

CONFIDENTIAL

Decision by Ofcom

Sanction: to be imposed on Baltic Media Alliance Limited

For material broadcast on NTV Mir Baltic on 2 April 2018¹

**Ofcom's Decision
of Sanction against:**

Baltic Media Alliance Limited ("BMAL" or the "Licensee") in respect of its service **NTV Mir Baltic** (TLCS001143BA/2).

For:

Breach of the Ofcom Broadcasting Code (the "Code")² in respect of:

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".

Ofcom's Decision:

To impose a financial penalty (payable to HM Paymaster General) of £20,000; and

To direct the Licensee to broadcast a statement of Ofcom's findings in a form and on date(s) to be determined by Ofcom.

¹ See Broadcast and On Demand Bulletin 372 for the material broadcast on NTV Mir Baltic and found in breach of Ofcom's Broadcasting Code ("the Code"), https://www.ofcom.org.uk/_data/assets/pdf_file/0028/136585/Issue-372-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf

² The version of the Code which was in force at the time of the broadcast took effect on 3 April 2017: https://www.ofcom.org.uk/_data/assets/pdf_file/0005/100103/broadcast-code-april-2017.pdf

Executive Summary

1. NTV Mir Baltic is a television channel broadcasting to the Russian-speaking community in Latvia. The licence for NTV Mir Baltic is held by Baltic Media Alliance Limited (“BMAL” or “the Licensee”). The Licensee also holds broadcasting licences in relation to other services targeted at the Russian-speaking communities in the Baltic countries, including NTV Lithuania.
2. On 2 April 2018, BMAL broadcast a news programme, *Today*, which included a discussion about the poisoning of Sergei and Yulia Skripal in Salisbury on 4 March 2018.

The Breach Decision

3. In Ofcom’s decision published on 11 February 2019 in issue 372 of the Broadcast and On Demand Bulletin (the “Breach Decision”)³, Ofcom found that the programme above had failed to maintain due impartiality and had breached Rules 5.1, 5.11 and 5.12 of the Code.
4. The Breach Decision 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.
5. The Breach Decision was the sixth time that the Licensee had breached the due impartiality rules in the Code on its channels NTV Mir Lithuania and NTV Mir Baltic since November 2014⁴. Ofcom put BMAL on notice in the Breach Decision that it considered this breach of the due impartiality rules, in light of the Licensee’s previous breaches, to be a serious failure of compliance and it was minded to consider the breach in the present case for the imposition of a statutory sanction. Following the publication of the Breach Decision, Ofcom gave the Licensee an additional opportunity to make representations on whether the breach should be considered by Ofcom for the imposition of a statutory sanction. Having considered BMAL’s submissions, Ofcom decided to consider the Breach Decision for the imposition of a statutory sanction.

The Sanction Decision

6. In accordance with Ofcom’s procedures for the consideration of statutory sanctions in breaches of broadcast licences (the “Sanctions Procedures”)⁵, Ofcom considered whether the Code breach was serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee. Having taken into account the Licensee’s representations, Ofcom has reached a Decision that a sanction is warranted for the reasons set out in paragraphs 38 to 48 below.
7. Ofcom’s Decision is to impose a financial penalty of £20,000 and to direct the Licensee to broadcast a statement of Ofcom’s findings on date(s) and in a form to be determined by Ofcom. This paper sets out the basis for Ofcom’s Decision, taking into account all the relevant material in this case and Ofcom’s Penalty Guidelines⁶ (the “Penalty Guidelines”).

Legal Framework

8. We set out in the Breach Decision the relevant legal framework and the duties which Ofcom took into account in making the Breach Decision.

³ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0028/136585/Issue-372-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf

⁴ The previous breach decisions were: *Professia Reporter*, broadcast on NTV Mir Lithuania on 2 November 2014, published in [Broadcast Bulletin 282](#); *Today*, broadcast on NTV Mir Lithuania on 28 and 30 January 2015, published in [Broadcast Bulletin 284](#); *Anatomy of the Day*, broadcast on NTV Mir Lithuania on 2 September 2015, published in [Broadcast and On Demand Bulletin 300](#); *The Incident: Special Investigation*, broadcast on NTV Mir Lithuania on 15 April 2016, published in [Broadcast and On Demand Bulletin 319](#); and *Today*, broadcast on NTV Mir Baltic on 12 November 2016, published in [Broadcast and On Demand Bulletin 330](#).

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf. These procedures took effect on 3 April 2017.

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf

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9. 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.
10. Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 (the "2003 Act"), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets.
11. Ofcom has a specific duty under section 319 of the 2003 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 2003 Act are complied with (section 319(2)(c) and (d)).
12. Reflecting Ofcom's duties under sections 319 and 320 of the 2003 Act, Section Five of the Code requires that the special impartiality requirements are met⁷. The relevant rules of the Code are set out in full at the beginning of this Decision.
13. In performing these duties, Ofcom must have regard to the principles under which its 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 expression⁸.
14. 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").
15. 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 public authority and regardless of frontiers (Article 10(1))⁹. It applies not only to the content of information but also to the means of transmission or reception¹⁰. And while subject to exceptions, the need for any restriction must be established convincingly¹¹. 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 of 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.

⁷ Accompanying Guidance Notes to each section of the Code are published, and from time to time updated, on the Ofcom website: https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.

⁸ Sections 3(3) and 3(4)(g) of the 2003 Act.

⁹ *Lingens v Austria* (1986) 8 EHRR 407.

¹⁰ *Autronic v Switzerland* (1990) 12 EHRR 485.

¹¹ *Steel & Morris v UK* (2005) EMLR 15.

16. 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).
17. 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 generally¹². The due impartiality standards required under sections 319 and 320 of the 2003 Act form part of a tripartite series of measures (the others being a prohibition on paid political advertising¹³ and the provision of free party political and party election broadcasts according to defined rules¹⁴) which aim to safeguard the integrity of democratic debate on matters of public concern.
18. As explained in the Government White Paper which led to the 2003 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 counter-weight to other, often partial, sources of news. They therefore contribute significantly to properly informed democratic debate."*¹⁵
19. As Lord Bingham explained in the *Animal Defenders* case, 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."*¹⁶
20. 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

¹² *R (On The Application of Animal Defenders International) v Secretary of State For Culture, Media and Sport* [2008] 1 AC 1312 and *Animal Defenders v United Kingdom* [2013] EMLR 28.

