

## Complaint by the Institute of Economic Affairs about James O'Brien

IEA Representations on Ofcom preliminary view



### 1 Summary

*“Ofcom’s Preliminary View is that material facts were not presented, disregarded or omitted in the programmes in a way that was unfair to the IEA. Nor did we consider, in the particular circumstances of this case, that it was necessary for the broadcaster to have provided the IEA with an appropriate and timely opportunity to respond in order to avoid unfairness to it.” – Ofcom Preliminary View (PV), 15<sup>th</sup> March 2021.*

The Institute of Economic Affairs (IEA) thanks Ofcom for their Preliminary View (PV), but is disappointed by the finding of ‘Not Upheld’, both in outcome and explanation.

We wish to contest this finding and believe we continue to have a strong case that Mr. O’Brien (JOB) violated the Broadcasting Code. We submit that Ofcom’s final adjudication should uphold or at least partially uphold the complaint.

### 2 Framing & Definitions

Our representations are set out, as with the original complaint of 29<sup>th</sup> May 2019 (IEA1) under

- 1) Section 5 Due Impartiality and Due Accuracy
- 2) Section 7 Fairness (of the Broadcasting Code)

Noting that the OFCOM’s PV responds only to questions of fairness, we will reference section 5 only in so far as material errors and bias impact fair treatment.

We will use the prior grounds submitted in IEA1 and restated in the PV headers, noting the clarifications below, given misdirection and misrepresentation of the grounds, by the broadcaster. These appear to have been accepted in the absence of these representations, which we hope redress the balance. We have set out an argument from the code at every stage.

We will refer to the broadcast on February 26<sup>th</sup> 2019 henceforth as JOB1

We will refer to the broadcast on March 8<sup>th</sup> 2019 henceforth as JOB2

We will refer to the broadcast right to reply on August 2<sup>nd</sup> 2019 henceforth as JOB3

We will refer to the LBC Broadcaster’s Statement of 22<sup>nd</sup> October 2019 henceforth as LBCBS1

### 3 Grounds

#### 3.1 Ofcom headings

The Ofcom summary, based on IEA1 and LBCBS1 note that JOB referred to the IEA as:

A1) a “lobby group”, that representatives were “not actors of good faith” or “proper experts” and that it was an organisation of “questionable provenance, with dubious ideas and validity”. (JOB1)

A2) “politically biased” (JOB2)

B) a “hard right lobby group” (JOB1 & JOB2)

And made:

A3) An inaccurate attribution of an event to the IEA (JOB1)

And in all of these JOB did not give the IEA

C) Any right to reply prior to broadcast, or a genuine, or adequate right to reply afterwards. (JOB3)

#### 3.2 Clarification to the expression of grounds

Within A1) there are two separate points.

A1a) Allegations of illegal lobbying

A1b) Allegations of dishonesty and lack of expertise

To clarify further within A1a) the allegation is not simply one of being a “lobby group” but also the pejorative manner in which it was articulated, which clearly amount to allegations of illegal commercial lobbying. For example, in the opening statement alone.

- “‘dark money’ behind a lot of these so-called ‘think tanks’ that are really just lobby groups for extremely mysteriously commercial interests.” - JOB1
- “until they reveal their financial backers, you just have to presume that everything they do is on the say so of the financial backers that they refuse to reveal.” – JOB1
- “Peter’s done another sterling investigation into the ‘dark money’ that is in his words ‘winning the Brexit influencing game’” – JOB1

And multiple other examples later on. It is clear from the reference in IEA1 to the ORCL ruling that this is the meaning that is being strongly contested as unfair, rather than merely an inaccurate allusion to lobbying in general. We will return to this in arguments under A1a.

B) similarly, the full allegation is “hard right lobby group funded by foreign billionaires” (JOB1) and “hard-right lobby group for vested interests” (JOB2).

Let us note that the material point in the latter half of B and all of A1a are substantially similar. They cover all allegations of lobbying for commercial or vested interests where the funding is concealed, which, to be clear, is illegal. That is what **lobby group** means in this context, not the more benign form suggested by LBC in their Broadcaster’s Statement:

“a form of advocacy with the intention of influencing decisions made by the government” – LBCBS1

Self-evidently JOB was not intending his comments about the IEA to be benign.

