

Sanction: Decision by Ofcom

Sanction: to be imposed on Star China Media Limited (SCML)

For material broadcast on China Global Television Network Channel (CGTN) between 11 August 2019 and 21 November 2019¹.

Ofcom’s Sanction against: SCML (the “Licensee”) in respect of its service **CGTN** (previously TLCS000575BA/2²).

For: Breaches of the Ofcom Broadcasting Code (the “Code”)³:

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

Rule 5.11: “Due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service...in each programme or in clearly linked and timely programmes”; and

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”.

Decision: To impose a financial penalty (payable to HM Paymaster General) of £125,000.

¹ See [Broadcast and On Demand Bulletin 403](#), 26 May 2020 (“the Breach Decisions”).

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

³ The version of the Code which was in force at the time of the broadcast took effect on 1 January 2019.

Executive Summary

1. CGTN was: “the international English language news channel of China Media Group, China’s public broadcaster on television and radio”⁴. The licence for the provision of the CGTN service was held by Star China Media Limited (“SCML” or “the Licensee”) until 4 February 2021 when the Licence was revoked. In the UK, the channel was broadcast on satellite. The Licensee did not hold any other broadcasting licences.
2. Between 11 August 2019 and 21 November 2019, CGTN broadcast the following programmes:
 - *The World Today*, 11 August 2019, 17:00;
 - *The World Today*, 26 August 2019, 08:00;
 - *The World Today*, 31 August 2019, 07:00;
 - *The World Today*, 2 September 2019, 16:00; and,
 - *China 24*, 21 November 2019, 12:15.
3. Each programme was concerned with the protests which were ongoing in Hong Kong during this period. These protests were initially in response to the Hong Kong Government’s Extradition Law Amendment Bill that would have allowed criminal suspects in Hong Kong to be sent to mainland China for trial. The protests were organised by the Anti-Extradition Law Amendment Bill Movement.

The Breach Decisions

4. In Ofcom’s Decisions (“the Breach Decisions”) published on 26 May 2020 in Issue 403 of the Broadcast and On Demand Bulletin⁵, Ofcom found that each of the five programmes listed above had failed to maintain due impartiality and had breached Rules 5.1, 5.11 and 5.12 of the Code.
5. The Breach Decisions set out specifically the broadcast material that was in breach, along with reasoning as to why the material had breached the applicable rules of the Code.
6. Ofcom put the Licensee on notice in the Breach Decisions that it considered these five breaches, taken together, to be a serious failure of compliance and it was minded to consider the imposition of a statutory sanction. Ofcom gave the Licensee an opportunity to make representations on this matter and, having considered the Licensee’s submissions, decided to proceed to consider the Breach Decisions for the imposition of a statutory sanction.

Licence revocation

7. On 4 February 2021, Ofcom revoked the Licence under section 238(4) of the Communications Act 2003 (the “Act”) and Condition 28(2)(a) of the Licence on the basis that SCML had ceased to provide the CGTN service and, in the circumstances, it was appropriate to revoke the Licence⁶.
8. By virtue of section 346(3) of the Act, Ofcom has the power to impose a penalty relating to breaches of the Code during the period in which the Licensee held a broadcasting licence,

⁴ Licensee’s initial response dated 17 September 2019 to Ofcom’s formal request for comments regarding four editions of *The World Today* broadcast on 11 August 2019, 26 August 2019, 31 August 2019 and 2 September 2019. Information on CGTN’s website now states that: “China Global Television Network, or CGTN, is an international media organization launched on December 31, 2016. It aims to provide global audiences with accurate and timely news coverage as well as rich audiovisual services, promoting communication and understanding between China and the world, and enhancing cultural exchanges and mutual trust between China and other countries”.

⁵ See footnote 1.

⁶ The reasons for Ofcom’s decision are set out in full in the [Notice of Revocation](#).

notwithstanding the fact that the Licence has been revoked and the CGTN service is no longer broadcasting.⁷

The Sanction Decision

9. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences (the "Sanctions Procedures"⁸), Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case. Having taken into account all of the Licensee's representations, Ofcom has reached a Decision that a sanction is warranted for the reasons set out in paragraphs 44 to 61 below.
10. Following consideration of the Licensee's representations, Ofcom's Decision is to impose a financial penalty of £125,000. This paper sets out the basis for Ofcom's Decision on the type and level of sanction to be imposed on the Licensee, taking into account all the relevant material in this case and Ofcom's Penalty Guidelines⁹ (the "Penalty Guidelines").

Legal Framework

11. We set out in the Breach Decisions the relevant legal framework and the duties which Ofcom took into account in making the Breach Decisions.
12. Ofcom must also act in accordance with these statutory duties in considering whether it is appropriate to impose a statutory sanction, and if so, the type and level of sanction which it would be proportionate to impose.
13. Ofcom's principal duty, set out in section 3(1) of the Act, is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets.
14. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that news included in television and radio services must be reported with due accuracy and presented with due impartiality and that the impartiality requirements of section 320 of the Act are complied with (section 319(2)(c) and (d)).
15. Reflecting Ofcom's duties under sections 319 and 320 of the Act, Section Five of the Code requires that the special impartiality requirements are met¹⁰. The relevant rules of the Code are set out in full at the beginning of this Decision.
16. In performing these duties, Ofcom must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and among other things, to the need to secure the application of standards in television services in the manner that best guarantees an appropriate level of freedom of expression¹¹.

⁷ By virtue of Section 346(3) of the Act, a person's liability to have a penalty imposed under section 237 of the Act in respect of acts or omissions of that person occurring while the holder of a Broadcasting Act licence is not affected by that Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty.

⁸ See Ofcom's [Sanctions Procedures](#).

⁹ See Ofcom's [Penalty Guidelines](#).

¹⁰ See accompanying [Guidance Notes](#) to each section of the Code are published on the Ofcom website and from time to time updated. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.

¹¹ Sections 3(3) and 3(4)(g) of the Act.

17. As a public authority, Ofcom must also act in accordance with its public law duties to act lawfully, rationally and fairly, and it has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (the “Convention”)¹².
18. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster’s freedom to impart and the audience’s freedom to receive information and ideas without interference by a public authority and regardless of frontiers (Article 10(1))¹³. It applies not only to the content of information but also the means by transmission or reception¹⁴. And while subject to exceptions, the need for any restriction must be established convincingly¹⁵. The exercise of these freedoms may be subject only to conditions and restrictions which are “prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary” (Article 10(2)). Decisions in the European Court of Human Rights make clear that there is little scope for restrictions on freedom of expression in two fields, namely political speech and on matters of public interest. Accordingly, a high level of protection of freedom of expression will normally be accorded, with the authorities having a particularly narrow margin of appreciation.
19. Ofcom must exercise its duties in light of the broadcaster’s and audience’s Article 10 rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim (i.e. proportionate to the legitimate aim pursued and corresponding to a pressing social need).
20. It is well established that the freedom of expression of licensed broadcasters may legitimately be restricted where such measures are necessary to achieve the positive objective of maintaining fair and equal democratic discourse on influential media platforms to the benefit of society generally¹⁶. The due impartiality standards required under sections 319 and 320 of the Act form part of a tripartite series of measures (the others being a prohibition on paid political advertising¹⁷ and the provision of free party political and party election broadcasts according to defined rules¹⁸) which aim to safeguard the integrity of democratic debate on matters of public concern¹⁹. The legitimate aim of the due impartiality requirements in particular is to “ensure that other viewpoints are received by viewers who may then participate on an informed basis in the democratic processes including those of debate and viewing”²⁰.
21. As explained in the Government White Paper which led to the Act:

“[Due impartiality] obligations have played a major part in ensuring wide public access to impartial and accurate information about our society and the opportunity to encounter a diverse array of voices and perspectives. They ensure that the broadcast media provide a

¹² Section 6(1) of the Human Rights Act 1998.

¹³ *Lindens v Austria* (1986) 8 EHRR 407.

¹⁴ *Autronic v Switzerland* (1990) 12 EHRR 485.

¹⁵ *Steel & Morris v UK* (2005) EMLR 15.

¹⁶ *Animal Defenders v United Kingdom* [2013] EMLR 28 and *R (On The Application of Animal Defenders International) v Secretary of State For Culture, Media and Sport* [2008] 1 AC 1312.

¹⁷ See s.319(2)(g) and 321(2) of the Act.

¹⁸ Section 333 of the Act provides that licences for certain broadcasters must require the inclusion of free broadcasts and the observance of the Ofcom Rules on Party Political and Referendum Broadcasts. Those Rules regulate party political broadcasts (offered to qualifying parties outside election periods); party election broadcasts (offered to qualifying parties during election periods); and referendum campaign broadcasts (offered to each designated referendum organisation before each referendum).

¹⁹ *R (Autonomous Non-Profit Organisation TV-Novosti) v Ofcom* [2020] EWHC 689 (Admin), paragraph 21.

