

# **Ofcom Broadcast Bulletin**

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## Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act<sup>2</sup>.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by ATVOD and the ASA on the basis of their rules and guidance for ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on ‘political’ advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising<sup>3</sup>.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters and ODPS, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant

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<sup>1</sup> The relevant legislation is set out in detail in Annex 1 of the Code.

<sup>2</sup> The relevant legislation can be found at Part 4A of the Act.

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

licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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

## Standards cases

### In Breach

#### News

RT, 1 March 2014, 16:00

RT, 3 March 2014, 21:00

RT, 5 March 2014, 09:00

RT, 6 March 2014, 12:00

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#### Introduction

RT (formerly Russia Today) is a global news and current affairs channel produced in Russia, and funded by the Federal Agency for Press and Mass Communications of the Russian Federation<sup>1</sup>. In the UK, the channel broadcasts on satellite and digital terrestrial platforms. The licence for RT is held by Autonomous Non-profit Organisation TV Novosti (“TV Novosti” or “the Licensee”).

Three complainants alerted Ofcom to two of the news bulletins listed above, which were broadcast by RT on 1 March 2014 and 3 March 2014. These complainants considered that RT’s coverage of unfolding events in Ukraine was not duly impartial. In particular, the complainants objected to critical references being made about the interim Ukrainian Government, including allegations of far right-wing influence on the new administration in Ukraine. In addition, Ofcom monitored other news bulletins relating to events in Ukraine. We identified two further bulletins, broadcast by RT on 5 March 2014 and 6 March 2014, which raised issues warranting investigation.

#### Chronology of events

All of the news bulletins in this case dealt with the situation in Ukraine during early March 2014. By way of background, we noted the following chronology of events in Ukraine up to March 2014:

- 21 November 2013: The Ukrainian president, Viktor Yanukovich announced the abandonment of a proposed agreement on closer trade links with the European Union (“EU”) and the intention to seek closer co-operation with Russia.
- Late November 2013 and December 2013: Mass protests took place in Kiev, the capital of Ukraine, against the decision of President Yanukovich to abandon the proposed agreement with the EU.
- January 2014: The Ukrainian Parliament passed anti-protest legislation as protests continued in Kiev and Western Ukraine. At the end of January 2014 the Ukrainian Prime Minister resigned and the Ukrainian Parliament annulled the anti-protest legislation.

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<sup>1</sup> See the description of RT in *Television News Channels in Europe (Based on a Report prepared by the European Audiovisual Observatory for the European Commission – DG COMM, October 2013,* <http://www.obs.coe.int/documents/205595/264629/European+news+Market+2013+FINAL.pdf/116afdf3-758b-4572-af0f-61297651ae80>. Section 5.4.6 of this report states that Russia Today: “can be considered as a state funded or public media service”.

- 14 to 16 February 2014: All 234 protesters arrested since December 2013 were released.
- 20 February 2014: Violent protests took place in Kiev with at least 88 people dying over two days, and a video was released showing unidentified snipers firing at protesters on Maidan Nezalezhnosti (Independence Square in Kiev)<sup>2</sup>.
- 21 February 2014: An agreement to end immediately hostilities in Ukraine was signed between President Yanukovich and opposition leaders.
- 22 February 2014: President Yanukovich left Kiev. The Ukrainian Parliament voted to remove him from power, and set elections for 25 May 2014. President Yanukovich subsequently appeared on Russian television to denounce the situation in Ukraine as a “coup”.
- 23 to 26 February 2014: The Ukrainian Parliament named Olexander Turchynov as interim President of Ukraine.
- 27 to 28 February 2014: Unidentified gunmen, reportedly supporting Russia, took over key buildings in the region of Crimea in the south of Ukraine. Viktor Yanukovich appeared on television and stated that he remained President of Ukraine.
- 1 March 2014: The Russian Parliament gave approval to President Vladimir Putin’s request to use Russian military forces in Ukraine to protect Russian speakers in the country.
- 6 March 2014: The Crimean Parliament voted to join Russia and scheduled a referendum for 16 March 2014 for the population of Crimea to vote whether they wished to become part of Russia.

### Broadcast content

We noted the contents of the four news bulletins in this case as follows:

#### 1 March 2014 at 16:00

This bulletin began with the studio presenter, Bill Dod, saying the following headlines:

*“Russia’s Parliament approves the use of military forces in Ukraine following a request from President Putin and an appeal for help from authorities in Crimea”.*

*“An armed assault on administrative buildings in Ukraine’s Crimea, ordered by Kiev, is thwarted by local self-defence forces”.*

Later in the bulletin, a reporter, Egor Piskunov, said the following:

*“Overnight, groups of armed men, sent from Kiev, tried storming and capturing several local government buildings here, firing weapons and using stun grenades.... The general understanding here is that many of the new laws passed by the new authorities there in Kiev are aimed against Russians”.*

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<sup>2</sup> The protest movement has become known as the “Maidan protests”.

The bulletin reported on the views of former members of the Ukrainian riot police (the Berkut)<sup>3</sup>, which had been disbanded by the interim Ukrainian Government, and on statements of a member of the Ukrainian Parliament suggesting that the interim Ukrainian Government might acquire nuclear weapons and use these against Russia.

This news programme also included a studio interview, conducted by the studio presenter, with an international relations expert, Mark Sleboda<sup>4</sup>. The latter said the following during this interview:

*“OK, I think originally, when this putsch<sup>5</sup> government [i.e. the interim Ukrainian Government that came to power after the Maidan protests] came to power – with the help of the violent mobs of the Maidan, this vanguard of ultra-nationalists and neo-Nazis with the Right Sector<sup>6</sup>; and it should be said with the support of Western funding and political backing – Russia, at first, the Russian Government looked for some form of compromise. They looked for signs if a responsible government would take place in Kiev, that they could at least do business with. And what we’ve seen instead is the appointment of a number of extremists to this putsch government. In particular, Andrew Parubiy, who was formerly a co-founder of the Social Nationalist Party, a simple turnaround of National Socialism, an outright neo-Nazi; and Dimtry Yarosh the leader of the violent ultra-national Right Sector. Both of whom have made many statements previously about their contempt for the Russian ethnic people of the Ukraine and for Russians and Russia itself. So clearly the Russian Government was faced with taking this as a threat not only to the Russian ethnics living within the Ukraine, but also as a potential national security threat to Russia itself. Vitali Klitschko, this opposition leader, he can make claims on behalf of the putsch government to mobilise the Ukrainian armed forces, but this government has demonstrated no ability or no clear indication that they have control even of a majority of the Ukrainian armed forces in the Intelligence services. I have serious questions about whether, in fact, that a significant number of them wouldn’t fail to follow his orders”.*

### 3 March 2014 at 21:00

This bulletin began with the studio presenter, Bill Dod (unless otherwise indicated), saying the following headlines:

*“Crimea’s no longer under Kiev’s command. An entire Ukrainian air force division says it will follow the orders of local authorities, bringing the total number of troops who switched sides to almost six thousand”.*

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<sup>3</sup> The Berkut were the riot police disbanded by the interim Ukrainian Government. The Berkut had been criticised for their role in the Maidan protests (see footnote 2).

<sup>4</sup> Senior lecturer and researcher in international relations and security studies at the Moscow State Lomonosov University.

<sup>5</sup> The Oxford English Dictionary defines “putsch” as meaning: “An attempt to overthrow a government, esp. by violent means; an insurrection or coup d’état”.

<sup>6</sup> Ofcom understands that Right Sector was set up in late 2013 as a grouping of Ukrainian far right-wing groups, and in late March 2014 became a political party.

Sergei Lavrov<sup>7</sup> (Voice of interpreter): *“It is well-known who created the crisis in Ukraine and how they did it”.*

*“Russia’s Foreign Minister responds to threats of isolation and sanctions over the country’s policies over the Ukraine, by accusing some in the West of escalating the crisis in the first place”.*

*“Some of the country [i.e. Ukraine]’s richest oligarchs are handed control of two economic powerhouse regions, with Kiev keen to stamp out the rebellious sentiment sweeping across the South East”.*

Later in the bulletin, a reporter, Egor Piskunov, reported on Crimean military and police personnel who said:

*“...they will not fulfil, what they call, are illegal orders coming from the self-appointed government, the self-appointed authorities, in Kiev”.*

He also said:

*“Meanwhile, it seems support of the military for the new authorities is declining even in Western parts of the country. There are reports that several special force brigades have refused to fulfil the orders to march on the Crimea”.*

The bulletin also included a report from Aleksey Yaroshevsky describing the situation in the east of Ukraine, as follows:

*“Just when the self-proclaimed leaders in Kiev thought they had control of the country, thousands took to the streets of some of the largest cities, including Kharkov on Saturday, unwilling to be governed by the new authorities in the capital”.*

During Aleksey Yaroshevsky’s report there were the following statements:

First female protester:

*“I want my kids to live in peace with all our other neighbours, both Ukrainian and Russian”.*

Second female protester:

*“All night, I have been watching how they’re attacking our guys with Molotov cocktails and fireworks. Some have had their hands blown off. Who knows, that could have been because they failed to throw their grenades at our sons. We don’t want such a country. We want our country to be peaceful. We used to work and pay taxes to the state”.*

Marcus Papadopoulos (a commentator on Russia and the Balkans):

*“The people in Kiev who are now calling the shots. They’ve made it very clear from day one that they have an extremely hostile attitude towards Russia, and they’ve backed it up. How have they backed it up? Well, first of all they repealed the law allowing Russian to be an official language in Ukraine. They have not done anything to stop the destruction of Russian monuments”.*

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<sup>7</sup> Foreign Minister of Russia.



Later in the bulletin, the studio presenter, Bill Dod, said the following:

*“As protests against the authorities spread across the south east of the country, Kiev is asking for help from some of the people the crowds on Independence Square were rallying against. Two of the country’s oligarchs have been appointed Governor in restive, but economically powerful, regions. It’s part of Kiev’s campaign to replace officials it doesn’t trust”.*

There was then a report by Peter Oliver (a journalist for RT), who then said about certain “oligarchs” in Ukraine:

*“That’s what [the interim government of Ukraine is] looking for really. They want people loyal to their cause. And they’re wanting people that helped to finance the coup, well, to get rewards for helping do just that.... The giving of these roles to some of the richest in the country and some of Ukraine’s most powerful oligarchs, isn’t going to sit well with the people who have taken out onto the streets in Independence Square. When they wanted to overthrow the government, they wanted to make sure they could get rid of these oligarchs. And it seems that these oligarchs are finding themselves back in quite important positions of power”.*

5 March 2014 at 09:00

This bulletin began with the studio presenter, Rory Suchet, saying the following headline:

*“World War two veterans in Sevastopol<sup>8</sup> fear fascism could be returning, as hard-line nationalists and neo-Nazis thrive in post-coup Ukraine”.*

Rory Suchet then said the following:

*“The threat of neo-Nazi ideology is causing rather a lot of alarm in Ukraine. The country, home to over 13 ethnicities, is now rocked on a daily basis by shocking videos, uploaded to YouTube, by some of those who came to power, following the ousting of President Yanukovich”.*

In a subsequent report, Maria Finoshina said:

*“These are some of the new masters of Ukraine, doing what they want after spearheading the revolution. They burst into a local Parliament session in a town outside Kiev, wearing uniforms, masks and t-shirts with Nazi symbols. Among them are the Patriots of Ukraine group. One of its leaders, Igor Moseychuk, was recently released from jail as a political prisoner by the country’s new authorities. He had been serving six years for preparing a terror attack.... A close associate of the Patriots of Ukraine, Dimtry Yarosh, was reportedly offered a key position in the Ukrainian Security council. His group, the Right Sector, has been described as neo-fascist by the western media. Another prominent member... in this 2007 video, pledges to fight against communists, Jews and Russians for as long as blood flows in his veins. It’s a sentiment echoed by his followers in these videos [Voice of translator]; ‘Stab the Russian scum!’”.*

After this report, Rory Suchet said the following:

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<sup>8</sup> A city in Crimea.

*“And it is the ultra-nationalist threat that has prompted Russia to reserve the right to use military force to protect Russian speakers in Ukraine. And that is the message coming from President Putin, who said his country would not go to war with Ukraine, and again condemned the uprising in Kiev as unconstitutional”.*

6 March 2014 at 12:00

This bulletin began with the studio presenter, Marina Dzhashi (unless otherwise indicated), saying the following headlines:

*“The Crimean Parliament unanimously votes for the region to become part of Russia. The move will be put to a popular ballot in ten days’ time”.*

Estonian Foreign Minister, Urmas Paet: *“Behind the snipers it was not Yanukovych but somebody from the new coalition”.*

*“A leaked phone call between top European officials reveals that the snipers firing at the crowds and police in Kiev were allegedly hired by the opposition leadership”.*

Maria Dzhashi then interviewed a geo-political commentator, John Wight, who said:

*“I think this is part of a process whereby the democratic rights of loads of people in Crimea, which were violated and have been violated by events in Kiev, are being restored. The idea that the illegitimacy of Kiev should be allowed to stand, and could be allowed to stand, was delusional on the part of western politicians, who support what has taken place in Kiev. And I think this further helps to stabilise the situation, because there’s no doubt that without Moscow’s participation, we were looking at Ukraine slipping to civil conflict. As of now that conflict has been averted, and I think this is a further measure in that regard to secure the situation. But most importantly to restore democratic rights to millions of people, who saw their rights so blatantly and criminally violated a couple of weeks ago in Kiev...the prospect of secession looms ever larger because we’re not just talking about the illegitimate takeover of power in Kiev, we’re talking about the participation of fascism in those events, and five ministerial offices have been taken over by members of fascist parties. And this is quite astounding. This is the first time that fascists have had state power in Europe since the 1930s. And that’s an awful thing to contemplate, and surely the civilised world could not let that stand....Ukraine’s constitution has already been violated. Ukraine’s constitution, as it stands, no longer exists because of the actions of the people involved in the coup in Kiev, among them, as I said, fascists. So Ukraine’s constitution as of now no longer exists. That was violated and torn up by the people involved in the illegitimate takeover of a democratically elected government in Kiev last week”.*

Soon afterwards, the studio presenter, Marina Dzhashi said the following statements:

*“The images you can see right here sent shockwaves across the world. Over 80 people were killed in the country’s worst violence in years. And it’s now been revealed that snipers, who were shooting at the crowd and the police, were allegedly in the pay of the former opposition. That’s according to a leaked phone call between the EU’s foreign policy chief and the Estonian foreign minister”.*

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*“Now these are the pictures of a sniper’s rifle being discovered in a car leaving Maidan at the time of the protest. The man searching it is Parliamentary member, Sergei Bershinsky, who actually drove away in that car despite the demonstrators trying to stop him. Mr Bershinsky is now the head of the President’s interim administration. And as for the recent staggering leak, many believe it could help reveal the true face of those now in power in Kiev”.*

### Ofcom’s investigation

Ofcom considered that as news programming, the above content raised issues warranting investigation under the following rule of the Code:

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

In addition, it was Ofcom’s view that these news bulletins were dealing with a matter of major political controversy and major matter relating to current public policy. This matter was the political crisis in Ukraine in the first week of March 2014 (widely considered to be one of the most serious international developments between the West and Russia since the end of the Cold War) leading up to the annexation by Russia of Crimea on 18 March 2014, and in particular the policies and actions of the Russian Government and interim Ukrainian Government in relation to the on-going crisis in Ukraine, including towards Crimea, following the departure of Viktor Yanukovich from Ukraine. We therefore considered that this news content also raised issues warranting investigation under the following rules of the Code:

Rule 5.11: “In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes”.

Rule 5.12: “In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented”.

Ofcom asked TV Novosti to provide comments on how the programme complied with these three rules.

### **Response**

The Licensee said that RT: “treats the issue of due impartiality with the utmost seriousness”. In its view the complaints that Ofcom had received in this case appeared to relate to two issues: firstly, the legitimacy of the interim Ukrainian Government that had been in place since late February 2014; and second, the participation in that government of ‘Pravy Sektor’ (Right Sector)<sup>9</sup>.

TV Novosti made a number of main points as follows:

- a) The Licensee said that “subject to compliance with the Code”, RT aimed to provide: “an alternative perspective on major global events and to acquaint

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<sup>9</sup> See footnote 6.

international audiences with the Russian viewpoint and that is what [RT's] audiences expect". It added that RT: "delivers stories often missed by the mainstream media to create news with an edge". It said that the preservation of due impartiality depends on a number of factors and noted that the Code's definition of "due" is: "adequate or appropriate to the subject and nature of the programme". It also stressed that another relevant factor in judging due impartiality is audience expectations, which in this case: "will be shaped by RT's explicit mission...to provide an alternative perspective on major global events".

- b) According to the Licensee, the alternative viewpoints provided by RT are: "not limited to the Russian viewpoint". It added that the channel reflects a range of viewpoints as illustrated by the programmes *Crosstalk* and *Worlds Apart* which: "include contributions from commentators who challenge vigorously the Russian viewpoint". In this regard, it pointed to the appearance of John Herbst, a former US Ambassador to Ukraine, in an edition of *Worlds Apart* broadcast on 27 February 2014, in which he was: "deeply sceptical of pro-Russian views of events in Ukraine and in particular of the dangers of Right Sector". In addition, TV Novosti pointed to the appearance of Dr Angela Stent, Professor of Government at Georgetown University in the United States and director of its Centre for Eurasian, Russian, and East European Studies on 6 March 2014: "in a segment of one of the programmes complained of". According to the Licensee, Dr Stent addressed: "the question of the legitimacy of the new Ukrainian government [and] she was equally sceptical of the view that it was unconstitutional".
- c) On the issue of providing alternative viewpoints, TV Novosti said that: "RT's aims are similar...to the remit of Channel 4, a UK public broadcaster, which includes 'challenging established views so as to support and stimulate well-informed debate' and 'promoting alternative views and new perspectives'"<sup>10</sup>. In this context, the Licensee made several points:
- i) It cited a 1977 Parliamentary Report<sup>11</sup>, *Report of the Committee on the future of broadcasting* ("the Annan Committee Report"). According to TV Novosti this report made: "clear that what is needed is not just a variety of news outlets but also a variety of editorial judgements". The Annan Committee Report had led to Parliament introducing legislation for the establishment of Channel 4. The Licensee argued that in creating Channel 4: "it must be assumed that Parliament has embraced and approved the provision by at least one broadcaster of news and current affairs that challenge established views, and the promotion of alternative views".

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<sup>10</sup> In relation to point (c), TV Novosti also described RT's: "remit and ambition as aiming, like Channel 4 to challenge established views, to promote alternative views and to facilitate the presentation of viewpoints rarely heard in mainstream media".

<sup>11</sup> The Annan Committee was established in 1974 to consider the future of the UK broadcasting sector. It reported in February 1977 (Cmnd. 6753). One of the Committee's recommendations was the creation of a fourth independent television channel.