This comment then by the broadcaster “it is therefore not unreasonable for the programme of 26 February to suggest that the IEA has been known as a lobby group.” Is not the full ground being contested, it is the allegation of illegal lobbying on behalf of others. Hence our IEA1 reference to the ORCL ruling on this matter.

The operative and distinct point in B then is the allegation that the IEA is “hard right”. That is also inaccurate and not fair comment. But we do not need to repeat lobbying arguments in B.

## 4 Central Argument

We note at one level this is very simple. JOB's statements on LBC amount to a set of allegations that the IEA was an extremist organisation run by disreputable characters peddling dubious ideas, who by doing so had committed criminal acts. An allegation he either knew to be untrue, or was contested, or, in taking reasonable care, could have established as such by giving the IEA a proper right to reply. This amounts to misrepresentation and possible defamation, as grounds for a claim of unfair treatment.

It amounts to clearly ignoring the parts of the Code that are clear that 'reasonable care' must be paid by broadcasters of authored content on matters of political controversy. Both Brexit (the wider context), and false allegations of illegal conduct by the IEA (the focus) are political controversies. The Plan A+ case, as a central battleground for freedom of expression in the think tank sector, such that it led to a regulator issuing a sector notice in December 2018<sup>1</sup>, may also be considered an industrial controversy. Either way that 'alternative viewpoints must be adequately represented' is a strong direction from the Code that was ignored entirely by JOB and remains unreferenced by the PV.

In regard to an adequate Right to Reply, JOB could have sought the IEA's comment on Geoghegan and his allegations prior to broadcast. He could at the very least published a prompt correction. He did neither. This amounts to unfair treatment.

In regard to negotiations over an adequate Right to Reply, after the event, JOB could have offered to interview Mark Littlewood (Director General of the IEA) or reviewed public information available at the time (noting the main case LBC say justified their piece had been overturned). Instead, he ignored the case, and editorialised upon a disputed and inadequate statement LBC submitted to the regulator. In this, he repeated his original, discriminatory, and likely illegal terms for a proper right to reply (donor transparency for groups JOB is 'troubled by'), making it clear this correction was insincere. This amounts to unfair treatment.

It is not a defence of JOB's behaviour that he holds an ideological opinion that organisations that prioritise donor privacy over donor transparency must be considered disreputable, or that he enforces such a policy with guests. We will establish in our arguments that the policy is real, and in being still promoted by LBC on their website, and amounts to a corporate policy to discriminate against guests on the JOB show.

We will contend that by upholding a defence of fair comment to parts of the IEA complaint, the PV is in error, by accepting illogical interpretations of statements made in LBCBS1, which itself may amount to further misrepresentation as currently stated. Which may in turn amount to maladministration on the grounds of error and bias. Or it may be an error that stems from substantial misdirection and misrepresentation of the facts, by LBC, in their broadcaster's statement. One that can be corrected by a final adjudication that does not misrepresent the IEA.

We appreciate the time and effort both Ofcom and LBC have already put into this complaint. A 6-page statement (after five months) and 18-page PV (after a further seventeen months), on a 1-page complaint, is itself interesting. We reserve our rights to consider this delay in any action that may follow the final view. We do though appreciate the latitude given to the IEA on timing earlier in the complaint. We appreciate some matters in the complaint are complex, pertaining to two other regulatory actions, involving three other regulators, and a long-running political smear campaign by third parties to 'no platform' the IEA and other bodies with whom they disagree.

We would then welcome further consideration of these representations, as they raise important questions of fair treatment and free expression. The IEA are ready to attend a hearing or provide further evidence should that be required. Equally, we look forward to a constructive resolution with LBC should one be on offer.

---

<sup>1</sup> <https://www.gov.uk/government/news/regulatory-alert-issued-to-charitable-think-tanks>

## 5 Relevant sections of the code

We consider that the following sections of the code are most relevant to supporting the IEA's response. These are taken from the Broadcasting Code, January 2019 (BC2019), and related guides which we submit are the relevant documents for the consideration of this case.