²⁰ *R (Autonomous Non-Profit Organisation TV-Novosti) v Ofcom*, paragraph 64.

counter-weight to other, often partial, sources of news. They therefore contribute significantly to properly informed democratic debate.”²¹

22. As Lord Bingham explained in the *Animal Defenders* case²², which related to paid political advertising, the underlying rationale for the due impartiality regime is as follows:

“The fundamental rationale of the democratic process is that if competing views, opinions and policies are publicly debated and exposed to public scrutiny the good will over time drive out the bad and the true prevail over the false. It must be assumed that, given time, the public will make a sound choice when, in the course of the democratic process, it has the right to choose. But it is highly desirable that the playing field of debate should be so far as practicable level. This is achieved where, in public discussion, differing views are expressed, contradicted, answered and debated. It is the duty of broadcasters to achieve this object in an impartial way by presenting balanced programmes in which all lawful views may be ventilated”.

23. In *R (Autonomous Non-Profit Organisation TV-Novosti) v Ofcom*²³, Lord Justice Dingemans stated:

“There is nothing to suggest that the need for accuracy or impartiality in the broadcasting media, or the contribution that an adherence to those standards in broadcasting makes to a properly informed democratic debate, has diminished or is any less important to safeguarding the interests of citizens now than it was at the time of the White Paper or the enactment of the 2003 Act. Indeed, there is reason to consider that the need is at least as great, if not greater than ever before, given current concerns about the effect on the democratic process of news manipulation and of fake news”.

24. In other words, a central purpose of the due impartiality requirements is that those subjected to the particularly potent and pervasive influence of broadcast media should be left in a position to make their own minds up on matters of important public interest, having been exposed to a plurality of views. In this way, both protections on free speech, and the requirements of impartiality that may (to an extent) restrict free speech, derive from the same fundamental concern: the need to safeguard the integrity of public discussion and thereby the democratic process. This remains a central concern today.
25. The interference with Article 10 attendant on imposing a statutory sanction in relation to findings of breaches of due impartiality requirements may, where appropriate and proportionate in the circumstances of the case, be justified by the need to achieve these legitimate aims. In order to be proportionate, any interference must be the minimum necessary to promote the legitimate objective pursued.

Remedial action and penalties

26. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or the Broadcasting Act 1996 must include conditions for securing that the standards set under section 319 of the Act are observed by the licensee. Condition 6 of a TLCS licence requires the same.
27. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the Act insofar as relevant to the case. In this case, because the Licence has been revoked, the only relevant power available to Ofcom is the power to impose a financial penalty under section 237 of the Act in respect of the breaches of the Code

²¹ [Communications White Paper – A New Future for Communications](#), December 2000. See also *R (Autonomous Non-Profit Organisation TV-Novosti) v Ofcom*, paragraph 64.

²² See footnote 16.

²³ See footnote 19, paragraph 23.

during the period in which a Licensee held a broadcasting licence²⁴. The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and five per cent of the qualifying revenue from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force.

Background - The Breach Decisions and subsequent correspondence with the Licensee

28. In the Breach Decisions, Ofcom found that the following programmes broadcast on CGTN were in breach of Rules 5.1, 5.11 and 5.12 of the Code:
- *The World Today*, 11 August 2019, 17:00;
 - *The World Today*, 26 August 2019, 08:00;
 - *The World Today*, 31 August 2019, 07:00;
 - *The World Today*, 2 September 2019, 16:00; and,
 - *China 24*, 21 November 2019, 12:15.
29. The Breach Decisions²⁵ set out specifically the broadcast material that was in breach, along with the reasoning as to why the material had breached the applicable rules in the Code.
30. Ofcom put the Licensee on notice in the Breach Decisions that it considered five breaches in respect of news programmes broadcast during 11 August 2019 and 21 November 2019, taken together, to be a serious failure of compliance, and subject to the Licensee's representations, it was minded to consider these breaches for the imposition of a statutory sanction.
31. At the time of publication of the Breach Decisions on 26 May 2020, Ofcom gave the Licensee an additional opportunity (which Ofcom does not normally provide as part of its sanction process) to provide representations on whether Ofcom should proceed to consider the imposition of a statutory sanction. Having considered the Licensee's representations, Ofcom decided to proceed to consider the Breach Decisions for the imposition of a statutory sanction.

Ofcom's Preliminary View to impose a Statutory Sanction

32. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
33. In this case, Ofcom issued a Preliminary View that Ofcom was minded to impose a statutory sanction in the form of: a) a financial penalty and b) a direction to the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form determined by Ofcom. Ofcom sent a copy of its Preliminary View to the Licensee and the Licensee made written representations regarding the sanction proposed on 16 December 2020, which are summarised in paragraphs 34 to 43 below. The Licensee chose not to make oral representations.

The Licensee's representations

34. The Licensee provided the following representations as to whether Ofcom should proceed to consider the imposition of a statutory sanction. Specifically, it argued that, in its view, the five breaches, taken together, did not warrant the imposition of a statutory sanction because "we do not consider the breaches to be sufficiently serious". This was for the following reasons:

²⁴ As set out above, by virtue of section 346(3) of the Act, a person's liability to have a penalty imposed under section 237 of the Act in respect of acts or omissions of that person occurring while the holder of a Broadcasting Act licence is not affected by that Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty.

²⁵ See [Broadcast and On Demand Bulletin Issue 403](#).

- since CGTN had started broadcasting in the UK in 2003²⁶, it had only been found in breach of the Code on one occasion in 2014²⁷. SCML argued that “as far as we are aware, CGTN's compliance record compares favourably as against other mainstream UK broadcasters and surpasses a number of overseas media organisations broadcasting into the UK”;
- given CGTN’s “almost clean compliance record”, the Licensee said it had not met with Ofcom to discuss compliance “as other broadcasters have done when Ofcom has found them to be in breach” of the Code;
- SCML argued that any harm Ofcom considers may have been caused “must be assessed against the fact that CGTN broadcasts to a relatively small audience as compared to other licensed news outlets, and the channel’s audience knows and expects CGTN to present the Chinese perspective”;
- the Licensee also considered it relevant to “determining the seriousness of the breaches and the level of harm caused by the broadcasts that the investigations were initiated as a result of Ofcom’s own monitoring, rather than arising as a result of any complaint from the audience, and that the broadcasts mainly comprised short segments of news programmes”;
- SCML referred to various precedents involving breaches of the due impartiality rules in which financial penalties were imposed by Ofcom where “there had been a failure on the part of the licensee either to preserve due impartiality on the part of the person providing the service²⁸... and/or to preserve due impartiality in connection with an election²⁹”. The Licensee therefore argued that as “Ofcom has not found CGTN to have committed any such breach here, it cannot be said that the same level of seriousness has been met”;
- the Licensee recognised that since December 2015 Ofcom had adopted a “more deterrent-focused approach to imposing sanctions”. However, SCML added that since May 2012, Ofcom had only imposed sanctions in three cases involving breaches of the due impartiality rules. The Licensee considered all three cases were “vastly different and easily distinguishable” from the present case:
 - ANO TV Novosti (“RT”)³⁰: The Licensee noted that since May 2012, RT had 14 breaches of the Code recorded against them (including eight breaches of the due impartiality rules and one breach of the election rules). SCML added that “RT had also had substantial engagement with Ofcom to discuss compliance, meeting on three occasions”. It further noted that Ofcom had found RT to have breached the impartiality rules on seven separate occasions, and five of the relevant broadcasts were not news programmes. The Licensee said that “CGTN by contrast has an almost clean compliance record and has not at any point met with Ofcom to discuss compliance (as there has thus far been no need to)”. It added that all five breaches in the present case were news content and “as such, [SCML] does not consider RT to be applicable to these circumstances”;

²⁶ SCML had held the licence for the CGTN service since 2011. Previously the licence was held by Satellite Television Region Ltd.

²⁷ Ofcom found four news programmes broadcast on *CCTV News* on 30 September 2014, 1 October 2014, 2 October 2014 and 3 October 2014 in breach of due impartiality requirements. See Ofcom’s [Broadcast and On Demand Bulletin Issue 273](#).

²⁸ See [Aden Live](#), [Al Mustakillah TV](#) and [DM Digital](#).

²⁹ See [Islam Channel](#), [Talksport](#) and [Al Mustakillah](#).

³⁰ See [RT Sanction Decision](#).