¹³ See s.319(2)(g) and 321(2) of the 2003 Act.

¹⁴ S.333 of the 2003 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).

¹⁵ Communications White Paper – A New Future for Communications, December 2000, [https://webarchive.nationalarchives.gov.uk/20100407160140/http://www.culture.gov.uk/images/publication/s/communicationswhitepaper_fullreport.pdf,section 6.6.1](https://webarchive.nationalarchives.gov.uk/20100407160140/http://www.culture.gov.uk/images/publication/s/communicationswhitepaper_fullreport.pdf,section%206.6.1).

¹⁶ *R (On the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] 1 AC 1312 at paragraph 28.

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fundamental concern: the need to safeguard the integrity of public discussion and thereby the democratic process.

21. The interference with Article 10 attendant on imposing a statutory sanction in relation to findings of breaches of due impartiality requirements may, where appropriate and proportionate in the circumstances of the case, be justified by the need to achieve these legitimate aims. In order to be proportionate, any interference must be the minimum necessary to promote the legitimate objective pursued.

The Breach Decision and subsequent correspondence with the Licensee

22. In the Breach Decision, Ofcom found that material broadcast by the Licensee on NTV Mir Baltic breached Rules 5.1, 5.11 and 5.12 of the Code. The Breach Decision set out the reasons for these breach findings.
23. The Breach Decision noted that on 2 April 2018 at 19:00, the news programme broadcast on NTV Mir Baltic included an item which focused on the poisoning of Sergei Skripal and his daughter Yulia Skripal, who were found unconscious in Salisbury on 4 March 2018 after coming into contact with what police later identified as a nerve agent. The UK Government had on 12 and 14 March 2018 said that this constituted an unlawful use of force by the Russian State in the UK. The Russian Federation denied that it developed the nerve agent concerned and that it committed the attempted murder. The news item included various statements that were critical of the UK Government's position and supportive of the Russian Government's position on the poisoning of the Skripals.
24. For the reasons given in the Breach Decision, and having taken careful account of the broadcaster's and audience's rights to freedom of expression and the relevant contextual factors discussed above, Ofcom's view was that the Licensee failed to include and give due weight to an appropriately wide range of significant viewpoints on the relevant matter of major political controversy and relevant major matter relating to current public policy dealt with in the news item as required under Rules 5.11 and 5.12 and, taken overall, due impartiality was not preserved during the news item as required under Rule 5.1.
25. The Breach Decision¹⁷ sets 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.
26. Ofcom put BMAL on notice in the Breach Decision that it considered this breach of the due impartiality rules, in light of the Licensee's previous breaches, to be a serious failure of compliance and it was minded to consider the breach in the present case for the imposition of a statutory sanction.
27. Ofcom gave the Licensee an additional opportunity (which Ofcom does not normally provide for as part of its sanctions process) to provide representations on whether Ofcom should proceed to consider the imposition of a statutory sanction. Having considered the Licensee's additional representations, Ofcom decided to consider the Breach Decision for the imposition of a statutory sanction.

The Licensee's representations

28. The Licensee provided representations as to whether Ofcom should proceed to consider the imposition of a statutory sanction.¹⁸ It submitted that Ofcom should take into account that

¹⁷ See Broadcast and On Demand Bulletin 372 for the material broadcast on NTV Mir Baltic and found in breach of the Code, https://www.ofcom.org.uk/data/assets/pdf_file/0028/136585/Issue-372-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf.

¹⁸ Baltic Media Alliance Ltd letter to Ofcom of 12 February 2019.

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“previous breaches took place over several years and this was the first breach since January 2017”, when Ofcom had met BMAL to discuss its compliance in the area of due impartiality¹⁹; and that the Licensee is “working in [a] high competition area where speed of news coverage is very important”.

29. Having considered BMAL’s representations, Ofcom decided to proceed to consider the Breach Decision for the imposition of a statutory sanction.
30. Ofcom provided the Licensee with its Preliminary View that it was minded to impose a statutory sanction in the form of a financial penalty and a direction to BMAL to broadcast a statement of Ofcom’s findings, in a form and on date(s) to be determined by Ofcom.
31. The Licensee provided written representations on Ofcom’s Preliminary View, but did not provide any oral representations.
32. BMAL said that: “We take seriously our responsibilities and are clearly disappointed that Ofcom intends to impose such [a] large financial fine in respect to the markets we operate, especially when all materials and videos containing alleged[ly partial content] are 24/7 available on various streaming and on-demand unlicensed and IP infringing platforms which...[face] no sanctions or official reaction”. It added that: “Arguably YouTube has reach and audience far exceeding that of NTV Mir Baltic TV”.
33. According to the Licensee: “The sole purpose of the programme was not the implication or allegation, or criticism in respect of the UK Government or any UK officials” but was intended to “exhibit the Russian point of view on the matters of public interest brought by [a] Russian public servant [i.e. Sergei Lavrov]”. It added that: “The only intent of the news programme was providing the audience with...official information”.
34. BMAL said that “there is a permanent political pressure on media and media regulators, particularly in Latvia and Lithuania where we operate”, adding that: “Last year [the] head of [the] Lithuanian media regulator was forced to resign...and politicians are forcing the head of [the] Latvian media regulator to resign as well”. BMAL argued that the above “somewhat explains increased number of complaints about our TV channels” but that: “Only in rare cases our channels were found in breach and we always worked hard to minimize number of such cases”.
35. The Licensee also argued that “interest in Russian speaking channels in the Baltics is high and our company is the only one who delivers legal TV channels with cleared copyrights and editorial responsibility”. It added that this is “especially important when [the] bar for illegal TV watching is so low in the Baltics - when some Russian speaking TV channel become legally unavailable then most of viewers switch to TV versions which come [into the] EU from various illegal sources, but still widely available in the region”.
36. BMAL said that it intends to strengthen its compliance processes and that it had “performed internal thorough and complex training for our programming staff in respect of how to spot questionable content in order to avoid breaches” of the Code. This training included updating staff on recent communications and any guidance received from Ofcom and identifying several topics where staff should pay particular attention: “WWII events in the territory of Baltics and its aftermath”, “political shows regarding potentially controversial political issues in the Baltics to make sure different points of view are represented” and “impartiality for news coverage, especially for potentially controversial topics”. BMAL also said that staff were asked to prepare proposals for the “best content split” for 2020 programming across its channels, “particularly

¹⁹ In June 2017, Ofcom recorded a breach of Rule 5.1 for content broadcast on NTV Mir Baltic. However, this was for content broadcast in November 2016 (see [Broadcast and On Demand Bulletin 330](#)) i.e. before the January 2017 meeting between BMAL and Ofcom.

the amount and composition of political content” in programmes. In addition, the Licensee stated it had already moved some “political oriented content out of prime time”.