- ii) According to the Licensee: “it is apparent from the comparison<sup>12</sup> with C4C [Channel 4]’s remit that [RT] has much in common with one of the UK’s main public service broadcasters...[and] RT’s remit and ambition to provide alternative perspectives having due regard to objectivity and media freedom is not only compatible with UK broadcast regulation but mirrors the public service remit of Channel 4”.
- iii) TV Novosti suggested that: “any consideration of whether RT has maintained due impartiality in its presentation of news and current affairs from a Russian viewpoint should...take account of the Annan Committee’s approach to impartiality on the one hand and the fact that Parliament has endorsed that approach by including in the public service remit of Channel 4 a requirement to promote alternative viewpoints. Ofcom should be slow to assume that a complaint of bias in RT’s reporting of international events reveals anything more than that an established view has been successfully challenged”.
- d) The Licensee said that the news bulletins in this case were: “news reports of exceptional events of which the legitimacy<sup>13</sup> of and participation in the Ukrainian government are in general part of the explanation, not the news item themselves”. It added that “in a number of cases” the “news story was not the Ukrainian government”, but rather “Russia’s threatened intervention in Ukraine”. Summarising the point, it said that: “The main subject of the key news stories in the programmes [was] the Russian decision to authorise deployment of its armed forces in Ukraine (or its consequences), not the legitimacy or otherwise of the government or the participation in it of the Right Sector extremists”. TV Novosti also said that in the news bulletins in this case: “legitimacy and participation are givens (facts) not viewpoints and do not necessarily need to be balanced with other views”. It added that: “the legitimacy of and participation in the Ukrainian government is in general part of the explanation of the momentous events in Ukraine, not criticisms, and [did] not invite comment or balance or alternative viewpoints in the same way as the main subject of the key news stories. Further, the government’s questionable legitimacy and the participation of Right Sector were matters of fact, not criticism”.
- e) TV Novosti said that its exploration of the: “the legitimacy and the participation of Right Sector and other extremists [in the interim Ukrainian Government] contributes to a better understanding of the international situation especially as they were at the time of transmission largely ignored by (at least) the mainstream UK broadcasters”. In this regard, it added that: “It would not further the interests of citizens to inhibit broadcasters from seeking to challenge established Western views, particularly in the current climate, by

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<sup>12</sup> In its representations, the Licensee noted that section 198A of the Communications Act 2003 (“the Act”) requires that C4C (Channel 4 television Corporation): “must, in particular, participate in the making of relevant media content that consists of news and current affairs... [and in doing so must] support and stimulate well-informed debate on a wide range of issues, including by providing access to information and views from around the world and by challenging established views...[and] promote alternative views and new perspectives”.

<sup>13</sup> TV Novosti made clear it had “no view as to the merits of the various parties” in relation to the departure of Viktor Yanukovich as President of Ukraine”. It added that: “the appointment of Mr Turchynov as interim President [see footnote 35] and the appointment of a new government were not in accordance with the [Ukrainian] Constitution and were therefore at the very least of doubtful legitimacy”.

excluding the Russian viewpoint...[and] audiences would lose out if the Western viewpoint were a fugitive and cloistered position that never ventured out to be tested adversarially in public debate against an opposing view". In the Licensee's view, therefore: "Democratic debate would be diminished if audiences were to be deprived of insights into the Russian viewpoint".

- f) According to the Licensee it had: included an appropriately wide range of significant views and given these due weight; and had preserved: "a degree of impartiality which [was] adequate or appropriate to the subject and nature of the programme, even if the viewpoint of the Ukrainian government [was] not always reflected in the programmes". It added that: "Other views of the Russian decision to authorise military deployment [were] either expressed or implied in the programmes".
- g) TV Novosti made various other points about RT's provision of alternative views. It said that the issue at stake in this case was "Ofcom's application" of the due impartiality rules and "in particular giving what [TV Novosti] regard[ed] as undue weight to the presence or absence of particular alternative viewpoints and insufficient weight to other factors, including context<sup>14</sup>, the nature of the channel and audience expectations" and the "rolling nature" of the service and likely audience expectations in assessing whether due impartiality has been preserved. The Licensee also said that: "Alternative viewpoints are not in fact required by Section Five except in the limited circumstances set out in Rule 5.9<sup>15</sup> [and] are, of course, an example of the means by which the due impartiality requirement may be fulfilled but that is not the same thing as a requirement". It added that: "Ofcom appears to treat the alternative view as the touchstone of impartiality" as opposed to the broader definition<sup>16</sup> of due impartiality laid out in the Code, which refers to contextual factors needing to be taken into account. It further argued that: "the absence of alternative viewpoints does not necessarily amount to non-compliance with the due impartiality rules since there are other factors to take into account".

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<sup>14</sup> In its representations, the Licensee stressed that context is a factor within the meaning of "due impartiality" laid out in Section Five of the Code. This states (with Ofcom emphasis added): "'Due' is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. 'Due' means adequate or appropriate to the subject and nature of the programme. So 'due impartiality' does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important".

<sup>15</sup> Rule 5.9 states: "Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of "personal view" or "authored" programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views".

<sup>16</sup> See footnote 14.

- h) TV Novosti argued that in judging whether “an alternative viewpoint ...is a matter of bias and partiality...[or] is a different perspective that supports and stimulates well-informed debate...[t]he answer must be that the alternative view is a valuable contribution so long as it does not cross the line that divides legitimate debate from illegitimate partiality.” The Licensee therefore said that a “pragmatic” approach to due impartiality is to: “demand that alternative viewpoints...should always be reflected to some extent in the programme”. But: “where, as here, it is difficult always to find such a reflection, that solution is not available and Ofcom must decide where the line lies and whether it has been crossed”.
- i) Specifically in the case of the events in Ukraine considered in this case, TV Novosti said that RT was giving: “an account of a major international event from a different (and perhaps unwelcome politically) viewpoint from the orthodox viewpoint”. It therefore observed that: “In the circumstances it is not surprising that allegations of bias have been made”.

TV Novosti also gave its comments in relation to the four individual news bulletins Ofcom was reviewing in this case.

1 March 2014 at 16:00

In summary, the Licensee said that the 1 March 2014 news bulletin was “a major news item about the deployment of Russian troops in another country” and the: “report appear[ed] to present events in a reasonably detached way and, where it matter[ed], reflecting the view of the new government”. TV Novosti said that it had: “gathered together on-the-spot reports from reporters in Moscow (to report on events in the Russian Parliament) and in Ukraine (to report on events in Crimea) and a well-informed expert in international relations (Mark Sleboda) to deliver an insight into the possible causes of the events, specifically the participation in the new government in Ukraine of the extremist Right Sector group. It added that: “the insight which it delivered was...not delivered in a dogmatic fashion as it might have been if RT had been seeking to persuade rather than to report. Instead it was evidence-based (as presented by the reporters) and was advanced as an opinion (by an analyst, Mr Sleboda)”. In the Licensee’s view there were: “sufficient indications of the viewpoint of the new Ukrainian government (that it was an invasion or occupation) to make it clear that the Ukrainians regarded the events in Crimea as constituting a great deal more than mere stabilisation. The Ukrainian viewpoint was that the Russians were invading”.

In relation to the subject matter of this news bulletin, TV Novosti said that it was “not a news story critical of the Ukrainian government but an interpretation of events to throw light on the Russian Parliament’s response to a perceived threat to ethnic Russians in Crimea”. Therefore, the Licensee said that as made clear by the first headline of the bulletin, the programme: “concerned the Russian Parliament’s approval of the use of military forces in Ukraine”. It added that this was: “a major news item about the deployment of Russian troops in another country and the view of the new government was reflected in this bulletin where it mattered”. TV Novosti added that two background factors were relevant at the time this bulletin was broadcast. Firstly, the “constitutional position was that the [Ukrainian] President was in principle still in office but in practice had been replaced and a new government had been formed by a procedure for which the [Ukrainian] Constitution made no provision” and therefore the new Ukrainian Government had “questionable legitimacy”. Second, according to TV Novosti, Andriey Parubiy and Dimitry Yarosh,

two far-right wing politicians<sup>17</sup>, had been either appointed or offered appointments<sup>18</sup> as members of the new Ukrainian Government.

The Licensee pointed to how, in its view, the bulletin's "editorial narrative" was dealing with the decision of the Russian Parliament to approve the use of military force in Ukraine and to: "provide background information to make that decision intelligible for the benefit of viewers". For example, the presenter referred to this issue in the bulletin headlines. A reporter, Irina Galushka, reporting from Moscow, then reported on the reasons for the Russian Parliament's decision, namely that the Parliament: "perceived a threat to Russians living in Ukraine from 'radical nationalistic groups such as Right Sector, who consider Russians to be their enemy, and they pose a very palpable threat to Russians living in Ukraine". In TV Novosti's view a background factor behind the Russian Parliament's decision: "was the participation in the new [Ukrainian] government, formed only a few days before, of Right Sector, an extremist group which was anti-Russian and espoused violence". A second reporter, Egor Piskunov also sought "to give an explanation" for the Russian Parliament's decision to approve military action. In particular, his reference to: "the attempted repeal of the language laws in Ukraine was relevant to the perceived threat represented by the presence of the extremist, anti-Russian elements in the new administration in Kiev".

The Licensee made various points about the comments made in this bulletin by an interviewee, Mark Sleboda. According to TV Novosti, this interview was not a standalone item and Mr Sleboda was: "not being asked to deliver news or to report directly on the change of government". Rather, according to the Licensee, the proper context of Mark Sleboda's remarks was that he: "was being asked instead to interpret events to throw light on the news, as foreshadowed in the headline, that the Russian Parliament had approved the use of military forces in Ukraine". The Licensee said: "it was perhaps unduly provocative on Mr Sleboda's part repeatedly to describe the new government as a 'putsch'<sup>19</sup> government but strictly speaking it was not inaccurate and the government's questionable legitimacy at the time was one of the keys to understanding why the Russian Parliament had taken the step that it had". It added that the interim Ukrainian Government "took power in a putsch and included a number of extremists" and that these issues were "matters of fact" and the context of Mark Sleboda's comments was that he was providing: "his analysis of the matters that were the subject of the bulletin". TV Novosti also said that: "The question whether what [Mr Sleboda] said was criticism and, if it was, its strength, are matters of judgment to be weighed in the context in which he said what he did".

TV Novosti also said that Mark Sleboda provided an alternative viewpoint<sup>20</sup> by making it: "clear that he at least was not fooled by the so-called people's guard<sup>21</sup> in Crimea", when he said (with the Licensee's emphasis added):

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<sup>17</sup> The Licensee said that Andriy Parubiy had founded the Social National Party, and Dimitry Yarosh was leader of Right Sector.

<sup>18</sup> The Licensee said that: "At the time of the first broadcasts, it was widely believed that Dimitry Yarosh had been appointed Andriy Parubiy's Deputy...But by 5 March, RT was reporting that he had only been offered the position - that he was 'reportedly offered a key position in the Ukrainian Security Council'...Whether or not he was subsequently appointed, the genie was out of the bottle and all concerned, at the time of the relevant broadcasts, could reasonably assume that he was part of the government".

<sup>19</sup> See footnote 5.



“I would say considering what we have seen in the Crimea today and the question of the identity of soldiers and civil defence units, self defence units that are formed locally, supposedly led by ex-members of the Berkut<sup>22</sup>, now officially members of the Berkut again as the local Crimean Prime Minister has reinstated the force. I would say at this point it is far more than likely that we will see Russian forces... at least in the Crimea”.

In particular, TV Novosti said that whilst Mr Sleboda referred to the occupation of Crimea as “a liberation”, the studio presenter who was interviewing him “made it quite clear that others also saw it as a military invasion and occupation” by reflecting the view of the Ukrainian Government<sup>23</sup>. The Licensee said however that Mark Sleboda: “was seeking to present a reasonably detached<sup>24</sup> and realistic view of events”. For example, when challenged by the studio presenter that “the new Ukrainian Interior Minister had said that this was a military invasion or occupation” Mark Sleboda said:

“Well, first of all, it’s rather difficult to call this an ‘invasion’ of the Crimea. It’s difficult to ‘invade’ the willing”.

In summary about this exchange, the Licensee said that: “between them, Mr Sleboda and [the presenter] presented a reasonably detached and realistic view of events and reflected the alternative view of the Ukrainian government”.

The Licensee compared the contents of the bulletin on 1 March 2014 with news content being produced on the situation in Ukraine by other broadcasters. It said that as a channel aiming to present an alternative perspective and to acquaint its audiences with the Russian viewpoint “the likely expectation of the audience [for RT] will have been such that the content of the programme will have taken few viewers by surprise”, even if the output “differed from what viewers saw elsewhere” in relation to Russia’s decision to: “authorise deployment of Russia’s military forces in the Ukraine”. In this regard, TV Novosti pointed to the contents of two separate online news reports produced by other broadcasters:

- Firstly, the Licensee provided details of a BBC News online report<sup>25</sup> published on 1 March 2014 “on the same topic” as the 1 March 2014 RT news bulletin. It said

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<sup>20</sup> TV Novosti also said that during the 1 March 2014 bulletin an RT reporter referred to the “so-called’ people’s guard protecting the Berkut headquarters in Crimea’s Simferapol”.

<sup>21</sup> Ofcom understand that the ‘people’s guard’ in this context were local militia units in the Crimea that were in opposition to the interim Ukrainian Government.

<sup>22</sup> See footnote 3.

<sup>23</sup> The Licensee referred to the studio presenter interviewing Mark Sleboda saying the following: “*Alright, well the [Ukrainian] Interior Minister, the new Interior Minister said this is a military invasion and occupation*”.

<sup>24</sup> TV Novosti said that Mark Sleboda provided a “detached view” of the “competing” viewpoints of the Ukrainian crisis being provided in the Russian media and Western media. In this regard the Licensee cited the former broadcast executive, David Cox, who had defined impartiality as involving: “no more than the attempt to regard different ideas, opinions, interests or individuals with detachment” (quoted in Richard Sambrook’s report: “Delivering Trust: Impartiality and Objectivity in the Media Age”, July 2012).

<sup>25</sup> See <http://www.bbc.co.uk/news/world-europe-26400035> TV Novosti said about the BBC News report on the BBC website: “we anticipate that it will be very similar to a news

that the headline of the BBC News online item was “Russian parliament approves troop deployment in Ukraine”, which TV Novosti argued was: “in effect the same as RT’s headline”. It added that the BBC News online item set out: “the position of the main international players, including the Russians, the Ukrainians, the British, the UN and the US, with comments from the BBC”. The Licensee further added that when comparing the BBC News online item and the 1 March 2014 RT news bulletin, “it is striking that the BBC offers no further explanation” of the reasons for the Russian Parliament’s decision to approve the deployment of Russian forces in Ukraine. By contrast, TV Novosti described its approach as follows: “vigorously investigative...[and the Licensee] asks for and gets opinions as to why approval was given. The answers, in short, were that the new government lacked legitimacy and included members of Right Sector. Nothing of that appears in the BBC report. The BBC report ends instead with a reference to the Ukrainian government rejecting the legitimacy of the Crimean government in Ukraine, which is much less to the point than RT’s approach”.

- Second, the Licensee also provided details of a Sky News online report<sup>26</sup> “of the same story on the same day” which had the headline: “Ukraine: Russia Approves Military Action”. TV Novosti said that this item included: “the reaction to the news of major international players, including the US, France, Germany, Ukraine and the UK but no explanation is again given other than that Mr Putin had said that Russia reserves the right to protect the interests of Russian-speakers in the event of violence and that the use of armed forces was needed to protect the majority ethnic Russian population in the south east [of Ukraine]”.

The Licensee said that the above comparisons illustrated the way in which it fulfilled its mission to: “deliver stories often missed by the mainstream media and to provide an alternative perspective on major global events, as well as acquainting an international audience with the Russian viewpoint”.

In conclusion in relation to the 1 March 2014 news bulletin, TV Novosti said that the news bulletin drew on a: “wide range of sources and presents a sufficiently wide range of views and with sufficient weight to contextualise the events described”. It said this was done by the studio presenter, the two RT reporters featured in the bulletin, and the interviewee, Mark Sleboda. For example, the Licensee said that: “Mr Sleboda made reference<sup>27</sup> to the growing pro-Russian protests in the south and east of Ukraine. In addition...during the interview with Mr Sleboda, the interviewer made reference to the viewpoint of the new Ukrainian Government concerning the occupation of Crimea”.

TV Novosti said that it had also reflected a wide range of significant views and given those views due weight. For instance in a segment broadcast at 16:20, a reporter, Marie Finoshina reported on the views of: “certain members of the Berkut, the [Ukrainian] riot police who were blamed for the deaths of protesters and...were disbanded by the new Ukrainian Government”. The Licensee said that: “the individuals concerned had taken refuge in Crimea. They had a different viewpoint

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programme as broadcast and anyway is subject to the BBC’s own version of the accuracy and impartiality rules”.

<sup>26</sup> See <http://news.sky.com/story/1219302/ukraine-russia-approves-military-action>

<sup>27</sup> Mark Sleboda said: “*In fact a Western journalist commented today on Twitter that what they are seeing in the southern eastern Ukraine is like a looking-glass anti-vision of what the Maidan was from a Kremlin perspective*”.

from that of the new Ukraine government and a different story to tell from the orthodox western narrative". In addition, in this segment, the reporter, Marie Finoshina referred to the Ukrainian Government's Interior Minister as having: "posted on his internet page that the Berkut were finished". In addition, TV Novosti said there then followed an item: "in which the presenter introduce[d] a report of a member of the Ukrainian Parliament having suggested that the new government might go nuclear. In context, this touche[d] on the main editorial narrative of this bulletin, flowing from the first headline, which [was] the Russian Parliament's concerns about the extremist elements in the new Ukrainian government. This is because, as the presenter and reporter explain[ed], the member of Parliament who made the suggestion of going nuclear is also a member of the far-right Svoboda party". According to TV Novosti, this report was supplemented by: "views from Ted Rall, a US columnist and Eric Draitser, a New York analyst".

### 3 March 2014 at 21:00

In relation to this news bulletin, the Licensee said that: "the news story [was] not the legitimacy of the Ukraine government as such. It [was] that some military and other emergency services [were] taking their orders from the Crimean authorities and not from Kiev. The legitimacy (or otherwise) of the government in Kiev [was] not itself the news story, it [was] the reason that those concerned have given for their not taking orders from Kiev. In TV Novosti's view this bulletin "was dealing with the behaviour of the Crimean authorities" and "offer[ed] the same key insight into the causes of the crisis as was delivered in the 1 March bulletin" in relation to the following "factual matters":

- the new Ukrainian Government "was of doubtful legitimacy" under the Ukrainian Constitution;
- Right Sector, "an extremist and violent group", was participating in the new Ukrainian Government;
- the new Ukrainian Government was: "having difficulty establishing its authority in parts of Ukraine";
- "anti-Russian legislation was one of the first results of the overthrow of the preceding government"; and
- the consequences of the appointment of new Governors in certain regions of Ukraine, which was "evidently controversial".

According to the Licensee, the "editorial narrative" in the news bulletin was that the new Ukraine Government was: "losing control". Therefore, the Licensee said: "In the circumstances, the [Ukraine] government's viewpoint cannot very well be in doubt, whether included in the report or not". It added that: "The editorial thrust of the bulletin was that the emergency services were no longer looking to Kiev for their orders. It would not have served viewers well for there to be no explanation. The explanation was that the interim government's legitimacy was in doubt".