- Baltic Media Alliance Limited (“BMAL”)³¹: SCML noted that BMAL had previously breached the due impartiality rules six times in five years. The Licensee added that “Ofcom had also met with the licensee to discuss compliance and [BMAL] had positively assured Ofcom that it understood its due impartiality obligations”. SCML said that given that “CGTN has a nearly clean compliance record and has never met with Ofcom to discuss compliance, we do not consider *Baltic Media Alliance Limited* to be applicable to these circumstances”; and
 - Talksport Limited (“Talksport”)³²: SCML noted that Talksport had previously breached the Code 21 times, including two breaches of the due impartiality rules and two breaches of the election rules, one of which they were sanctioned for in 2008. The Licensee therefore did not consider “Talksport to be applicable here given its nearly clean compliance record and that the broadcasts that Ofcom found to be in breach [in the present case] were very short news segments”.
 - The Licensee considered that as the licensees in the three cases mentioned above were given the opportunity to meet with Ofcom to discuss compliance in respect of earlier breaches, it would be fair, appropriate, proportionate, and consistent with precedent for Ofcom and CGTN to meet to do the same, without the need for Ofcom to impose a sanction on this occasion.
35. Having considered the Licensee’s additional representations set out in the paragraphs above, Ofcom decided to consider the five Breach Decisions together for the imposition of a statutory sanction.
36. As noted above, the Licensee made written representations regarding the sanction proposed in Ofcom’s Preliminary View. In these representations SCML stated it did not consider that the five programmes in this case had breached the Code. It also reiterated a number of points made in its previous representations. For example, it said that CGTN has a global audience and presents a Chinese perspective on world events, and that it provides an important alternative to the dominant mainstream western media.
37. Given the Licensee did not consider the five programmes breached the Code, the Licensee said it did not accept the justification for the imposition of any sanction.
38. SCML said that in its view, “it is clear that no harm would have been caused to the audience by these five programmes” and Ofcom had produced no evidence of such harm. It argued that the absence of harm supported their view that the imposition of a sanction, particularly a “punitive financial penalty”, was unnecessary and inappropriate. The Licensee submitted the following factors supporting this contention:
- Ofcom’s investigations arose out of its own monitoring of CGTN’s content rather than as a result of any audience complaints;
 - the audience was “unlikely to be surprised by the Chinese views aired on CGTN and will be able to evaluate those views in context, particularly when the audience is likely to be aware of the mainstream positions (as presented on other television channels and news platforms)”;
 - the audience is likely to welcome, or be seeking, another perspective on news events, in particular a Chinese perspective from a Chinese channel which is “unfiltered by a UK broadcaster”;

³¹ See [Baltic Media Alliance Limited Sanction Decision](#).

³² See [Talksport Sanction Decision](#).

- paragraph 1.14 of Ofcom's Guidance Notes for Section 5 of the Code³³ states that “Ofcom research has also demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience”; and
 - CGTN has a relatively small UK audience amongst the global audience to which it is broadcasting.
39. The Licensee also submitted to Ofcom that given there were no complaints from the public and there was no evidence of actual harm to the public, it was their view that Ofcom’s decision to find the programmes in breach and to impose a sanction seemed to be “politically motivated, and thus unreasonable and unfair”.
40. SCML also made some specific points about its compliance record, reiterating that CGTN had an almost clean record which compared favourably to other mainstream UK broadcasters, and said that it “surpasses a number of overseas media organisations broadcasting into the UK”. The Licensee again emphasised that CGTN had not met, or been invited to meet, with Ofcom to discuss compliance. It argued that this was because there has never been a need to, unlike other broadcasters who have repeatedly breached the Code. Given these points, SCML said that if Ofcom properly took into account the broadcaster’s good compliance record, it should reach the conclusion that CGTN should not be sanctioned.
41. SCML also provided further information about its compliance procedures:
- it said that it believed its compliance procedures were “adequate at the time” and that Ofcom “must take into account the exceptional practical challenges faced by the channel in covering this major, fast-moving story”. The Licensee reiterated that reporting about the protests in Hong Kong, as the Chinese public broadcaster, had been challenging when trying to obtain alternative views. It said it recognised that paragraphs 1.17 and 1.37 of Ofcom's Guidance³⁴ addressed the issue of where alternative views are not readily available, but said it was important for Ofcom to understand the difficulties of the situation that it faced at the time. It restated the practical difficulties it had faced obtaining interviews with protesters in Hong Kong because they are “hostile to the media from the Chinese mainland and to Mandarin-speaking reporters”. SCML added that where a very small number of protestors have briefly engaged with CGTN (usually “with their faces masked”), it had included their brief contributions in its reports where possible;
 - the Licensee said it had previously informed Ofcom, but did not consider Ofcom had taken this into account, that it had assigned two experienced international correspondents from North America to Hong Kong to address the challenges of reporting this particular story. It also reiterated that it had added an experienced Supervising Producer with several decades of news journalism and production experience working for Western media outlets to oversee such coverage;
 - it said it was aware of its impartiality and other obligations under the Code and took its compliance responsibilities seriously. It said it had “invested considerable time and effort in training in this area”, particularly since being put on notice of Ofcom's investigation and with a specific focus on the concerns that Ofcom has raised. SCML also added that up until being notified of Ofcom's investigation, the broadcaster “had an almost clean record”;
 - the Licensee said CGTN had reviewed and updated its training programme on the Code during 2019 (before Ofcom’s investigation leading to the Breach Decisions had

³³ [Ofcom’s Guidance to Section 5.](#)

³⁴ See footnote 33.

commenced). It added that this training was led by Nick Pollard, a senior UK journalist and former Head of Sky News and Chairman of the Ofcom Content Board. The Licensee said that Mr Pollard had also delivered a number of training seminars during 2019 and 2020 to staff in Beijing and London, “all of which have involved a detailed explanation of every aspect of the Ofcom Code”. One of the presentations focused solely on the “impartiality section of the Code to reinforce the staff’s understanding of the Code and improve compliance in this area”. SCML added that “As the presentations were held virtually, they have also been viewed by CGTN staff in the Washington DC and Nairobi production centres to ensure that all employees are fully aware of the Code and how to achieve compliance with it”;

- it said that CGTN had also produced updated and detailed editorial guidelines for all staff during 2020 which emphasised the importance of compliance with the Code and the application of good journalistic practices; and
- finally, it said that regular output reviews were held to discuss compliance issues with staff, including at the end of an Ofcom investigation when a complaint is upheld and/or referred for sanction.

42. The Licensee also stated that they made no gain, financial or otherwise, as a result of the breaches and that it had been fully cooperative with Ofcom’s investigation at every stage.
43. SCML also provided submissions on the precedent cases drawn upon by Ofcom in reaching its Preliminary View. It said that three recent due impartiality precedent cases (RT, Baltic Media Alliance and Talksport) were clearly distinguishable from the circumstances of CGTN’s case because they involved viewer complaints and involved broadcasters with poor compliance records. The Licensee also argued that a number of other precedent cases cited by Ofcom (see paragraph 93) were wholly irrelevant because they did not relate to the due impartiality rules of the Code. It therefore added that it would be wrong for Ofcom to take these precedent cases into account.

Ofcom’s Decision on the imposition of a statutory sanction

44. We set out below Ofcom’s Decision on its reasons for considering that it is appropriate to impose a statutory sanction and as to the level of sanction Ofcom considers should be imposed on the Licensee. In reaching its decision, Ofcom has taken account of all the evidence and representations made by the Licensee. In addition, Ofcom had regard to the Penalty Guidelines³⁵.
45. We first considered whether the breaches were serious, deliberate, reckless or repeated.

Serious and repeated nature of the breaches

46. Ofcom’s Decision is that, for the reasons set out below, the five breaches of Rules 5.1, 5.11 and 5.12, taken together, were serious and repeated and therefore warrant the imposition of a statutory sanction.
47. As set out in the Breach Decisions and at paragraphs 20 to 24 above, the public policy rationale for the requirement of due impartiality in broadcasting is that these obligations play a major part in ensuing wide public access to impartial and accurate information about important societal and democratic issues, thereby providing a counterweight to other, often partial, sources of news. They therefore contribute significantly to properly informed democratic debate³⁶. Breaches of the

³⁵ See the [Penalty Guidelines](#).

³⁶ See the [Government’s Communications White Paper](#) (Safeguarding the interests of citizens, 6.6.1) and *R (Autonomous Non-Profit Organisation TV-Novosti) v Ofcom* [2020] EWHC 689 (Admin).

impartiality rules have the potential adversely to affect and distort the dynamic of ensuing debate, with viewers becoming exposed to narrow and one-sided programming on important policy and political matters in which competing views are either ignored or raised only to be denigrated and dismissed³⁷.