37. In conclusion, the Licensee requested that, taking into account the circumstances, Ofcom reconsider the sum of statutory sanction which BMAL considered to be disproportionate, and “decrease it as the main objective of sanctions is deterrence not excessive punishment”.

Ofcom’s Decision on the imposition of a statutory sanction

38. 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 type and level of sanction Ofcom considers should be imposed on the Licensee, taking into account all the relevant material, including the Licensee’s representations, and Ofcom’s Penalty Guidelines (the “Penalty Guidelines”).

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

Serious and repeated nature of the breach

40. The imposition of a sanction against a broadcaster is serious matter, and Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement. Ofcom’s Decision is that, for the reasons set out below, the breach of Rules 5.1, 5.11 and 5.12 in this particular programme was a serious failure of compliance and therefore warrants the imposition of a statutory sanction.
41. As set out in the Breach Decision and at paragraphs 22 to 27 above, the public policy rationale for the requirement of due impartiality in broadcasting is that these obligations play a major part in ensuring 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, information and discourse. They therefore contribute significantly to properly informed democratic debate²⁰. Breaches of the 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 dismissed.
42. Any 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. Breaches of Rule 5.1 relating to the requirement to ensure due impartiality is preserved in relation to news may be serious depending on the circumstances. 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.
43. Ofcom acknowledges the broadcaster’s right to make programmes providing audiences with the Russian viewpoint on news and current affairs, including programmes which feature viewpoints that are supportive of certain nation-states, or which are critical of the policies of particular governments, including the UK. However, such programmes still need to comply with Section Five of the Code, and Ofcom’s specific concern in relation to the programme that was the

²⁰ See the Government’s Communications White Paper (Safeguarding the interests of citizens, 6.6.1) https://webarchive.nationalarchives.gov.uk/20100407191943/http://www.culture.gov.uk/images/publications/communicationswhitepaper_fullreport.pdf

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subject of the Breach Decision is that insufficient attempts were made to include and give due weight to an appropriately wide range of alternative viewpoints.

44. We took account of the Licensee's submission that it operates in what it described as a "high competition area where speed of news coverage is very important". It added that "there is a permanent political pressure on media and media regulators, particularly in Latvia and Lithuania where we operate". However, as we said in the Breach Decision, the Licensee could – and should – have reflected and given due weight to the UK Government's position on the incident. It was an editorial decision for the broadcaster as to how to reflect this alternative viewpoint to ensure that due impartiality was preserved.
45. In assessing the seriousness of the breach in question as set out in the Breach Decision, Ofcom also took into account the nature of the breach. In our view, the programme failed to preserve due impartiality on a matter of major political controversy or a major matter of current public policy, namely the poisoning of Sergei and Yulia Skripal. The Licensee argued that the intention of the programme was to "exhibit the Russian point of view on the matters of public interest" as expressed by the Russian Foreign Minister, Sergei Lavrov, and thereby to provide the audience with "official information". However, we considered that the poisoning of the Skripals was a matter of high public and political concern at the time the programme was broadcast and in our view, the failure of the programme to adhere to the due impartiality standards in covering this major matter was therefore particularly liable to have damaging consequences for the democratic and societal objectives which the due impartiality regime is designed to promote and was therefore particularly serious.
46. Ofcom was especially concerned that the Licensee had breached the due impartiality rules in the Code on its channels NTV Mir Lithuania and NTV Mir Baltic six times since November 2014²¹. We took account of the Licensee's submission that these breaches occurred over several years, and that the last breach related to content broadcast in November 2016 ahead of Ofcom's compliance meeting with BMAL in January 2017. We also took account of BMAL's submission that they took their responsibilities to comply with Ofcom's Broadcasting Code seriously, and intended to strengthen their compliance procedures in future. However, the fact remains that the Licensee has breached the Code a significant number of times over the past five years, and we were concerned that all these breaches related to due impartiality. Ofcom considers that repeated and serious breaches of the due impartiality rules potentially aggravate the detriment to viewers. In addition, 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.
47. In addition, Ofcom took into account that Ofcom met with the Licensee in January 2017 to discuss its compliance processes in the area of due impartiality and the Licensee gave assurances to Ofcom concerning their understanding of the due impartiality rules. We therefore considered that the Licensee is well-versed in how to comply with the due impartiality rules. In light of the assurances that BMAL gave to Ofcom at the January 2017 meeting, Ofcom is very concerned that there should be a subsequent sixth breach of the due impartiality rules.
48. Accordingly, Ofcom's Decision is that this breach of Rules 5.1, 5.11 and 5.12 represented a serious and repeated failure of compliance with the due impartiality requirements of the Code on the part of the Licensee, which warrant the imposition of a statutory sanction.

Imposition of sanction

49. Ofcom therefore considered which of the sanctions available to it were appropriate in the present case.

²¹ See footnote 4.

Ofcom's powers to impose statutory sanctions for breaches of content standards requirements

50. As noted above, the Licensee holds a television licensable content service ("TLCS") licence. Under section 325 of the 2003 Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 of the 2003 Act are observed by the licensee. Condition 6 of a TLCS licence requires the same.
51. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the 2003 Act insofar as relevant to the case.
52. Section 236 of the 2003 Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme which was in contravention of a licence condition.
53. Section 237 of the 2003 Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. 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 5 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.
54. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence where a licensee is in contravention of a condition of a TLCS licence or direction thereunder.

Directing the Licensee to broadcast a statement of Ofcom's findings and/or not to repeat the programme

55. The purpose of directing a licensee to broadcast a statement of Ofcom's findings in relation to breaches of the due impartiality rules is to inform audiences of Ofcom's findings and ensure they are aware of the specific way in which the programme breached the Code.
56. For the reasons set out at paragraphs 40 to 48 above, Ofcom considered that this breach was serious. Ofcom's Decision is that the Licensee must broadcast a statement, to be prepared by Ofcom and in a form and on date(s) to be determined by Ofcom, to ensure that Ofcom's findings are drawn to the attention of the Licensee's viewers, and to help deter future misconduct by the Licensee and other broadcasters.