The Licensee said that the news item was such that "it invite[d] viewpoints at the international level", and therefore it said it had summarised the viewpoints of various countries, such as the US, Germany, Belgium, Sweden and Russia. In addition, TV Novosti said that the bulletin also included a report which featured two female protesters and an interviewee, Marcus Papadopoulos, that highlighted concerns:

“about the participation of Right Sector in the new government”. In relation to one of the female protesters stating that the forces of the interim Ukrainian Government had been “*attacking our guys with Molotov cocktails*”, the Licensee said that this reference was to Right Sector<sup>28</sup>. It added that: “RT was offering an explanation of events by reference to known circumstances that at that time appeared to be driving events – the legitimacy of the interim government and the participation of Right Sector in it”.

Finally, this news bulletin included a report from a reporter, Peter Oliver, concerning the appointment of certain “*oligarchs*” as Governors in regions of Ukraine...to keep order”. TV Novosti said that this report did not: “seem to call for comment or for alternative viewpoints except in one possible respect...[which was] the slightly hesitant suggestion on Peter Oliver’s part that their appointments were rewards for helping to fund the overthrow of the Yanukovich government”. The Licensee suggested that this reference: “might be taken as suggesting that the appointments were corrupt but that seems a rather extreme reading of the situation”.

#### 5 March 2014 at 09:00

The Licensee said that the news bulletin broadcast on 5 March 2014 included content reporting on Right Sector. In particular, a report by journalist Maria Finoshina featured video footage of right wing extremists, including the Patriots of Ukraine<sup>29</sup> group, entering a “*local parliament session in a town outside Kiev*”. According to TV Novosti, this report was referring to Right Sector’s “participation in both the protests that toppled Mr Yanukovich and the new government” and the featured video footage: “made good the headline that hard line nationalists and neo-Nazis were thriving in Ukraine”. TV Novosti added that the leader of Right Sector, Dimitry Yarosh, had been offered the appointment<sup>30</sup> of “a Deputy Ministerial role in the interim government...[and] the Minister to whom he was deputy was Andrey Parubiy, a co-founder of a ‘Social Nationalist’ party, a party apparently styled on Hitler’s ‘National Socialist’ [party]”. It also added that in the news bulletin Dimitry Yarosh: “was a close associate of the Patriots of Ukraine, indeed we understand that Patriots of Ukraine are some sort of group within Right Sector”.

The Licensee also said that Maria Finoshina’s report referred to a 2007 video featuring another Patriot of Ukraine member pledging “*to fight against communist Jews and Russians for as long as blood flows through his veins*” while the phrase “*Stab the Russian scum*” was also heard. Given this content, the Licensee said that: “RT journalists might reasonably have been reluctant to seek an alternative view from them”.

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<sup>28</sup> TV Novosti said that: “Right Sector, described at the time by Channel 4 (for example) as ‘masters of the Molotov cocktail’, was represented in the interim government by a deputy Minister, Dimitry Yarosh. The Minister himself was Andriy Parubiy, founder of the Social National Party of Ukraine, a fascist party styled on Hitler’s Nazis, with membership restricted to ethnic Ukrainians. These were matters of record, not viewpoints”.

<sup>29</sup> Ofcom understands the Patriots of Ukraine to be a far right-wing group, which was one of the organisations that formed Right Sector in late 2013.

<sup>30</sup> See footnote 18.

6 March 2014 at 12:00

According to TV Novosti, the news bulletin on 6 March 2014 dealt with the decision of the Crimean Parliament: “to hold a referendum on whether to join Russia and to hold it earlier than had previously been anticipated”. During the bulletin, the studio presenter, Marina Dzhashi, interviewed a geo-political commentator, John Wight, about the Crimean Parliament’s decision. The Licensee said that in this interview, Marina Dzhashi elicited a response from John Wight as to the Ukrainian Government’s viewpoint on the decision of the Crimean Parliament, which was as follows:

*“Well, the reaction from Kiev will be as it is now that this is unconstitutional, this is a violation of Ukraine’s constitution...”*

TV Novosti also said that when John Wight referred to the accession to power of the interim Ukrainian Government as being a “*takeover of a democratically elected government*”, involving “*fascists*”, this was: “factually correct (even if one ignores the fact that [Dimitry] Yarosh<sup>31</sup>’s appointment was not confirmed, Andrey Parubiy, founder of the ‘Social Nationalist’ party, was also involved). It is not obvious that reporting facts is denigration”.

TV Novosti said that the news bulletin also focused on the issue of “the leaking of a telephone call” between the Estonian Foreign Affairs Minister, Urmas Paet and the senior EU foreign affairs official, Baroness Ashton. It said that the telephone call was: “alleging that the Maidan<sup>32</sup> snipers were hired by the opposition (i.e. the new government)”. According to the Licensee, this story was important because: “if true, it would add to the concerns about the participation in the new government of Right Sector, whose extremism and espousal of violence that RT’s reports had highlighted made the possibility of provocateur snipers credible”. However, TV Novosti said that the news bulletin made clear that: “RT had heard from the Estonian foreign minister disclaiming the allegations<sup>33</sup>”. The Licensee said that the bulletin, in discussing this item also focused on a video: “apparently showing an individual who had by then become a member of the new government driving off with a sniper’s rifle” in the wake of the Maidan shootings. TV Novosti said that the bulletin examined the evidence surrounding the sniper issue and: “(impartially) comes to no firm conclusion”. In summary, the Licensee said in this item, RT was “fulfilling its mission of pursuing stories missed by the mainstream media and providing an alternative perspective”. It added that the studio presenter made: “it clear that the facts [were] complex and incomplete (albeit perhaps deliberately in the hands of some of the media)”, by saying:

*“There are many pieces of the Ukrainian puzzle that some leave out of sight”*.

TV Novosti said that : “RT’s journalism may have exposed a key part of the Ukrainian puzzle ahead of most of the mainstream media, such as the BBC”.

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<sup>31</sup> Leader of Right Sector.

<sup>32</sup> As noted above, on 20 February 2014, violent protests took place on Maidan Nezalezhnosti (Independence Square) in Kiev, with at least 88 people dying over two days, and a video was released showing unidentified snipers firing at protesters.

<sup>33</sup> TV Novosti said that the RT reporter Peter Oliver said in the news bulletin that the Estonian Foreign Affairs Minister, Urmas Paet: “*says that he didn’t make any claims that any opposition leaders...were behind those shootings...*”.

## Conclusion

In conclusion, the Licensee said that this case was one “of regulatory development involving a genuine dispute over how the impartiality rules should be applied” and Ofcom should not put TV Novosti “on notice of further regulatory action<sup>34</sup>, including consideration of sanctions, in the event of any future breach”.

## **Decision**

### Introduction

Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that: news included in television and radio services is presented with due impartiality: and the special impartiality requirements set out in section 320 of the Act are complied with. These objectives are reflected in Section Five of the Code.

Broadcasters are required to comply with the rules in Section Five to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

When applying the requirement to preserve due impartiality, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. The broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy.

Section Five of the Code acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure, for example, that news is reported with due accuracy and presented with due impartiality, and that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee has the freedom to report on and discuss any controversial subject or include particular points of view in its programming, broadcasters must always comply with the Code.

In addition, in judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. Therefore “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained. The definition of “due impartiality” laid out in the Code also states: “The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the

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<sup>34</sup> In its Preliminary View in this case, Ofcom put TV Novosti on notice that any future breaches of the due impartiality rules may result in further regulatory action, including consideration of a statutory sanction.

audience. Context, as defined in Section Two: Harm and Offence of the Code, is important”.

Importantly, it is not part of Ofcom’s remit to question or investigate the validity of the views expressed in a case like the current one, but to require the broadcaster to comply with the relevant standards in the Code. The Code does not prohibit broadcasters from discussing or reporting on any controversial subject, or including any particular point of view in a news programme. To do so would be an unacceptable restriction on a broadcaster’s freedom of expression. Therefore, the broadcasting of critical comments concerning the policies and actions of any government, multi-national institution or nation-state is not, in itself, a breach of due impartiality. The Code does not prohibit broadcasters from, for example, criticising particular nation-states, governments or one side in a particular conflict or dispute, such as that currently taking place in Ukraine. Ofcom licensees always have the editorial freedom, more generally, to challenge any ‘orthodox’ viewpoint on any controversial issue (including any view perceived to be that of “the West”) in news and other output, as long as due impartiality is preserved. It is essential that news and current affairs programmes are able to explore and examine controversial issues, and contributors are able to take a robust and highly critical position. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way and/or take other appropriate editorial measures to ensure due impartiality is preserved.

#### Application of Section Five

Rule 5.1 of the Code states that: “News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

Rule 5.11 of the Code states that: “In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes”.

Rule 5.12 of the Code states that: “In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented”.

The obligation in Rule 5.1 to present news with due impartiality applies potentially to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures a news story is presented with due impartiality. In assessing whether any particular news item or issue in the news has been presented with due impartiality, we take into account all relevant facts in the case, including: the substance of the story in question; the nature of the coverage; whether there are varying viewpoints on a news story, and if so, how a particular viewpoint or viewpoints on a news item could be or are reflected within news programming; and, the context of the particular broadcast material in issue, including factors such as the type of programme and channel, and the likely expectation of the audience as to content. With any case of whether news has been presented with due impartiality, a key part of Ofcom’s analysis is an assessment of whether a particular view or response needed to be reflected to ensure due impartiality, and - if so - whether it

was appropriately reflected. This is a matter of judgment, to be decided taking account of all the relevant circumstances.

In addition to Rule 5.1, broadcasters must ensure that if their news content is dealing with matters of major political and industrial controversy and major matters relating to current public policy, they must comply with Rules 5.11 and 5.12 of the Code. These additional rules are necessary because of the nature of the subject matter concerned: a matter of major political and industrial controversy or major matter relating to current public policy is of a significant level of importance and is likely to be of the moment. Rule 5.11 requires that due impartiality must be preserved on major matters in each relevant programme or clearly linked and timely programme. Rule 5.12 requires that (where appropriate) news broadcasters must ensure that, in addition to preserving due impartiality at a basic level, when reporting on a matter of this significance they include “an appropriately wide range of significant views” and give those views “due weight”.

All four of the news bulletins dealt with aspects of the unfolding political events in Ukraine in the first week of March 2014. As such, we considered that these events were of significant global importance because of their implications not just for Ukraine but also for relations between Russia and the US and Western Europe. We therefore considered that as well as engaging Rule 5.1, these news bulletins were overall dealing with matters of major political and industrial controversy and major matters relating to current public policy. These matters were the political crisis in Ukraine in the first week of March 2014 leading up to the annexation by Russia of Crimea on 18 March 2014, and in particular the policies and actions of the Russian Government and interim Ukrainian Government in relation to the on-going crisis in Ukraine, including towards Crimea following the departure of Viktor Yanukovich from Ukraine. The matters were the over-arching background against which the various individual news stories that are the subject of this finding were reported. We considered that these matters were of a significant level of importance at the time of broadcast, and therefore decided that these news bulletins also engaged Rules 5.11 and 5.12 of the Code. TV Novosti did not dispute that Rules 5.11 and 5.12 were engaged in this case.

When Rules 5.11 and 5.12 apply to news, the bulletins may present the news with and preserve due impartiality by, for example, sufficiently reflecting alternative viewpoints, and in particular including “an appropriately wide range of significant views” and giving those views “due weight”. “Significant views” normally include the viewpoint of nation states whose policies and/or actions are material to the relevant major political and industrial controversy or major matter relating to current public policy. There is no requirement on broadcasters to provide an alternative viewpoint in all news stories or all issues in the news. All news stories must however be presented with due impartiality: that is with impartiality adequate or appropriate to the subject and nature of the programme. Presenting news stories with due impartiality in news programmes very much depends on editorial discretion being exercised appropriately in all the circumstances.

Ofcom underlines that it is not part of our remit to question or investigate the validity of any views expressed in programming. The Code does not prevent broadcasters from criticising one side in a conflict, or challenge any ‘orthodox’ viewpoint on any controversial issue (including a view perceived to be that of “the West”). In addition, there is nothing in the Code to prohibit or materially limit an editorial approach based on a view of world events from a particular country’s perspective. However, at all times due impartiality must be preserved.



The Licensee argued that the principal subject of the main new stories in the news bulletins was: “the Russian decision to authorise deployment of its armed forces in Ukraine (or its consequences), not the legitimacy or otherwise of the government or the participation in it of the Right Sector extremists”. In this regard, we noted that TV Novosti made clear that it had “no view as to the merits of the various parties” in relation to the departure of Viktor Yanukovich as President of Ukraine, but that: “the appointment of Mr Turchynov<sup>35</sup> as interim President and the appointment of a new government were not in accordance with the [Ukrainian] Constitution and were therefore at the very least of doubtful legitimacy. Strictly speaking a putsch had taken place”. The Licensee added that the issues of the legitimacy of the interim Ukrainian Government and the make-up of that Government were: “givens (facts) not viewpoints and [did] not necessarily need to be balanced with other views”. TV Novosti said that the various “factual matters” dealt with in the news bulletins were that:

- the new Ukrainian Government “was of doubtful legitimacy” under the Ukrainian Constitution;
- the Right Sector, “an extremist and violent group”, was participating in the new Ukrainian Government;
- the new Ukrainian Government was: “having difficulty establishing its authority in parts of Ukraine”;
- “anti-Russian legislation was one of the first results of the overthrow of the preceding government”; and
- the consequences of the appointment of new Governors in certain regions of Ukraine, which was “evidently controversial”.

Ofcom recognises that as a broadcaster articulating the news of the events in Ukraine from a Russian perspective, the Licensee would want to report on matters taking account of the matters listed above in its news programming. In particular, we acknowledged TV Novosti’s argument that, for example, in its view the legitimacy of the interim Ukrainian Government and the make-up of that Government were: “givens (facts) not viewpoints”. It is understandable why it should wish to reflect such matters in its news programming, and in Ofcom’s view it was legitimate and possible to do so in compliance with the Code. The issue was not reporting these matters, but whether the Licensee presented them with due impartiality.

We disagreed with the Licensee’s argument that when reporting and presenting these matters the Licensee did: “not necessarily need [them] to be balanced with other views”. This is because Ofcom considered that these matters were not simply “factual matters”, as the Licensee contended. There was of course an element of fact in each of them, but as often the case, the broadcaster had to make editorial decisions about which facts to select and how to present them. When including facts in news the Code requires that they are presented with due impartiality. The news bulletins dealt with different aspects of the on-going political crisis in Ukraine (such as for example the Russian Parliament’s decision to authorise military action in Ukraine). This material included reporting on the nature, policies and actions of the interim Ukrainian Government following the departure of Viktor Yanukovich from

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<sup>35</sup> The Ukrainian Parliament named Olexander Turchynov as interim President of Ukraine after the departure of Viktor Yanukovich from Kiev on 22 February 2014.

Ukraine and responses to these issues and events i.e. matters of major political and industrial controversy and major matters relating to current public policy.

In reporting these matters in these bulletins, TV Novosti included various statements (made by its own journalists or interviewees) that commented directly or indirectly on them. By way of example, we noted the following:

1 March 2014 at 16:00

*“Overnight, groups of armed men, sent from Kiev, tried storming and capturing several local government buildings here, firing weapons and using stun grenades.... The general understanding here is that many of the new laws passed by the new authorities there in Kiev are aimed against Russians”.*

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*“Originally, when this putsch government came to power – with the help of the violent mobs of the Maidan, this vanguard of ultra-nationalists and neo-Nazis with the Right Sector...”.*

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*“...They looked for signs if a responsible government would take place in Kiev, that they could at least do business with. And what we’ve seen instead is the appointment of a number of extremists to this putsch government...”.*

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*“...Vitali Klitschko, this opposition leader, he can make claims on behalf of the putsch government to mobilise the Ukrainian armed forces, but this government has demonstrated no ability or no clear indication that they have control even of a majority of the Ukrainian armed forces in the Intelligence services”.*

3 March 2014 at 21:00

*“Some of [Ukraine]’s richest oligarchs are handed control of two economic powerhouse regions, with Kiev keen to stamp out the rebellious sentiment sweeping across the South East”.*

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*“...they [Crimean military and police personnel] will not fulfil, what they call, are illegal orders coming from the self-appointed government, the self-appointed authorities, in Kiev”.*

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*“Just when the self-proclaimed leaders in Kiev thought they had control of the country, thousands took to the streets of some of the largest cities, including Kharkov on Saturday, unwilling to be governed by the new authorities in the capital”.*

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*“The people in Kiev who are now calling the shots. They’ve made it very clear from day one that they have an extremely hostile attitude towards Russia... ”.*

5 March 2014 at 09:00

*“The threat of neo-Nazi ideology is causing rather a lot of alarm in Ukraine. The country, home to over 13 ethnicities, is now rocked on a daily basis by shocking videos, uploaded to YouTube, by some of those who came to power, following the ousting of President Yanukovich”.*

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*“These are some of the new masters of Ukraine, doing what they want after spearheading the revolution. They burst into a local Parliament session in a town outside Kiev, wearing, uniforms, masks and t-shirts with Nazi symbols...”.*

After this report, Rory Suchet said the following:

*“And it is the ultra-nationalist threat that has prompted Russia to reserve the right to use military force to protect Russian speakers in Ukraine. And that is the message coming from President Putin, who said his country would not go to war with Ukraine, and again condemned the uprising in Kiev as unconstitutional”.*

6 March 2014 at 12:00

*“A leaked phone call between top European officials reveals that the snipers firing at the crowds and police in Kiev were allegedly hired by the opposition leadership” [i.e. some of the leaders of the interim Ukrainian Government].*

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*“...to restore democratic rights to millions of people [in Crimea], who saw their rights so blatantly and criminally violated a couple of weeks ago in Kiev”.*

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*“...This is the first time that fascists have had state power in Europe [i.e. in Ukraine] since the 1930s. And that’s an awful thing to contemplate, and surely the civilised world could not let that stand.... Ukraine’s constitution has already been violated ”.*

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*“...Ukraine’s constitution, as it stands, no longer exists because of the actions of the people involved in the coup in Kiev, among them, as I said, fascists...”.*

In summary, these news bulletins reported on major matters of political controversy and major matters relating to of public policy in Ukraine against the backdrop of various issues, such as: the legitimacy of the interim Ukrainian Government; the degree to which Right Sector might be “an extremist and violent group”; and, the degree of control the interim Ukrainian Government had in parts of Ukraine. In doing so, the bulletins contained various comments that were critical of, or in opposition to, the interim Ukrainian Government on all these issues (see examples immediately above). The interim Ukrainian Government, being the *de facto* government of

Ukraine at that time and claiming to represent the views of the majority of Ukrainians, had a viewpoint on these matters which clearly in Ofcom's opinion was a "significant view". We therefore considered that to ensure that the news about the political crisis in Ukraine was presented with due impartiality, that viewpoint needed to be reflected, and reflected appropriately.