48. Breaches of the due impartiality rules in the Code may cause harm to the specific audience of the broadcasts in that they will be exposed to partial broadcasting on matters of important political and public interest³⁸. Further, and more fundamentally, if programming of this nature was permitted on licensed radio and television services, then at a wider societal level the balance of informed public debate and discussion on important matters of public concern is liable to become distorted. This could have damaging consequences for the democratic and societal objectives which the due impartiality regime is designed to promote, as well as the credibility of broadcast media as a trustworthy source of information on matters of public concern³⁹.
49. Breaches of Rule 5.1 relating to the requirement to ensure due impartiality is preserved in relation to news may or may not be serious depending on the circumstances. A breach of Rule 5.11 and/or 5.12 is potentially particularly serious, since these rules concern the specific requirement to maintain due impartiality in relation to matters of major political or industrial controversy and major matters relating to current public policy. The obligations on licensees to take measures to preserve due impartiality are correspondingly more onerous where Rules 5.11 and 5.12 are applicable than when Rule 5.5 is engaged⁴⁰. Generally, a single breach of the impartiality rules is likely to be less serious in principle than a single breach of the rules concerning hate speech or incitement to crime. However, it may be quite a serious matter due to the potential impact on democratic debate and public trust in regulated news and current affairs outlets, in relation to which, in some circumstances, a sanction can be appropriate.
50. In assessing the seriousness of the breaches in question, Ofcom considered the nature of each of the breaches and the fact that there were five of them (four of which occurred over a very short period of time). Ofcom took into account that each of the breaches concerned a failure to preserve due impartiality in news programmes reporting on matters of major political controversy and major matters relating to current public policy, namely matters connected to the ongoing political events which were taking place in Hong Kong at the time the programmes were broadcast. These involved protests and demonstrations in Hong Kong which began in response to the Hong Kong Government introducing amendments to Hong Kong's extradition laws and continued after the amendment had been withdrawn. Throughout the summer of 2019, a growing wave of demonstrations and protests were held in public spaces in Hong Kong, and tensions between Hong Kong police and the protestors became increasingly acute. These events attracted much media and political discussion across the world. The protests also formed part of a longstanding tension between the Hong Kong Government and some of its residents who oppose the role of the Chinese Government in Hong Kong's affairs.
51. As noted at paragraph 49, any breach of Rule 5.11 and/or 5.12 is potentially particularly serious. Further, Ofcom considers that multiple breaches of due impartiality rules, which occur during a concentrated period of time, potentially aggravate the detriment to viewers. They have the effect of undermining public confidence in the impartiality of, and therefore trust in, broadcast news and current affairs, which the rules in Section Five of the Code are intended to safeguard.

³⁷ See *R (Autonomous Non-Profit Organisation TV-Novosti) v Ofcom* [2020] EWHC 689 (Admin), paragraphs 37, 66 and 73.

³⁸ See *R (Autonomous Non-Profit Organisation TV-Novosti)*, paragraphs 67 and 93.

³⁹ See *R (Autonomous Non-Profit Organisation TV-Novosti)*, paragraphs 67 and 73.

⁴⁰ Rule 5.5 requires the preservation of due impartiality on matters of political and industrial controversy and matters relating to current public policy (i.e. those which are not matters of major political and industrial controversy nor major matters relating to current public policy).

52. The Licensee argued that any assessment of seriousness should take into account the fact that the breaches in this case arose from Ofcom's own monitoring rather than arising as a result of any complaint from the audience. It submitted that the programmes did not generate complaints and therefore, in its view, there was no evidence of harm to the public from the broadcast of these programmes. Ofcom identified the broadcasts of *The World Today* during routine monitoring and identified the broadcast of *China 24*, on 21 November 2019, in the course of considering a fairness and privacy complaint from a member of the public about a different news item in this programme. Ofcom may be alerted to potential breaches of the Code either through complaints from viewers and listeners or through its own routine monitoring. However, whether or not Ofcom is alerted to content through a complaint or through its own monitoring has no bearing on the seriousness of a breach, should that content be found to be in breach of the Code.
53. Further, the Licensee argued that it was relevant that the five broadcasts in this case comprised short segments of news programmes. We note that the length of the broadcasts in question ranged from 2 minutes to 12 minutes 30 seconds and all the items provided news coverage on what was a matter of major political controversy and major matter of current public policy, namely recent events related to the ongoing Hong Kong protests. In any event, we do not consider that the length of a programme is necessarily determinative of the seriousness of any breach of the Code. Our assessment of seriousness is based on the nature of the breach (or breaches) themselves and the particular circumstances of a given case. In particular, Ofcom considers that a failure to preserve due impartiality in respect of a news item (or items) may be more serious than breaches of the due impartiality rules relating to other types of programmes, particularly when they concern matters of major political or industrial controversy or major matters of current public policy, in light of the purpose of these requirements as discussed above at paragraphs 48 and 49.
54. The Licensee also argued that no harm had been caused to the audience by these five programmes and Ofcom had not produced evidence of any harm. However, as set out in paragraphs 47 and 48 above, breaches of the due impartiality rules have the potential to cause harm to the specific audience of the broadcasts, and more generally, if programming of this nature was permitted on licensed radio and televised services, then at a wider societal level the balance of informed public debate and discussion on important matters of public concern is liable to become distorted. As also explained at paragraph 51 above, this could have damaging consequences for the democratic and societal objectives which the due impartiality regime is designed to promote, as well as the credibility of broadcast media as a trustworthy source of information on matters of public concern. Further, in order to impose a sanction in this case, Ofcom is not required to establish that actual harm had been caused to any particular viewers, rather it is important to determine whether there had been a potential for harm as a consequence of the breach. For the reasons already stated, it is our view that there was such a potential for harm.
55. The Licensee also argued that any harm that may have been caused in this case must be assessed against the fact that CGTN's audience knows and expects CGTN to present the Chinese perspective, and noted that its UK audience is small relative to its overall global audience. Ofcom acknowledges the broadcaster's right to make programmes providing audiences with the Chinese viewpoint on news and current affairs, including programmes which feature viewpoints that are supportive of the Chinese government, or which are critical of the policies of particular governments or groups. In reaching the Breach Decisions and in assessing the seriousness of the breaches for the purposes of considering whether a sanction is warranted, we have taken into account the likely expectations of CGTN's audience, including that they would likely have expected the CGTN programmes to examine the Hong Kong protests from a Chinese perspective. However, such programmes need to comply with Section Five of the Code, and Ofcom's specific concern in relation to the news programmes that were the subject of the Breach Decisions is that insufficient attempts were made to include and give due weight to alternative viewpoints. In our view, these viewers still should have been provided with an appropriately wide range of views on this matter

of major political controversy to ensure that they were properly informed on significant issues of political debate. For the reasons set out at paragraphs 47, 48 and 51 above, we have concluded that these failures to comply with the Code did have the potential to cause harm, both to CGTN's audience and at a wider societal level.

56. In its submissions, the Licensee stressed to Ofcom the difficulties it faced obtaining interviews with those protesting and explained that they were hostile to the media from mainland China and to Mandarin-speaking reporters⁴¹. The Licensee told Ofcom that one of its Hong Kong based correspondents estimated she had tried to approach and contact over 50 young protestors and/or the opposition when reporting on the Hong Kong protests. However, as Ofcom has made clear on numerous occasions⁴², where an alternative viewpoint is needed to maintain due impartiality, inviting contributors to participate who then refuse to do so is not sufficient to preserve due impartiality and the alternative viewpoint needs to be represented in an appropriate way. Ofcom's Guidance on Section Five of the Code gives examples of several editorial techniques which a broadcaster might consider employing, where alternative views are not readily available, in order to preserve due impartiality. This includes, for example, summarising alternative viewpoints with due objectivity and in context, within a programme, or where an interviewee is expressing a particular viewpoint, interviewers could reflect alternative viewpoints through questions to that interviewee⁴³.
57. In its written submissions, the Licensee also added that it was their view that Ofcom's decision to find the programmes in breach and to impose a sanction seemed to be "politically motivated". Ofcom's decision making in this case was in no way politically motivated. Ofcom is the independent regulator for broadcast standards in the UK and as such carries out its statutory duties independently from the UK government. In carrying out our statutory functions in this case, Ofcom's only concern is to establish whether rules in the Code had been breached, and if so, whether those breaches were serious and repeated so as to merit the imposition of a statutory sanction.
58. In determining the seriousness of the breaches in this case, we also took into account the Licensee's submissions that at that time of the breaches it had only been found in breach of the Code on one previous occasion⁴⁴, and that unlike some other licensees, SCML had not had the opportunity to meet with Ofcom to discuss compliance in this area, and that it was therefore not appropriate to proceed to sanction in this case. In its representations, the Licensee argued that Ofcom had not met with SCML because it was not necessary to conduct a compliance meeting with them, as their compliance record was good and compared favourably to other broadcasters. While the Licensee may not previously have met with Ofcom to discuss compliance in relation to this particular issue, we noted that the Licensee's previous breaches in 2014 had, like the present case, involved breaches of Rules 5.1, 5.11 and 5.12 in news programming and had dealt with the same subject matter, namely pro-democracy protests in Hong Kong. Our previous breach decision should therefore have put the Licensee on notice that its compliance procedures in that case had been inadequate and demonstrated the need to take particular care to preserve due impartiality when reporting on this issue. We further considered that in implementing its compliance procedures, the Licensee, like all Ofcom licensees, should have taken into account Ofcom's publicly

⁴¹ SCML's representations in response to Ofcom's request for comments on the five investigations, see page 5 of the [Breach Decisions](#) and also see paragraph 41 above.