Financial penalty

57. Given Ofcom's assessment of the seriousness of the breach, Ofcom considered whether a direction alone would be a sufficient sanction.
58. In determining whether to impose a financial penalty in this case, Ofcom took account of the following factors:
 - this was the sixth time since November 2014 that BMAL had breached the due impartiality requirements of the Code²²;
 - in January 2017, we met with BMAL to discuss its compliance processes in the area of due impartiality and the Licensee gave assurances to Ofcom concerning their understanding of the due impartiality rules. However, just over a year later, in April 2018, the Licensee breached these rules in the present case. In light of the assurances that the Licensee gave to Ofcom at the January 2017 meeting, Ofcom is very concerned

²² The only other breach of the Code recorded against BMAL was a breach of Rule 2.3 (offence must be justified by the context) in relation to *Norkin's List* broadcast on NTV Mir Lithuania on 15 February 2015 in [Broadcast Bulletin 290](#).

that there should be a subsequent, and serious, sixth breach of the due impartiality rules; and

- the present breach related to a failure to preserve due impartiality in relation to matters of major political and industrial controversy and major matters relating to current public policy. Under the 2003 Act and the Code, broadcasters are required to take additional steps²³ to ensure that such matters are presented with due impartiality. A failure to do so therefore risks 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.

59. Ofcom did not consider a direction alone would be a sufficient sanction to act as an effective disincentive to discourage this Licensee from repeating similar breach of the Code or other licensees from contravening the Code in a similar manner. Ofcom's Decision is therefore that it would be proportionate to impose a financial penalty in addition to the direction.

Proposed amount of the financial penalty

60. As explained in paragraph 53 above, 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 revenue²⁴ from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force. In this instance, the maximum penalty Ofcom can impose is £250,000.

61. Ofcom's Penalty Guidelines²⁵ state (in paragraph 11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty".

62. In considering the appropriate amount of a financial penalty, Ofcom took account of the specific relevant factors set out at paragraph 1.12 of the Penalty Guidelines as set out below:

The seriousness and duration of the contravention

63. We took into account that the present case related to a single news item. However, as mentioned above, the breach related to a failure to preserve due impartiality in relation to matters of major political and industrial controversy and major matters relating to current public policy. We took into account the Licensee's argument that this was its first breach since January 2017, when Ofcom met with the Licensee to discuss compliance with due impartiality rules. However, we do not consider that this mitigates the seriousness of the breach. On the contrary, we were greatly concerned that this breach took place just over a year of our meeting

²³ For example, when discussing such matters, broadcasters are required to include an appropriately wide range of significant views and give those views due weight in each programme or in clearly linked and timely programmes (see Rule 5.12 of the Code).

²⁴ 'Qualifying revenue' is the Licensee's qualifying revenue for its last complete accounting period (as determined in accordance with Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act) falling within the period for which the Licensee's licence has been in force. In summary, section 19(2) of the 1990 Act states that the qualifying revenue for any accounting period of the licence holder shall consist of all payments received or to be received by him or by any connected person (a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or (b) in respect of charges made in that period for the reception of programmes included in that service.

²⁵ See footnote 6.

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with BMAL, when the Licensee gave assurances concerning their understanding of due impartiality rules, and followed the Licensee's earlier five breaches of these requirements

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

64. We took into account the Licensee's representation that "interest in Russian speaking channels in the Baltics is high and our company is the only one who delivers legal TV channels with cleared copyrights and editorial responsibility". It added that this is "especially important when [the] bar for illegal TV watching is so low in the Baltics - when some Russian speaking TV channel become legally unavailable then most of viewers switch to TV versions which come [into the] EU from various illegal sources, but still widely available in the region".
65. We interpreted this to be an argument that because it does not seek to contravene relevant laws, BMAL provides content which will be potentially less harmful to audiences than other available unlawful content. However, as explained at paragraphs 17 to 21 above, the purpose of the due impartiality requirements for broadcast content is to safeguard the integrity of democratic debate on Ofcom 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 relating to 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. This breach had the potential to adversely affect viewers by failing to broadcast an appropriately wide range of viewpoints on important policy and political matters. In particular, given the breach related to a matter of major political controversy and major matter relating to current public policy, we consider it had the potential to undermine public confidence in the due impartiality regime.

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

66. We have no evidence to suggest that the Licensee made any financial or other gain from this breach of the Code.

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

67. We considered that the Licensee's compliance procedures had been insufficient to ensure due impartiality was preserved in this case. This was despite the assurances BMAL had given Ofcom in January 2017 when the Licensee met with us to discuss its compliance in this area.
68. Since the programme broadcast on 2 April 2018, Ofcom has identified no further breach of the due impartiality requirements in NTV Mir Baltic or BMAL's output more widely.

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

69. We have no evidence to suggest that this breach occurred deliberately or recklessly. However, we were concerned that the Licensee's compliance processes were insufficient to prevent the breach in this case.

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

70. The Licensee did not appear to be aware of the issues concerning the programmes that Ofcom found in breach until Ofcom informed it that it was opening an investigation in this case.

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71. The breach occurred in April 2018 approximately a year and a half after the previous breach recorded against BMAL in November 2016, and just over a year after Ofcom had met with the licensee in January 2017 to discuss its compliance processes.
72. Ofcom has not become aware of any further breach of Section Five of the Code by the Licensee to date.

