The Licensee did not hold any other broadcasting licences.
2. On 27 August 2013 CCTV News broadcast the news programme *China 24* which reported on the arrest of Mr Peter Humphrey for a criminal offence and on 14 July 2014 it broadcast *News Hour* which reported on his indictment. The programmes included footage of Mr Humphrey as he apologised for having committed the offence.
3. Mr Humphrey complained to Ofcom in November 2018 about unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programmes and the programmes as broadcast by CCTV News on 27 August 2013 and 14 July 2014.

## **Ofcom’s Adjudication**

4. In [Ofcom's Adjudication](#) (“the Adjudication”) published on 6 July 2020 in issue 406 of the Broadcast and On Demand Bulletin, Ofcom found that the programmes had breached Rules 7.1 and 8.1 of the Code.
5. The Adjudication set out specifically 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 programmes and the programmes as broadcast.
6. Ofcom put the Licensee 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 revocation**

7. On 4 February 2021, Ofcom revoked the Licence under section 238(4) of the Communications Act 2003 (the “2003 Act”) and Condition 28(2)(a) of the Licence on the basis that SCML had ceased to provide the CGTN service and, in the circumstances, it was appropriate to revoke the Licence.<sup>4</sup>
8. By virtue of section 346(3) of the 2003 Act, 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 Licence has been revoked and the CGTN service is no longer broadcasting.<sup>5</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>6</sup>, Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case. Having taken account of the Licensee’s representations Ofcom has reached a decision that a sanction is warranted for the reasons set out in paragraphs 57 to 71 below.

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<sup>4</sup> The reasons for Ofcom’s decision are set out in the [Notice of Revocation](#).

<sup>5</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 occurring while the 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.

<sup>6</sup> [The Sanctions Procedures](#).

10. Following consideration of the Licensee's representations, Ofcom's Decision is that the appropriate sanction is to impose a financial penalty of **£100,000 (one hundred thousand pounds)**. This paper sets out the basis for Ofcom's final Decision on the type and level of sanction to be imposed on the Licensee, taking into account all the relevant material in this case and Ofcom's Penalty Guidelines<sup>7</sup> ("the Penalty Guidelines").

### **Legal Framework**

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

11. Ofcom's principal duty, set out in section 3(1) of 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>8</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 infringements 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>9</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.

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<sup>7</sup> [The Penalty Guidelines](#).

<sup>8</sup> Section 3(2)(f) of the 2003 Act.

<sup>9</sup> Sections 3(3) and 3(4)(g) of the 2003 Act

17. Article 8 of the Convention provides for a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". Article 8(2) of the Convention states that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
18. Article 10 of the Convention provides for the right to freedom of expression. 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>10</sup> It applies not only to the content of information but also the means by transmission or reception<sup>11</sup>. And while subject to exceptions, the need for any restriction must be established convincingly<sup>12</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.

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<sup>10</sup> *Lindens v Austria* (1986) 8 EHRR 407

<sup>11</sup> *Autronic v Switzerland* (1990) 12 EHRR 485

<sup>12</sup> *Steel & Morris v UK* (2005) EMLR 15

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 revoked, 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 the breaches of the Code during the period in which a Licensee held a broadcasting licence.<sup>13</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 Preliminary View and Adjudication on Mr Humphrey's complaint**

24. In Ofcom's Preliminary View on Mr Humphrey's complaint (the "Breach Preliminary View"), Ofcom put the Licensee on notice that it had provisionally concluded there had been a breach of Rules 7.1 and 8.1 of the Code and that these breaches were serious such that (subject to the Licensee's representations on the Preliminary View) Ofcom intended to consider them for the imposition of a statutory sanction. The Licensee provided representations on Ofcom's Breach Preliminary View which included representations on whether the breach should be considered for sanction. The Licensee requested that Ofcom reconsider the reasonableness and proportionality of its view to impose a sanction and provided its reasons for this which are detailed below in paragraphs 36 and 37.
25. In the Adjudication, Ofcom found that the programmes *China 24* and *News Hour* broadcast by the Licensee on CCTV News on 27 August 2013 and 14 July 2014 respectively breached Rules 7.1 and 8.1 of the Code. The Adjudication set out the reasons as to why Ofcom upheld the complaint of unjust or unfair treatment and of unwarranted infringement of privacy in connection with the obtaining of material included in the programmes and the programmes as broadcast.
26. The Adjudication noted that the *China 24* programme broadcast on 27 August 2013 included a report on the arrest of Mr Humphrey and his wife for "*illegally obtaining personal information and selling it on for profit*" and that they "*face charges over obtaining and selling personal data for illegal purposes*". The programme included footage of Mr Humphrey, filmed by the programme makers, in which he was described as a "*suspect*" in a caption. In this footage, Mr Humphrey spoke in Mandarin and said: "*We obtained personal information by illegal means. I regret what I did and apologise to the Chinese government*". The programme also said that Mr Humphrey and his wife had "*confessed to their criminal activities, criminal facts to the police and apologised to the Chinese government*". The *News Hour* programme broadcast on 14 July 2014 included a report which provided an update on Mr Humphrey, and his wife. The report said that they had been indicted and included footage of Mr Humphrey, filmed by the programme makers, in which he was described as a "*defendant*" in a caption. In this footage, Mr Humphrey said "*I deeply regret having offended any Chinese law, it certainly was not our intention to violate Chinese law or to cause any harm. And, you know, if we have broken Chinese law then I feel very ashamed about that and I am very regretful about that and I apologise to the Chinese government for this*". The programme also said that Mr Humphrey had "*admitted to having used illegal means in his investigations, also expressing regret for his actions*". Mr Humphrey's face was obscured in both programmes, although he was named, the name of his company was revealed and details were given about his career. The Adjudication noted that Mr Humphrey and his wife were in custody in China facing serious criminal charges and were therefore in a

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<sup>13</sup> As set out above, 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 occurring while the 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.

vulnerable position. Mr Humphrey was also handcuffed in the first interview, although not the second.