*5.7 Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes.*

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

*5.13 Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service (listed above) taken as a whole.*

*Meaning of "undue prominence of views and opinions": Undue prominence is a significant imbalance of views aired within coverage of matters of political or industrial controversy or matters relating to current public policy.*

*Meaning of "programmes included in any service...Taken as a whole": Programmes included in any service taken as a whole means all programming on a service dealing with the same or related issues within an appropriate period.*

*7.9 "Opportunity to contribute and proper consideration of facts*

*Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that:*

*material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and*

*anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute."*

*7.11 If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.*

*7.11 Guidance notes:*

*However, the broadcaster should explain the reasons for the absence of a contribution and reflect any material facts in relation to the position of the individual or organisation in the programme, if it would be unfair not to do so.*

## 6 Grounds and contended code breaches in summary

Headings	Contended Code Breaches
A1a – Illegal lobbying	5.7, 5.9, 5.13, 7.9, 7.11
A1b – Dishonesty and lack of expertise	5.7, 5.9, 5.13, 7.9, 7.11
A2 – Political bias	5.7, 7.9, 7.11
A3 – Misattribution of an event	Accepted as corrected
B – Hard right	5.7, 7.9, 7.11
C – Right to reply	5.9, 5.13, A10 HRA, A14 HRA, 7.11

## 7 Allegations of illegal lobbying (A1a)

### 7.1 Argument of unfairness under the code

JOB, a presenter of an authored programme gave undue prominence to the views and opinions of particular people (Peter Geoghegan / himself) on matters of political controversy (Brexit / think tank funding) (5.13). He not only failed to provide adequate or indeed any representation of alternative viewpoints (5.9); but made several allegations of wrongdoing (illegal lobbying) (7.11), with omission of material facts (ORCL ruling) (7.9), involving substantial misrepresentation of views and facts (CC OW / IEA funding transparency) (5.7).

This amounts to a case of unjust and unfair treatment.

### 7.2 Error of focus in the PV

This has been covered in the clarification of the expression of grounds. Ofcom appear to believe that our complaint is the use of the term ‘lobby groups’ alone. It is not, it is the full terms used by JOB and Geoghegan, which imply lobbying on the basis of undeclared funding for lobbying purposes. Something which is straightforwardly illegal, and was demonstrably untrue. Something we made clear with reference to the ORCL investigation, the competent regulator for such an allegation, in our original complaint (IEA1).

The Ofcom conclusion to this section *“Therefore, Ofcom considered that the references to “lobby groups” in the programme were unlikely to have materially and adversely affected listeners’ opinions of the IEA in a way that was unfair to it.”* – appears to be assessing a complaint that was not made rather than the one that was – rendering the entire section on pages 12 and 13 in error by omission.

The PV simply does not address the opinion of the competent authority to assess claims of illegal lobbying on the basis of undeclared funding, which is the ORCL, not the Charity Commission (CC).

Ofcom give undue weight to the temporary position of the IEA in relation to the CC, and no weight at all to the overturning of that position. The position in February 2019 may justify the discussion; it does not justify the claims of an entirely different offence to the one prosecuted by the CC, nor excuses made in the PV for LBC’s inadequate Right to Reply (JOB3).

That these matters were self-evidentially controversial and contested, in the wider context of a public controversy, is also ignored, leading to a perception of bias in the PV.

### 7.3 Immaterial claims about being an education charity

As evidence of balance to the complaints in A1a) LBC adduce that these comments show balance:

Presenter: *"For the record Peter, they are officially an educational charity" – JOB1*

Presenter: *"Educational charities – " – JOB1*

These comments state a neutral fact, also stated in IEA1. The IEA is an education charity. This comment does not mitigate against a false allegation of illegal lobbying. The PV gives this a weight that suggests the reference in IEA1 was not understood, and would benefit from this further context.

### 7.4 Immaterial claims about personal opinions

The PV claims:

*"Taking these factors into consideration, it was Ofcom's view that it would have been clear to listeners that the presenter's (and guest's) comments about the IEA represented their personal views and opinions based on investigations carried out by openDemocracy<sic>." – PV*

It does not matter under the code (5.13) whether the statements were 'personal views and opinions'; clearly, they are authored content. The relevant question is whether they involve "allegations of wrongdoing" (7.11) with "substantial misrepresentation"(5.7) or by omission (7.9) without representation of alternative viewpoints (5.9). We contend JOB's allegations of illegal lobbying meet these tests.