Any steps taken for remedying the consequences of the contravention

73. We took account of the steps that the Licensee said it has taken, since this breach, to ensure that no further breaches of the due impartiality requirements. These included strengthening its compliance processes and providing its staff with “complex training” to be able to “spot questionable content” in particular in relation to “television programmes about WWII events in the territory of Baltics and its aftermath”; “political shows regarding potentially controversial political issues in the Baltics”; and news covering potentially controversial issues. BMAL also requested its staff to “carefully assess [the] overall situation” with the television channels REN TV, REN TV LIETUVA, NTV Mir Baltic, NTV Mir Baltic, NTV Mir Lithuania and to prepare “proposals for best content split for Year 2020 and beyond, particularly the amount and composition of political content in the programs”.
74. Finally, the Licensee said its staff had already made changes to the “routine schedule” of NTV Mir Lithuania and NTV Mir Baltic to move “some politically oriented content out of prime time”.
75. Through these steps, we considered that the Licensee had demonstrated to a limited extent a willingness to take measures to prevent further breaches. However, Ofcom specifically requested the Licensee to provide Ofcom with further detail of the compliance procedures that it said it had introduced since the breach recorded in this case, which the Licensee failed to provide. In light of the limited information and lack of supporting evidence provided by the Licensee, it is difficult for us to have full confidence in the effectiveness of its new compliance procedures.
76. In addition, we consider that some of the steps the Licensee said it had implemented as a consequence of the breach – namely moving some “politically oriented content out of prime time” – demonstrated a lack of understanding of the due impartiality requirements. The time a programme is broadcast will normally have very limited relevance to whether or not it complies with Section Five of the Code, which is concerned with whether a programme preserves due impartiality. Therefore we did not consider this step was likely to be an effective way of ensuring further breaches of the due impartiality rules do not occur.

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

77. Ofcom has previously found the Licensee’s services NTV Mir Baltic and NTV Mir Lithuania in breach of the Code on five occasions in relation to the due impartiality rules:
 - *Professia Reporter*, broadcast on NTV Mir Lithuania on 2 November 2014²⁶;
 - *Today*, broadcast on NTV Mir Lithuania on 28 and 30 January 2015²⁷;
 - *Anatomy of the Day*, broadcast on NTV Mir Lithuania on 2 September 2015²⁸;

²⁶ See [Broadcast Bulletin 282](#).

²⁷ See [Broadcast Bulletin 284](#).

²⁸ See [Broadcast and On Demand Bulletin 300](#).

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- *The Incident: Special Investigation*, broadcast on NTV Mir Lithuania on 15 April 2016²⁹; and
- *Today*, broadcast on NTV Mir Baltic on 12 November 2016³⁰.

78. The only other breach of the Code recorded against BMAL was a breach of Rule 2.3 (offence must be justified by the context) in relation to *Norkin's List* broadcast on NTV Mir Lithuania on 15 February 2015³¹ in Broadcast Bulletin 290.

79. Full details of the Licensee's compliance history are set out in Annex 1.

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

80. We took into account that the Licensee has told Ofcom it takes its responsibilities to comply with the Code seriously, had taken certain steps to strengthen their compliance processes and intended to take further steps to strengthen its compliance processes in future. We also noted that the Licensee has engaged with and responded to Ofcom's investigation.

Precedents

81. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has also had regard to relevant precedents set by previous cases. However, 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, have taken them into account. However, the absolute level of a penalty imposed is not arithmetically linked only to the harmfulness of the particular content concerned, since Ofcom takes other matters into account including (but not limited to): the compliance history of the licensee, its turnover, and the need for deterrence.

82. Taking the approach we set out above, Ofcom considered:

- (1) a number of previous decisions in which financial penalties had been imposed for breaches of due impartiality requirements in the Code³²;
- (2) a number of more recent 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 harm³³. These financial penalties were imposed since December 2015, after Ofcom's Penalty Guidelines were updated to place greater emphasis on deterrence. However, the cases involved licensees with generally better compliance records than the Licensee in this case; and
- (3) 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 breach at issue in this Decision and, where relevant, took it into account in deciding on the level of the penalty which would be proportionate in the circumstances.

83. Ofcom considered that the previous decisions in which Ofcom had imposed financial penalties for breaches of due impartiality requirements in the Code were relevant, as the nature of those breaches was, to varying degree, similar to the nature of the breach at issue in this Decision.

²⁹ See [Broadcast and On Demand Bulletin 319](#).

³⁰ See [Broadcast and On Demand Bulletin 330](#).

³¹ See [Broadcast Bulletin 290](#).

³² These are set out in Annex 2.

³³ These are set out in Annex 2.

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84. Ofcom's recent *RT* sanction decision³⁴ was relevant to the present case for several reasons. It was decided under the current Penalty Guidelines. Two of the *RT* programmes found in breach dealt with the same matter of major political controversy and major matter relating to current public policy as in the present case, namely the poisoning of Sergei and Yulia Skripal. Furthermore, as in this case, the licensee had previously engaged with Ofcom regarding how to comply with the Code, in particular with the due impartiality provisions.
85. However, there are a number of features which distinguish the *RT* sanction from the present case. The *RT* sanction concerned seven programmes, six of which dealt with matters of major political controversy and major matters relating to current public policy, whereas the present case concerns one programme found in breach of Rules 5.11 and 5.12 (as well as Rule 5.1). Additionally, in *RT* the relevant programmes were broadcast over a six-week period, which we found had the potential to aggravate the detriment to viewers. Moreover, in *RT*, Ofcom had met with the licensee on three occasions following past due impartiality breaches, whereas in this case, Ofcom had met only once with BMAL to discuss compliance. These aggravating factors in the *RT* case are not applicable in the present case and therefore, consistent with the *RT* decision, Ofcom considers that the sanction in the present case should be considerably lower than that imposed in *RT*.
86. The other cases in which Ofcom had imposed financial penalties for breaches of due impartiality requirements in the Code were also relevant to the present case. For example, a number of these previous cases (*Islam Channel*³⁵, *Aden Live*³⁶ and *Al Mustakillah*³⁷) 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 thus were relevant to the concerns which arose with the breach of Rules 5.11 and 5.12 in this instance. We also noted that in one case, *TalkSPORT*³⁸, Ofcom decided it was warranted to impose a financial penalty for a breach concerning a single programme, as in this case. We also noted that there were similarities with the present case in that, in all of these previous cases, Ofcom had also identified that the breach had resulted from inadequate compliance procedures or compliance failures.
87. However, we also noted that there were differences in the circumstances of those previous cases. For example, the breaches in the cases of *Aden Live* and *Al Mustakillah* were committed by broadcasters who had not had the engagement with Ofcom that the Licensee has had regarding how to comply with the Code, in particular the due impartiality provisions.
88. In addition, in some of these previous cases, Ofcom decided it was warranted to impose a financial penalty on the licensee for breaches concerning more than one programme (*Islam Channel*, *Al Mustakillah*, *DM Digital*³⁹), and all of these previous cases concerned: a failure on

³⁴ 26 July 2019, ANO TV Novosti (https://www.ofcom.org.uk/_data/assets/pdf_file/0027/158571/sanction-decision-rt.pdf).