27. In relation to Rule 7.1 of the Code, Ofcom considered that the inclusion of the footage in the programmes would have been understood by viewers as Mr Humphrey confessing to an offence. In Ofcom's view, the comments made about Mr Humphrey were framed as statements of fact, rather than allegations about him, and the police's evidence which it had relied upon to arrest Mr Humphrey and search his property was referred to in the programmes. The footage would also have been understood by viewers as showing Mr Humphrey had chosen to make these statements prior to his criminal trial. The programmes therefore had the clear potential materially and adversely to affect viewers' opinions of Mr Humphrey.
28. Ofcom also considered that insufficient steps had been taken by the Licensee to inform Mr Humphrey about the nature and purpose of the programmes, or to provide him with such information as may have otherwise suggested that he had given his informed consent to contribute to either programme. In relation to the *China 24* programme, the Licensee had relied on a short, signed note purported to be from Mr Humphrey and provided to it by the police. The note did not cast any light on what, if anything, the police had explained to Mr Humphrey. In relation to the *News Hour* programme, a longer note was provided to the Licensee via the police, which did set out some areas of questioning. The note also stated, "I have been told by the PSB that the purpose of this interview is to obtain an outcome of our case which will be favourable and lenient". This, in Ofcom's view, clearly implied that failing to consent to the interview would contribute to an outcome which was not "favourable and lenient" for Mr Humphrey, and this information was in the possession of the Licensee. The Licensee did not take any independent steps to inform Mr Humphrey as to the nature and purpose of the programmes, nor did it discuss with Mr Humphrey at the time his reasons for giving either interview or the nature of his contribution in the absence of those holding him in custody (i.e. people who, if there was undue pressure being placed on Mr Humphrey to give an interview, might reasonably be assumed to be the ones applying pressure). Ofcom considered that the Licensee ought to have been aware that, in light of the fact he was confessing to offences in advance of trial and in the presence of those who were holding him in custody, there were reasons to doubt whether Mr Humphrey's consent was genuine and informed. The fact the Licensee had been provided with these notes by the police could not, in the circumstances in which either interview took place, allay these concerns.
29. Further, it did not appear to Ofcom that the Licensee 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 Humphrey. Ofcom considered that the Licensee 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. This included that the invitation to interview Mr Humphrey came from the Ministry of Public Security, that the Licensee had not been able to verify the existence of informed consent and, in the case of the *News Hour* interview, that the Licensee was aware that Mr Humphrey believed that the outcome of his case was partly contingent on him giving the interview. Ofcom also found the Licensee failed to present facts which cast significant doubt on whether Mr Humphrey's statements were made voluntarily, and indeed of his guilt.
30. Ofcom also found that the complainant had not been provided with an appropriate opportunity to respond to the claims made in the programmes.
31. For these reasons (as detailed further in the Adjudication), Ofcom concluded that the broadcast of the programmes had resulted in unfairness to Mr Humphrey and that the Licensee was therefore in breach of Rule 7.1 of the Code.

32. In relation to Rule 8.1 of the Code, Ofcom considered that Mr Humphrey had a legitimate expectation of privacy, in circumstances where he was filmed in a detention centre in Shanghai (where access to him was limited and was likely to be restricted and where he was likely to be feeling vulnerable) and disclosed information of a highly sensitive nature. For the reasons set out above, Mr Humphrey had not provided his informed consent to being filmed or for the footage to subsequently be included in the broadcast programmes. Ofcom acknowledged that the programmes discussed matters which would have been of public interest in that it reported on Mr Humphrey's case and a serious issue about the misuse of personal data, and that it was important for the broadcaster to be able to make programmes which report on news stories with a view to imparting information about such topics to the audience. However, Ofcom did not consider that the public interest warranted filming Mr Humphrey in such a sensitive situation, nor broadcasting footage of him apparently confessing to a criminal offence (in advance of his trial), without first having taken further measures to verify the circumstances which had led to the interviews and to confirm that his consent had been obtained. For these reasons (as detailed further in the Adjudication), Ofcom found that the Licensee had unwarrantably infringed Mr Humphrey's legitimate expectation of privacy and that the broadcaster was therefore in breach of Rule 8.1 of the Code.
33. 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**

34. 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.
35. Ofcom issued a preliminary view ("the Sanction Preliminary View") that we were minded to impose on SCML a statutory sanction in the form of: a) a financial penalty; b) a direction that the Licensee broadcast a statement of Ofcom's finding on a date and in a form to be determined by Ofcom; and c) a direction that the Licensee does not repeat the programmes found in breach again. Ofcom sent a copy of the Sanction Preliminary View to the Licensee on 4 November 2020 and gave the Licensee the opportunity to provide written and oral representations on it. The Licensee provided its written representations to Ofcom on 16 December 2020, which are summarised in paragraphs 36 to 56 below alongside representations which were made during the course of Ofcom's investigation of Mr Humphrey's complaint. The Licensee chose not to make oral representations.

#### **The Licensee's representations**

##### *Serious and repeated nature of the breaches*

36. In its representations on Ofcom's Sanction Preliminary View, the Licensee noted, reiterating a point that it had made in its representations on Ofcom's Breach Preliminary View, that the complaint related to historic broadcasts from six to seven years ago, noting that Mr Humphrey submitted his complaint to Ofcom in November 2018. It said that the *China 24* programme was broadcast over five years and three months before Mr Humphrey complained to Ofcom, and the *News Hour* programme was broadcast over four years and four months before the complaint was submitted. The Licensee submitted that the complaint had been made out of time and that Ofcom should not have entertained it.
37. The Licensee said that Mr Humphrey's prolonged delay in lodging his complaint to Ofcom is a highly relevant consideration to the analysis of the seriousness of the breaches, which it considered Ofcom had not properly taken into account. In particular, it said that Ofcom had given little weight to the fact that Mr Humphrey made the time to speak publicly and give

interviews after his release from prison in 2015, despite receiving medical treatment up until mid-2018. The Licensee said that Ofcom also failed to note that Mr Humphrey was pursuing formal complaints against various bodies relating to his experience in China, rather than immediately pursue a formal editorial complaint to CCTV (or Ofcom). The Licensee said that Ofcom is required to consider the effect on the complainant when deciding on the seriousness of a breach and in its view, Mr Humphrey was not so detrimentally affected (or seriously harmed) by the broadcasts that he felt compelled to take prompt action to seek redress against the Licensee. This was exemplified by the fact that he had waited more than three years after his release from prison before complaining to Ofcom. The Licensee said that if Mr Humphrey did not consider the matter so serious as to warrant the prompt lodging of a complaint, it would be wrong and disproportionate for Ofcom to find the breaches to be so serious that they warrant the imposition of a statutory sanction.

38. The Licensee also provided representations that Ofcom had not given sufficient weight to certain factors in its decision to uphold the complaint. For example, the Licensee said that the seriousness of the breach must be considered in the context of the substantial public interest in Mr Humphrey's case, and in particular, that CCTV covered Mr Humphrey's case from the time of his arrest on 27 August 2013 through to his subsequent conviction on 8 August 2014 in which he was sentenced to two years and six months' imprisonment, a fine and deportation. The Licensee said that these were serious offences and would be regarded as such in any country, including the UK.
39. The Licensee said that only a very small amount of footage of Mr Humphrey speaking, with his face obscured, (8 seconds and 30 seconds respectively) was included in the broadcasts to illustrate what Mr Humphrey said following his arrest. It said that it would have been clear to the audience from both the narrative in the broadcasts and the footage itself that Mr Humphrey had made such statements whilst in custody and awaiting trial. It said that it was also noteworthy that the statements that Mr Humphrey made at that time were not contradicted by what he later said in his trial, and that he was, in fact, convicted and sentenced to imprisonment. The Licensee submitted that Ofcom had not given sufficient weight to any of these points when assessing the fairness and privacy breaches.
40. The Licensee submitted that the characterisation of the breaches as repeated was grossly unfair. It said that at the time of the second broadcast, it was not apparent to the Licensee that it had contravened any requirement of the Code. This was because, in the intervening period a complaint was neither lodged with the broadcaster nor Ofcom. During this period, Ofcom had also not made any finding against the Licensee (or broadcaster), and therefore, it was not on notice that the first broadcast potentially breached the Code. The Licensee said that in its view, it had taken the appropriate steps at the time to broadcast the first programme, and later the second programme, in compliance with the Code.
41. The Licensee submitted that it was neither proportionate nor necessary for Ofcom to impose any statutory sanction, not least the three statutory sanctions Ofcom set out in its Sanction Preliminary View, given the circumstances of the case and when properly taking into account the precedent cases and the Penalty Guidelines.
42. In particular, it said that a direction to broadcast a statement of Ofcom's findings and a direction not to repeat the programmes found in breach again were unnecessary when taking into account that the Licensee had voluntarily committed not to repeat the programmes found in breach and, expressed that it does not intend to broadcast pre-trial confessions in the UK, other than in exceptional circumstances where it was confident that it was justifiable in the public interest and would be compliant with the Code.
43. It also said that it would be disproportionate, and inconsistent with precedent for Ofcom to impose a financial penalty and in particular a penalty of the amount indicated in Ofcom's