Preservation of due impartiality: Rules 5.1, 5.11 and 5.12

Ofcom went on to assess whether the news bulletins preserved due impartiality by, for example, sufficiently reflecting alternative viewpoints, and in particular including "an appropriately wide range of significant views" and giving those views "due weight".

We took into account that RT is a service that reports the news from a Russian viewpoint. RT is of course free to do this, provided it complies with the Code.

We acknowledged that, given the understandable interest of Russia in events taking place in its near neighbour Ukraine in early March 2014, a channel covering news events from a Russian perspective would want to cover these events in detail. We noted TV Novosti's editorial desire to provide an alternative perspective on global news events and "acquaint international audience[s] with the Russian viewpoint" with the unfolding situation in Ukraine. In reaching our Decision, Ofcom also had careful regard to the nature of this service, the likely audience expectations to RT, and the broadcaster's right to freedom of expression and the audience's right to receive information and ideas.

Ofcom underlines that the Code did not prohibit the Licensee from broadcasting various comments that were critical of, or in opposition to, the interim Ukrainian Government - such as that the interim Ukrainian Government was not legitimate, or that certain of its members were members of far right wing political organisations. Ofcom has no view on whether or not the interim Ukrainian Government was a legitimate administration, or the composition of that government. However, we disagreed with the Licensee's argument that the various comments, which could be classed as critical of or in opposition to the interim Ukrainian Government did: "not invite comment or balance or alternative viewpoints in the same way as the main subject of the key news stories". This was because, as already pointed out above, the interim Government had a "significant view" on these issues. TV Novosti was therefore obliged to reflect adequately the viewpoint of the interim Ukrainian Government within the news bulletins.

We noted that the Licensee argued that: "the absence of alternative viewpoints does not necessarily amount to non-compliance with the due impartiality rules, since there are other factors to take into account". We agreed. Whether due impartiality is preserved depends on all the relevant circumstances. The absence of an alternative viewpoint does not inevitably mean that due impartiality has not been maintained. However, a fundamental aspect of the preservation of due impartiality is that normally a range of viewpoints (and especially of "significant views") needs to be reflected to an appropriate extent in programming. Ofcom's published Guidance on Rule 5.1 of the Code states that: "...if a news item includes criticism of individuals or organisations, then broadcasters should consider whether they need to reflect the viewpoints of the individuals or organisations being criticised, within their news output

as appropriate and in a proportionate way and/or reflect any refusal to comment of that individual or organisation<sup>36</sup>”.

The four news bulletins in this case featured various news stories that dealt with different aspects of the on-going political crisis in Ukraine. In all four of the news bulletins, we considered that the interim Ukrainian Government: was directly or implicitly criticised; statements were broadcast in opposition to its policies or actions; and/or the viewpoint of the interim Ukrainian Government was to a very large extent not reflected in circumstances when it would be reasonable to expect it to be. We noted the following for example in each of the four bulletins:

1 March 2014 at 16:00

This bulletin was principally dealing with the news that the Russian Parliament had approved the use of military forces in Ukraine. It also included various statements that reported on potentially controversial actions of the interim Ukrainian Government without any explanation as to why that Government took these steps, such as:

*“Overnight, groups of armed men, sent from Kiev, tried storming and capturing several local government buildings here, firing weapons and using stun grenades...The general understanding here [in Crimea] is that many of the new laws passed by the new authorities there in Kiev are aimed against Russians”.*

This part of the bulletin contained an interview with an international relations expert, Mark Sleboda. The programme also reported on the views of former members of the Ukrainian riot police (the Berkut), which had been disbanded by the interim Ukrainian Government, and on a member of the Ukrainian Parliament suggesting that the interim Ukrainian Government might acquire nuclear weapons and use these against Russia.

*Mark Sleboda*

Mark Sleboda made a number of direct criticisms of the interim Ukrainian Government. He labelled it a “*putsch*”<sup>37</sup> government” which had come to power with the help of “*violent mobs*”, and which included “*a number of extremists*”.

We noted the Licensee’s various arguments defending various statements of the interviewee Mark Sleboda. It said that:

- his labelling the interim Ukrainian Government as a ‘putsch’ government “strictly speaking...was not inaccurate and the government’s questionable legitimacy at the time was one of the keys to understanding why the Russian Parliament had taken the step that it had”;
- the interim Ukrainian Government “took power in a putsch and included a number of extremists” and that these issues were “matters of fact”; and
- the context of Mark Sleboda’s comments was that he was providing: “his analysis of the matters that were the subject of the bulletin”.

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<sup>36</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>, paragraph 1.12.

<sup>37</sup> See footnote 5.

TV Novosti also said that: “The question whether what [Mr Sleboda] said was criticism and, if it was, its strength, are matters of judgment to be weighed in the context in which he said what he did”. We agreed. We noted that Mark Sleboda was being interviewed as an analyst giving his view as a third party commentator on the events in Ukraine. In our view, it was legitimate for Mark Sleboda to, for example, refer to the interim Ukrainian Government’s accession to power as a *“putsch”* and the Licensee to broadcast Mark Sleboda’s comments. However, we considered that Mark Sleboda’s critical statements: could be reasonably considered to be critical of the interim Ukrainian Government; were ones about which the interim Ukrainian Government were likely to have had a view; and, were ones where it would have been reasonable to expect that view to have been reflected adequately.

The Licensee also argued that Mr Sleboda provided a “detached view” of the “competing” viewpoints of the Ukrainian crisis being provided in the Russian media and Western media, for example by referring to the view of a *“Western journalist”*<sup>38</sup>. In response, the meaning of “due impartiality” in the Code does not equate simply to the ‘detachment’ of particular individuals. Rather it states that:

“‘Due’ is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. ‘Due’ means adequate or appropriate to the subject and nature of the programme. So ‘due impartiality’ does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented.

Given the strong criticisms being made of the interim Ukraine Government by Mark Sleboda, we considered TV Novosti was obliged to reflect its viewpoint adequately in this bulletin on the various criticisms he made of it.

#### *Ukrainian government acquiring nuclear weapons to use against Russia*

This item was about a far right wing member of the Ukrainian Parliament, Mikhail Golovko, suggesting that the interim Ukrainian Government might acquire nuclear weapons and use these against Russia. Mr Golovko was a member of a party represented in the interim Ukrainian Government, but did not hold any position within that Government.

We noted that this report focused to what was termed as the US’s *“double-standards”* in relation to its attitude to Iran’s nuclear policy compared to what the reporter termed *“provocative statements coming out of Kiev”* made by a member of the Ukrainian Parliament. The reporter said:

*“One member of the Ukrainian Government’s ultra-nationalist Svoboda party [Mikhail Golovko] warned that if Russia doesn’t tread carefully it will be dealing with a nuclear power. That’s the rhetoric - despite Ukraine signing up to the international nuclear non-proliferation treaty in 1994”.*

Ted Rall, an editorial columnist commented:

*“There is a double-standard when it comes to the way the United States deals with supposed nuclear threats from Iran, which let’s not forget, there’s absolutely*

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<sup>38</sup> Mark Sleboda said: *“In fact a Western journalist commented today on Twitter that what they are seeing in the southern eastern Ukraine is like a looking-glass anti-vision of what the Maidan was from a Kremlin perspective”.*

*no evidence whatsoever that Iran intends to develop nuclear weapons for aggressive, military purposes”.*

The reporter continued:

*“Unlike Iran, the ultimatum from the Ukrainian lawmaker contains an actual deadline of just a few months. This in a conflict-torn country, where even the most pessimistic predictions ended up becoming a reality. But no one of that seems to disturb the US”.*

Eric Draitser, a political analyst, then said:

*“The money that we can’t use to feed the poor and the hungry in the United States and in Europe, that money is going to support Nazis in Ukraine with nuclear ambitions, who are looking to de-stabilise the region and whose sole goal is the destruction of Russia”.*

Ofcom noted that this report focused on a view expressed by just one Ukrainian Parliamentarian who was a member of a party represented in the interim Ukrainian Government, but who did not hold any position within that Government. We considered that this item was clearly dealing with a controversial issue: whether Ukraine’s interim Government should or intended to acquire nuclear weapons with the intention of threatening to use them against Russia, and what the reaction of the United States should be to such a policy. In our opinion, the interim government of Ukraine would clearly have a “significant view” on this issue - not least because of the publicly announced support of the interim Ukrainian Government for nuclear non-proliferation<sup>39</sup>. We considered the Licensee was therefore obliged to reflect this viewpoint adequately in this bulletin, and so we carefully reviewed the 1 March 2014 bulletin to assess whether this happened.

#### *Appropriately wide range of significant views*

There was only one example in the 1 March 2014 bulletin of the viewpoint of the interim Ukrainian Government being explicitly reflected to any degree. This was when during the interview with Mark Sleboda, he referred to the occupation of Crimea by pro-Russian forces as “a liberation”. At this point, the studio presenter who was interviewing him said the following:

*“Alright, well the [Ukrainian] Interior Minister, the new Interior Minister said this is a military invasion and occupation”.*

This explicit reference did clearly reflect the opinion of the Ukrainian government. However, it was very brief and unique in the context of this bulletin as a whole. When set against the overall tone and perspective of this bulletin, with reports and interviews containing a number of statements critical of or in opposition to the Ukrainian government, we did not consider that this brief reference alone was sufficient to preserve due impartiality. Further, Ofcom’s opinion was the views of the interim Ukraine government on these issues and events was not adequately represented by other statements or references in the bulletin.

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<sup>39</sup> We noted that the interim Ukrainian Government had announced its support for the principles of nuclear non-proliferation (see: [http://www.kmu.gov.ua/control/publish/article?art\\_id=247075396](http://www.kmu.gov.ua/control/publish/article?art_id=247075396) and <http://iipdigital.usembassy.gov/st/english/texttrans/2014/03/20140325296843.html#axzz31h4Pimvk>).

In reaching our decision on whether this bulletin complied with Rules 5.1, 5.11 and 5.12, we took into account TV Novosti's relevant submissions.

The Licensee argued that this bulletin featured: "a major news item about the deployment of Russian troops in another country and the view of the new government were reflected in this bulletin where it mattered"; and specifically that there were: "sufficient indications of the viewpoint of the new Ukrainian government...to make it clear that the Ukrainians regarded the events in Crimea as constituting a great deal more than mere stabilisation. The Ukrainian [government] viewpoint was that the Russians were invading".

As regards Rule 5.12, TV Novosti said that RT had in the 1 March 2014 bulletin provided a sufficiently wide range of viewpoints and given those views due weight. It gave examples of these viewpoints.

One was that of members of the Berkut, the former Ukrainian riot police. Their viewpoint was contained in a report by Marina Finoshina (see above). The Licensee said that the Berkut: "had a different viewpoint from that of the new Ukraine government and a different story to tell from the orthodox western narrative". In this item, Maria Finoshina reported on the reaction of members of the Berkut to being disbanded by the interim Ukrainian Government. She said:

*"The country [i.e. Ukraine]'s acting interior minister posted on his internet page that the Berkut are finished".*

We noted that this was followed by various clips of individuals criticising the interim Ukrainian Government. For example, one former Berkut member said:

*"It's hard for us. There are many among us who sacrificed their health and lives to protect citizens. And after 22 years of service, they just threw us out like garbage. It's painful".*

In addition, a civilian supporter of the Berkut said:

*"We're protecting Berkut from the armed thugs who came to power as a result of the armed coup. They're controlling the puppet government who is issuing decrees at gunpoint".*

Ofcom acknowledged that the viewpoint of the former members of the Berkut was therefore reported. But this viewpoint did not in any way present the opinion of the interim Ukraine government on contemporaneous events in that country: it reinforced other comments critical of that administration in this bulletin.

TV Novosti also referred to the various viewpoints in the news item about the controversial remarks of Mikhail Golovko about the Ukraine potentially seeking to gain nuclear weapons. The Licensee said this item: "touche[d] on the main editorial narrative of this bulletin, flowing from the first headline, which is the Russian Parliament's concerns about the extremist elements in the new Ukrainian government". TV Novosti said that viewpoints were also provided in this item by two interviewees, Ted Rall and Eric Draitser. Again, we noted that this report set out a viewpoint or viewpoints on Mr Golovko's remarks, and on the implicit but significant allegation that a credible tendency linked to the interim Ukrainian Government wanted to acquire nuclear weapons to use against Russia. None of these viewpoints however was that of the interim Ukrainian government.



The Licensee argued that Mark Sleboda provided an alternative viewpoint<sup>40</sup> by making it “clear that he at least was not fooled by the *so-called* [emphasis added] people’s guard in Crimea”. Similarly the Licensee said an RT reporter referred to the “*so-called*’ [emphasis added] people’s guard protecting the Berkut headquarters in Crimea’s Simferapol”. However, we considered these remarks could not reasonably be described as reflecting the viewpoint of the interim Ukrainian Government in relation to the various critical statements being made against it with this news bulletin.

The Licensee considered that the above statements taken together indicated that they had reflected a wide range of significant views and given those views due weight. We disagreed. It was clear to us that TV Novosti did not adequately reflect one key significant view – that of the interim Ukrainian Government in response to the various explicit and implicit criticisms made of, and in opposition to, it elsewhere in the news bulletin.

*Other submissions by TV Novosti on the 1 March 2014 bulletin*

Firstly, the Licensee argued that the subject matter of the news bulletin was “not about the Ukrainian government” but rather “concerned the Russian Parliament’s approval of the use of military forces in Ukraine”. It said that two relevant background factors to this news story were “the participation in the new [Ukrainian] government, formed only a few days before, of Right Sector, an extremist group which was anti-Russian and espoused violence”, and “the attempted repeal of the language laws in Ukraine”. Ofcom acknowledged the potential relevance of these factors to the news story being covered, and we reiterate that it was legitimate for the Licensee to broadcast various statements that could be described as highly critical of the interim Ukrainian Government. We also noted that the Licensee considered such matters to be “matters of fact, not criticism”. However, we considered that such matters were ones about which the interim Ukrainian Government would have taken a different view. Therefore, given the controversial nature of these issues and the extent to which they were reflected in this news bulletin, in our view, the viewpoint of the interim Ukrainian Government on the decision of the Russian Parliament to approve the use of military forces in Ukraine, and on its own policies and actions in relations to what was happening in Ukraine, should have been adequately reflected, and given due weight.

Second, TV Novosti compared the contents of the 1 March 2014 news bulletin to two separate online news reports produced by the BBC and Sky News and produced on the same day as the RT news bulletin. The Licensee argued that comparing its 1 March 2014 bulletin to the two online news reports produced by the BBC and Sky News showed how it fulfilled its mission to: “deliver stories often missed by the mainstream media and to provide an alternative perspective on major global events, as well as acquainting an international audience with the Russian viewpoint”. TV Novosti added that “the likely expectation of the audience will have been such that the content of the programme will have taken few viewers by surprise” even if the output “differed from what viewers saw elsewhere” in relation to Russia’s decision to: “authorise deployment of Russia’s military forces in the Ukraine”. We were not persuaded by this argument. It always was, and is, open to TV Novosti to broadcast news content which is different from other news broadcasters. In doing so, however, it must comply with the Code.

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<sup>40</sup> TV Novosti also said that during the 1 March 2014 bulletin an RT reporter referred to the “*so-called*’ people’s guard protecting the Berkut headquarters in Crimea’s Simferapol”.

For all the reasons above, and after taking careful account of the context of the 1 March 2014 bulletin, we decided that it did not present the news with due impartiality.

3 March 2014 at 21:00

This news bulletin dealt with issues such as the degree to which Crimea was under the control of the interim Ukrainian Government, and the appointment of two 'oligarchs' as regional governors in Ukraine. We noted that the Licensee argued that the news story was: "not the legitimacy of the Ukraine government as such. It is that some military and other emergency services [in Crimea] are taking their orders from the Crimean authorities and not from Kiev". It added that the bulletin: "offer[ed] the same key insight into the causes of the crisis as was delivered in the 1 March bulletin" in relation to the following "factual matters":

- the new Ukrainian Government "was of doubtful legitimacy" under the Ukrainian Constitution;
- Right Sector, "an extremist and violent group", was participating in the new Ukrainian Government;
- the new Ukrainian Government was: "having difficulty establishing its authority in parts of Ukraine";
- "anti-Russian legislation was one of the first results of the overthrow of the preceding government"; and
- the consequences of the appointment of new Governors in certain regions of Ukraine, which was "evidently controversial".

In this news bulletin there were a number of direct and indirect criticisms of the interim Ukrainian Government. For example, the interim Ukrainian Government was described variously as being "self-appointed" and giving "illegal orders" to Crimean military and police personnel, and being "self-proclaimed". We considered these statements were clearly critical references to the level of legitimacy of the interim Ukrainian Government, although supporters of that administration would argue that it had come to power as a result of a popular uprising of a number of Ukrainians.

We also noted a female protester in the east of Ukraine was featured saying the following about the forces of the interim Ukrainian Government:

*"All night, I have been watching how they're attacking our guys with Molotov cocktails and fireworks. Some have had their hands blown off. Who knows, that could have been because they failed to throw their grenades at our sons. We don't want such a country. We want our country to be peaceful. We used to work and pay taxes to the state".*

There were various statements that related to controversial actions of the interim Ukrainian Government, namely: the appointment of two of Ukraine's 'oligarchs' as regional Governors; and the attempt to pass laws repealing the legal status of Russian as an official language within Ukraine:

*"As protests against the authorities spread across the south east of the country, Kiev is asking for help from some of the people the crowds on Independence Square were rallying against. Two of the country's oligarchs have been appointed*

*Governor in restive, but economically powerful, regions. It's part of Kiev's campaign to replace officials it doesn't trust".*

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*"[The interim Ukrainian Government] want people loyal to their cause. And they're wanting people that helped to finance the coup, well, to get rewards for helping do just that.... The giving of these roles to some of the richest in the country and some of Ukraine's most powerful oligarchs, isn't going to sit well with the people who have taken out onto the streets in Independence Square. When they wanted to overthrow the government, they wanted to make sure they could get rid of these oligarchs. And it seems that these oligarchs are finding themselves back in quite important positions of power".*

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*"The people in Kiev...are now calling the shots. They've made it very clear from day one that they have an extremely hostile attitude towards Russia, and they've backed it up. How have they backed it up? Well, first of all they repealed the law allowing Russian to be an official language in Ukraine".*

TV Novosti argued that the "editorial narrative" in the news bulletin was that the new Ukrainian Government was "losing control". Therefore, the Licensee said: "In the circumstances, the government's viewpoint cannot very well be in doubt, whether included in the report or not". TV Novosti also argued that: "The editorial thrust of the bulletin was that the emergency services were no longer looking to Kiev for their orders. It would not have served viewers well for there to be no explanation. The explanation was that the interim government's legitimacy was in doubt". We disagreed. A fundamental feature of the requirement to preserve due impartiality in news is that, where significant criticisms or allegations are made (especially in the context of politically controversial matters), the viewpoint of the object of those criticisms should be reflected as appropriate.