### 7.5 Misrepresentation of the Charity Commission's Official Warning on Plan A+

LBC say the motor of this piece was the Charity Commission's February 5th Official Warning (OW) against the IEA. They claim:

*"The subject of a formal warning, in this case the IEA, is not automatically entitled to contradict or question the findings, or subsequent media coverage of it, to be fair. It is fair and reasonable for contributors to political debate to allow the content of a warning from an established industry regulator to inform their views." – LBC Broadcasters Statement 22<sup>th</sup> October 2019. (LBCBS1)*

We are however entitled to challenge LBC substantially misrepresenting the case or inflating its relevance to claims that are nothing to do with the Plan A+ case.

To be clear, the now withdrawn OW suggested that the IEA's publication and launch of Plan A+ (an alternative plan for Brexit), had broken charity law. Specifically, by being 'too political' and showing 'insufficient balance and neutrality'. The matter was complex, charities are allowed to be 'political' and to 'campaign', but only in pursuit of their charitable objects. In the case of education charities, they must do so with sufficient balance and neutrality, in the round.

The Plan A+ OW was contested on those matters. It was not contested on the grounds of transparency of funding. Which would at any rate not be a material concern to whether or not Plan A+ was or was not in breach of charity law. Charities are not obliged to declare their donors. It is material only to the question of a breach of lobbying law, to which we will return.

We are further not obliged to recontest these points with LBC as that matter is settled and not within OFCOM's competency. We note for information then that the CC action was fully withdrawn (from all Government websites, including linked commentary such as that referenced in the Broadcasters Statement as evidence<sup>2</sup>, which must now be struck out as misrepresentation).

This happened in three stages, as a result of a decision review and two administrative complaints

---

<sup>2</sup> <https://www.gov.uk/government/news/charitable-think-tank-warned-over-breaches-of-charity-law>

against the Charity Commission (CC) by the IEA, the latter of which was escalated to the Information Commissioner who then investigated the CC. Helen Stephenson, the CEO of the CC apologised in person to our Chair of Trustees Neil Record, in July 2019.

We should also note this was unprecedented. No other Official Warning has been summarily and fully terminated like this. The OW was applied incorrectly, it was withdrawn incorrectly, then correctly, and now does not exist. The LBC suggestion then that it was properly and lawfully issued is simply wrong, and this was publicly contested at the time<sup>3</sup>:

*“the Warning was not properly and lawfully issued, but because the IEA had taken sufficient remedial action (for example removing the report from its website) to satisfy the Commission.”* - LBCBS1

*“This is some heavy spin from the Charity Commission. In their letter to the IEA informing them of their decision to withdraw the warning, the Commission both accepted that the IEA had taken “immediate steps” to implement the “remedial actions” they requested – several months prior to the issuing of the official warning – and admitted that their decision to subsequently issue the warning anyway did not deal fully with certain aspects relating to procedure, fairness, and proportionality and aspects of the reasons for the warning”* – Guido Fawkes – 28<sup>th</sup> June 2019

As is the suggestion:

*“At the time of writing the IEA “remains subject to an ongoing regulatory compliance case examining concerns about the trustees’ management and oversight of the charity’s activities”* – LBCBS1

The CC Regulatory Compliance Case had concluded 5 months earlier in June 2019. Conversely at this point the CC were under investigation by the ICO. On this point LBC have materially misled Ofcom in their statement, we assume in error from not checking the facts, or only looking at one statement without consulting the counterparty as to its accuracy. But that is something of a theme in this case.

JOB and LBC did not seek alternative views on a matter of extreme controversy against a predetermined narrative that contained substantial misrepresentation.

Conversely, if in February 2019 LBC had taken reasonable steps to contact the IEA prior to broadcasting a piece they knew would be discussing the CC case, they would at least have been able to say, very simply, that: “The IEA are contesting the Official Warning”. That was not done. That was not fair treatment.

Further, having refused to publish the IEA’s right to reply and instead formulated their own correction in August 2019, they did not reference the withdrawal. This was not fair treatment either and added to the misrepresentation of the IEA, given at that point the withdrawal was known. See section C.