Sanction Preliminary View. The Licensee argued that it was necessary to take into account its compliance history and that this was its first breach of the fairness and privacy rules since it began broadcasting in 2003<sup>14</sup> and that it had only been found in breach of the Code on two other occasions relating to the impartiality rules. It said that its compliance record compares favourably against other mainstream UK broadcasters and surpasses a number of overseas media organisations broadcasting into the UK. It added that it had never been invited by Ofcom to discuss its compliance obligations unlike other international media organisations broadcasting in the UK.

44. The Licensee submitted that the breaches found by Ofcom were not sufficiently serious or repeated so as to warrant the imposition of a statutory sanction, let alone such a high financial penalty.

*The Licensee's response to other factors taken into account in determining the penalty*

45. The Licensee confirmed that it made no gain, financial or otherwise, as a result of broadcasting the programmes found in breach of the fairness and privacy provisions of the Code.
46. The Licensee noted that Ofcom was not suggesting that the breaches were deliberate or reckless.
47. The Licensee maintained that it took appropriate steps in good faith at the time, which it believed to be in compliance with the Code. It considered Ofcom's provisional view that the broadcaster had "seriously inadequate compliance processes" to be an incorrect and unfair characterisation when it said it had taken some steps to discharge its compliance obligations rather than no steps at all. In particular it said that:
- a) It had taken steps it believed were sufficient at the time to obtain Mr Humphrey's consent and received notes of written consent signed by Mr Humphrey (an experienced journalist) on both occasions;
  - b) Mr Humphrey's demeanour during the interviews did not indicate that he was in extreme distress;
  - c) At no point during the filming of Mr Humphrey did he ask for the filming to stop; had he done so, then the filming would have been stopped;
  - d) The broadcaster obscured Mr Humphrey's face in both programmes; and,
  - e) The broadcaster broadcast only a very small amount of footage of Mr Humphrey speaking in both broadcasts (as outlined at paragraph 39 above). This footage was included to illustrate what he had said and those statements were not contradicted by what he said later in his trial.
48. The Licensee also submitted in its representations on Ofcom's Sanction Preliminary View, reiterating a submission it had made in its representations on Ofcom's Breach Preliminary View, that the service on which the programmes had been broadcast was renamed in late 2016. It said that in the intervening period, the service had changed and evolved considerably, including in relation to its editorial staff, production and practices, as well as its compliance and regulatory efforts to broadcast to a worldwide audience. It added that it runs a continuous programme of training for its staff in compliance and regulatory issues, including in relation to the Code. The Licensee noted that in its Sanction Preliminary View, Ofcom appeared to be concerned about an apparent serious failure in compliance that ought to have been prevented by the Licensee's compliance procedures. The Licensee provided the following information in relation to its

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<sup>14</sup> The service started broadcasting in 2003, although up until 2011 the Licence was held by Satellite Television Asian Region Ltd. The service was originally called CCTV and its name changed to CGTN on 31 December 2016.

compliance and the steps it had taken since Ofcom's investigation into Mr Humphrey's complaint commenced:

- a) The broadcaster takes its compliance responsibilities seriously and has invested considerable time and effort in training in this area, particularly since receiving Mr Humphrey's complaint almost two years ago and with a specific focus on the concerns that Ofcom has raised with the channel. It said that up until that date, the broadcaster had an almost clean record with only one<sup>15</sup> impartiality breach found by Ofcom and no sanctions recorded against it;
  - b) The broadcaster reviewed and updated its training programme on the Code and a number of training seminars were delivered to its staff in 2019 and 2020 which involved a detailed explanation of the Code. It said that one of the presentations focussed on the fairness and privacy sections of the Code to reinforce staff's understanding of it and improve compliance in this area;
  - c) The broadcaster had also produced updated and detailed editorial guidelines for all staff during 2020 which emphasise the importance of compliance with the Code and the application of good journalistic practices;
  - d) It started holding regular output reviews to discuss compliance issues with staff, including at the end of an Ofcom investigation when a complaint is upheld and/or referred for sanction; and,
  - e) For all pre-trial confession footage that the broadcaster may consider broadcasting, the broadcaster had recently implemented an automatic referral system to the relevant geographical Head of the production centre, who can refer the matter to the channel's Global Editorial Board and/or seek external specialist advice as necessary.
49. The Licensee submitted that it took effective steps to end the breaches found by Ofcom and to remedy the consequences once it became aware of them. It added that it had not repeated the footage of Mr Humphrey since receiving the Ofcom complaint and it had assured Mr Humphrey (and Ofcom) in its previous submissions that it would not rebroadcast the footage of which he had complained. It reiterated that it had taken careful note of Ofcom's views on broadcasting pre-trial confessions and that in future, the broadcaster did not intend to broadcast such material in the UK, other than in exceptional circumstances.
50. The Licensee said that it had been fully cooperative with Ofcom's investigation at every stage.

*Precedent cases*

51. The Licensee said that there were significant differences between the precedent cases relied on by Ofcom in its Sanction Preliminary View and this case and as such it should not be treated in the same way. It said that the financial penalty imposed was disproportionate and not consistent with precedent.
52. With regards to the Press TV sanction decision<sup>16</sup>, the Licensee submitted that:
- a) The Press TV case represented serious and deliberate breaches of the Code because of the lack of steps taken to obtain the complainant's informed consent. The Licensee submitted that the same could not be said in this case and noted that Ofcom had said that it had not found the Licensee to have been deliberate or reckless. The Licensee further stated that,

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<sup>15</sup> The Licensee referred to one previous breach in its representations. While the Licensee had, at the time that Ofcom received Mr Humphrey's complaint, only been found in breach on one previous occasion relating to the due impartiality rules, as set out at paragraph 96. At the date that Ofcom published its Adjudication on Mr Humphrey's complaint, it had been found in breach of the Code on two occasions relating to the impartiality rules.