TV Novosti also mentioned the reference one of the female protesters featured in the news bulletin referring to the interim Ukrainian Government "*attacking our guys with Molotov cocktails*". The Licensee said that this reference was to Right Sector<sup>41</sup> and: "RT was offering an explanation of events by reference to known circumstances that at that time appeared to be driving events – the legitimacy of the interim government and the participation of Right Sector in it". However, we considered that significant allegations were made about the armed forces of the interim Ukrainian Government in this item, and therefore that it was incumbent on the Licensee to reflect the viewpoint of the interim Ukrainian Government to some degree.

In relation to the 3 March 2014 bulletin, we considered that this news bulletin did not contain any statements that could be reasonably described as reflecting the viewpoint of the interim Ukrainian Government in relation to allegations that, for example, it was: "*self-appointed*"; giving "*illegal orders*"; and "*self-proclaimed*". In particular, there was no content to respond to the serious allegation that two Ukrainian 'oligarchs' had been appointed as regional Governors by the interim

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<sup>41</sup> TV Novosti said that: "Right Sector, described at the time by Channel 4 (for example) as 'masters of the Molotov cocktail', was represented in the interim government by a deputy Minister, [Dimitry] Yarosh. The Minister himself was Andriy Parubiy, founder of the Social National Party of Ukraine, a fascist party styled on Hitler's Nazis, with membership restricted to ethnic Ukrainians. These were matters of record, not viewpoints".

Ukrainian Government as “rewards” for helping to “finance the coup”. We noted that TV Novosti acknowledged that the suggestion that the appointment of the two ‘oligarchs’ as regional governors “were rewards for helping to fund the overthrow of the Yanukovich government” might arguably have required an alternative viewpoint to be reflected.

5 March 2014 at 09:00

This news bulletin included videos featuring members of certain far right-wing organisations making offensive statements and entering: “a local Parliament session in a town outside Kiev, wearing, uniforms, masks and t-shirts with Nazi symbols”. In this news bulletin there were a number of direct criticisms of the interim Ukrainian Government. For example, there were various statements that referred to far right-wing organisations being part of the interim Ukrainian Government as follows:

*“The threat of neo-Nazi ideology is causing rather a lot of alarm in Ukraine. The country, home to over 13 ethnicities, is now rocked on a daily basis by shocking videos, uploaded to YouTube, by some of those who came to power, following the ousting of President Yanukovich”.*

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*“These are some of the new masters of Ukraine, doing what they want after spearheading the revolution. They burst into a local Parliament session in a town outside Kiev, wearing, uniforms, masks and t-shirts with Nazi symbols. Among them are the Patriots of Ukraine group. One of its leaders, Igor Moseychuk was recently released from jail as a political prisoner by the country’s new authorities. He had been serving six years for preparing a terror attack....A close associate of the Patriots of Ukraine, Dimtry Yarosh, was reportedly offered a key position in the Ukrainian Security council. His group, the Right Sector, has been described as neo-fascist by the western media. Another prominent member...in this 2007 video, pledges to fight against communists, Jews and Russians for as long as blood flows in his veins. It’s a sentiment echoed by his followers in these videos [Voice of translator]; ‘Stab the Russian scum!’”.*

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*“And it is the ultra-nationalist threat that has prompted Russia to reserve the right to use military force to protect Russian speakers in Ukraine. And that is the message coming from President Putin, who said his country would not go to war with Ukraine, and again condemned the uprising in Kiev as unconstitutional”.*

We considered it was of course legitimate for the Licensee to report on the activities of politicians representing political parties within the interim Ukrainian Government. In this context, certain right-wing organisations with controversial views, such as Right Sector, were involved in the protests that led to the accession to power of the interim Ukrainian Government. We also noted that certain politicians from, for example, the right-wing nationalist party, Svoboda, had been appointed to positions within the interim Ukrainian Government. We took into account TV Novosti’s representation that the leader of Right Sector, Dimitry Yarosh had been offered an appointment: “to a Deputy Ministerial role in the interim government...[and] the Minister to whom he was deputy was Andrey Parubiy, a co-founder of a ‘Social Nationalist’ party, a party apparently styled on Hitler’s ‘National Socialist’ [party]”. Although Dimitry Yarosh was not: “subsequently appointed, the genie was out of the bottle and all concerned, at the time of the relevant broadcasts, could reasonably assume that he was part of the

government". The Licensee also said that it was stated in the news bulletin that Dimitry Yarosh: "was a close associate of the Patriots of Ukraine, indeed we understand that Patriots of Ukraine are some sort of group within Right Sector".

It is Ofcom's understanding that:

- Dimitry Yarosh did not in fact join<sup>42</sup> the interim Ukrainian Government (although we recognise that the news bulletin in this case had only stated that he had only been "reportedly offered" a government position);
- there is no evidence that members of the Patriots of Ukraine Group were appointed to positions within the interim Ukrainian Government; and
- although the right-wing politician, Andrey Parubiy was appointed as Secretary of the National Security and Defence Council of Ukraine, Andrey Parubiy did not have any links either to Right Sector or the Patriots of Ukraine.

In light of the above, we noted that that this report focused on, for example, extreme and highly offensive views held by members of the Patriots of Ukraine group and stated that these views were being put forward by: "*some of those who came to power*". The news bulletin referred to Dimitry Yarosh, leader of Right Sector, as being a "*close associate of the Patriots of Ukraine*", although Dimitry Yarosh was not clearly a member of the interim Ukrainian Government. Therefore, in our view, the Patriots of Ukraine Group could reasonably said to have had at most some form of indirect link to the interim Ukrainian Government. However, we considered that, by linking the extreme views of the Patriots of Ukraine with the interim Ukrainian Government, the likely effect on viewers would have been to suggest that these extreme views were representative of the interim Ukrainian Government as whole. We therefore considered that TV Novosti should have sought to reflect adequately the viewpoint of the interim Ukrainian Government in response on the significant allegations in this news item that it supported extremist views.

The Licensee argued that, given the extreme nature of some of the content featured in the report, "RT journalists might reasonably have been reluctant to seek an alternative view from" the organisations featured such as the Patriots of Ukraine. We did not consider this was a relevant consideration. This was because the relevant viewpoint that needed to be reflected was not that of the extreme groups, such as the Patriots of Ukraine. Rather it was the viewpoint of the interim Government of Ukraine, of which the Patriots of Ukraine were not a part.

#### 6 March 2014 at 12:00

This news bulletin dealt with the news that the Crimean Parliament had unanimously voted to hold a referendum as to whether Crimea should become part of Russia. In addition, it covered allegations that some of the snipers who had killed a number of Maidan<sup>43</sup> protesters had been paid by the Ukrainian opposition.

In this news bulletin there were a number of direct criticisms of the interim Ukrainian Government. For example, regarding the news from the Crimean Parliament, during an interview with the geo-political commentator John Wight, he described the

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<sup>42</sup> See <http://time.com/11005/many-ukrainians-want-russia-to-invade/#11005/many-ukrainians-want-russia-to-invade/>

<sup>43</sup> See footnote 32.

accession to power of the interim Ukrainian Government as having “*violated*” the democratic rights of people within Crimea and “*Ukraine’s constitution*” and involved: “*the participation of fascism in those events*”.

TV Novosti said that in this news bulletin, the viewpoint of the interim Ukrainian Government on this issue was reflected when the studio presenter, Marina Dzhashi, conducted an interview with studio guest, John Wight. At one point in the interview, we noted that Marina Dzhashi asked what the reaction would be of the interim Ukrainian Government to the decision of the Crimean Parliament. John Wight replied:

*“Well, the reaction from Kiev will be as it is now that this is unconstitutional, this is a violation of Ukraine’s constitution, but of course Ukraine’s constitution has already been violated. Ukraine’s constitution, as it stands, no longer exists because of the actions of the people involved in the coup in Kiev, among them, as I said, fascists. So Ukraine’s constitution as of now no longer exists. That was violated and torn up by the people involved in the illegitimate takeover of a democratically elected government in Kiev last week”.*

In our view, although John Wight briefly referred to the likely viewpoint of the interim Ukrainian Government, he immediately went on to repeat the strong criticisms of the interim Ukrainian Government he made elsewhere in this interview, saying that the accession to power of the interim Ukrainian Government had been a violation of Ukraine’s constitution, and a “*takeover of a democratically elected government*”, involving “*fascists*”. We noted TV Novosti’s argument that when John Wright referred to the accession to power of the interim Ukrainian Government as being a “*takeover of a democratically elected government*”, involving “*fascists*”, this was: “factually correct (even if one ignores the fact that Dimitry Yarosh<sup>44</sup>’s appointment was not confirmed, Andrey Parubiy, founder of the ‘Social Nationalist’ party, was also involved). It is not obvious that reporting facts is denigration”. However, we considered that John Wright’s various comments were clearly critical of the interim Ukrainian Government. As such, we considered that the interim Ukrainian Government was likely to have had a view on such significant matters, and TV Novosti was obliged to reflect it adequately. In addition, to comply with Rule 5.12 of the Code, to treat an alternative viewpoint with ‘due weight’, a viewpoint must not be dismissed or denigrated, and included in a programme simply as a means of criticising that viewpoint.

There were more direct criticisms of the interim Ukrainian Government when reporting allegations that some of the snipers who fired at crowds in the Maidan<sup>45</sup> on 20 February 2014 had been “*in the pay of the former opposition*” who had subsequently become the interim Ukrainian Government.

This bulletin reported on a leaked telephone conversation between the Estonian Foreign Affairs Minister, Urmas Paet, and the senior EU foreign affairs official, Baroness Ashton. The Licensee said this conversation was: “alleging that the Maidan snipers were hired by the opposition (i.e. the new government)”. It added that this story was important because: “if true, it would add to the concerns about the participation in the new government of Right Sector, whose extremism and espousal of violence that RT’s reports had highlighted made the possibility of provocateur snipers credible”. We acknowledged that it was legitimate for TV Novosti to report on allegations that snipers involved in the Maidan shootings on 20 February 2014 may

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<sup>44</sup> Leader of Right Sector.

<sup>45</sup> See footnote 32.

have been organised by members of the Ukrainian organisation who shortly afterwards joined the interim Ukrainian Government. We noted that the RT reporter, Peter Oliver, reported that Estonian Foreign Affairs Minister, Urmas Paet: “says that he didn’t make any claims that any opposition leaders...were behind those shootings...”. However, we noted that the news bulletin then went on to broadcast video footage, which it reported on as follows:

*“Now these are the pictures of a sniper’s rifle being discovered in a car leaving Maidan at the time of the protest. The man searching it is Parliamentary member, Sergei Bershinsky, who actually drove away in that car despite the demonstrators trying to stop him. Mr Bershinsky is now the head of the President’s interim administration. And as for the recent staggering leak, many believe it could help reveal the true face of those now in power in Kiev”.*

The audience for this news bulletin was provided with the following information: firstly, allegations that had been made that the then Ukrainian opposition may have had a role in sniper shootings that had led to a number of deaths in the Maidan protests on 20 February 2014; and second, a leading member of the interim Ukrainian Government (Sergei Bershinsky) had, during the Maidan protests being seen driving away from the Maidan with “a sniper’s rifle” in his car. We considered that by linking these two pieces of information (“many believe it could help reveal the true face of those now in power in Kiev”), the Licensee was making significant allegations about the recent activities of at least one member of the interim Ukrainian Government. We noted the Licensee said that the studio presenter in this bulletin made: “it clear that the facts [were] complex and incomplete (albeit perhaps deliberately in the hands of some of the media)”. Nonetheless, we considered the Licensee was obliged to reflect sufficiently the viewpoint of the interim Ukrainian Government on these allegations. In our view they did not do, and nor did TV Novosti demonstrate how it had done so.

#### Conclusion: appropriately wide range of significant views in 1, 3, 5, and 6 March 2014 bulletins

In summary, we considered that the Licensee did not adequately reflect the viewpoint of the interim Ukrainian Government in response to the various criticisms and allegations made about it in the four news bulletins in this case. Across the four news bulletins broadcast between 1 March 2014 and 6 March 2014, Ofcom noted there was one brief example<sup>46</sup> that could be reasonably characterised as the view of the interim Ukrainian Government being reflected to some degree and with due weight. We did not however consider this was sufficient to balance the many other viewpoints within these news bulletins criticising (some seriously so), or in opposition to, the interim Ukrainian Government and its policies and actions. Therefore, the Licensee had not ensured that it had included an appropriately wide range of significant views and give those views due weight, as required by Rule 5.12 of the Code.

#### Other matters

Ofcom went on to consider other points or issues raised by TV Novosti.

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<sup>46</sup> In the 1 March 2014 news bulletin, when interviewing Mark Sleboda, the studio presenter said the following: “Alright, well the [Ukrainian] Interior Minister, the new Interior Minister said this is a military invasion and occupation”.

First, the Licensee described its service generally as reflecting viewpoints from “commentators who challenge vigorously the Russian viewpoint” as illustrated by the programmes *Crosstalk* and *Worlds Apart*. This was in the context of TV Novosti’s statement that RT’s remit and ambition was “aiming, like Channel 4 to challenge established views, to promote alternative views and to facilitate the presentation of viewpoints rarely heard in mainstream media”. TV Novosti did not provide any evidence of specific editions of *Crosstalk* which reflected alternative viewpoints relevant to the particular programmes in this case. However, the Licensee did point to the appearances of: John Herbst, a former US Ambassador to Ukraine in an edition of *Worlds Apart*, broadcast on 27 February 2014; and Dr Angela Stent, Professor of Government at Georgetown University and director of its Centre for Eurasian, Russian, and East European Studies, in “in a segment of one of the programmes complained of” on 6 March 2014.

The Licensee said that John Herbst had been: “deeply sceptical of pro-Russian views of events in Ukraine and in particular of the dangers of Right Sector”, However, we noted that TV Novosti did not argue that this interview was editorially linked with the news bulletins in this case. Rather, it cited this interview in the context of, as mentioned above RT’s: “remit and ambition as aiming, like Channel 4 to challenge established views”.

TV Novosti said that Angela Stent had appeared on 6 March 2014: “in a segment of one of the programmes complained of”. According to the Licensee, Dr Stent addressed: “the question of the legitimacy of the new Ukrainian government [and] she was equally sceptical of the view that it was unconstitutional”. Angela Stent appeared in the edition of *Worlds Apart* broadcast on 6 March 2014 at 12:30 immediately following the 12:00 news bulletin broadcast on that day, and which we investigated in this case. We did not agree with the Licensee’s description of Angela Stent’s interview as having appeared: “in a segment of one of the programmes complained of”. Rather, the interview was included in a standalone interview programme, *Worlds Apart*, albeit that programme immediately followed the 12:00 news bulletin.

We therefore reviewed the edition of *Worlds Apart* broadcast on 6 March 2014, in which Angela Stent had appeared. We noted that this edition of *Worlds Apart* consisted of an interview with Angela Stent, which lasted approximately 30 minutes. During the interview, the discussion principally focused on Russia’s position on, and reaction to, the on-going events in Ukraine. We noted that during the interview Angela Stent (“AS”) made the following statements which could reasonably said to relate to the interim Ukrainian Government to some degree:

AS: *“...what triggered [the Ukrainian crisis] was the problems within Ukraine itself and the dissatisfaction of the people with their Government, the failure to sign an agreement with the European Union is a symbol of that”.*

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Interviewer: *“...What was the point, as far as Americans are concerned with siding with this unconstitutional government, or endorsing this unconstitutional change of government? Because, I mean, elections are just around the corner, and, you know, it’s still an open question how long that government will stay in power”.*



AS: *“Well, I mean, let me take you back to February 21<sup>st</sup> alright? Well, the agreement was signed between the various [opposition] groups [and the Yanukovich government]... Then something happened, right? Yanukovich left. Nobody’s quite clear exactly how or why that happened. But that was not something instigated by any western country. So then you have to deal with the reality that Mr Yanukovich has disappeared. Nobody knew where he was for a couple of days. Then of course he went to Russia. And then you have people in Kiev who say: ‘Well, we’re going to be the interim government. Otherwise it would have been a complete breakdown of all governmental structures all law and order. So the US, the European countries are now dealing with this interim government, which of course wasn’t elected by anyone. But, otherwise there would be a total power vacuum because Mr Yanukovich just disappeared”.*

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AS: *“I agree with you that this interim government immediately trying to pass legislation degrading the Russian language and its use within Ukraine, that was clearly a mistake and they shouldn’t have done it, and I guess that law is no longer operative”.*

We considered that the above statements by Angela Stent did, to some degree, seek to explain the background to the formation of the interim Ukrainian Government in late February 2014. However, in our view the statements were not sufficient to counter the criticisms that had been made about the interim Ukrainian Government in the news bulletin broadcast at 12:00 on 6 March 2014, which immediately preceded the edition of *Worlds Apart*. In particular, in that bulletin, an interviewee, John Wight, labelled the “*the democratic rights*” of the population as having been “*violated*” and “*criminally violated*” by the interim Ukrainian Government, which he said had no legitimacy whatsoever (“*the illegitimacy of Kiev*”). He also referred to the accession to power of the interim Ukrainian Government as being an “*illegitimate takeover of power in Kiev*”; which involved “*the participation of fascism*” where: “*Ukraine’s constitution has already been violated*”.

In addition, the Licensee did not provide any evidence as to how the interview with Angela Stent had been “clearly linked” to the preceding news bulletin, within the meaning of Rules 5.11 and 5.12 of the Code beyond saying that the Angela Stent interview was in a segment of the programme. We noted in the news bulletin that preceded this edition of *Worlds Apart*, the studio presenter ended the programme as follows:

*“Oksana Boyko ‘in Worlds Apart’ is next. So stay with RT International”.*

We considered that this announcement would not have been sufficient to alert viewers to the fact that the following programme would contain viewpoints that might counter the various criticisms that had been made of the interim Ukrainian Government during the preceding news bulletin. For these various reasons, we considered that the interview with Angela Stent was not clearly linked the preceding news bulletin broadcast on 6 March 2014, as required by Rule 5.12 of the Code.

Second, TV Novosti argued that, in preserving due impartiality: “Alternative viewpoints are not in fact required by Section Five except in the limited

circumstances set out in Rule 5.9<sup>47</sup> [and] are, of course, an example of the means by which the due impartiality requirement may be fulfilled but that is not the same thing as a requirement". It added that "Ofcom appears to treat the alternative view as the touchstone of impartiality" as opposed to the broader definition of due impartiality laid out in the Code, which refers to context factors needing to be taken into account, and that: "the absence of alternative viewpoints does not necessarily amount to non-compliance with the due impartiality rules: since there are other factors to take into account". We disagreed. In our view, although contextual factors such as the nature of the channel and audience expectations are to be taken into account, central to the concept of due impartiality, when a broadcaster is dealing with controversial matters to which the due impartiality rules apply, is the fact that there will be viewpoints or views from different sides of the debate on such matters. Although, Rule 5.9 is the only rule in Section Five that explicitly uses the words "alternative viewpoints", the synonymous term "view" is used throughout Section Five<sup>48</sup>, including in Rule 5.12<sup>49</sup>, one of the rules being considered in this case. Therefore, central to preserving due impartiality is the requirement to reflect, as appropriate, alternative viewpoints or views.