³⁵ 31 July 2007, see https://www.ofcom.org.uk/_data/assets/pdf_file/0019/60562/islamchannel.pdf

³⁶ 8 May 2012, Dama (Liverpool) Limited, see http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden_Live_sanctions_decisio1.pdf

³⁷ 4 January 2013, Al Mustakillah Television Limited, see <https://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Mustakillah-TV.pdf>

³⁸ 8 December 2008, Talksport Ltd, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/57105/talksport.pdf (In this earlier sanction case involving the licensee Talksport Ltd, the entity in control of Talksport Ltd was UTV Media plc.

³⁹ 5 July 2013, DM Digital Television Limited, see <https://webarchive.nationalarchives.gov.uk/20160703015525/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/DM-digital-POAF.pdf>

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 a failure to preserve due impartiality in connection with an election (*Islam Channel, TalkSPORT, Al Mustakillah*), which were breaches we considered to be particularly serious. 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.

89. The majority of the more recent decisions⁴⁰ in which Ofcom has imposed a financial penalty for breaches of content standards rules did not relate to breaches of due impartiality requirements, and concerned different issues. Specifically, most of these previous cases concerned breaches of Section Three of the Code involving hate speech, and in one case also involved the broadcast of material likely to encourage or incite the commission of crime or lead to disorder. 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. The other case related to a serious breach of fairness and privacy requirements which had caused serious harm to the individual concerned (as footage was broadcast of the individual while detained in prison, in circumstances where it had been found he had made confessions to state authorities under torture), which also distinguished it from the concerns that arose in this present case.
90. Ofcom also had regard to the fact that, other than the recent *RT* case, in all other cases since May 2012 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. Ofcom considered it appropriate to depart from these precedents in this case, in light of the Licensee's previous compliance record, in particular the fact that this was the sixth breach in five years of the due impartiality rules, despite the previous engagement Ofcom has had with the Licensee regarding its compliance processes.

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

91. 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. Ofcom will impose a penalty which is appropriate and proportionate, and which will act as a deterrent, taking into account the size and turnover of the Licensee.
92. The Licensee argued against a "disproportionate" and "large financial fine" in the context of the competitive marketplace in which the Licensee operates, when "when all materials and videos containing alleged impartiality are 24/7 available on various streaming and on-demand unlicensed and IP infringing platforms which...[face] no sanctions or official reaction". However, as an Ofcom licensee BMAL is subject to the due impartiality requirements set out in Section Five of the Code. As explained in paragraphs 17 to 21 above, these due impartiality standards, which are required under sections 319 and 320 of the 2003 Act, have the objective of aiming to safeguard the integrity of democratic debate on matters of public concern. The expectations of

⁴⁰ These were: Ariana Television and Radio Network, 6 July 2017, see https://www.ofcom.org.uk/_data/assets/pdf_file/0026/103949/decision-ariana-television-radio-network.pdf; Club TV Limited (Peace TV Urdu), 11 November 2016, see https://www.ofcom.org.uk/_data/assets/pdf_file/0022/96124/Noor-TV.pdf; Mohiuddin Digital Television Limited (Noor TV), 20 December 2016, see https://www.ofcom.org.uk/_data/assets/pdf_file/0022/96124/Noor-TV.pdf; Kanshi Radio, 25 July 2017, see https://www.ofcom.org.uk/_data/assets/pdf_file/0020/105167/kanshi-radio-sanction-decision.pdf; Al Arabiya News, 25 January 2018, see https://www.ofcom.org.uk/_data/assets/pdf_file/0030/109767/Al-Arabiya-sanction.pdf

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impartiality and trust in broadcast media would be affected if Ofcom failed to impose a proportionate sanction, taking into account the need to deter future breaches by both BMAL and other licensees, where a serious and repeated breach of the due impartiality requirements has taken place, as in this case.

93. In considering what financial penalty is proportionate and will have a deterrent effect, we have taken account of the Licensee's qualifying revenue in respect of the last accounting period.
94. We recognise that the penalty must be proportionate taking into account the Licensee's rights under Article 10 of the Convention. We must also consider the central objective of deterrence in imposing a penalty as set out in our Penalty Guidelines. 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. Ofcom will impose a penalty which is appropriate and proportionate, and which will act as a deterrent, taking into account the size and turnover of the Licensee.
95. For all the reasons set out above, Ofcom considers it is proportionate to impose a financial penalty on the Licensee of £20,000.

Revocation of the licence

96. Section 238 of the 2003 Act provides Ofcom with the power to revoke a TLCS licence where a licensee is failing to comply with a condition of such a licence or a direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.
97. In considering whether to propose the revocation of a licence, Ofcom must have regard to the broadcaster's and the audience's rights under Article 10 of the Convention. We noted that the NTV Mir Baltic service seeks to provide audiences with a Russian viewpoint on major global events and revoking the licence would mean it would no longer be able to broadcast.
98. Revocation of a licence is the ultimate enforcement action available to Ofcom. A decision to revoke a licence may only be taken by Ofcom if it is satisfied that it is a proportionate response to the Licensee's failure to comply with its licence conditions. A relevant factor for Ofcom to consider in this regard is whether any sanction short of revocation could ensure that the Licensee would, in future, comply with the Code.
99. Taking account of all the relevant factors, it is Ofcom's Decision that, while this breach of Rules 5.1, 5.11 and 5.12 was a serious and repeated failure of compliance, in circumstances where the other sanctions discussed at paragraphs 55 to 94 above are sufficient to act as a deterrent against future breach, revocation would be disproportionate.

Decision

100. In order to achieve Ofcom's central objective of deterrence, we have carefully considered the nature and level of statutory sanction that should be imposed. In doing so, we have taken account of the particular seriousness of the breach, the Licensee's representations and relevant precedent cases. We have also had regard to our legal duties, as set out in the Breach Decision and in paragraphs 8 to 21 above, including the need to ensure that any sanction we impose is proportionate, consistent and targeted only at cases where action is needed.
101. For all the reasons set out above, Ofcom's Decision is that we consider that it is appropriate to impose a statutory sanction and it would be proportionate (i) to impose a financial penalty of £20,000 (payable to HM Paymaster General), and (ii) to direct the Licensee to broadcast a statement of Ofcom's findings in a form and on date(s) to be determined by Ofcom.

