

David Hooper

By email to



Kevin Bakhurst
Group Director
Broadcasting & Online Content
Group and
Executive Member, Ofcom Board



19 November 2020

Dear Mr Hooper,

Complaint regarding the BBC and Martin Bashir's 1995 Panorama interview

Thank you for your letters of 3 and 13 November 2020, in which you have raised a complaint relating to the circumstances surrounding Martin Bashir's interview with Princess Diana on Panorama in November 1995, and the allegations raised recently by a Channel 4 programme and Earl Spencer.

As you will be aware the BBC confirmed yesterday that it is setting up a fully independent inquiry, to be led by Lord Dyson, into the events surrounding the interview in 1995 and the subsequent BBC investigation in 1996. We welcome the BBC's announcement and will follow this inquiry and its conclusions closely.

Below, we set out in detail our response to your complaint.

Your complaint

In your complaint, you have raised concerns surrounding the actions of Martin Bashir, in his capacity as a BBC journalist, in securing an interview with Princess Diana on Panorama, broadcast on 20 November 1995 ("the Interview"), the BBC's 1996 inquiry into whether Mr Bashir acted appropriately in obtaining the Interview, the BBC's handling of subsequent questions and requests for documents about the Interview and its 1996 inquiry, and the BBC's response to Earl Spencer's latest allegations about this matter.

Your complaint relates to serious allegations disclosed in a recent Channel 4 programme broadcast on 21 October 2020, *Diana: The Truth behind the Interview*, as well as allegations made by Earl Spencer, that Princess Diana was induced to participate in the Interview as a result of deceptive practices on the part of Mr Bashir, including that Mr Bashir showed Earl Spencer forged bank statements and made a number of false statements to him with a view to securing the interview with Princess Diana. You have also referred to concerns about potential shortcomings in the BBC's 1996 inquiry into Mr Bashir's conduct and alleged inconsistencies in the BBC's subsequent public statements on this matter. In your 13 November letter you describe your concerns as relating to a "failure of corporate governance at the BBC".

In your complaint, you have argued that the BBC has breached the following obligations of the BBC [Charter](#):

- Article 4 – the BBC’s Object, which is to fulfil its Mission and promote the Public Purposes;
- Article 5 – the BBC’s Mission, which is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain;
- Article 6, which sets out the BBC’s Public Purposes; and
- Article 9, which sets out the BBC’s general duty to act in the public interest.

You have requested that Ofcom takes action under Articles 44, 45 and 49 of the Charter (these are discussed below). In your 3 November letter, you suggested that Ofcom should intervene by appointing an independent QC to carry out a full investigation into the circumstances surrounding the Panorama interview and the BBC’s 1996 inquiry into the Interview. In your 13 November letter, in light of the BBC’s announcement that it would set up an independent inquiry into these matters, you request that this independent inquiry is organised and supervised by Ofcom.

Ofcom’s assessment

In your complaint, you raise potential concerns about the adequacy of the BBC’s corporate governance processes, both in relation to Mr Bashir’s conduct in 1995 and in relation to the BBC’s subsequent handling of allegations raised about Mr Bashir’s conduct since then.

Under the current BBC Charter and Agreement the BBC Board has responsibility for BBC internal governance, staffing and management issues.¹ The BBC Board is also responsible for ensuring the BBC fulfils its Mission and Public Purposes.² These responsibilities include ensuring good corporate governance is observed when responding to allegations about misconduct by current or past employees of the BBC.³ They also include ensuring that, in any response to such allegations, the BBC complies with its general duties under the Charter to observe high standards of openness and seeks to maximise transparency and accountability.⁴

Ofcom is responsible for regulatory oversight of the BBC under the current Charter. Prior to March 2017, oversight of the BBC under previous Charters was not a matter for Ofcom, and Ofcom has no power to consider retrospectively the BBC’s compliance with its Charter, as it applied in 1995 / 1996. However, we have considered whether our regulatory functions are engaged by the BBC’s response to the allegations that have emerged more recently.

Ofcom’s regulatory functions in relation to the BBC are defined in the Charter and the [Agreement](#). In relation to the Charter provisions you have referred to in your complaint:

- Article 44 of the Charter explains that Ofcom’s function, pursuant to section 198 of the Communications Act 2003, is to regulate the BBC to the extent provided under the Charter and Agreement.

¹See, for example, in Articles 20(6) and 34 of the Charter

² Articles 20(3) and 20(8) of the Charter

³ Article 17 of the Charter

⁴ Article 12 of the Charter

- ii. Article 45 of the Charter sets out Ofcom's duties in connection with regulating the BBC. As well as Ofcom's general duties under section 3 of the Communications Act 2003⁵, Ofcom also has a number of specific duties to which it must have regard when carrying out its functions in relation to the BBC, namely:
- the object of the BBC to fulfil its Mission and promote the Public Purposes;
 - the desirability of protecting fair and effective competition in the United Kingdom; and
 - the requirement for the BBC to comply with its duties under Articles 9-18 of the Charter.
- iii. Article 49 of the Charter outlines Ofcom's powers to take formal enforcement action against the BBC. It stipulates that Ofcom must enforce compliance by the BBC in respect of 'specified requirements'. Those 'specified requirements' (which are set out in Clause 59 of the Agreement) are strictly delimited. They would include, for example, a failure on the part of the BBC to ensure its UK Public Services comply with Ofcom's Broadcasting Code, or a failure on the part of the BBC to meet a condition in its Operating Licence. However, the specified requirements do not include an alleged general failure by the BBC to fulfil its Mission or Public Purposes, nor to abide by one of its general duties under the Charter (including its general duties under Articles 12 and 17 of the Charter). In addition, while Ofcom does have specific functions and powers in connection with the BBC's handling of complaints under Clause 56 of the Agreement, these only apply to complaints that the BBC has failed to comply with a 'specified requirement'.

Therefore, we do not have any remit under the Charter to investigate whether the BBC has complied with Articles 4, 5, 6 and 9, as you request. Nor do we have a remit to investigate the adequacy of the BBC's general corporate governance processes in connection with the Interview, the 1996 inquiry or subsequently. The issue of governance of the BBC is for the BBC Board.

As the independent external regulator of the BBC, it is of course important to us that the BBC holds itself to account, openly and transparently, to ensure it provides content to the highest editorial standards – in accordance with its Mission, Public Purposes and general duties under the Charter. As we set out above, we welcome the BBC's independent inquiry into these events to be led by Lord Dyson.

Given the public interest already raised in your complaint to Ofcom, and our general duty to have regard to the principle of transparency, we will publish your complaint and this reply on our website later today. We will ensure that your personal contact details are redacted.

Yours sincerely,



Kevin Bakhurst

⁵ Ofcom's principal duty, as set out in section 3 of the Communications Act 2003, is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.