Linked to these points, TV Novosti said that Ofcom should take into account contextual factors such as the "rolling nature" of RT and likely audience expectations. Ofcom acknowledges that such context is important in determining the approach to due impartiality in any particular case, and we had regard to these factors in this case. In particular, we recognise the challenges of ensuring that rolling news programming complies with the Code. However, such programming must comply with due impartiality obligations, and rolling news services regulated by Ofcom can and do successfully take a number of measures to ensure they do so.

Third, TV Novosti said: "It would not further the interests of citizens to inhibit broadcasters from seeking to challenge established Western views, particularly in the current climate, by excluding the Russian viewpoint...[and] audiences would lose out if the Western viewpoint were a fugitive and cloistered position that never ventured out to be tested adversarially in public debate against an opposing view". Ofcom agreed. Section Five of the Code does not prevent broadcasters from: criticising one side in a conflict; challenging what might be described as the viewpoint of "the West"; or reporting the news from a particular nation-state's perspective, such as that of

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<sup>47</sup> Rule 5.9 states: "Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of "personal view" or "authored" programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views".

<sup>48</sup> For example, the definition of "due impartiality" in Section Five of the Code states (with Ofcom emphasis added): "...So 'due impartiality' does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented...".

<sup>49</sup> Rule 5.12 states: "In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented".

Russia. In this respect, Ofcom recognises the importance of media plurality, which we have defined<sup>50</sup> as, for example, ensuring there is a diversity of viewpoints available, and consumed, across and within media enterprises. However, this does not mean that individual Ofcom licensees do not have to reflect alternative viewpoints in their own news programming, as appropriate, in accordance with Rule 5.1 of the Code.

Fourth, the Licensee made various references to Channel 4. In summary TV Novosti argued that the creation of Channel 4 showed that Parliament wished to promote alternative views on UK television, and RT's aim to challenge established views was similar to part of Channel 4's remit. It added that: "Ofcom should be slow to assume that a complaint of bias in RT's reporting of international events reveals anything more than that an established view has been successfully challenged". In response, Ofcom is of course aware of the Annan Committee Report and the developments that led to the establishment of Channel 4. We welcome the desire by some licensees to provide a distinct range of content that articulates alternative viewpoints. In particular we acknowledged and took into account in this case that the Licensee wishes to challenge "established views". TV Novosti, like Channel 4, however must comply with the Code. In our view neither is constrained disproportionately from challenging established views or orthodoxies through the obligation to comply with the due impartiality requirements of the Code.

### Overall Conclusion

Ofcom emphasises that there is no requirement on broadcasters to provide an alternative viewpoint on all news stories or issues in the news, or to do so in all individual news items or programmes. It is also legitimate for news on a licensed service to be presented in broad terms from the viewpoint of a particular nation-state. We recognise that TV Novosti, providing a service with a Russian background, will want to present the news from a Russian perspective. However, all news must be presented with due impartiality: that is with impartiality adequate or appropriate to the subject and nature of the programme. In particular, when reporting on matters of major political or industrial controversy and major matters relating to current public policy in news programmes, broadcasters must ensure that they reflect an appropriately wide range of significant views and give those views due weight. Presenting news stories with due impartiality in news programmes very much depends on editorial discretion being exercised appropriately in all the circumstances.

For all the reasons set out above, Ofcom concluded that the Licensee failed to preserve due impartiality as required by Section Five of the Code and the four news bulletins detailed in this finding therefore breached Rules 5.1, 5.11 and 5.12 of the Code.

We noted that this Decision followed three previous published decisions<sup>51</sup> in which Ofcom found that TV Novosti breached Section Five of the Code. As a result of the

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<sup>50</sup> See paragraph 1.6, *Measuring media plurality: Supplementary advice to the Secretary of State for Culture, Media and Sport and the Leveson Inquiry* (See <http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/letters/advice.pdf>).

<sup>51</sup> See:

- Issue 213 of Ofcom's Broadcast Bulletin, 10 September 2012 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb213/obb213.pdf>);

most recent of those decisions, we requested that the Licensee attend a meeting to discuss compliance with regard to its due impartiality. Therefore, as a result of the current case, we are putting TV Novosti on notice that any future breaches of the due impartiality rules may result in further regulatory action, including consideration of a statutory sanction.

### **Breaches of Rules 5.1, 5.11 and 5.12**

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- Issue 217 of Ofcom's Broadcast Bulletin, 5 November 2012 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb217/obb217.pdf>); and
  - Issue 244 of Ofcom's Broadcast Bulletin, 16 December 2013 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/2431/obb244.pdf>).

## In Breach

### Newsbeat

BBC Radio 1, 13 June 2014, 12:45

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#### Introduction

*Newsbeat* is a regular news programme broadcast on BBC Radio 1 which is targeted at a younger audience, in line with the station's audience profile.

A complainant alerted Ofcom to a report on the radical terrorist organisation ISIS<sup>1</sup>, included in this edition of *Newsbeat*. The complainant objected to this report including an interview with an ISIS fighter, who said he had travelled from the UK to join ISIS. In particular, the complainant suggested that this interview had "glorified terrorism by likening killing innocent people to playing" a computer game.

ISIS is a terrorist organisation that was proscribed<sup>2</sup> under UK law on 16 June 2014, three days after the broadcast of this programme. The UK Government's List of Proscribed Terrorist Organisations describes ISIS as:

"a brutal Sunni Islamist terrorist group active in Iraq and Syria. The group adheres to a global jihadist ideology, following an extreme interpretation of Islam, which is anti-Western and promotes sectarian violence. ISIL aims to establish an Islamic State governed by Shari'a law in the region and impose their rule on people using violence and extortion".

We noted that at the beginning of this edition of *Newsbeat*, while describing what news items would be discussed in the programme, the presenter said the following:

*"We hear from a man who left England to fight for the radical ISIS group".*

This was immediately followed by the following statement from this man:

*"It's actually quite fun, better than, how you would say what's that game called, 'Call of Duty'? It's like that, but really, you know, 3-D, you know. You can see everything's happening in front of you, you know, it's real, you know what I mean?"*

A few minutes later, following a light-hearted news item concerning the football World Cup in Brazil, the programme included an item of just under two and a half minutes duration that focused on a UK citizen, Abu Sumayyah, who had left England to join ISIS in Syria. The whole news item consisted of initial comments by the presenter and a clip of a statement by President Obama, followed by a report by a *Newsbeat* journalist, Anna Collinson, introducing various extracts from a previously recorded

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<sup>1</sup> "ISIS" or Islamic State of Iraq and Syria is also known as: Islamic State ("IS"); Islamic State of Iraq and the Levant ("ISIL"); Dawlat al-'Iraq al-Islamiyya; Islamic State of Iraq ("ISI"); or Dawlat al Islamiya fi Iraq wa al Sham ("DAISh").

<sup>2</sup> Under the Terrorism Act 2000, the Home Secretary may proscribe an organisation if the Home Office believes it is concerned in terrorism. For the current List of Proscribed Organisations, see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/266038/List\\_of\\_Proscribed\\_organisations.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266038/List_of_Proscribed_organisations.pdf).

interview with Abu Sumayyah that had been made available online as a podcast by a freelance journalist<sup>3</sup>. This podcast was described by the *Newsbeat* reporter, Anna Collinson as follows: “*Sumayyah has joined the ISIS group, who have taken control of parts of Syria and Iraq. He’s been speaking to presenters Jonathan Krohn and Emma Beales, who host the ISIS show podcast*”. Various statements made by Abu Sumayyah and one statement made by one of the podcast presenters, Jonathan Krohn, were included in the *Newsbeat* news item interspersed with statements by the *Newsbeat* journalist, Anna Collinson.

The content of the whole *Newsbeat* news item was as follows:

*Newsbeat* presenter:

*“Let’s take you to Iraq. [Sound of machine gun fire]. The United Nations says Islamist fighters have now started executing civilians and soldiers in the country’s second biggest city. Seventeen people were shot on one street. The fighters are from ISIS, a group that broke away from Al-Qaeda. They want to create a strict Islamic state across Iraq and Syria. Here’s President Obama”.*

Clip of President Obama:

*“What we’ve seen over the last couple of days indicates the degree to which Iraq’s gonna need more help. I don’t rule out anything, because we do have a stake in making sure that these Jihadists are not getting a permanent foothold”.*

*Newsbeat* presenter:

*“This all comes as one British man reveals what’s it’s like to fight with ISIS in Syria. Newsbeat’s Anna Collinson’s been listening to this rare interview”.*

*Newsbeat* reporter (Anna Collinson):

*“He’s a man from Britain with three kids. But 11 months ago Abu Sumayyah left it all behind to fight what he calls a holy war”.*

Abu Sumayyah:

*“The first time I ever heard a bomb, I realised then, ‘Okay, you know, this is scary you know?’”*

*Newsbeat* reporter (Anna Collinson):

*“Sumayyah has joined the ISIS group, who have taken control of parts of Syria and Iraq. He’s been speaking to presenters Jonathan Krohn and Emma Beales, who host the ISIS Show podcast”.*

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<sup>3</sup> The podcast was labelled online as follows: “*Jonathan [Krohn] and Emma [Beales] interview Abu Sumayyah (ISIS) in Idlib [in Syria]*”. In its representations to Ofcom, the BBC explained that: “despite its title, the *ISIS Show* [was] not produced by ISIS but by Jonathan Krohn a freelance journalist working for Vice.Com, and we know of no evidence that it [was made available online] by ISIS. Both Mr Krohn and Ms Beales have written extensively for mainstream media, here and in the US, and the *Newsbeat* team spoke to Ms Beales before the item’s transmission in order to verify her and Mr Krohn’s credentials”.

Journalist in *ISIS Show* podcast (Jonathan Krohn):

*“What’s that noise? Very foreboding”.*

Abu Sumayyah:

*“A lot of bombing going on at the moment, it’s quite far away, but, er, you can hear it”.*

Newsbeat reporter (Anna Collinson):

*“Sumayyah says he’s speaking from an internet café near his training camp in North West Syria. ISIS is also one of the main groups fighting government forces there”.*

Abu Sumayyah:

*“For us to be here, it’s freedom, totally freedom. I can walk around with a Kalashnikov if I want to, with a RPG<sup>4</sup>, if I want to”.*

Newsbeat reporter (Anna Collinson):

*“Sumayyah hasn’t spoken to his children since he left the UK. He claims the Home Office has taken away his British citizenship. They’ve told Newsbeat they can’t comment”.*

Abu Sumayyah:

*“This idea of us wanting to go back and plot terror attacks in our own countries and so on and so forth, I think is absolute rubbish. We’re having the good life here, you know?”*

Newsbeat reporter (Anna Collinson):

*“Sumayyah says he has no plans to go back to the UK”.*

Abu Sumayyah:

*“For me, I felt like I was in prison in that country [the UK]. You need, er, road tax, you need this, and you need that and blah, blah, blah. It’s just money-making schemes”.*

Newsbeat reporter (Anna Collinson):

*“Some say ISIS is overtaking Al-Qaeda as one of the world’s most dangerous Jihadist organisations. Sumayyah says what they are fighting for is right”.*

Abu Sumayyah:

*“It’s actually quite fun, better than, how you would say what’s that game called, ‘Call of Duty’? It’s like that, but really, you know, 3-D, you know. You can see everything’s happening in front of you, you know, it’s real, you know what I mean?”*

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<sup>4</sup> Rocket propelled grenade, a shoulder-launched anti-tank weapon.

Ofcom considered that the material raised issues warranting investigation under the following rules of the Code:

Rule 1.3: “Children must...be protected by appropriate scheduling from material that is unsuitable for them”.

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

We therefore sought the BBC’s comments as to how this material complied with these rules.

## Response

By way of background, the BBC said that *Newsbeat*: “has a long-established record for tackling difficult subjects in a responsible way and this particular issue is of considerable interest and concern to its listeners”. It added that the programme team had decided to broadcast the interview with Abu Sumayyah: “as part of the programme’s wider coverage of this topic”.

In relation to both Rules 2.3 and 1.3, the BBC variously said that: the interview with Abu Sumayyah “should have been accompanied by more contextual information about Abu Sumayyah’s personal claims”; “more explanation could have been given about the way that this interview had been obtained, and the reality of life in Iraq for those recruited from abroad to fight alongside jihadists in the Middle East”; and the fact that the interview: “had been conducted for a non-BBC podcast...could have been made clearer”. In addition, it acknowledged that: “with hindsight, it should have been preceded by a warning about the potential for offence arising from the views he was about to express”. In this context, the BBC added that *Newsbeat*: “routinely gives warnings on air about such material and it was an oversight not to have done so on this occasion”.

The BBC said that steps had been taken by production staff to “verify” the recording. It made clear that the interview with Abu Sumayyah was: “not given to a BBC journalist and it was therefore not possible to challenge Abu Sumayyah directly”. However, the broadcaster asserted that the programme team had taken a number of steps to provide context to the interview with Abu Sumayyah. These included:

- the fact that the presenter’s first line within the news item was: “immediately followed by the sound of gunfire, which was itself followed by a statement that it was believed ISIS had shot 17 people in one street alone”. According to the BBC, this information was part of a claim made by the United Nations which: “explained the brutal tactics employed by ISIS against innocent civilians, making clear at the outset that terrible crimes were being committed in Iraq”;
- the clip of President Obama which: “provided political context and indicated that renewed US intervention in Iraq had not been ruled out”. The BBC said that President Obama’s remarks and the reference to the United Nations’ claims of ISIS violence: “conveyed a sense of the extent to which ISIS’s actions had been condemned by the international community”;



- the fact that the “extreme nature of Abu Sumayyah’s actions and the far reaching personal consequences of his participation in the conflict were also reported, including that he had not spoken to his children for 11 months since leaving the UK and that he claimed to have lost his British citizenship”;
- despite Abu Sumayyah’s “professed enjoyment of his situation”, the BBC said that the news item indicated that his situation was: “dangerous and potentially lethal”. For example, Abu Sumayyah said that his situation was “scary”, and Jonathan Krohn (who conducted the original interview with Abu Sumayyah) “commented that they too could hear the sound of bombs and gunfire, describing it as ‘foreboding’”; and
- near the conclusion of the report, the BBC said that: “the view of some that ISIS may be a more dangerous jihadist organisation than Al-Qaeda reinforced the image of the group as extremist and violent”.

### Rule 2.3

The BBC acknowledged that Abu Sumayyah’s comments: “may have offended many people”. However, it added that the programme-makers: “were alive to the fact that this was a very rare chance to hear from someone who had chosen to fight abroad alongside ISIS”. The BBC argued that: “the motives of such individuals had been widely discussed and speculated upon in the press and by politicians and academics.... [This] was an opportunity to hear at first hand what one such recruit thought and we believe that it provided an insight which could not have been provided in any other way”. The BBC in particular pointed to Abu Sumayyah distinguishing his activities in Syria from: “any desire to plan terror attacks in the UK”. According to the BBC this distinction: “went to the heart of a political debate about home-grown terrorism dating back to the 7/7 bomb attacks in London and was one of the chief concerns in public discussion about the dangers of individuals like Abu Sumayyah travelling abroad to fight with groups such as ISIS” .

The BBC also said that this news item was also part of “a major running story for Newsbeat” and in June 2014 alone Radio 1 had broadcast “18 stories about ISIS in its bulletins or programmes” which had included various issues such as: parents in the UK “whose children had gone to fight in Syria or Iraq and who were angry with their children, calling on them to return”; “warnings from the police about the dangers for young British people trying to fight abroad”; and, “detailed explanations of what ISIS is, what it stands for, how it is seen in the West and how many civilian deaths it has been responsible for”.

In summary, the BBC argued that the news item: “did not in any way endorse the remarks made by Abu Sumayyah and we do not believe that the audience will have formed the impression that it did”. The BBC said that the news item “left the audience in no doubt as to the violent nature of” ISIS. In addition, it pointed out that Abu Sumayyah: “explicitly rejected the notion of coming back to the UK to plot terror attacks” .

### Rule 1.3

The BBC said that audience research “shows the average listener age for the lunchtime Newsbeat programme is 33, but the programme makers are aware that the audience also includes a significant number of under-18s and tailors its output accordingly”. The BBC also stated its belief that: “this report raised significant issues

relevant to, and of concern to, young people of whatever age or creed and we do not believe that it was unsuitable for the younger members of the audience". It added that: "It had been widely reported at the time that several of those who had joined ISIS from the UK were under the age of eighteen and there was considerable public discussion about the extent to which parents could exercise control over their children". The BBC said that: "This story was, therefore, highly relevant to the programme's audience and, we believe, there was a significant public interest in broadcasting the interview itself".

In conclusion, the BBC outlined measures it had taken: "to ensure the chances of an error of this type re-occurring are significantly reduced". It said that since this broadcast the Programme Editor had: "spoken to the Duty Editor and reporter concerned and reminded them of the importance of including all appropriate context when dealing with this kind of story"; "stressed to the team the need for ensuring all items for broadcast are compliant"; and "emphasised...the requirement for producers and reporters to consult [BBC] Editorial Policy and a lawyer, should this be appropriate, and the importance for duty editors and Assistant Editors in confirming this has happened". The BBC also said that all *Newsbeat* programming staff will be required to attend compliance workshops where it would be emphasised that: "*Newsbeat* must consider the specific legal and editorial obligations it has towards a youth audience".

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that persons under the age of eighteen are protected, and that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material. These duties are reflected in Section One (Protecting the Under-Eighteens) and Section Two (Harm and Offence) of the Code respectively.

In reaching its decision in this case, Ofcom has taken careful account of the audience's and the broadcaster's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Ofcom must therefore seek an appropriate balance between ensuring members of the public are protected from material which may be considered harmful or offensive on the one hand, and the broadcaster's and audience's right to freedom of expression on the other.

We acknowledge that, at times, offence can be caused not just by the actual content of a programme but by the very fact that people with extreme and very controversial views are given airtime. Any potential offence in these circumstances can be exacerbated if viewers or listeners consider that such contributors' views are not properly challenged in order to provide appropriate context. However, broadcasters are allowed to include any contributor they wish in their programming, provided they comply with the Code. There are various possible editorial approaches to how a broadcaster might provide context when featuring an individual with extreme and offensive views (e.g. a presenter asking challenging questions). However, the final decision as to what approach to take is one for the broadcaster.

In this case, a news item was broadcast which focused on the extremist Islamic group ISIS, and specifically on an individual, Abu Sumayyah. He was reported to

have left the UK to fight in Syria for ISIS, a terrorist organisation that was proscribed within the UK shortly after the broadcast of this programme. ISIS is a violent group that has sought to establish an Islamic state (a "caliphate") across parts of Iraq and Syria. In addition, it has been widely reported that a number of UK citizens have travelled to Iraq and Syria to join ISIS, and that the UK might be a target for any of these citizens returning to the UK or for the group generally.

In this context, Ofcom considered it was clearly legitimate journalistically for the BBC to wish to broadcast a report highlighting and analysing the beliefs and activities of this group. In particular, we considered there was a strong public and news interest for broadcasters to examine the views of a UK national who had joined ISIS, and explain and assess his beliefs and motivations. This was especially the case in the context of the on-going debate as to the extent of which UK citizens were joining extreme Islamic terrorists groups such as ISIS abroad, with the risk that they might then return to the UK 'radicalised' and ready to commit acts of terror in the UK.