<sup>16</sup> [1 December 2011, Press TV Limited sanction decision](#)

unlike in the Press TV case where no steps were taken to obtain consent, the Licensee did take steps to obtain Mr Humphrey's consent that it believed, in good faith, were sufficient at the time to comply with the Code. Again, unlike the Press TV case where the material found in breach was rebroadcast on multiple occasions, the Licensee had not rebroadcast the relevant footage in the UK and had assured Mr Humphrey (and Ofcom) that it would not do so. Taking these factors into account, the Licensee said that it showed that it did not have a similar disregard for compliance.

- b) The panel also considered in the Press TV case that the detrimental effect of the broadcast on the complainant was relevant to the amount of the financial penalty. The Licensee reiterated its submissions that the fact Mr Humphrey waited three years after his release from prison to bring the complaint against the Licensee was evidence that the effect of the broadcast on Mr Humphrey was not so serious, otherwise he would have lodged his complaint sooner.
- c) Press TV had been found in breach of the Code 11 times in total. In contrast, the Licensee had previously been found in breach of the Code twice for impartiality breaches and had not been sanctioned to date.
- d) The Licensee had cooperated with Ofcom at every stage of the investigation process, whereas in the Press TV case the Licensee had made broad and far reaching allegations against Ofcom and the fairness of Ofcom's process.

53. With regards to the Al Arabiya sanction decision<sup>17</sup>:

- a) Al Arabiya did not appear to take any steps prior to the broadcast of the programme to verify the accuracy and veracity of the footage (which had been filmed four to five years prior to the broadcast) nor did it take into account that it had been publicised that the complainant had sought to have his conviction overturned on the basis that his confession had been obtained under torture. Al Arabiya had also not secured the complainant's consent to film him. By contrast, the Licensee said that the broadcaster was present during the filming of the interviews of Mr Humphrey and took a number of steps that it believed at the time were sufficient to obtain Mr Humphrey's informed consent prior to the broadcast of the programmes.
- b) In the Al Arabiya case Ofcom found that the public interest did not warrant the broadcast of the material. The Licensee submitted that in the current case under consideration, there was a substantial public interest in the broadcast of the footage of Mr Humphrey given his arrest and detention concerned a highly topical issue of personal data trafficking which was of international importance.
- c) Although Al Arabiya had not been found in breach of the Code prior to the breach which was considered for sanction, it had only been broadcasting for three years at the time the breach occurred. The Licensee said that by contrast, the broadcaster had been broadcasting in the UK for 18 years<sup>18</sup> and had previously only been found in breach of the Code twice on impartiality grounds.
- d) Ofcom considered that Al Arabiya had displayed a reckless disregard for the Code because it did not appear to have adequate compliance procedures to prevent contraventions of the Code, whereas the Licensee said the same could not be said for this case for the reasons summarised above.

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<sup>17</sup> [25 January 2018, Al Arabiya News Channel FZ-LLC sanction decision](#)

<sup>18</sup> The service started broadcasting in 2003, although up until 2011 the Licence was held by Satellite Television Asian Region Ltd.

54. The Licensee acknowledged Ofcom's view that the above precedent cases had to be considered in the context of the more recent Penalty Guidelines and the greater focus on deterrence by Ofcom when sanctioning broadcasters. It said that it reiterated its submissions regarding the relevance of the Press TV case even under the new Penalty Guidelines.
55. The Licensee submitted that to impose any financial penalty, not least the provisional financial penalty proposed by Ofcom, would be disproportionate and not consistent with precedent.
56. The Licensee concluded that it was neither necessary nor proportionate to impose any statutory sanction in this matter. It submitted that the three sanctions Ofcom had proposed to impose were unnecessary and disproportionate in light of i) the circumstances of the case, including the fact that the Licensee had already committed not to broadcast pre-trial confessions in the UK, other than in exceptional circumstances; ii) relevant precedent, and iii) the Penalty Guidelines.

#### **Ofcom's Decision on the imposition of a statutory sanction**

57. We set out below Ofcom's Decision on its reasons for considering that it is appropriate to impose a statutory sanction and as to the level of sanction Ofcom considers should be imposed on the Licensee. In reaching its decision, Ofcom has taken into account all relevant material and the Licensee's representations. In addition, Ofcom had regard to the Penalty Guidelines.
58. We first considered whether the breaches were serious, deliberate, reckless or repeated.

#### **Serious and repeated nature of the breaches**

59. 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.
60. In general, contraventions of Rules 7.1 and 8.1 of the Code may be considered serious content 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.
61. In considering the seriousness of the breach, we took into account the Licensee's representations on the Sanction Preliminary View, some of which had also been made during Ofcom's investigation of Mr Humphrey's complaint. We acknowledge the Licensee's submission that the complaint related to broadcasts that took place a number of years ago and that the service had evolved considerably since then. However, at the time the programmes were broadcast, the service was licensed by Ofcom and Rules 7.1 and 8.1 of the Code still applied. Therefore, irrespective of when the programmes were broadcast, the Licensee should have fully considered whether the filming and broadcast of the footage of Mr Humphrey was in compliance with the Code.
62. We also acknowledged the Licensee's submission that, although Mr Humphrey had been released from prison in 2015, and had subsequently spoken publicly and to the media about his experiences, as well as pursuing other formal complaints against other bodies, he had not made a complaint to Ofcom until 2018. We noted the Licensee's view that this should be taken into account by Ofcom in considering the potential detrimental impact of the broadcast of the programmes on Mr Humphrey.

63. The issue of delay in Mr Humphrey bringing the complaint to Ofcom was considered in Ofcom's decision to entertain the complaint. Ofcom's published procedures on fairness and privacy complaints<sup>19</sup> state that Ofcom may refuse to entertain a complaint where it has not been submitted within 20 working days of broadcast, but that Ofcom will weigh relevant factors before deciding whether or not it is appropriate to entertain a complaint submitted outside this time period. In particular, in reaching a decision that it was appropriate to entertain the complaint, we had regard to the fact that Mr Humphrey was detained for much of this intervening period (being released from prison in June 2015) and he then received medical treatment for physical conditions and mental health problems up until mid-2018, all of which he had said had prevented him from submitting the complaint sooner. We noted that Mr Humphrey had spoken publicly and widely about his concerns and experiences, and as such we considered that the broadcaster would have, or ought to have, been aware of the very serious claims Mr Humphrey was making about his arrest and imprisonment and his claims about the broadcaster's role in it.
64. In terms of the Licensee's submission that Mr Humphrey was not so seriously harmed by the broadcasts that he felt the need to seek immediate redress by complaining to Ofcom, Ofcom considered that, even if Mr Humphrey could have brought his complaint earlier than he did, in assessing the seriousness of the breaches in this case, it was important to consider the potential harm to the complainant that could have resulted from the broadcasts. Ofcom did not consider that the mere fact the complaint related to broadcasts made a number of years ago, nor the fact there had been a delay in the submission of Mr Humphrey's complaint, lessened the potential impact of the broadcasts on Mr Humphrey's reputation or altered in any way the sensitivity of the statements made by Mr Humphrey in the interviews at the time of broadcast, which did have the potential to cause serious harm to Mr Humphrey, for the reasons set out at paragraphs 79 and 80 below.
65. Ofcom acknowledged the Licensee's undertaking not to broadcast the footage of Mr Humphrey again and to carefully consider whether to broadcast pre-trial confessions in the UK in future (although we also note that the CGTN service has now ceased broadcasting following revocation of the Licence, as explained at paragraph 7 above). Whilst this may have reduced the likelihood of future breaches, Ofcom does not consider that this undertaking alters the seriousness of the original breaches.
66. Having carefully considered the Licensee's representations made during Ofcom's investigation and in response to the Sanction Preliminary View, it is Ofcom's view that the breaches were particularly serious. This is because, as set out in paragraphs 25 to 32, the footage of Mr Humphrey showed him disclosing highly sensitive information – apparently confessing to a criminal offence – in a manner that would have led viewers to have gained the impression that he had made a genuine, voluntary statement on the basis of which it was safe to conclude he had committed offences, and in circumstances where:
- a) Mr Humphrey was detained in a detention centre when the interviews took place;
  - b) he was likely to be feeling vulnerable, taking into account the environment where he was filmed as noted above, and also, in relation to the first interview, that he was handcuffed while he was being interviewed;
  - c) the allegations made against Mr Humphrey were, at the time of the filming and broadcast of the programmes, still subject to a pending criminal trial;
  - d) the Licensee took insufficient steps to obtain Mr Humphrey's informed consent before filming him making the statements contained in the footage;