Two years on, it is the case the Plan A+ case does not exist. The grounds LBC cited to justify their statements in October 2019 do not exist. We wish to be clear then that any further remedial action by LBC on this case must now refer to the full withdrawal of the regulatory action they relied upon to defend their case.

Finally, it should be noted that one of the reasons that the administrative complaints succeeded was that the Charity Commission’s initial failure to properly withdraw the OW amounted to its maintenance by other means. It would be unfortunate if Ofcom repeated this error by republishing inaccurate commentary that has been withdrawn. The PV needs substantial review to cure this procedural unfairness.

---

<sup>3</sup> <https://order-order.com/2019/06/28/charity-commission-retracts-official-warning-iea/>



## 7.6 Misrepresentation of Commercial Lobbying and significance of the ORCL ruling.

We also contest this statement by LBC, and the PV's failure to properly consider the relevance, given it was clearly stated as relevant grounds in IEA1.

*"(the ORCL ruling) is less relevant to this fairness complaint than the Charity Commission's finding from February 2019."* – LBCBS1

We have already established that the CC OW was not in any way connected to the allegations of illegal commercial lobbying made by JOB, either presently or at the time of broadcast. A commercial lobbying allegation with undeclared funding is different and more serious. The PV appears not to have understood the difference.

The claim that the IEA is a "'dark money' lobby group for commercial interests" (and related statements) is an allegation that the IEA broke lobbying law, specifically, the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (L-ACT). The penalties for violation of the L-ACT are severe and criminal charges may be brought:

*"If a person or organisation commits an offence under the Act the Registrar can impose a civil penalty of up to £7500 or refer the matter to the Director of Public Prosecutions for potential criminal prosecution."* – ORCL<sup>4</sup>

It is clear from the linkage in IEA1, between the allegation of lobbying and the ORCL's exoneration of the IEA, that this is the main misrepresentation for Ofcom to consider under the heading 'lobby group'. LBC has attempted to misdirect the regulator by asserting a far more benign implication was intended.

*"As the dictionary definition of 'lobbying' is 'a form of advocacy with the intention of influencing decisions made by the government', it is therefore not unreasonable for the programme of 26 February to suggest that the IEA has been known as a lobby group."* – LBCBS1

There is no mention of improper funding in LBC's chosen definition, there are many in the broadcast, all of which would be interpreted by a reasonable person as an allegation of breaking the L-Act. None of this is relevant to the Plan A+ case or any activity of the CC. This is a misrepresentation and misdirection.

## 7.7 The political 'smear campaign' underpinning Geoghegan's work

Turning to the claim itself, the sole material evidence of illegal lobbying, both in the Geoghegan piece<sup>5</sup> and LBC reporting, were false allegations made in a joint Greenpeace Unearthed & Guardian campaign in July 2018.

This was a political campaign co-ordinated<sup>6</sup> with the Labour Party's then Shadow Minister for the Cabinet Office Jon Trickett - all three quoted or sourced in the Geoghegan piece. It was in turn rooted in an older political campaign by various groups like Who Funds You (now defunct) who believe special disclosure rules should apply to think tanks.

This campaign almost exclusively targets free market and conservative groups with their concerns, in a manner that suggests political bias. Their primary purpose is not legislative reform (although they are lobby groups) but to no-platform groups by innuendo of malintent, and presumption of guilt until proven innocent, rather than evidence of malpractice.

---

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/2014/4/section/12/enacted>

<sup>5</sup> <https://www.opendemocracy.net/en/dark-money-investigations/revealed-how-dark-money-is-winning-brex-it-influencing-ga/>

<sup>6</sup> <https://www.civilsociety.co.uk/news/charity-commission-assessing-concerns-over-think-thank-iea-after-guardian-investigation.html>



The IEA publicly described this action as a “smear campaign” at the time<sup>7</sup>, and stands by that analysis today. It is self-evident that it was politically motivated. It is a fact that the claims did not stand up to scrutiny by the competent regulatory authority.

We suggest the purpose of this smear campaign was to create media coverage tarnishing the IEA’s reputation. In the case of the JOB show it worked. JOB used his show to promote aspects of a smear campaign that had already been discredited, 3 months earlier, which JOB must either have known, and omitted, or would have known, had he taken reasonable care to establish material facts.