Against this background, we analysed the programme against Rules 2.3 and 1.3 of the Code.

### Rule 2.3

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context is assessed by reference to a range of factors including but not limited to: the editorial content; the degree of offence; the effect of the material on viewers or listeners who might come across it unawares; whether the nature of the content has been brought to the attention of the audience by appropriate information; and, likely audience expectations.

Ofcom first considered whether this news item about ISIS had the potential to cause offence. We noted that at the beginning of this edition of *Newsbeat*, while describing what news items would be discussed in the programme, the presenter said the following:

*"We hear from a man who left England to fight for the radical ISIS group".*

This was immediately followed by the following statement from this man (Abu Sumayyah):

*"It's actually quite fun, better than, how you would say what's that game called, 'Call of Duty'? It's like that, but really, you know, 3-D, you know. You can see everything's happening in front of you, you know, it's real, you know what I mean?"*

We considered that this statement by Abu Sumayyah, an ISIS fighter, originally from the UK, had clear potential for causing offence. In particular, the statement appeared to endorse the extreme violent activities of ISIS, describing them as "*actually quite fun*". The potential offence was increased by Abu Sumayyah likening armed combat with ISIS as being "*better*" than playing a violent video game, 'Call of Duty'.

The full news item itself prominently featured various statements made by Abu Sumayyah, who was reported as describing himself to be fighting: "*a holy war*". Abu Sumayyah made various statements in which he referred often in a positive way to his experiences fighting in Syria. In our view these statements were potentially offensive because they also appeared to endorse the extreme violent activities of ISIS. For example, Abu Sumayyah described his membership of ISIS as: "*freedom*,

*totally freedom*”, *“the good life”*, and *“actually quite fun”*. The potential offence was increased by Abu Sumayyah speaking positively about the fact that he could *“walk around with a Kalashnikov if I want to, with a RPG, if I want to”* and, likening armed combat with ISIS as being *“better”* than playing the video game, ‘Call of Duty’. Ofcom noted by way of important background context that at the time<sup>5</sup> of the broadcast of the programme in this case, ISIS had started disseminating images via social media with the purpose of recruiting fighters from Western countries. These images portrayed armed ISIS fighters posing with a caption (in English) referring to the video game ‘Call of Duty’. We considered, therefore, that the potential for offence was likely to have been heightened by Abu Sumayyah positively comparing a video game to armed violence at the same time that ISIS, a violent terrorist organization, was referring to that same video game in its recruitment communications. In addition, we considered that potential offence would have been caused by Abu Sumayyah appearing to suggest that membership of ISIS, a violent terrorist group, was better than living in the UK and that what he was: *“fighting for is right”*.

Ofcom therefore concluded that both the headline and the main news item were capable of causing a significant degree of offence. We then considered whether this potential offence was justified by the context.

This material was included in *Newsbeat*, a radio news programme that provides distinctive news coverage in a manner tailored for a younger audience. It was not surprising, and within audience expectations for this programme, that a specialist news programme should want to analyse and report on the views and activities of ISIS to some extent. However, in doing so, the BBC was required to ensure there was sufficient context to justify the offence in this case.

Ofcom considered the factors which the BBC had put forward as helping to justify the offence. These included:

- the reference made by the presenter to claims made by the United Nations that ISIS has *“started executing civilians and soldiers in the country’s second biggest city. Seventeen people were shot on one street”*.
- the clip of President Obama stating that: *“we do have a stake in making sure that these Jihadists are not getting a permanent foothold”*.
- the *Newsbeat* reporter saying that ISIS was: *“overtaking Al-Qaeda as one of the world’s most dangerous Jihadist organisations”*; and
- the news item not endorsing Abu Sumayyah’s views in any way.

In Ofcom’s view, these factors did provide some context. However, we considered that they provided background contextual information on the issue of ISIS and jihadism generally. None of the contextual information challenged or rebutted specifically the positive and personal description that Abu Sumayyah provided in the report of his experiences fighting as a member of ISIS in Syria.

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<sup>5</sup> For example, see <http://www.thedailybeast.com/articles/2014/08/31/isis-s-use-of-social-media-to-reach-you-its-new-audience.html#>, which states: “Then, on June 10, after ISIS captured Mosul, its messages pivoted towards the West. The majority of the group’s posts were still in Arabic but English tweets and translated videos surged as ISIS targeted a Western audience. One meme clearly aimed to recruit young Westerners was the image of two ISIS fighters posing over a caption comparing jihad to the video game Call of Duty”.

We took into account in particular that there was no context or warning provided around the first statement by Abu Sumayyah included during the opening headlines to the programme:

*“It’s actually quite fun, better than, how you would say what’s that game called, ‘Call of Duty’? It’s like that, but really, you know, 3-D, you know. You can see everything’s happening in front of you, you know, it’s real, you know what I mean?”*

Further, we noted that the main news item featuring Abu Sumayyah was included in this programme immediately following a much more light-hearted item concerning the football World Cup in Brazil. In our view, the content of this preceding news item would not have prepared listeners for the content and tone of the following news item featuring Abu Sumayyah.

We also noted that no warning was given to listeners either before the statement by Abu Sumayyah in the headlines or before or during the main item. In particular, we noted that the podcast from which Abu Sumayyah’s interview had been taken was referred to as: *“the ISIS Show podcast”*. This was despite the fact, according to the BBC<sup>6</sup>, that the podcast was produced and presented by two independent freelance journalists. We considered that the potential for offence in this case was likely to have been increased by the fact that the BBC had failed to provide adequate context by signposting the origin of the podcast. In our view, this could have given the impression to the audience that a number of excerpts of a podcast produced by ISIS had been broadcast by the BBC, with insufficient context being provided to those excerpts.

We noted that the main news item did refer to some negative aspects of Abu Sumayyah’s experience as a member of ISIS. For example, it was stated that: *“Sumayyah hasn’t spoken to his children since he left the UK [11 months previously]. He claims the Home Office has taken away his British citizenship”*. In addition, Abu Sumayyah described the situation as being *“scary”*, and one of his interviewers referred to sounds of bombing in the vicinity of Abu Sumayyah as being *“foreboding”*. However, in our view, there was not any content that could be described as specifically contradicting Abu Sumayyah’s overall positive assessment of being a member of ISIS (including his praise of the freedom of being able to walk around carrying *“a Kalashnikov”* or *“RPG”*) or his trivialisation of armed combat (when he likened it to being better than playing the video game ‘Call of Duty’). Nor was there any comment from the reporter pointing out that Abu Sumayyah’s experience was that of just one individual and therefore it might not be at all typical.

The BBC stated that Abu Sumayyah: *“explicitly rejected the notion of coming back to the UK to plot terror attacks”*. However, in our opinion this fact did not materially mitigate the offence caused by Abu Sumayyah’s various positive comments concerning his experience as a member of ISIS.

The BBC said the interview with Abu Sumayyah was: *“not given to a BBC journalist and it was therefore not possible to challenge Abu Sumayyah directly”*. Broadcasters are free to transmit an interview containing potentially offensive views, and conducted by a third party, but, as necessary, they must find alternative ways to challenge in order to provide appropriate context to the views being expressed, or otherwise contextualise those views. In our view insufficient steps were taken by the

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<sup>6</sup> See footnote 3.

BBC in this news item to mitigate the offence generated by the interview with Abu Sumayyah.

Overall therefore, for all these reasons, we considered that this news item was not in line with the likely audience expectations for this programme.

In reaching this Decision, we took into account the BBC's acknowledgement that the interview with Abu Sumayyah "should have been accompanied by more contextual information about Abu Sumayyah's personal claims", and that: "more explanation could have been given about...the reality of life in Iraq for those recruited from abroad to fight alongside jihadists in the Middle East". We also noted the BBC's comment that *Newsbeat* "routinely gives warnings on air about such material and it was an oversight not to have done so on this occasion". Finally, we also had regard to the various measures the BBC said it had taken: "to ensure the chances of an error of this type re-occurring are significantly reduced". These included the Programme Editor: speaking "to the Duty Editor and reporter concerned and reminded them of the importance of including all appropriate context when dealing with this kind of story"; and emphasizing "the requirement for producers and reporters to consult [BBC] Editorial Policy and a lawyer, should this be appropriate". In addition, *Newsbeat* programming staff would be required to attend compliance workshops where it would be emphasised that: "*Newsbeat* must consider the specific legal and editorial obligations it has towards a youth audience".

However, we considered that, for all the reasons given above there was insufficient context to justify the offence in this case, and there was therefore a breach of Rule 2.3 of the Code.

### Rule 1.3

Although this programme was broadcast at lunchtime during school term time, we noted the BBC's statement that audience research: "shows the average listener age for the lunchtime *Newsbeat* programme is 33, but the programme makers are aware that the audience also includes a significant number of under-18s and tailors its output accordingly". We therefore also considered the content under Rule 1.3 of the Code. This requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; the nature of the particular programme; and, the likely audience expectations.

We first considered whether the material in this case was unsuitable for children. We considered that Abu Sumayyah's apparent endorsement extreme violent activities of ISIS without proper context or warning was unsuitable for children. In particular, we considered that his statement ("*It's actually quite fun, better than, how you would say what's that game called, 'Call of Duty'?*") suggesting that fighting for ISIS was better than playing the popular but violent video game, was particularly unsuitable for children. This was because it had no proper context or warning and, in our view, the effect of this statement was to downplay the violent and lethal nature of the actions of ISIS. In addition, we considered this interview was unsuitable for children because, without proper context or warning, it would be less likely that children would be able to fully appreciate the differences between the contents of a video game and the realities of life as an ISIS fighter. We also considered that the unsuitability of the reference to the video game 'Call of Duty' would, in our view, have been heightened by the fact that, as mentioned above, ISIS had, at the time of this broadcast, started disseminating images via social media with the purpose of recruiting fighters. These

images portrayed armed ISIS fighters posing with a caption referring to the video game 'Call of Duty'. Abu Sumayyah's positive comparison of fighting for ISIS with a popular video game was particularly unsuitable for children given that that same video game was being actively cited by ISIS in its recruitment communications (in English) aimed at young people in Western countries.

We then considered whether this news item was appropriately scheduled. In our view, it was not. This was partly because it was broadcast at lunchtime on a radio channel specifically targeted at young people, and this particular programme according to the BBC normally includes: "a significant number of under-18s". It was also because of the nature of the content, and the likely expectations of the audience for this programme at this time (see above under Rule 2.3).

We took into account the BBC's arguments that the news item in this case: "raised significant issues relevant to, and of concern to, young people of whatever age or creed".

In reaching this Decision, we also took into account the BBC's acknowledgement that the interview with Abu Sumayyah: "should have been accompanied by more contextual information...[and], with hindsight, it should have been preceded by a warning. And, as referred to above, we took into account the BBC's statement that that *Newsbeat*: "routinely gives warnings on air about such material and it was an oversight not to have done so on this occasion". Furthermore, we took into account the various measures that the BBC had put in place to improve compliance as result of this case. Nonetheless, for the reasons outlined above, the material was also in breach of Rule 1.3.

In Ofcom's Finding, published<sup>7</sup> on 6 January 2014, concerning BBC1 News coverage two days after the murder of Fusilier Lee Rigby in May 2013, Ofcom had made clear to the BBC and reminded all broadcasters (and we reiterate this guidance as a result of this case) to take care ensuring that material included in news bulletin headline sequences are appropriate for the likely audience. Broadcasters should take account of the fact that it is not in keeping with audience expectations nor with the well-established style of news bulletins to give warnings to viewers in advance about the content of news headline sequences. The content of headline sequences must therefore be selected with care.

The Code does not prohibit particular individuals or organisations from appearing on UK television and radio just because their views or actions have the potential to cause offence, provided broadcasters comply with the Code. To do otherwise would be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information and ideas. This is especially the case in news and current affairs programming, where broadcasters may wish to give coverage to or interview individuals or organisations with extreme and very challenging views as part of their legitimate and comprehensive coverage of the news. Broadcasters should be able to report on terrorist groups that pose threats internationally and domestically. This is clearly in the public interest and expected by viewers and listeners. However, where highly controversial individuals or organisations are given the opportunity to articulate their views on television or radio, broadcasters must always ensure that they place those views in context by, for

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<sup>7</sup> See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/245/obb245.pdf>, p.52.

example, providing appropriate challenge to those views and giving warnings as appropriate.

### **Breaches of Rules 1.3 and 2.3**



## In Breach

### Bam Bam at Breakfast

*Jack FM (South Coast), various dates and times*

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#### Introduction

Jack FM (South Coast) is a local commercial radio station that broadcasts to the Solent region. The licence for the service is held by Celador Radio Ltd (“Celador” or “the Licensee”).

During *Bam Bam at Breakfast* a commercial reference for Lovett International Estate Agents (“Lovett”) was broadcast. This stated:

*“Bam Bam at Breakfast with Lovett International Estate Agents, the toast of the National Estate Agency Awards 2013. Our toast is burnt – it won’t win any awards”.*

A listener, who understood that Lovett had been shortlisted for, but not won, an award at the National Estate Agency Awards, objected that the statement was misleading.

Ofcom considered the material raised issues warranting investigation under Rule 10.7 of the Code, which states:

Rule 10.7: “Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting”.

The advertising content and scheduling rules that apply to radio broadcasting are set out in the UK Code of Broadcast Advertising (“the BCAP Code”)<sup>1</sup> and include the following:

BCAP Code Rule 3.1: “Advertisements must not materially mislead or be likely to do so”.

BCAP Code Rule 3.9: “Broadcasters must hold documentary evidence to prove claims that the audience is likely to regard as objective and that are capable of objective substantiation”.

BCAP Code Rule 3.12: “Advertisements must not mislead by exaggerating the capability or performance of a product or service”.

Ofcom therefore requested comments from the Licensee about how it complied with these rules.

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<sup>1</sup> The Advertising Standards Authority (“ASA”) and Broadcast Committee of Advertising Practice (“BCAP”) regulate the content of broadcast advertising, under a Memorandum of Understanding with Ofcom. Specifically, BCAP supervises and reviews the codes that govern the regulation of broadcast advertising. The regulation of commercial references on radio, including sponsorship credits, remains with Ofcom, as such references form part of radio broadcasters’ editorial content (i.e. they are not spot advertisements).

## Response

Celador stated that Lovett was shortlisted for a number of awards in 2013, which the company was keen to promote when they signed up to sponsor the breakfast show in 2014. The Licensee said it was clear that the reference related to 2013 awards and provided Ofcom with a screenshot from the Estate Agency of the Year website that named Lovett on a page entitled “*A-Z of Award Winning Agents*”.

Celador said that Lovett considered it was a winner at the National Estate Agency Awards “in much the same way that an athlete coming third in the Olympics is regarded as a winner for receiving a bronze” and that receiving a shortlist certificate made it a winner.

Celador continued that it had used light-hearted humour to play on the dual meaning of the word “toast”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including “that generally accepted standards are applied to the contents of...radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material” and “that the inclusion of advertising which may be misleading, harmful or offensive in...radio services is prevented”. These objectives are reflected in Section Ten of the Ofcom Broadcasting Code in relation to commercial communications in radio programming and the BCAP Code in relation to advertisements.

Ofcom reviewed the Estate Agency of the Year website and noted that Lovett was listed on the *A-Z of Winners* page. However, we further noted that, when clicking on the company’s name, it was identified as being shortlisted for the *Best Small South West Estate Agency 2013* award, but was not the winner of that category.

Although we noted the Licensee’s argument that the reference was intended to be a humorous pun, we considered the statement that Lovett had been “*the toast of the National Estate Agency Awards 2013*” clearly implied the company had achieved significant success at that event. Because the company had not won the category in which it was entered, Ofcom considered that the Licensee had failed to substantiate that Lovett was the “*toast*” of the awards. Further the commercial reference had exaggerated the company’s success at the awards and was likely to mislead listeners.

Ofcom therefore concluded that the material breached Rule 10.7 of the Broadcasting Code, with reference to Rules 3.1, 3.9 and 3.12 of the BCAP Code.

## **Breach of Rule 10.7 of the Code with reference to Rules 3.1, 3.9 and 3.12 of the BCAP Code**

## In Breach

### Jago Pakistan Jago

*HUM Europe, 26 June 2014, 09:00*

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#### Introduction

HUM Europe is a general entertainment channel that broadcasts in Urdu, serving the Pakistani community in the UK and Europe. Its programming includes material originally shown in Pakistan on one of three channels operated by HUM Network. The licence for HUM Europe is held by HUM Network UK Limited (“HUM” or “the Licensee”).

*Jago Pakistan Jago* is a lifestyle programme recorded in front of a studio audience. A complainant alerted Ofcom to the programme broadcast on 26 June 2014, which he considered contained the promotion of products. As the programme was in Urdu, we commissioned a full independent translation of the broadcast.

We reviewed the programme and noted two segments in which products appeared to be promoted. The first segment concerned the washing powder, Brite, and comprised the following:

Presenter: *“Before going for a break, I am going to ask quiz questions and give some prizes. You have to answer quickly. What does the ‘stain magnet’ do? Speak in the microphone”.*

[Members of the audience raise their hands.]

Audience member: *“99 percent”.*

Presenter: *“What does it do?”*

Audience members: *“Kills germs”.*

Audience member: *“99 percent germs”.*

Presenter: *“What percent of germs does it eliminate?”*

Audience members: *“99 percent. 99”.*

[The presenter hands out Brite gift hampers to two members of the audience.]

Presenter: *“How do you spell, Brite?”*

Audience members: *“B, R, I, T, E”.*

[The presenter hands out Brite gift hampers to two more members of the audience.]

Presenter: *“How do we get germs in our clothes?”*

Audience members: *“Through sweat. Through sweat”.*

[The presenter hands out Brite gift hampers to two more members of the audience.]

Presenter: *“What does Brite contain, which removes the toughest stains from our clothes?”*

[No one answers.]

Presenter: *“Which magnet? Is it the magnet we attach to our fridges?”*

[No one answers.]

Presenter: *“Stain magnet”.*

[The presenter hands out Brite gift hampers to two more members of the audience.]

Presenter: *“It’s time for a break now. We will return after the break...”.*

After the commercial break the remaining eight minutes of the programme appeared to promote the clothing retailer, Origins. The presenter introduced this segment with the following:

*“Ramadan is about to begin and as soon as it begins we start preparing for Eid. In the markets you find various kinds of ready-to-wear clothes and the designers have made it easy by putting their stuff in the shops for us to choose from and buy. Among these brands one is called, Origins, which has great designs, and they have offered a special collection for Eid about which we are going to speak today”.*

The presenter then introduced her studio guests, who were Origins’ Brand Ambassador for its Eid Collection and the company’s Head of Marketing, who confirmed they were both wearing clothes from that collection. The guests spoke about the launch of the Eid Collection – which was described as *“Origin’s best collection”* – and the various design options available. They explained that there was a light collection and a heavy collection, with *“shirts, two pieces and three pieces...”* ranging in cost from three to eight thousand rupees.