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<sup>19</sup> [Procedures for the consideration and adjudication of Fairness and Privacy Complaints](#)

- e) Mr Humphrey may have felt that not agreeing to take part in the second interview would have contributed to a less favourable and lenient outcome at his trial; and,
  - f) the Licensee failed to present facts which cast significant doubt on whether Mr Humphrey's statements were made voluntarily, and on his guilt.
67. We considered that the failure by the Licensee to comply with Rule 7.1 of the Code resulted in serious unfairness to Mr Humphrey. This was because of the Licensee's failure to obtain Mr Humphrey's informed consent and its failure to fairly present material facts which would have cast doubt on the presence of consent and on whether the alleged confession could be taken at face value which meant that the audience's perception of him was likely to have been altered to his detriment.
68. Further, we considered that the failure by the Licensee to comply with Rule 8.1 of the Code resulted in a serious infringement of Mr Humphrey's legitimate expectation of privacy. As set out above, on both occasions Mr Humphrey was filmed in a detention centre, disclosing highly sensitive information i.e. apparently confessing to a criminal offence, and doing so prior to any criminal trial having taken place. Moreover, despite the extremely sensitive circumstances of the filming, the Licensee took insufficient steps to secure Mr Humphrey's consent to film him on either occasion. We acknowledged the Licensee's submission that only a small amount of footage of Mr Humphrey with his face obscured was included in the programmes and that there was a public interest in covering the arrests and developments of Mr Humphrey's story. These factors were considered by Ofcom when reaching its adjudication of Mr Humphrey's complaint that his privacy had been unwarrantably infringed. While we acknowledge that there was a public interest in reporting on Mr Humphrey's case, it was not sufficient to warrant the filming or broadcast of this material in the circumstances and did not outweigh the very significant intrusion into Mr Humphrey's right to privacy.
69. In addition to assessing the seriousness of the breaches, Ofcom also considered whether they were repeated. We took into account the Licensee's submission that Ofcom should not categorise these breaches as repeated because a complaint had not been made to Ofcom by Mr Humphrey, nor had the broadcaster been put on notice that the programmes had breached the Code, until after the second programme had been broadcast. Ofcom acknowledges that both programmes had already been broadcast before Ofcom received and investigated Mr Humphrey's complaint into the programmes, and that we had not previously found the Licensee to be in breach of Rules 7.1 or 8.1 of the Code.
70. However, the Sanctions Procedures make clear that a repeated breach of a relevant requirement may also include "... repetition of the same or similar conduct as that which earlier contravened a requirement" in the Code. This may include repetition of the same or similar conduct in two programmes which are both found to be in breach of the same rules of the Code, even if Ofcom has not begun its investigation into the first broadcast before the second programme is broadcast. In this case, the Licensee breached Rules 7.1 and 8.1 of the Code in relation to the broadcast of two programmes, broadcast almost 11 months apart, namely *China 24* and *News Hour* on 27 August 2013 and 14 July 2014 respectively. Both programmes reported on the story of Mr Humphrey and included footage of Mr Humphrey, filmed by the programme makers while Mr Humphrey was in a detention centre, as he apologised for having committed an offence. On both occasions, the broadcaster had failed to obtain Mr Humphrey's informed consent and failed to present material facts about his circumstances. In light of these factors, we considered that the same or similar serious compliance errors were involved in both instances. Ofcom therefore considered that the breach of Rules 7.1 and 8.1 of the Code represented a serious failure of compliance during this period, and was repeated in the sense of occurring in relation to two separate broadcasts. We considered that the potential adverse impact and harm to Mr Humphrey was exacerbated by such serious and repeated failures.

71. In light of the above, Ofcom's Decision is that the breach of Rules 7.1 and 8.1 represented a serious and repeated failure of compliance with the Code on the part of the Licensee, which warrants the imposition of a statutory sanction.

**Imposition of sanction**

72. In view of the factors set out above, Ofcom has decided that the breaches were serious and repeated warranting the imposition of a statutory sanction. The following paragraphs set out the sanction that we have decided to impose.

73. As set out in paragraphs 23 above, Ofcom has powers to impose a statutory sanction on TLCS licensees under sections 236 to 239 of the 2003 Act. As SCML's TLCS licence to provide the CGTN service has now been revoked, and the CGTN service has ceased broadcasting in the UK, only the power to impose a financial penalty under section 237 of the 2003 Act is available in this case. As such, in contrast to Ofcom's proposals in the Sanction Preliminary View, Ofcom will not be imposing on the Licensee a direction to broadcast a statement of Ofcom's findings nor a direction not to repeat the programme. Nor is it relevant for Ofcom to consider whether licence revocation may be an appropriate and proportionate sanction in this case.

74. As explained at paragraph 23 above, under section 237 of the 2003 Act, the maximum level of financial penalty that can be imposed on the holder of a TLCS licence is whichever is greater of £250,000 and 5 percent of the qualifying revenue from the licensed service for the licensee's last complete accounting period falling within the period during which its licence has been in force. In this instance the maximum penalty Ofcom can impose is £250,000. We also took into account evidence of other funds received by SCML in connection with the CGTN service.

75. 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".

76. In reaching its Decision on the imposition of a sanction in this case, Ofcom has taken account of the need to ensure that any penalty acts as a deterrent and has also taken account of the specific factors set out at paragraph 1.12 of the Penalty Guidelines, as set out below.