⁴² See Ofcom's Decision on Crosstalk, RT, 11 July 2016, published in [Issue 319 of Ofcom's Broadcast and On Demand Bulletin](#), 19 December 2016, or Ofcom's Decisions against seven programmes broadcast on RT published on 20 December 2018 in [Issue 369 of Ofcom's Broadcast and On Demand Bulletin](#).

⁴³ [Guidance Notes: Section Five](#) – see paragraphs 1.60 and 1.37.

⁴⁴ Ofcom found four news programmes broadcast on *CCTV News* on 30 September 2014, 1 October 2014, 2 October 2014 and 3 October 2014 in breach of due impartiality requirements. See Ofcom's [Broadcast and On Demand Bulletin Issue 273](#).

available Guidance on Section Five⁴⁵ and our published decisions, including the three recent due impartiality breach decisions referred to in its representations (*RT*, *BMAL* and *Talksport*). We therefore considered that the Licensee ought to have been familiar with how to comply with due impartiality rules, and that the breaches therefore represented a serious failure of compliance on the part of the Licensee.

59. In addition to assessing the seriousness of the breaches, Ofcom also considered whether they were repeated. This was because the same set of rules (Rules 5.1, 5.11 and 5.12) were breached on five separate occasions between 11 August 2019 and 21 November 2019, and the first four breaches took place in the period between 11 August 2019 and 2 September 2019 (a period of just over three weeks). Further, all five breaches related to programmes discussing the same issue, namely, the ongoing pro-democracy protests in Hong Kong.
60. Ofcom considered that multiple breaches of the due impartiality requirements in relation to matters of major political or industrial controversy or major matters of current public policy within a concentrated period indicated that there had been a serious and repeated failure of compliance during this period. As explained at paragraph 51, Ofcom considers that multiple breaches which occur during a concentrated period of time potentially aggravate the detriment to viewers, and have the effect of undermining public confidence in the impartiality of, and therefore trust in, broadcast news and current affairs, which the rules in Section Five of the Code are intended to safeguard.
61. Therefore, in light of the above, Ofcom's Decision is that these five breaches of Rules 5.1, 5.11 and 5.12, taken together, represented a serious and repeated failure of compliance with the due impartiality requirements of the Code on the part of the Licensee, which warrants the imposition of a statutory sanction.

Imposition of a sanction

62. In view of the factors set out above, Ofcom has decided that the breaches were serious and repeated, warranting the imposition of a statutory sanction. The following paragraphs set out the sanction that we have decided to impose.
63. As set out in paragraphs 26 and 27 above, Ofcom has powers to impose a statutory sanction on TLCS licensees under sections 236 to 239 of the Act. However, as SCML's TLCS licence to provide the CGTN service has now been revoked, and the CGTN service has ceased broadcasting in the UK, Ofcom only has the power to impose a financial penalty under section 237 of the Act in this case. As such, in contrast to Ofcom's proposals in the Preliminary View, Ofcom will not be imposing on the Licensee a direction to broadcast a statement of Ofcom's findings. It is also no longer relevant for Ofcom to consider whether licence revocation may be an appropriate and proportionate sanction in this case.

Financial penalty

Proposed amount of the financial penalty

64. As explained at paragraph 27, under section 237 of the Act, the maximum level of a financial penalty that can be imposed on the holder of a TLCS licence is whichever is the greater of £250,000 and 5 per cent of the qualifying revenue from the licensed service for the licensee's last complete accounting period falling within the period during which its licence has been in force. In this instance the maximum penalty Ofcom can impose is £250,000. We also took into account evidence of other funds received by SCML in connection with the CGTN service.
65. Ofcom's Penalty Guidelines state (at paragraph 1.11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate

⁴⁵ Ofcom's [Guidance Notes: Section Five](#).

amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty”.

66. In considering the appropriate amount of financial penalty, Ofcom has taken account of the need to ensure that any penalty acts as a deterrent and has also taken account of the specific relevant factors set out in the paragraph 1.12 of the Penalty Guidelines, as set out below.

The seriousness and duration of the contravention

67. In addition to the reasons set out at paragraphs 46 to 61 above, Ofcom has placed particular weight on the fact that there were multiple breaches of the due impartiality requirements, of which all five involved breaches of Rules 5.11 and 5.12 within a relatively short and concentrated period of time. Ofcom considered this to be a serious and repeated failure of compliance.

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

68. As explained at paragraphs 47 and 48 above, the purpose of the due impartiality requirements for broadcast content is to safeguard the integrity of democratic debate on licensed broadcasters on matters of public concern. There are stricter requirements in respect of programmes that deal with matters of major political controversy and major matters of current public policy, reflecting the heightened importance of preserving due impartiality in relation to such matters. Breaches of those requirements by any broadcaster potentially causes harm both to the viewers who watched the programme in issue and also undermines the democratic objectives which the due impartiality regime is designed to promote.
69. Ofcom noted the Licensee’s submission that CGTN had a small audience in the UK. Ofcom also took into account the Licensee’s submission that CGTN’s audience was likely to welcome, or be seeking, another perspective on news events, in particular a Chinese perspective from a Chinese channel. However, Ofcom considered that the breaches in question, particularly the breaches of Rules 5.11 and 5.12 of the Code, had the potential to adversely affect viewers in the UK who chose to consult CGTN for news programming and who were therefore presented with coverage of important policy and political matters which denied them an appropriately wide range of viewpoints. Ofcom also considered that the cumulative nature of the multiple breaches of due impartiality requirements during a relatively short period of time (four of the breaches took place in a period of just over three weeks) had the potential to aggravate the detriment to viewers and to undermine public confidence in the impartiality of, and trust in, broadcast news and current affairs, which the rules in Section Five of the Code are intended to safeguard.

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

70. We have no evidence to suggest that the Licensee made any financial or other gain from these breaches of the Code. Further, the Licensee also confirmed to Ofcom that it made no gain, financial or otherwise from broadcasting these programmes.

Whether in all the circumstances appropriate steps had been taken by the Licensee to prevent the contraventions

71. We considered that the Licensee’s compliance procedures had been inadequate to prevent these multiple breaches of the due impartiality requirements in the Code over the period between 11 August 2019 and 21 November 2019 when the five breaches took place.
72. As mentioned above, the Licensee argued that, unlike some other licensees where statutory sanctions had been imposed for breaches of Section Five, the Licensee had not had the opportunity to meet with Ofcom to discuss compliance in this area. SCML also argued that it had

not met with Ofcom, or been invited to meet with Ofcom, because it had a good compliance history and a meeting to discuss compliance was not necessary. However, as discussed in paragraph 58 above, the Licensee had previously had a breach decision recorded against it in relation to the same due impartiality rules and the same subject matter, namely pro-democracy protests in Hong Kong. Accordingly, we considered that the Licensee ought to have nonetheless been familiar with how to comply with the due impartiality rules in this context and ought to have taken appropriate steps following that previous breach decision to ensure future compliance with these rules of the Code in relation to these issues.

73. We also noted that a significant amount of the broadcast content found to be in breach was pre-recorded, and the Licensee would have had the opportunity to review it prior to broadcast. We would have expected that such a review ought to have identified the programme's failure to preserve due impartiality in relation to the matters dealt with in the programmes.
74. Some of the content found to be in breach was not pre-recorded (for example, some of it was live news content). While we acknowledged that there can be challenges in ensuring live programming complies with Section Five of the Code, we considered that the Licensee ought to have had appropriate procedures in place to ensure due impartiality was preserved in relation to these news items.
75. As explained in paragraph 56 above, the Licensee submitted that it was important for Ofcom to understand the difficulties faced by CGTN at the time in obtaining interviews with protestors. Ofcom acknowledged that covering issues of this nature can be challenging for broadcasters, particularly during a developing story. However, as Ofcom has made clear on numerous occasions⁴⁶, where an alternative viewpoint is needed to maintain due impartiality, inviting contributors to participate who then refuse to do so is not sufficient to preserve due impartiality and the alternative viewpoint needs to be represented in an appropriate way. For example, Ofcom's Guidance on Section Five of the Code sets out several editorial techniques which a broadcaster might consider employing where alternative views are not readily available, in order to preserve due impartiality, including, for example, reflecting alternative viewpoints through questions posed by presenters⁴⁷.
76. Therefore (and also for the reasons explained above), we considered these five breaches of the Code represent a serious and repeated failure of compliance with the due impartiality requirements of the Code.