Ofcom

17 February 2020

ANNEX 1: LICENSEE'S COMPLIANCE HISTORY

Programme	Relevant Code Rule	Nature of the Breach
Professia Reporter , NTV Mir Lithuania, 2 November 2014, 19:10 ⁴¹	Breach of Rule 5.5	This programme failed to preserve due impartiality in relation to the policies and actions of the Central Electoral Commission of Ukraine, the Ukrainian Government and/or other relevant agencies of the Ukrainian state in general in relation to the conduct and outcome of the Ukrainian Parliamentary elections taking place on 26 October 2014.
Today , NTV Mir Lithuania, 28 and 30 January 2015, 18:00 ⁴²	Breach of Rule 5.1	The first programme included a news item about conscription to the Ukrainian army which also focused on a reported Ukrainian policy to deal with Ukrainian soldiers who " <i>would not obey orders</i> ". There was insufficient challenge to the allegations that certain parts of the Ukrainian armed forces were deliberately killing other Ukrainian troops. The second programme included a news item which failed to preserve due impartiality in relation to the allegations that Ukrainian military forces had committed " <i>atrocities</i> " by killing civilians intentionally and indiscriminately in Eastern Ukraine.
Norkin's List , NTV Mir Lithuania, 15 February 2015, 19:20 ⁴³	Breach of Rule 2.3	Offensive remarks made by the Russian politician Vladimir Zhirinovskiy, who appeared to exhort the Russian Government, in certain circumstances, to take extreme, violent action against inhabitants of certain nations (Finland, Estonia, Latvia, Lithuania and Poland) for no other reason than their nationality. He was further appearing to encourage the Russian Government to destroy the Ukrainian capital Kiev and attack its population by using the controversial weapon napalm.
Anatomy of the Day , NTV Mir Lithuania, 2 September 2015, 23:40 ⁴⁴	Breach of Rule 5.1	The programme contained a news item which was critical of, or in opposition to, the Lithuanian Government and its education policy and failed to preserve due impartiality on these matters.

⁴¹ Published in [Broadcast Bulletin 282](https://www.ofcom.org.uk/data/assets/pdf_file/0021/50349/issue_282.pdf) (https://www.ofcom.org.uk/data/assets/pdf_file/0021/50349/issue_282.pdf).

⁴² Published in [Broadcast Bulletin 284](https://www.ofcom.org.uk/data/assets/pdf_file/0018/50436/issue_284.pdf) (https://www.ofcom.org.uk/data/assets/pdf_file/0018/50436/issue_284.pdf).

⁴³ Published in [Broadcast Bulletin 290](https://www.ofcom.org.uk/data/assets/pdf_file/0024/50694/issue_290.pdf) (https://www.ofcom.org.uk/data/assets/pdf_file/0024/50694/issue_290.pdf).

⁴⁴ Published in [Broadcast and On Demand Bulletin 300](https://www.ofcom.org.uk/data/assets/pdf_file/0012/51402/issue_300.pdf) (https://www.ofcom.org.uk/data/assets/pdf_file/0012/51402/issue_300.pdf).

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The Incident: Special Investigation , NTV Mir Lithuania, 15 April 2016, 19:50 ⁴⁵	Breach of Rule 5.5	The programme included a number of highly critical statements about the policies and actions of two Baltic State governments (i.e. Latvia and Lithuania) relating to their treatment of their Russian-speaking minority populations and failed to preserve due impartiality on these matters.
Today , NTV Mir Baltic, 12 November 2016, 09:05 ⁴⁶	Breach of Rule 5.1	The programme included a news item containing allegations that the Latvian Government had authorised and financed torch processions in Latvia which were characterised as: “ <i>manifestations of radicalism</i> ”; honouring “ <i>the memory of several hundred legionnaires of the Waffen SS</i> ”; and during which protesters were chanting “ <i>Latvia for Latvians</i> ”. There was insufficient challenge to these allegations.

⁴⁵ Published in [Broadcast and On Demand Bulletin 319](https://www.ofcom.org.uk/data/assets/pdf_file/0018/96012/Issue-319-of-Ofcoms-Broadcast-and-On-Demand-Bulletin,-to-be-published-on-19-December-2016.pdf) (https://www.ofcom.org.uk/data/assets/pdf_file/0018/96012/Issue-319-of-Ofcoms-Broadcast-and-On-Demand-Bulletin,-to-be-published-on-19-December-2016.pdf).

⁴⁶ Published in [Broadcast and On Demand Bulletin 330](https://www.ofcom.org.uk/data/assets/pdf_file/0021/102567/issue-330-broadcast-on-demand-bulletin.pdf) (https://www.ofcom.org.uk/data/assets/pdf_file/0021/102567/issue-330-broadcast-on-demand-bulletin.pdf).

ANNEX 2: PRECEDENTS

Previous sanctions relating to breaches of due impartiality requirements

Sanction Decision	Breaches of Rules of the Code	Sanction	
31 July 2007, Islam Channel Ltd⁴⁷	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. The breach of these rules were very serious given: their sustained and repeated nature; the fact that the breach 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 breach 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 Ltd⁴⁸	Rule 6.1	£20,000 financial penalty; direction to broadcast a statement of Ofcom's findings	This case concerned the broadcast of <i>The James Whale Show</i> 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.

⁴⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0019/60562/islamchannel.pdf

⁴⁸ https://www.ofcom.org.uk/data/assets/pdf_file/0018/57105/talksport.pdf

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<p>8 May 2012, Dama (Liverpool) Limited (Aden Live)⁴⁹</p>	<p>Rule 2.4, 5.4, 5.11 and 5.12</p>	<p>£10,000 financial penalty; direction to broadcast a statement of Ofcom's findings</p>	<p>Regarding the breach 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 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 breach of these rules 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 breach 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 Limited⁵⁰</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 breach of the rules, taken together, underlined the Licensee's failure to understand and ensure compliance and that</p>

⁴⁹ http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden_Live_sanctions_decisio1.pdf

⁵⁰ <https://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Mustakillah-TV.pdf>

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			its compliance arrangements were systemically ineffective.
5 July 2013, DM Digital Television Limited ⁵¹	Rules 5.4 and 5.5	£20,000 financial penalty; direction to broadcast a statement of Ofcom's findings	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 breach of Rules 5.4 and 5.5 were serious because they showed that the due impartiality of the service had been compromised by the views of the licence holder. The breach was repeated (and in the case of Rule 5.5, occurred in a sustained manner over the course of two three hour programmes). Further, the breach 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) ⁵²	Rules 5.1, 5.11 and 5.12	£200,000 financial penalty; direction to broadcast a statement of Ofcom's findings	These cases relate to seven news and current affairs programmes broadcast on RT in the wake of the poisoning of Sergei and Yulia Skripal on 4 March 2018. We found the programmes to be in breach of the Code's due impartiality requirements.