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

*The seriousness and duration of the contravention*

77. For the reasons set out in paragraphs 66 to 70 above, Ofcom regards the breaches in this case as serious and repeated. We were particularly concerned with the circumstances in which the complainant was filmed, the potential impact the broadcasts would have had on viewers' opinions of Mr Humphrey, and the insufficient steps taken by the broadcaster to secure Mr Humphrey's informed consent and fairly represent material facts in the broadcast programmes. The fact the programmes resulted in serious unfairness to Mr Humphrey and gave rise to a serious and unwarranted infringement of Mr Humphrey's legitimate expectation of privacy was also of particular concern to Ofcom.

78. The Adjudication related to material broadcast on 27 August 2013 and 14 July 2014. Ofcom has taken into consideration that similar, serious compliance errors were made in relation to the two programmes which were broadcast almost 11 months apart.

*The degree of harm, whether actual or potential, caused by the contravention, including any increased cost incurred by consumers or other market participants*

79. We acknowledged the Licensee's representations, as outlined in paragraphs 36 and 37, in relation to Mr Humphrey's delay in the submission of his complaint to Ofcom and the potential implications of this. However, we considered that despite the delay in bringing the complaint to Ofcom, the programmes had the potential to cause serious harm to Mr Humphrey. The programmes were found to be unjust or unfair to the complainant in that they would have given viewers the clear impression that he had given informed consent to appear and was making genuine, voluntary statements on the basis of which it was safe to conclude that he had committed offences, when that may not have been the case. The programmes were also found to have been a serious infringement of Mr Humphrey's legitimate expectation of privacy. We also considered the fact the breaches occurred across two programmes had the potential to heighten the adverse impact and harm to Mr Humphrey.
80. We noted in the Adjudication that it was not necessary for Ofcom to conclude on whether or not Mr Humphrey's trial was fair or his conviction safe, and whether the contravention had any impact on that. However, we note as a general point that pre-trial broadcast of footage giving the impression that an individual has voluntarily and genuinely confessed to offence has some potential to affect the fairness of a trial, whether or not it did so in this case.

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

81. The Licensee confirmed in its representations, as set out at paragraph 45, that it did not make 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*

82. We took into account the Licensee's representations, summarised at paragraph 47, concerning the steps it took to ensure compliance with the Code, which it considered were appropriate at the time. However, we considered that the steps it had taken were insufficient and we were concerned that the Licensee continued to maintain its view that the compliance procedures at the time the programmes were broadcast were adequate.
83. In particular, in deciding to film and broadcast the footage of Mr Humphrey, the Licensee relied on Mr Humphrey's demeanour during the interviews (as reiterated in its representations), his experience as a journalist and notes purported to have been signed by Mr Humphrey which were provided to it by the Ministry of Public Security as evidence that Mr Humphrey had consented to the interviews. The Licensee did not take any independent steps to inform Mr Humphrey as to the nature and purpose of the programme, provide him with any other information or discuss with Mr Humphrey his reasons for giving the interviews in the absence of those holding him in custody. On that basis, it did not appear to Ofcom that the broadcaster had taken sufficient steps to obtain Mr Humphrey's informed consent to the filming of the footage. We considered this to be a serious failure of compliance.
84. In addition, Ofcom had significant concerns that the Licensee 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 was so. This was particularly in the case of the *News Hour* interview, in relation to which the Licensee was aware that Mr Humphrey believed that the outcome of his case was partly contingent on him giving the interview.
85. Taking into account the matters above, the Licensee took insufficient steps to ensure that the filming and subsequent broadcast of the footage of Mr Humphrey in the programmes would not



result in a contravention of the Code. We therefore considered that this was evidence of seriously inadequate compliance processes for ensuring that individuals are not subject to unjust or unfair treatment or unwarranted infringements of privacy.

*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*

86. For the reasons explained at paragraphs 82 to 85 above, we considered that the Licensee had inadequate compliance procedures to prevent the contraventions of Rules 7.1 and 8.1 of the Code. We considered this represented a serious and repeated failure on the part of the Licensee. Although we have no evidence that suggests the breaches were deliberate or reckless, such a serious failure in compliance ought to have been prevented by the Licensee's compliance procedures.
87. We note, in particular, that the evidence apparently relied upon by the broadcaster as demonstrating informed consent was very significantly short of what could have been considered appropriate in the circumstances. It relied on notes which were provided to it by the Ministry of Public Security and impressions formed of Mr Humphrey's demeanour without taking further steps to obtain Mr Humphrey's informed consent in order to comply with Rule 7.1. Indeed, one of the notes it had provided to it made clear that Mr Humphrey was under the impression that giving an interview would lead to more favourable and lenient treatment (and, by implication, failure to give an interview would result in less favourable and lenient treatment).
88. We considered the Licensee also ought to have considered the likelihood that Mr Humphrey may have had a legitimate expectation of privacy in circumstances where he was filmed while in a detention centre and disclosing highly sensitive information. While the Licensee obscured Mr Humphrey's face in both programmes, his voice was not disguised, he was named and other information was included about him which rendered him easily identifiable. The Licensee therefore took steps significantly short of those necessary in order to ensure compliance with Rule 8.1.
89. We considered that these represented material compliance errors in the Licensee's approach to compliance with Rules 7.1 and 8.1 in the circumstances of this case.

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

90. It appears that the Licensee only became aware of the potentially serious issue raised by these particular programmes following Mr Humphrey's complaint to Ofcom. Ofcom is not aware of the programmes having been repeated on the UK licensed service since their first broadcasts.
91. The Licensee submitted that the service on which the programmes had been broadcast was renamed in late 2016. It said that in the intervening period, the service had changed and evolved considerably, including in relation to its editorial staff, production and practices, as well as its compliance and regulatory efforts and that it ran a continuous programme of training for its staff in compliance and regulatory issues. The Licensee also said (prior to Ofcom's decision to revoke the licence) that it had also taken careful note of Ofcom's views on broadcasting pre-trial confessions and that it did not intend to broadcast in the UK such material other than in exceptional circumstances where it was confident that it was justifiable in the public interest and would be compliant with the Code. We have taken into account that in its representations on Ofcom's Sanction Preliminary View (which were made prior to Ofcom's decision to revoke the licence), the Licensee provided Ofcom with further information about its compliance processes and the steps it had taken to enhance these since Ofcom's investigation into Mr Humphrey's complaint and its Adjudication, as set out at paragraph 48 above. In particular, the Licensee told

us that their enhanced processes included referring all pre-trial confession footage that it may consider broadcasting for further scrutiny by the geographical Head of the production centre, who could then refer the matter to the channel's Global Editorial Board, or for external specialist advice, as well as delivering specific training in this area.

92. In Ofcom's view, the above information suggests that the Licensee had taken some steps to put in place measures which might have helped to prevent further breaches of this nature from happening again. However, we were concerned that the Licensee continued to maintain that it considered the programmes were not in breach, and that it had said that it would consider broadcasting pre-trial confession footage in future, albeit only in exceptional circumstances where it was confident that it would comply with the Code.

*Any steps taken for remedying the consequences of the contravention*

93. In terms of avoiding repetition of the contravention, the Licensee had said that it would not repeat footage of Mr Humphrey which was the subject of the complaint again. We also note that the CGTN service has ceased broadcasting following revocation of the Licence, as explained at paragraph 7 above.