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

77. For the reasons explained at paragraphs 71 to 76 above, we considered that the Licensee's compliance procedures had been inadequate to prevent multiple breaches of the due impartiality requirements in the Code within this relatively short period of time between 11 August and 21 November 2019. We considered this represented a serious and repeated failure on the part of the Licensee during this period to ensure due impartiality was preserved in relation to the matters of major political controversy and major matters of current public policy dealt with in the programmes. Although we have no evidence that the breaches were deliberate or reckless, such a serious failure in compliance ought to have been prevented by the Licensee's compliance procedures and we were concerned about how such a failure has occurred. Given the Licensee's compliance history, as outlined in paragraph 58, we were particularly concerned that these five

⁴⁶ See Ofcom's Decision on Crosstalk, RT, 11 July 2016, published in [Issue 319 of Ofcom's Broadcast and On Demand Bulletin](#), 19 December 2016, or Ofcom's Decisions against seven programmes broadcast on RT published on 20 December 2018 in [Issue 369 of Ofcom's Broadcast and On Demand Bulletin](#).

⁴⁷ [Guidance Notes: Section Five](#) – see paragraphs 1.60 and 1.37.

breaches represented another compliance failure relating to the same subject matter and same due impartiality requirements of the Code.

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

78. The Licensee did not appear to be aware of the issues concerning the programmes that Ofcom found in breach until Ofcom wrote to the Licensee to inform it that Ofcom was opening investigations into four editions of *The World Today* on 17 September 2019, and subsequently about the edition of *China 24* on 17 December 2019.
79. Ofcom has not become aware of any further breaches of Section Five of the Code by SCML to date. We noted that the CGTN service has now ceased broadcasting following revocation of the Licence, as explained at paragraphs 7 and 8 above.

Any steps taken for remedying the consequences of the contravention

80. In its representations on Ofcom’s Preliminary View on the five Code breaches⁴⁸, the Licensee advised Ofcom that it takes its responsibilities to comply with the Code seriously and it was carefully considering whether to strengthen CGTN’s compliance processes further.
81. The Licensee informed Ofcom in its written submissions following Ofcom’s Preliminary View on the sanction that it had invested considerable time and effort in training, specifically focused on the concerns Ofcom had raised. The Licensee reiterated to Ofcom that it was aware of its obligations under the Code and took these obligations and responsibilities seriously. SCML also provided details of training conducted by a Nick Pollard – a consultant and adviser to CGTN – which focused on Section Five of the Code. This training was delivered to staff in Beijing and London and later viewed virtually by CGTN staff in Washington DC and Nairobi. The Licensee also advised Ofcom that CGTN had produced updated and detailed editorial guidelines for all staff during 2020 and conducted regular output reviews to discuss compliance issues with staff. The Licensee also reiterated that it had assigned two experienced international correspondents from North America to Hong Kong to obtain interviews with protestors, and added a Supervising Producer to oversee its coverage.
82. Ofcom acknowledged the steps taken by the Licensee to improve its compliance processes following Ofcom’s investigation and the Breach Decisions, including delivering specific training in this area. However, we were concerned that the Licensee continued to maintain that the five programmes were compliant with the due impartiality rules, and that it considered that its compliance procedures were adequate at the time. In addition, these five breaches were very similar in nature to the Licensee’s previous breach as discussed above at paragraph 58. We were therefore concerned about whether the subsequent steps taken by the Licensee in relation to its compliance procedures in this area would have been sufficient to prevent further breaches from occurring.

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

83. Prior to the revocation of the Licence on 4 February 2021, Ofcom considered that the Licensee had, in general, a reasonable compliance record. We noted that the Licensee has argued in its representations that it has an “almost clean record” which compares favourably against other broadcasters.

⁴⁸ Provided to Ofcom on 16 March 2020.

84. Prior to the revocation of the Licence, the Licensee had held the Ofcom licence for the service since 2011⁴⁹ and had been found in breach of due impartiality rules on one occasion previously prior to the breaches now being considered for statutory sanction for programmes broadcast on CCTV News in 2014⁵⁰. These breaches related to four news items reporting on the same subject matter as in relation to the five breaches in this case, namely pro-democracy demonstrations taking place in Hong Kong⁵¹, and these news items were found to have breached the same due impartiality rules as in relation to the five breaches in this case, namely Rules 5.1, 5.11 and 5.12⁵².
85. In July 2020, the Licensee was also found in breach of Rules 7.1 and 8.1 in relation to two news programmes in which the complainant, Peter Humphrey, was featured: in the first programme appearing to confess to a criminal offence; and in the second apologising for having committed the offence⁵³. Ofcom found that the inclusion of the footage of the complainant in the programmes as broadcast would have given viewers the clear impression that he had given informed consent to appear and was making genuine, voluntary statements on the basis of which it was safe to conclude that he had committed offences, whereas the Licensee had substantial grounds to doubt any consent was informed and that the statements were genuine and voluntary, and this was not conveyed in the programmes. In addition, the complainant was not provided with an appropriate and timely opportunity to respond to the allegations. Ofcom therefore concluded that the broadcast of the programmes had resulted in unfairness to the complainant. The complainant also had a legitimate expectation of privacy and the Licensee had unwarrantably infringed the complainant's rights to privacy. This case was considered separately for the imposition of a statutory sanction⁵⁴.

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

86. In Ofcom's view, the Licensee had generally been cooperative in that it has engaged with the investigation. For example, it provided full and timely representations in response to Ofcom's formal requests for information relating to the material broadcast.

Precedent

87. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases. Each case is decided on its own facts. In reaching our decision in this instance Ofcom has considered these previous cases and to the extent we consider them relevant, we have taken them into account.
88. Ofcom considered a number of previous decisions in which financial penalties had been imposed for breaches of due impartiality requirements in the Code⁵⁵. Some of these decisions are now over five years old and were decided before Ofcom's current Penalty Guidelines⁵⁶ came into force. Ofcom also had regard to a number of other decisions in which financial penalties had been imposed for particularly serious breaches of the Code, not relating to breaches of due impartiality requirements, which had the potential to cause serious harm⁵⁷. These decisions have some relevance as the financial penalties were imposed after December 2015, when Ofcom's Penalty

⁴⁹ The service started broadcasting in 2003, although up until 2011 the Licence was held by Satellite Television Asian Region Ltd.

⁵⁰ CCTV News was renamed as CGTN on 31 December 2016, and the service continued to operate under the same licence.

⁵¹ Which took place at the end of September 2014 and early October 2014.

⁵² See [Broadcast and On Demand Bulletin issue 273](#), published on 16 February 2015.

⁵³ See [Ofcom's Adjudication published on 6 July 2020 in Issue 406 of the Broadcast and On Demand Bulletin](#).

⁵⁴ See Ofcom [Sanction Decision](#) published 8 March 2021

⁵⁵ See Annex 1 Precedents.

⁵⁶ The current version of the Ofcom's [Penalty Guidelines](#) came into force on 14 September 2017. This version of the Penalty Guidelines replaced the previous version which had come into force on 3 December.

⁵⁷ See Annex 1 Precedents.

Guidelines were updated to place greater emphasis on deterrence. Ofcom also considered other decisions in which Ofcom had found breaches of due impartiality rules but had decided not to impose a statutory sanction. Ofcom considered the relevance of these past precedents to the circumstances of the breaches at issue in this Decision and, where relevant, took these into account in deciding on the level of penalty which would be proportionate in the circumstances.

89. Ofcom considered that the previous decisions in which Ofcom had imposed financial penalties for breaches of due impartiality requirements in the Code were of some relevance, as the nature of those breaches was, to some extent, similar to the nature of the breaches at issue in this Decision. For example, a number of these previous cases (*Islam Channel*⁵⁸, *Aden Live*⁵⁹ and *Al Mustakillah*⁶⁰) also dealt with a failure to preserve due impartiality in relation to matters of major political controversy and major matters relating to current public policy. We also noted that there were similarities in the present case in that in all of these previous cases, Ofcom had also identified that the breaches had resulted from inadequate compliance procedures or compliance failures.
90. However, we noted that there were a number of differences in the circumstances of those previous cases. In particular, while in some of these previous cases Ofcom decided it was warranted to impose a financial penalty on the licensee for breaches concerning a single programme (*TalkSPORT 2008*⁶¹) or a couple of programmes (*Al Mustakillah*, *DM Digital*⁶²), all these previous cases concerned a failure on the part of the licensee to ensure compliance with Rule 5.4 concerning preservation of due impartiality on the part of the person providing the service (*Aden Live*, *Al Mustakillah*, *DM Digital*), or concerned a failure to preserve due impartiality in connection with an election (*Islam Channel*, *TalkSPORT 2008*, *Al Mustakillah*), which were breaches we considered to be particularly serious. By contrast to those cases, where only a single programme or a couple of programmes were concerned, we are currently sanctioning five breaches (four of which were committed in a very short period of time). And as noted above, Ofcom also took into account that these precedents had not been decided under Ofcom's current Penalty Guidelines, which place greater emphasis on deterrence.
91. The more recent decisions (*RT*⁶³, *Talksport*⁶⁴ and *BMAL*⁶⁵) in which Ofcom has imposed a financial penalty for breaches of due impartiality requirements are also of some relevance, as they are similar in nature to the breaches at issue in this Decision. These cases dealt with: a failure to preserve due impartiality in relation to matters of major political controversy and major matters relating to current public policy; and in the case of *RT* and *Talksport*, repeated breaches of these rules. In particular, the *RT* sanction decision concerned the broadcast of seven programmes over a six-week period, similar to the present case in which four of the five breaches took place over a three-week period. These more recent decisions are also of some relevance because they were decided under Ofcom's current Penalty Guidelines, which place greater emphasis on deterrence.
92. Ofcom noted the Licensee's argument that these cases involved viewer complaints, while there were no complaints about the CGTN programmes. However, as explained in paragraph 52 above, whether or not Ofcom is alerted to content through a complaint or through its own monitoring has no bearing on the seriousness of a breach, should that content be found to be in breach of the Code. In addition, for the reasons set out at paragraph 54 above, we consider that the programmes found to be in breach in this case had the potential to cause harm. Ofcom also noted

⁵⁸ 31 July 2007, see [Islam Channel Sanction Decision](#).