Previous sanctions relating to breaches of other rules in the Code since December 2015

Sanction Decision		Breaches of Rules of the Code	Sanction	
11 November 2016, Club TV Limited (Peace TV Urdu) ⁵³		Rules 2.1 and 2.3	£65,000 financial penalty; direction to	The programmes contained numerous examples of overwhelmingly negative and stereotypical references to Jewish people, which could be interpreted as spreading anti-Semitism and were a

⁵¹<https://webarchive.nationalarchives.gov.uk/20160703015525/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/DM-digital-POAF.pdf>

⁵² [26 July 2019, ANO TV Novosti](https://www.ofcom.org.uk/__data/assets/pdf_file/0027/158571/sanction-decision-rt.pdf) (https://www.ofcom.org.uk/__data/assets/pdf_file/0027/158571/sanction-decision-rt.pdf)

⁵³ https://www.ofcom.org.uk/__data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf

			broadcast a statement of Ofcom's findings	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.
20 December 2016, Mohiuddin Digital Television Limited (Noor TV) ⁵⁴		Rules 2.1 and 2.3	£75,000 financial penalty; direction to broadcast a statement of Ofcom's findings	The programme included a clear statement during a religious sermon that religious obedience within the Islamic faith could be demonstrated through murder of Jewish people, which had the potential to be interpreted as spreading anti-Semitism and were a form of hate speech. The statements were also delivered by a person who held a position of authority and respect within the Muslim community (a religious scholar). Further, the religious scholar spoke uninterrupted and there were no views or statements in the programmes which challenged or otherwise softened the considerable level of potential offence. Ofcom found that the statements in question had the clear potential to cause harm as well as being offensive. Ofcom further found that the broadcast of anti-Semitic hate speech in pre-recorded content indicated a lack of sufficiently robust compliance procedures and a failure of compliance oversight.
6 July 2017, Ariana Television and		Rules 2.3, 3.1 and 3.2	£200,000 financial penalty; direction to broadcast a statement of	The relevant programme was a news item that featured a video of an individual ⁵⁶ who made various statements describing in highly positive and graphic terms his and ISIL's intentions to carry out acts of extreme

⁵⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0022/96124/Noor-TV.pdf

⁵⁶ This individual, Muhammad Riyad, went on to carry out an attack on a train in Germany where he injured five people.

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<p>Radio Network⁵⁵</p>			<p>Ofcom's findings</p>	<p>violence against the German population. His last statement contained a direct call to action to members of the Muslim community to join ISIL and an indirect call to the Muslim community to commit violence, up to and including murder, against members of the police and the army in the West. Ofcom found the breach of Rules 2.3, 3.1 and 3.2 to be particularly serious and the content had the clear potential to cause harm. Ofcom had regard to concerns about ISIL's use of propaganda to radicalise and recruit citizens of the UK and elsewhere. The statements had the clear potential to influence impressionable viewers by encouraging serious crime, including murder, and/or leading to disorder in relation to members of the public, the police and the army. The licensee broadcast a prolonged example of highly offensive hate speech in a news bulletin with no surrounding content that sought to challenge, soften or otherwise contextualise highly extreme views. In Ofcom's view, it indicated a failure of compliance oversight by the licensee, and a lack of sufficiently robust compliance procedures on the part of the licensee.</p>
<p>25 July 2017, Kanshi Radio⁵⁷</p>		<p>Rules 2.1, 2.3, 3.2 and 3.3</p>	<p>£17,500 financial penalty; direction to broadcast a statement of Ofcom's findings</p>	<p>A song was broadcast in Punjabi, which included lyrics that contained a number of aggressively pejorative references to the Muslim community and Muslim women in particular. Ofcom considered that the lyrics and surrounding content of the song constituted a violent and menacing message, from an extreme Sikh perspective, which promoted and justified hatred towards Muslims and Muslim women, thereby constituting hate speech. The song was broadcast in Punjabi and broadcast on a channel which targets the Asian Punjabi speaking community in the UK, and Ofcom considered that the content had the potential to increase tensions between the Sikh and Muslim communities. Ofcom found the content taken as a whole had the potential to cause harm and be extremely offensive</p>

⁵⁵ <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins/content-sanctions-adjudications/ariana-sanction>

⁵⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0020/105167/kanshi-radio-sanction-decision.pdf

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				to listeners. The song was broadcast on two occasions as part of pre-recorded content. Ofcom considered the broadcast indicated a failure on the part of the licensee to have sufficiently robust compliance procedures in place.
25 January 2018, Al Arabiya News⁵⁸		Rules 7.1 and 8.1	£120,000 financial penalty; direction to broadcast a statement of Ofcom's findings; direction to not repeat the content	Footage was broadcast of an individual (Mr Mashaima) in a private room while detained in prison, in circumstances where the Bahrain Independent Commission Inquiry had recently published its findings that certain individuals, including Mr Mashaima, had made confessions to the Bahraini authorities under torture. Ofcom found Mr Mashaima had a legitimate expectation of privacy in the footage and that the degree of harm caused to him by the breach was very serious. Factors which contributed to the seriousness of the breach of Rules 7.1 and 8.1 were that the allegations made against Mr Mashaima were, at the time of filming, still subject to re-trial and appeal hearings; the licensee did not take any steps to obtain Mr Mashaima's informed consent; given the high publicity of the case, the licensee was aware or ought to have been aware at the date of broadcast that the footage may not have accurately or fairly represented Mr Mashaima's account of events; and despite being so aware, the licensee did not take any steps to verify the veracity of the footage with Mr Mashaima. Given the extremely sensitive circumstances, the licensee did not secure Mr Mashaima's consent to film him nor did the public interest warrant the broadcast of this material.

⁵⁸ <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins/content-sanctions-adjudications/decision-al-arabiya-news>