94. We are not aware that the Licensee has taken steps to remedy the consequences for Mr Humphrey of the contraventions that occurred.

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

95. Prior to revocation of the Licence on 4 February 2021, SCML had held an Ofcom Licence since 2011<sup>20</sup> and Ofcom had not previously found the Licensee to have committed breaches of Rules 7.1 and 8.1 the Code, prior to the breaches now being considered for statutory sanction.
96. On two occasions, Ofcom found the Licensee in breach of Rules contained within Section 5 of the Code. The first of these breaches related to four news items reporting on pro-democracy demonstrations taking place in Hong Kong which took place at the end of September 2014 and early October 2014 which, in 2015 were found by Ofcom to have breached due impartiality Rules 5.1, 5.11 and 5.12 of the Code<sup>21</sup>. The second breach related to five news items reporting on protests which were ongoing in Hong Kong during August 2019 and November 2019 which, in May 2020 were found by Ofcom to be in serious breach of Rules 5.1, 5.11 and 5.12 of the Code<sup>22</sup>. This case was considered separately for the imposition of a statutory sanction<sup>23</sup>.

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

97. In Ofcom's view, the Licensee has been generally cooperative in that it has engaged with the investigation. For example, it provided full representations in response to Ofcom's Entertainment Decision and Preliminary View on the complaint.

**Precedent**

98. 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.

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<sup>20</sup> The service started broadcasting in 2003, although up until 2011 the Licence was held by Satellite Television Asian Region Ltd.

<sup>21</sup> [Ofcom's Decision](#) published on 16 February 2015 in issue 273 of Ofcom's Broadcast Bulletin.

<sup>22</sup> [Ofcom's Decision](#) published on 26 May 2020 in issue 403 of Ofcom's Broadcast and On Demand Bulletin.

<sup>23</sup> See Ofcom [Sanction Decision](#) published 8 March 2021

99. Ofcom considered a number of previous decisions in which financial penalties had been imposed for breaches of Rules 7.1 and 8.1 of the Code<sup>24</sup>. Some of these decisions are now over five years old and were decided under the previous Penalty Guidelines<sup>25</sup>. Ofcom's new Penalty Guidelines place greater emphasis on deterrence. Ofcom considered the relevance of these past precedents to the circumstances of the breaches at issue in this Decision and, where relevant, took them into account in deciding on the level of penalty which would be proportionate in the circumstances.
100. While Ofcom considers that there are certain similarities in nature of the cases discussed in paragraphs 101 and 105 which mean they are of relevance to the current case for the reasons set out below, we note that, as set out in the Penalty Guidelines, Ofcom may depart from them depending on the facts and the context of the current case. In particular, Ofcom will not regard the amounts of previously imposed penalties as placing a lower or 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.
101. Ofcom considered that two previous decisions (Al Arabiya News Channel FZ-LLC ("Al Arabiya News")<sup>26</sup> and Press TV Limited ("Press TV")<sup>27</sup>) in which Ofcom had imposed financial penalties for breaches of Rules 7.1 and 8.1 shared a number of similar features to this case. This is because they involved the broadcast of sensitive material about the complainants without their consent, where the footage had been filmed by the broadcaster (or in the case of Al Arabiya News by a stringer, on behalf of the broadcaster, using the broadcaster's equipment) in a sensitive environment and where the broadcaster was aware, or ought to have been aware, of the complainant's circumstances, although both these cases related to footage broadcast in one programme, rather than in two programmes broadcast 11 months apart as in this case. The Al Arabiya News and Press TV cases also involved the omission of material facts which denied viewers important contextual information about the circumstances of the interviews. As in this case, Ofcom also considered that the Press TV and Al Arabiya News breaches had resulted from inadequate compliance procedures or compliance failures. The Al Arabiya News case was also similar in nature to the present case in that it involved the complainant discussing matters of a highly sensitive nature, i.e. apparently confessing to a criminal offence.
102. However, we noted that there were also differences in the circumstances of the Press TV and Al Arabiya News cases.
103. For example, in the Press TV case Ofcom considered that an aggravating factor was that the broadcaster had failed to accept Ofcom's findings and had been unwilling to recognise its obligations as an Ofcom licensee to comply with the Code and had also re-broadcast the footage in question in two further programmes following the publication of Ofcom's Adjudication, which Ofcom considered represented a continuance of their contravening behaviour. Ofcom also considered the breach in the Press TV case to be deliberate as well as serious. We also took into account the Licensee's submission that these factors do not apply in this case, as Ofcom has not found the breaches to be deliberate or reckless. We also took into account the Licensee's representations, as set out at paragraph 52 above, on Press TV's compliance history, noting that Press TV had been found in breach of the Code 11 times, in contrast to the Licensee's compliance record of two breaches of the Code relating to the due impartiality rules in the Code. However, Ofcom also took into account that the Press TV precedent had been decided nine

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<sup>24</sup> See Annex 1 Precedents.

<sup>25</sup> The current version of [the Penalty Guidelines](#) came into force on 14 September 2017. This version of the Penalty Guidelines replaced the previous version which had come into force on 3 December 2015.

<sup>26</sup> [25 January 2018, Al Arabiya News Channel FZ-LLC sanction decision](#)

<sup>27</sup> [1 December 2011, Press TV Limited sanction decision](#)

years ago, and had not been decided under Ofcom's current Penalty Guidelines, which place greater emphasis on deterrence.

104. In relation to the Al Arabiya News case, we recognised that an aggravating factor in that case was that Al Arabiya News did not appear to have taken any steps prior to the broadcast of the programme to verify the accuracy and veracity of the footage. This was despite the fact that the relevant footage had been filmed either four or five years prior to it being included in the broadcast programme, and during which it had been well-publicised that the complainant had sought to have his conviction overturned on the basis that his confession had been obtained under torture. We took into account the Licensee's submission that, in the Al Arabiya News case, Ofcom had found the Licensee had acted recklessly, whereas in this case Ofcom had not found the breaches to have been deliberate or reckless. We also took into account the Licensee's representations, as set out at paragraph 53 above, that while Al Arabiya had a good compliance record, the service had been broadcasting for three years prior to Ofcom's breach finding in that case. By way of comparison, the Licensee said that its service had been broadcasting for 18 years<sup>28</sup> and had only had two breaches recorded against it both relating to the due impartiality rules in the Code.
105. We considered that the British Broadcasting Corporation ("BBC")<sup>29</sup> and Kiss FM Radio Limited ("Kiss FM")<sup>30</sup> cases shared certain similar features to this case, albeit to a more limited extent, in that they involved, respectively, the issue of broadcasting sensitive material about the complainants without informed consent and, particularly in the second case, absence of adequate compliance systems.
106. There were distinct differences in the BBC and Kiss FM case. In particular, unlike the present case which concerns news programmes and were broadcast as the result of serious compliance errors, the BBC and Kiss FM cases concerned comedy/entertainment radio programmes, and where the material was broadcast as a result of serious misjudgements. We considered that the present case was more serious in character and gravity in that it had the potential to result in serious adverse harm to Mr Humphrey.
107. As noted above, the Licensee has made representations that there were differences between the precedent cases discussed above and this case, such that no financial penalty or a lower financial penalty should be imposed in this case. We have taken into account that there are differences between this case and the precedent cases discussed above, including that in the Press TV and Al Arabiya News cases there were certain aggravating factors present that are not present in this case. Ofcom has regard to precedent cases to the extent they are relevant, but they are not determinative. We also note that only one of the sanctions discussed above was decided under the current Penalty Guidelines, which place a greater emphasis on deterrence. Each case is decided on its own facts, having regard to all the circumstances of each case and the need for deterrence. In deciding of the level of the penalty in this case, we have had regard to all the relevant circumstances, including the need to ensure an appropriate level of deterrence given the seriousness of these particular breaches, which for the reasons set out above, were a serious and repeated failure of compliance with the potential to cause serious harm to the complainant.