⁵⁹ 8 May 2012, [Dama \(Liverpool\) Limited](#).

⁶⁰ 4 January 2013, [Al Mustakillah Television Limited](#).

⁶¹ 8 December 2008, [Talksport Ltd](#).

⁶² 5 July 2013, [DM Digital Television Limited](#).

⁶³ 26 July 2019, [RT](#).

⁶⁴ 17 February 2020, [Talk Radio](#).

⁶⁵ 17 February 2020, [NTV Mir Baltic](#).

the Licensee's argument that these three broadcasters (RT, Talksport and BMAL) had recorded more previous breaches of the Code than CGTN. As outlined in paragraphs 83-85 above, Ofcom has taken account of CGTN's compliance history in reaching its Decision.

93. We also had regard to a number of recent decisions (*City News Network (SMC) Pvt Ltd*⁶⁶, *Lord Production Inc Limited*⁶⁷ and *Club TV*⁶⁸) in which Ofcom has imposed a financial penalty for breaches concerning different issues, not due impartiality breaches. We noted the Licensee submitted to Ofcom that these cases do not relate to due impartiality and were therefore wholly irrelevant, and suggested it would be wrong for Ofcom to take them into account. Ofcom considered these are of some relevance because they demonstrate Ofcom's approach to setting financial penalties for serious breaches of the Code under the current Penalty Guidelines. However, we acknowledged these previous cases concerned breaches of Section Three of the Code involving hate speech or in one instance involved the broadcast of material likely to encourage or incite the commission of crime or lead to disorder, and we therefore put less weight on them. Ofcom considered these to be particularly serious breaches of the Code given their potential to cause serious harm to audiences, and therefore they are generally more serious than breaches of due impartiality rules.
94. Ofcom also had regard to the fact that, other than the *RT*, *Talksport* and *BMAL* cases, in all other recent cases in which Ofcom found breaches of due impartiality requirements, including of Rules 5.1, 5.11 and 5.12, Ofcom did not consider it to be warranted to impose a statutory sanction in the circumstances of those cases. To the extent that the nature of the content and the concern that were at issue in those decisions was of a similar nature to the breaches in this case, Ofcom took into account that each case turns on its specific facts and, as set out in the Penalty Guidelines, Ofcom may depart from these precedents where appropriate. In particular, we recognised that in this case, the breaches were serious and repeated, and all dealt with the same particular matter of major political controversy and/or matter of major current public policy.
95. As noted above, the Licensee made representations that there were differences between the precedent cases discussed above and this case. We have taken into account that there are differences between this case and the precedent cases discussed above. Ofcom has regard to precedent cases to the extent they are relevant, but they are not determinative. Each case is decided on its own facts, having regard to all the circumstances of each case and the need for deterrence. In deciding of the level of the penalty in this case, we have had regard to all the relevant circumstances, including the need to ensure an appropriate level of deterrence given the seriousness of these particular breaches, which for the reasons set out above, were a serious and repeated failure of compliance.

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

96. As set out in our Penalty Guidelines, the central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to ensure compliance, having regard to the seriousness of the infringement. SCML no longer holds a broadcast licence following Ofcom's decision to revoke the Licence and the CGTN service has ceased broadcasting in the UK; therefore, there is no longer a risk of future non-compliance by SCML or in respect of the CGTN service in this case. Nevertheless, Ofcom is concerned to ensure that enforcement against serious breaches of the Code acts as a wider deterrent against non-compliance by broadcasters in general. Accordingly, Ofcom considered what would be an appropriate and proportionate sanction, which would act as an effective deterrent, had SCML continued to hold a broadcast licence and the CGTN service continued to be broadcast, taking

⁶⁶ 15 April 2019, [Channel 4](#).

⁶⁷ 5 May 2020, [Peace TV](#).

⁶⁸ 5 May 2020, [Peace TV Urdu](#).

into account the size and turnover of the Licensee and broadcasters' and audiences' rights to freedom of expression under Article 10 of the Convention.

97. In reaching its Decision on the imposition and level of a sanction, Ofcom took into account the Licensee's qualifying revenue for the last accounting period. We also took into account evidence of other funds received by SCML in connection with the CGTN service.
98. For all the reasons set out above, Ofcom considered it proportionate to impose a financial penalty on the Licensee of £125,000.

Decision

99. In order to achieve Ofcom's central objective of deterrence, we carefully considered the nature and level of the statutory sanction that should be imposed. In doing so, we have taken account of the particular seriousness of the breaches, the Licensee's representations, the Licensee's compliance record, the Licensee's size and financial position, and relevant precedent cases. We have also had regard to the revocation of the Licence and the need to ensure that enforcement against serious breaches of the Code acts as a wider deterrent against future breaches by broadcasters in general. We have also had regard to our legal duties, as set out in the Breach Decisions, including the need to ensure that any sanction we impose is proportionate, consistent and targeted only at cases where action is needed.
100. Having regard to all the factors set out above, Ofcom's Decision is that it is appropriate to impose a statutory sanction for the Code breaches and it would be proportionate to impose a financial penalty of £125,000 (payable to HM Paymaster General).

Ofcom
8 March 2021

ANNEX 1: PRECEDENTS

Previous sanctions relating to breaches of due impartiality requirements

Sanction Decision	Rules of the Code	Sanction	Nature of the Sanction
31 July 2007, Islam Channel Ltd ⁶⁹	Rules 5.5, 5.12, 6.6, 6.8, 6.9 (and Licence Condition 11)	£30,000 financial penalty.	During the election period of the local elections in 2006, a number of episodes of two current affairs series were presented, at times, by candidates who were standing in the local elections. Some of these programmes also failed to treat matters of political and industrial controversy and major matters relating to current public policy with due impartiality. These breaches were very serious given: their sustained and repeated nature; the fact that the breaches occurred during an election period in programmes whose presenters were themselves candidates in those elections; and the relevant rules breached are designed to help secure the integrity of the democratic process and the public's trust in that integrity. The breaches in this case were a direct result of management and compliance failures and took place despite considerable guidance and training given by Ofcom to the licensee.
8 December 2008, Talksport Ltd ⁷⁰	Rule 6.1	£20,000 financial penalty; direction to broadcast a statement of Ofcom's findings.	This case concerned the broadcast of The James Whale Show during which Mr Whale made a number of comments criticising the Labour candidate for the 2008 London Mayoral Elections and directly and repeatedly encouraging listeners to vote for the Conservative candidate. Alternative views about the London mayoral candidacy and the Labour candidate's record were not represented. The contravention had the potential to cause considerable harm to the democratic process. The breach was particularly serious because it involved an experienced presenter who used his programme in a deliberate and conscious way to promote one particular candidate; the programme was broadcast in the election period close to the polling day with a greater potential to influence the voting intentions of listeners; it was the second time within eight months that the station had seriously breached the Code's due impartiality requirements; and the Licensee could, and should, have taken more action to ensure more robust compliance.
8 May 2012, Dama (Liverpool) Limited (Aden Live) ⁷¹	Rule 2.4, 5.4, 5.11 and 5.12	£10,000 financial penalty; direction to broadcast a statement of Ofcom's findings.	Regarding the breaches of the due impartiality rules, the content and views expressed in the broadcasts were almost entirely in support of the Southern Movement and the independence of South Yemen, and critical of the Government of Yemen. In addition, the views and opinions of the Licensee on the contemporaneous

⁶⁹ See Islam Channel [Sanction Decision](#).

⁷⁰ See Talksport [Sanction Decision](#).

⁷¹ See Aden Live [Sanction Decision](#).