The interview then continued:

Presenter: *“Wow. Beautiful. Wonderful. And I think many people would have chosen all of these dresses – such beautiful prints, such beautiful embroidery. What is Origins, basically?”*

Head of Marketing: *“Origins is Pakistan’s largest growing retail network and recently we have won many awards – one of which was the Brand of the Year award. We have fifty outlets – locally – throughout Pakistan, in Multan, Faisalabad, Lahore, and Karachi. Other than main cities, these are also in smaller towns like Gujrat, Gujranwala. Other than that...”.*

Brand Ambassador: *“Internationally in Dubai, Abu Dhabi, and Sharjah. An outlet is being opened in London. Origins has penetrated in the market very fast. It has been there for four to five years.”*

*Fifty outlets were opened in a year; last year it has grown a lot”.*

Presenter: *“I think young girls like you work for Origins and so they understand what a girl wants – what kind of clothes – and you cater more for them?”*

Brand Ambassador: *“Exactly. It is basically for working women, independent women. We believe in women empowerment and our clothes are such as women like you can manage along with their work. You don’t have to go here and there and run around for your clothes, you just go and get everything under one roof – light clothes, heavy clothes, casual clothes, which you can also wear to a wedding or while going out for a dinner. It’s everything under one roof”.*

[...]

Presenter: *“So, you gave something for everyone to like”.*

Brand Ambassador: *“Definitely”.*

The presenter then asked each guest to give a *“tip or message ... about how [to] make Eid a special one with Origins”*. The company’s Brand Ambassador said that people now wanted *“more manageable clothes, which can be easily carried around and which are not too expensive”*. Origins’ Head of Marketing said that, in response to *“a strong western influence in our lives”*, the company was *“reaching out to women in making them embrace our traditional culture and traditional designs”*, adding that *“no matter how much times have changed we should not forget our roots”*. The presenter agreed, adding *“...we will not forget Origins on this Eid”*.

HUM confirmed that the inclusion of references to the brands, Brite and Origins, in *Jago Pakistan Jago*, had been subject to a separate commercial arrangement between each brand and HUM TV (Pakistan), which is part of HUM Network and had produced the programme. As a result, the references met the definition of product placement<sup>1</sup> set out in the Code.

Ofcom considered the broadcast of *Jago Pakistan Jago* on HUM Europe raised issues warranting investigation under the following Code rules:

Rule 9.9: “References to placed products, services and trade marks must not be promotional”.

Rule 9.10: “References to placed products, services and trade marks must not be unduly prominent”.

Rule 9.14: “Product placement must be signalled clearly, by means of a universal neutral logo, as follows:

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<sup>1</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

- a) at the beginning of the programme in which the placement appears;
- b) when the programme recommences after commercial breaks; and
- c) at the end of the programme”.

We therefore asked the Licensee for its comments as to how the material broadcast complied with the above rules.

## Response

HUM said it did not benefit from the commercial relationships between the referenced brands and HUM TV (Pakistan), adding that HUM Europe required the removal of all commercial references from programmes originally broadcast in Pakistan before edited versions were shown in the UK. The Licensee said that, in this instance, product placement had not been signalled, as “HUM Europe should have received a clean version of the programme with all commercial references removed”. It added that, although visual commercial references had been removed from the original version of the programme, the editor appeared to have “overlooked the references made...by the presenter”.

HUM said it took its broadcast responsibilities very seriously and had implemented a new compliance process to avoid recurrence, under which “the UK version of *Jago Pakistan Jago* [would] not be aired within 4 hours of the original live transmission in Pakistan, but [would] instead be scheduled ... 28 hours later, effectively the next day”, to “allow editors in Pakistan more time to re-version the programme for UK broadcast”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, including “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

More specifically, both the AVMS Directive and the Act require that:

- programmes containing product placement shall not directly encourage the purchase or rental of goods or services;
- programmes containing product placement shall not give undue prominence to the products, services or trade marks concerned; and

- viewers are clearly informed of the existence of product placement in programmes; and surreptitious advertising is prohibited.

Rules 9.9, 9.10 and 9.14 of the Code, among others, reflect these requirements.

### Rules 9.9 and 9.10

Ofcom's Guidance accompanying Section Nine of the Code<sup>2</sup> makes clear that "where a product service or trade mark is included in a programme as a result of a product placement arrangement, a positive reference to it ... whether in vision or audio, is likely to be perceived to be promotional in intent". Factors that are likely to be considered promotional include "advertising claims", "references ... to the positive attributes or benefits of the placed product..." and "slogans associated with the placed product...". The Guidance also states that the level of prominence given to a product, service or trade mark will be judged against the editorial context in which it appears.

In this case, we noted that the programme segment concerning Brite appeared to serve no purpose other than to promote the product and its content (i.e. its "*stain magnet*"), through prominent, extended and repeated reference to each and to the product's efficacy (i.e. "*What percent of germs does it eliminate? 99 percent...*"). Likewise, we noted that the programme segment concerning Origins and its Eid Collection contained references to Origins as "*Pakistan's largest growing retail network*", highlighted its awards (i.e. "*we have won many awards – one of which was the Brand of the Year*") and outlets (i.e. "*We have fifty outlets – locally – throughout Pakistan...Internationally in Dubai, Abu Dhabi, and Sharjah. An outlet is being opened in London.*"), and noted its unique selling points (e.g. "*You don't have to go here and there and run around for your clothes, you just go and get everything under one roof – light clothes, heavy clothes, casual clothes, which you can also wear to a wedding or while going out for a dinner. It's everything under one roof*"). We also noted that the presenter appeared to offer her personal endorsement (e.g. "*Wow. Beautiful. Wonderful. And I think many people would have chosen all of these dresses – such beautiful prints, such beautiful embroidery*" and "*we will not forget Origins on this Eid*").

In each case, we considered the amount and nature of the references to the featured brand served a promotional rather than editorial purpose and could not therefore be justified. As a result, we concluded that the references to the placed products, Brite and Origins, in *Jago Pakistan Jago* were in breach of Rules 9.9 and 9.10 of the Code.

### Rule 9.14

Rule 9.14 requires that, where a programme contains product placement, the universal neutral product placement logo<sup>3</sup> (a 'P symbol') must appear at the beginning of the programme in which the placement appears, when the programme recommences after commercial breaks, and at the end of the programme. It applies to programmes (including films made for cinema) produced or commissioned by the

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

<sup>3</sup> Guidance on the form, size and duration of the logo can be found in Annex 1 of Ofcom's Guidance to Section Nine of the Code at:  
<http://stakeholders.ofcom.org.uk/binaries/guidance/831193/section9.pdf>.

provider of the television programme service or any person connected with that provider.

As *Jago Pakistan Jago* had been produced by HUM TV (Pakistan) – i.e. a person connected with HUM – Rule 9.14 applied in this instance. However, we noted that the inclusion of product placement had not been signalled by means of a universal neutral logo. The programme was therefore in breach of Rule 9.14 of the Code.

Ofcom therefore welcomed the new compliance process HUM had implemented to avoid recurrence.

### **Breaches of Rules 9.9, 9.10 and 9.14 of the Code**



## Broadcast Licence Conditions cases

### In Breach

#### Provision of licensed service

*Tudno FM (Llandudno), 2 to 14 September 2014*

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##### Introduction

Tudno FM is a community radio station licensed to provide a service for the residents of Llandudno in north Wales. The licence is held by Llandudno Community Radio Ltd (“LCRL” or “the Licensee”).

‘Key Commitments’<sup>1</sup> form part of each community radio station’s licence and are contained in an annex to the licence. They set out how the station will serve its target community and include a description of the programme service.

A complainant alerted Ofcom that Tudno FM had informed its Facebook followers that “due to essential maintenance Tudno FM will be off-air for up to two weeks”. The Licensee explained to us that the North Wales Fire Service had made an urgent recommendation that the station’s transmission equipment be moved from its current location, in order to mitigate a potential fire hazard.

The Licensee confirmed to Ofcom that Tudno FM had already ceased broadcasting, that it planned to recommence broadcasting in two weeks’ time, and that “Listeners were advised prior to this action and it is also on the Tudno FM Facebook page”. LCRL explained that the fire risk assessment had taken place approximately two months before the service came off the air, and the Fire Service’s report recommending the re-location of the transmission equipment had been received by the station two weeks later. The Licensee said it then established an action plan and a timeframe to enable volunteers to carry out the necessary re-location work.

In the days leading up to Tudno FM coming back on air with its full programming service, Ofcom was informed that continuous music was being broadcast, and that usual live output would then resume.

Ofcom considered that this raised issues warranting investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to LCRL’s licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period”. (Section 106(2) of the Broadcasting Act 1990); and

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period”. (Section 106(1) of the Broadcasting Act 1990).

We therefore sought the Licensee’s comments on how it had complied with these conditions.

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<sup>1</sup> Tudno FM’s Key Commitments:  
<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000156.pdf>.

## Response

The Licensee said that it had learned from its mistake and accepted that it should have contacted Ofcom when it became clear that the transmission equipment needed to be moved, and this would cause the service to come off air.

## Decision

Provision by a Licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. This is reflected in the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required community radio programme output is provided. In addition, choice for listeners is reduced.

In this case, the Licensee was told by the fire service that the position of its transmission equipment posed a fire risk, and it therefore needed to be relocated. The necessary work was planned and scheduled by the Licensee, and it was established that the work, due to be undertaken by a volunteer, would result in Tudno FM being off the air for a period of two weeks.

We took into account that LCRL did not at any stage inform Ofcom of its plans that would result in the licensed service being unavailable to listeners for a period two weeks. Rather, Ofcom only became aware of the situation when prompted by a complaint that drew our attention to announcements on the station's Facebook page.

Ofcom has concluded that the Licensee breached the relevant licence conditions for failing to provide its licensed service in accordance with its Key Commitments.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Llandudno Community Radio Ltd (licence number CR000156BA).**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 21 and 27 October 2014 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

### Investigations conducted under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date	Categories
Channel Donations Live	Fadak TV	27/03/2014	Appeals for funds
ITV News London	ITV London	28/08/2014	Crime
ITV News	ITV	28/08/2014	Crime
Today	BBC Radio 4	20/08/2014	Scheduling

For more information about how Ofcom conducts investigations about content standards, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

## Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 21 and 27 October 2014 because they did not raise issues warranting investigation.

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

For more information about how Ofcom assesses conducts investigations about content standards, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Four in a Bed	4Seven	03/10/2014	Generally accepted standards	1
BBC News	BBC	Various	Due impartiality/bias	1
BBC London News	BBC 1	08/10/2014	Generally accepted standards	1
BBC News at One	BBC 1	21/10/2014	Scheduling	1
BBC News at Ten	BBC 1	21/10/2014	Due accuracy	1
Casualty	BBC 1	04/10/2014	Materially misleading	1
Countryfile	BBC 1	19/10/2014	Animal welfare	1
Eastenders	BBC 1	08/09/2014	Scheduling	1
Holby City	BBC 1	21/10/2014	Sexual orientation discrimination/offence	1
Life Story	BBC 1	23/10/2014	Generally accepted standards	1
Life Story (trailer)	BBC 1	22/10/2014	Scheduling	1
Points West	BBC 1	17/10/2014	Nudity	1
Strictly Come Dancing	BBC 1	04/10/2014	Scheduling	1
Strictly Come Dancing	BBC 1	25/10/2014	Outside of remit / other	1
The Apprentice	BBC 1	14/10/2014	Promotion of products/services	1
The Farage Factor	BBC 1	13/10/2014	Due impartiality/bias	1
The Missing (trailer)	BBC 1	25/10/2014	Scheduling	1
True North	BBC 1 Northern Ireland	20/10/2014	Materially misleading	1
A History of Britain by Simon Schama	BBC 2	Various	Materially misleading	1
Mock the Week	BBC 2	09/10/2014	Gender discrimination/offence	1
The Apprentice: You're Fired!	BBC 2	14/10/2014	Generally accepted standards	1
The BBC Children in Need Sewing Bee	BBC 2	24/10/2014	Offensive language	1
Trust Me, I'm a Doctor	BBC 2	15/10/2014	Materially misleading	1
Hotel of Mum and Dad	BBC 3	29/09/2014	Generally accepted standards	1

Programming	BBC Radio 2	20/10/2014	Offensive language	1
The Now Show	BBC Radio 4	17/10/2014	Generally accepted standards	1
The Now Show	BBC Radio 4	18/10/2014	Scheduling	1
Down the Line	BBC Radio 4 Extra	22/10/2014	Offensive language	1
BBC News	BBC website	25/10/2014	Outside of remit / other	1
Live: UFC Nelson v Story	BT Sport 2	04/10/2014	Scheduling	1
Capital FM Breakfast Show	Capital FM	26/09/2014	Gender discrimination/offence	1
24 Hours in Police Custody	Channel 4	13/10/2014	Generally accepted standards	2
8 Out of 10 Cats	Channel 4	16/10/2014	Sexual orientation discrimination/offence	1
Extreme Brat Camp	Channel 4	08/10/2014	Under 18s in programmes	1
Obsessive Compulsive Cleaners	Channel 4	07/10/2014	Generally accepted standards	1
Obsessive Compulsive Cleaners	Channel 4	21/10/2014	Generally accepted standards	1
Obsessive Compulsive Cleaners	Channel 4	21/10/2014	Violence and dangerous behaviour	1
The Feeling Nuts Comedy Night	Channel 4	25/10/2014	Generally accepted standards	1
The Men with Many Wives	Channel 4	24/09/2014	Religious/Beliefs discrimination/offence	1
Cabin in the Woods (trailer)	Channel 5	26/10/2014	Scheduling	1
No Foreigners Here – 100% British	Channel 5	08/10/2014	Offensive language	1
The Wright Stuff	Channel 5	14/10/2014	Generally accepted standards	1
Mr Bean	CITV	20/10/2014	Gender discrimination/offence	1
Drivetime	Dee 106.3	20/10/2014	Sexual orientation discrimination/offence	1
Advertising	Discovery Channel	19/10/2014	Advertising content	1
Mythbusters	Discovery Science	23/10/2014	Offensive language	1
The Bill	Drama	06/10/2014	Television Access Services	1
Advertising	E4	24/10/2014	Advertising content	1
The Big Bang Theory	E4	18/10/2014	Generally accepted standards	1
The Selfish Giant Interview Special	Film4	12/10/2014	Offensive language	1
Leverage	Fox	12/10/2014	Offensive language	1
Gay Network	Gay Network	13/10/2014	Generally accepted standards	1
Programming	God TV	25/10/2014	Outside of remit / other	1

Daljeet Khana Show	Indus Radio	29/08/2014	Materially misleading	2
Advertising	ITV	26/10/2014	Advertising content	1
Coronation Street	ITV	03/10/2014	Generally accepted standards	1
Coronation Street	ITV	20/10/2014	Generally accepted standards	1
Coronation Street	ITV	20/10/2014	Scheduling	1
Emmerdale	ITV	23/10/2014	Outside of remit / other	1
Skoda's sponsorship of drama on ITV	ITV	19/10/2014	Generally accepted standards	1
Sunday Night at the Palladium	ITV	05/10/2014	Generally accepted standards	3
The Alan Titchmarsh Show	ITV	06/10/2014	Animal welfare	1
The Alan Titchmarsh Show	ITV	15/10/2014	Scheduling	1
The Alan Titchmarsh Show	ITV	21/10/2014	Gender discrimination/offence	1
The Daily Mirror Pride of Britain Awards 2014	ITV	07/10/2014	Due impartiality/bias	1
The Daily Mirror Pride of Britain Awards 2014	ITV	07/10/2014	Materially misleading	1
The Great Fire	ITV	16/10/2014	Outside of remit / other	1
The Undriveables	ITV	20/10/2014	Violence and dangerous behaviour	1
Through the Keyhole	ITV	27/09/2014	Generally accepted standards	1
Tonight	ITV	16/10/2014	Hypnotic and other techniques	1
UEFA Champions League: Extra Time	ITV	21/10/2014	Disability discrimination/offence	2
Celebrity Juice	ITV2	16/10/2014	Generally accepted standards	1
Release the Hounds	ITV2	06/10/2014	Animal welfare	2
The MOBO Awards 2014	ITV2	22/10/2014	Scheduling	1
Warner Leisure Hotels' sponsorship of Heartbeat	ITV3	23/10/2014	Outside of remit / other	1
Universal Soldier: Day of Reckoning	ITV4	18/10/2014	Generally accepted standards	1
Grand Designs	More4	21/10/2014	Offensive language	1
Masters of Sex (trailer)	More4	16/09/2014	Scheduling	1
Masters of Sex (trailer)	More4	03/10/2014	Scheduling	1
Masters of Sex (trailer)	More4	04/10/2014	Scheduling	1
Masters of Sex (trailer)	More4	06/10/2014	Scheduling	1
Advertising	Nick Jr	25/10/2014	Advertising content	1
Sanjay and Craig	Nick Toons	27/09/2014	Scheduling	1

Psychic Today	Psychic Today	23/10/2014	Exorcism, the occult and the paranormal	1
Advertising	RT	Various	Advertising content	1
The Leftovers	Sky Atlantic	08/10/2014	Generally accepted standards	1
Sky News	Sky News	17/10/2014	Generally accepted standards	6
Sky News	Sky News	25/10/2014	Generally accepted standards	1
News HQ at 6	Sky Sports 1	12/10/2014	Violence and dangerous behaviour	1
Super League Grand Final	Sky Sports 1	11/10/2014	Scheduling	1
Royal London's sponsorship of One-Day Cricket	Sky Sports 2	12/08/2014	Generally accepted standards	1
Russian Grand Prix	Sky Sports F1	12/10/2014	Generally accepted standards	1
Duck Quacks Don't Echo	Sky1	06/10/2014	Scheduling	1
Mad Dogs	Sky2	25/09/2014	Religious/Beliefs discrimination/offence	1
The Alan Brazil Sports Breakfast	Talksport	14/10/2014	Race discrimination/offence	1
Roots: The Next Generations	True Movies 1	09/10/2014	Race discrimination/offence	1
Jagad av Hundar	TV3	06/10/2014	Animal welfare	1
Programming	Various	Various	Television Access Services	2

## Investigations List

If Ofcom considers that a broadcaster may have breached its codes, a condition of its licence or other regulatory requirements, it will start an investigation.

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the licence or other regulatory requirements being recorded.**

Here are alphabetical lists of new investigations launched between 23 and 29 October 2014.

### Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date
Channel 4 News	Channel 4	6 March 2014
ITV News at Ten	ITV	8 September 2014
News	CCTV News	Various dates
Oh Messy Life	Sheffield Live TV	14 October 2014

For more information about how Ofcom assesses complaints and conducts investigations about content standards, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

### Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
CCTV: Caught on Camera – Lift Watching	Channel 4	9 June 2014
Saints and Scroungers	BBC1	2 October 2014

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.



### **Investigations launched under the General Procedures for investigating breaches of broadcast licences**

<b>Licensee</b>	<b>Licensed Service</b>
DM News Plus	DM Global Media Limited

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.