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

108. 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

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<sup>28</sup> The service started broadcasting in 2003, although up until 2011 the Licence was held by Satellite Television Asian Region Ltd.

<sup>29</sup> [3 April 2009, The British Broadcasting Corporation sanction decision](#)

<sup>30</sup> [20 June 2006, Kiss FM Radio Limited sanction decision](#)

effective incentive to compliance, having regard to the seriousness of the infringement. SCML no longer holds a broadcast licence and the CGTN service has ceased broadcasting in the UK following revocation of the Licence; therefore there is no longer a risk of future non-compliance by SCML or in respect of the CGTN service in this case. Nevertheless, Ofcom is concerned to ensure that enforcement against serious breaches of the Code acts as a wider deterrent against non-compliance by broadcasters in general. Accordingly, Ofcom has considered what would be an appropriate and proportionate penalty, which would act as an effective deterrent, had SCML continued to hold a broadcast licence and the CGTN service continued to be broadcast, taking into account the size and turnover of the Licensee and broadcasters' and audiences' rights to freedom of expression under Article 10 of the Convention.

109. In reaching its Decision on the imposition and level of a sanction in this case, Ofcom has taken account of the level of the Licensee's qualifying revenue for the last accounting period. We also took into account evidence of other funds by SCML in connection with the CGTN service.
110. For all the reasons set out above, Ofcom considers it is proportionate to impose a financial penalty on the Licensee of £100,000 (one hundred thousand pounds).

### **Decision**

111. Having regard to all the circumstances referred to above, including the need to achieve an appropriate level of deterrence in this case, we have carefully considered the nature and level of the statutory sanction that should be imposed. In doing so, we have taken account of the particular seriousness of the breaches, the Licensee's representations, the Licensee's compliance record, the Licensee's size and financial position, and relevant precedent cases. We have also had regard to the revocation of the Licence and the need to ensure that enforcement against serious breaches of the Code acts as a wider deterrent against future breaches by broadcasters in general. We have also had regard to our legal duties, as set out above, including the need to ensure that any sanction we impose is proportionate, consistent and targeted only at cases where action is needed.
112. Having regard to all the factors referred to above, Ofcom considers that an appropriate and proportionate sanction would be to impose a financial penalty of **£100,000** (one hundred thousand pounds) (payable to HM Paymaster General).

**Ofcom**  
**8 March 2021**

## ANNEX 1: PRECEDENTS

Previous sanctions relating to breaches of Rules 7.1 and 8.1

Sanction Decision	Sanction	Nature of the Sanction
<b>25 January 2018, Al Arabiya News Channel</b> <sup>31</sup>	£120,000 financial penalty; direction to broadcast a statement of Ofcom's findings and not to repeat the material found in breach again.	The programme reported on an attempt made in February and March 2011, by a number of people including the complainant, Mr Hassan Mashaima, to change the governing regime in Bahrain from a Kingdom to a Republic. It included an interview with Mr Mashaima, filmed while he was in prison awaiting a retrial, as he explained the circumstances which had led to his arrest and conviction. The interview included Mr Mashaima making confessions as to his participation in certain activities. Only approximately three months prior to the date on which Al Arabiya News said the footage was filmed, an official Bharani Commission of Inquiry had found that similar such confessions had been obtained from individuals, including Mr Mashaima, under torture. During Mr Mashaima's subsequent retrial and appeal, he maintained that his conviction should be overturned, as confessions had been obtained from him under torture. The audience's perception of Mr Mashaima was therefore likely to have been severely detrimentally compromised by the omission of this important contextual information. Ofcom considered that it would have been clear that the filming and broadcast of this interview constituted an unwarranted infringement of privacy because Mr Mashaima was discussing matters of a highly sensitive and confidential nature (particularly given that his re-trial and appeal were still pending), it appeared that he was filmed in a private room within the prison in which he was being detained and his consent had not been obtained.
<b>1 December 2011, Press TV</b> <sup>32</sup>	£100,000 financial penalty; direction to broadcast a statement of Ofcom's findings and not to repeat the material found in breach again.	This case concerned the broadcast of interview footage of Mr Maziar Bahari in which he said he had sent a report about the attack against the Basij base in Tehran, Iran, to <i>Channel 4 News</i> and to <i>Newsweek</i> magazine. Viewers were not informed that the interview of Mr Bahari had taken place while he was being detained in prison which we considered had the potential to affect the way in which viewers regarded the news report and the inferences which they drew from the report in relation to Mr Bahari. Ofcom considered that he was filmed in circumstances in which it should have been clear to Press TV that he was giving an interview under duress and to which he did not consent. It should also have been clear that the broadcast of this interview constituted an unwarranted infringement of his privacy because of the lack of consent and highly sensitive nature of the footage.
<b>3 April 2009, BBC</b> <sup>33</sup>	£80,000 financial penalty; direction to broadcast a statement of Ofcom's findings.	The case concerned two editions of <i>Russell Brand</i> in which offensive references were made to the actor Andrew Sachs and to his granddaughter, Georgina Bailie, which resulted in their privacy being unwarrantably infringed. Ofcom considered that the nature of the information disclosed in the programme was highly personal, intimate and sensitive in which the complainants were clearly

<sup>31</sup> [25 January 2018, Al Arabiya News sanction decision](#)

<sup>32</sup> [1 December 2011, Press TV sanction decision](#)

<sup>33</sup> [3 April 2009, BBC sanction decision](#)

## Sanction 139 (20) Star China Media Limited

		identifiable which led to infringements of privacy of the most serious nature.
<b>20 June 2006, Kiss FM<sup>34</sup></b>	£75,000 financial penalty	In relation to the breach of Rule 8.1, the presenter of the programme telephoned a member of the public (the complainant, who wished to remain anonymous) who had inadvertently left his telephone number on the presenter's voicemail, believing it to be his Human Resources ("HR") officer's voicemail. The complainant had called his HR officer in the hope of discussing redeployment opportunities in the company following his redundancy. The presenter then returned the complainant's call posing as the HR officer. The telephone call was recorded and broadcast without consent.

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<sup>34</sup> [20 June 2006, Kiss FM sanction decision](#)