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			<p>political situation in Yemen, including the policies and actions of the Government of Yemen (a matter of major political controversy and a major matter relating to current public policy) were expressed in the output of the channel, in breach of Rule 5.4. The breaches were serious because: the licensee and its senior management sought to use the channel as a platform to present their own views; and they occurred in programmes broadcast at various times on the channel, not just in an isolated programme or series of programmes. The breaches indicated poor compliance management by the Licensee and also a clear disregard for the due impartiality requirements, which the Licensee had previously and explicitly confirmed to Ofcom that it was aware of and would comply with.</p>
<p>4 January 2013, Al Mustakillah Television Limited⁷²</p>	<p>Rules 5.4, 5.5, 5.11, 5.12 and 6.1</p>	<p>£25,000 financial penalty.</p>	<p>This case concerned two programmes in which the sole director of the Licensee directly promoted the interests and policies of the Popular Petition for Freedom, Justice and Development in Tunisia, a political manifesto written by him. The programmes were broadcast in the run up to and immediately after the 2012 Tunisian General Election. The breaches of the relevant rules during the election period of a general election were serious, and particularly so given the comments were numerous and contained in two lengthy programmes. The director of the licensee clearly used his position to influence the editorial content of the service. Viewers were provided with a one-sided view of matters, and major matters, of political controversy and the viewpoints of, for example, other Tunisian political parties or their supporters were not presented. The content and views therefore had the potential to influence the voting intentions of viewers and thus was potentially harmful to the integrity of the democratic process. The breaches, taken together, underlined the Licensee’s failure to understand and ensure compliance and that its compliance arrangements were systemically ineffective.</p>
<p>5 July 2013, DM Digital Television Limited⁷³</p>	<p>Rules 5.4 and 5.5</p>	<p>£20,000 financial penalty; direction to broadcast a statement of Ofcom’s findings.</p>	<p>The two programmes included coverage of a conference, held in the UK, of the Pakistan Overseas Alliance Forum. In relation to Rule 5.4, the programmes included footage of the then Chief Executive and Chairman of DM Digital Television Ltd expressing his views on matters of political and industrial controversy and matters relating to current public policy. With respect to Rule 5.5, the first programme included statements that were highly critical of the MQM (at the time the governing political party in the Pakistani province of Sindh). The second programme included highly critical statements about NATO and the US Government’s policies and actions towards Afghanistan and Pakistan. The breaches were serious because they showed that the due impartiality of the service had</p>

⁷² See Al Mustakillah [Sanction Decision](#).

⁷³ See DM Digital [Sanction Decision](#).

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			been compromised by the views of the licence holder. The breaches were repeated (and in the case of Rule 5.5, occurred in a sustained manner over the course of two three-hour programmes). Further, the breaches highlighted the Licensee's wholly insufficient compliance arrangements and clear lack of understanding about the due impartiality requirements.
26 July 2019, ANO TV Novosti (RT) ⁷⁴	Rules 5.1, 5.11 and 5.12	£200,000 financial penalty and direction to broadcast a statement of Ofcom's findings.	These cases related to seven news and current affairs programmes broadcast on the news channel RT in the wake of the poisoning of Sergei and Yulia Skripal on 4 March 2018. The programmes were concerned with the following issues: the poisoning of Sergei and Yulia Skripal in Salisbury on 4 March 2018, the armed conflict in Syria and the Ukrainian Government's position on Nazism and its treatment of Roma Gypsies. The seven breaches occurred within a six-week period between 17 March 2018 and 26 April 2018. Ofcom found that each of the seven programmes failed to maintain due impartiality and had breached Rule 5.1 and/or Rules 5.11 and 5.12. Ofcom considered the seven breaches, individually and taken together, to be a serious failure of compliance.
17 February 2020, Talksport Ltd (Talk Radio) ⁷⁵	Rules 5.11 and 5.12	£75,000 financial penalty and direction to broadcast a statement of Ofcom's findings.	These cases related to three episodes of the George Galloway programme which dealt with the following issues, the poisoning of Yulia and Sergei Skripal in Salisbury on 4 March 2018 and allegations of anti-Semitism in the Labour Party. We found each programme failed to maintain due impartiality. Ofcom considered that these three breaches of the due impartiality requirements, which occurred within a period of five months, as well as the Licensee's failure to fully adopt improvements to its compliance processes following the first set of breaches, indicated a serious and repeated failure of compliance.
17 February 2020, Baltic Media Alliance Limited (NTV Mir Baltic) ⁷⁶	Rules 5.1, 5.11 and 5.12	£20,000 financial penalty and direction to broadcast a statement of Ofcom's findings.	Baltic Media Alliance Limited broadcast a news programme, <i>Today</i> , which included a discussion about the poisoning of Sergei and Yulia Skripal in Salisbury on 4 March 2018 and which failed to maintain due impartiality. This was the sixth time that the Licensee had breached the due impartiality rules since November 2014.

Previous sanctions relating to breaches of other rules in the Code

Sanction Decision	Breaches of Rules of the Code	Sanction	Nature of Sanction
11 November 2016, Club TV	Rules 2.1 and 2.3	£65,000 financial penalty; direction to broadcast a	The programmes contained numerous examples of overwhelmingly negative and stereotypical references to Jewish people, which could be interpreted as

⁷⁴See RT [Sanction Decision](#).

⁷⁵ See Talksport [Sanction Decision](#).

⁷⁶ See Baltic Media Alliance [Sanction Decision](#).

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<p>Limited (Peace TV Urdu)⁷⁷</p>		<p>statement of Ofcom’s findings.</p>	<p>spreading anti-Semitism and were a form of hate speech. These statements were also delivered by a person who holds a position of authority and respect within the Muslim community (a religious scholar). Further, the presenter spoke uninterrupted and there were no views or statements in the programmes which challenged or otherwise softened the considerable level of potential offence. The statements in question had the clear potential to cause harm by portraying Jewish people in highly negative terms. The broadcast of anti-Semitic hate speech in pre-recorded content in two separate programmes broadcast on consecutive days indicated a failure of compliance procedures.</p>
<p>15 April 2019, City News Network (SMC) Pvt Ltd (Channel 44)⁷⁸</p>	<p>Rules 2.3, 3.2 and 3.3</p>	<p>£75,000 financial penalty; direction to broadcast a statement of Ofcom’s findings.</p>	<p>The Licensee broadcast two episodes of <i>Point of View</i>, a current affairs discussion programme made in Pakistan and broadcast in the UK on Channel 44. A guest who was featured in both episodes made repeated, serious and unsubstantiated allegations about members of the Ahmadiyya community. These included that Ahmadi people had committed acts of murder, terrorism and treason as well as undertaking political assassinations. The same guest also made remarks that attributed conspiratorial intent to the actions of the Pakistani authorities towards the Ahmadiyya community and stated they were being favoured in Pakistani society at the expense of orthodox Muslims.</p>
<p>5 May 2020, Lord Production Inc Ltd (Peace TV)⁷⁹</p>	<p>Rules 2.3, 3.2 and 3.3</p>	<p>£100,000 financial penalty⁸⁰.</p>	<p>The Licensee broadcast one episode of <i>Strengthening your Family</i> on Peace TV. This episode, which was titled <i>Valley of the Homosexuals</i>, focussed on the issue of homosexuality and Islam. The presenter made a series of statements about homosexuality including: comparing homosexual people to animals, specifically a pig which the speaker referred to as an animal which was “<i>nasty and corrupted</i>”; asserting that homosexual people contract disease (by implication HIV and AIDS) because they are homosexual; and, describing the practice of homosexuality as insane, corrupt and a manifestation of satanic influence. Ofcom found the programme contained uncontextualised hate speech and amounted to abusive and derogatory treatment of homosexual people.</p>
<p>5 May 2020, Club TV Limited (Peace TV Urdu)⁸¹</p>	<p>Rules 2.3, 3.1, 3.2 and 3.3.</p>	<p>£200,000 financial penalty⁸².</p>	<p>The Licensee broadcast an episode of the series <i>Kitaab-ut-Tawheed</i> on Peace TV Urdu. This episode focused on the Islamic punishment of magicians (and</p>

⁷⁷ See Peace TV Urdu [Sanction Decision](#).

⁷⁸ See City News Network [Sanction Decision](#).

⁷⁹ See Lord Production Limited [Sanction Decision](#).

⁸⁰ On 18 November 2019, the Licensee surrendered its licence and the licensee is no longer broadcasting in the UK. Ofcom has the power to impose a penalty relating to breaches of the Code during the period which a licensee held a broadcast licence, even though the Licensee has surrendered its licence and is no longer broadcasting.

⁸¹ See Club TV Limited [Sanction Decision](#).

⁸² The Licensee is no longer broadcasting, see footnote 80.

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			<p>those who practise magic). In the programme the presenter, an Islamic scholar, spoke uninterrupted throughout the programme, and at the end of the lecture he answered a few questions from those in the audience. He made a series of statements about killing Muslim people who practise "Sihr" or magic. Ofcom found this programme contained material which amounted to an indirect call to action for members of the audience to kill those who practice magic and that is contained uncontextualised hate speech.</p>
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