LBCBS1 attempts to misdirect on the significance of this ruling. It implies there is no link to the allegations made. But this is clearly wrong. The ORCL ruling followed an investigation triggered by Uearthed, as a direct result of their smear campaign. This is crystal clear in the case timeline referenced by LBC in their own defence.

Start 29/30<sup>th</sup> July 2018: *“Media articles from Guardian and Uearthed including indicative evidence of consultant lobbying by IEA”* – ORCL<sup>8</sup>

3 September 2018: *“Further evidence provided by Uearthed.”* – ORCL

The campaign is also referenced directly by JOB in JOB1:

*“You also uncovered emails showing that Singham had personally arranged for interest groups to meet with the then Brexit Minister Steve Baker, while senior IEA staff had easy access to cabinet ministers. Something that I think that the head man over there, Mark Littlewood, had been caught on camera boasting about?”* – JOB transcript – 26<sup>th</sup> Feb 2019

Both points are a direct, almost verbatim reference to the claims made by Uearthed in July 2018:

*“The head of the Institute of Economic Affairs (IEA) boasted about setting up meetings with Brexiteer MPs, a government minister and senior trade officials for US visitors who had agreed to raise money for the IEA’s work pushing for a US-UK free trade deal.*

*The visitors, who met politicians including the then Brexit minister Steve Baker in May, came from an Oklahoma think tank which has promised to raise donations for the IEA, including from American farming interests who are keen to ensure the UK drops EU-level regulations after Brexit.”* – UE - July 29<sup>th</sup> 2018<sup>9</sup>

If Geoghegan added anything to these claims it is certainly not clear from his article, or the broadcast, or indeed any subsequent action through either the ORCL or CC, such as might be expected had his research contained any real or new content.

We contend then that Geoghegan’s article was largely an excuse to repurpose prior, tested, and debunked conspiracy theories. It was only superficially justified in the context of the latest controversy around the then Government’s Brexit policy, notably feuding between former Remain and Leave supporters in the Governing party, which was nothing to do with the IEA.

The ORCL ruling on these specific claims then is clearly relevant to whether or not it was misrepresentation for JOB to imply that the IEA had broken lobbying law in general, and in specific and direct reference to these prior claims.

Second, to repeat, the CC OW was not in any way connected to the allegations of illegal commercial lobbying made by JOB, let alone this one. Uearthed certainly attempted to have the CC look into those claims, this time from the perspective of charity law. But they were not successful.

---

<sup>7</sup> <https://www.spiked-online.com/2018/08/03/this-is-just-a-smear-campaign/>

<sup>8</sup> <https://registrarofconsultantlobbyists.org.uk/wp-content/uploads/2019/06/Summary-of-IEA-investigation.pdf>

<sup>9</sup> <https://unearthed.greenpeace.org/2018/07/29/iea-hard-brexit-think-tank-access-ministers/>

## 7.8 Summary

The IEA then can claim at least two regulators have found no merit in the claims made by the smear campaign amplified by JOB in his broadcasts. LBC conversely cannot claim that it was not relevant or less relevant to the complaint of fairness. It was our central point.

One that would have been so very easily addressed had JOB bothered to contact us and include a right to reply in his broadcast.

We submit that Ofcom should properly evaluate the fairness of the claims that were actually made or implied, in their full context. It is certainly the case that neither JOB or LBC have provided the IEA with a right to reply on these crucial matters of unfair, and potentially defamatory treatment.

## 8 Allegations of dishonesty and insufficient expertise (A1b)

### 8.1 Argument of unfairness under the code

JOB made allegations of bad faith and lack of expertise in IEA spokespeople, expressed in pejorative terms, giving undue prominence to the views and opinions of particular people (Peter Geoghegan / himself) on matters of fact that are capable of objective verification (5.13).

He not only failed to provide adequate, or indeed any, representation of alternative viewpoints (5.9), but made several allegations of disreputable conduct (acting in bad faith, political bias, dissemination of dubious ideas) (7.11), omission of material facts (the qualifications and standing of IEA spokespeople, the IEA's donor policies, the actual content of the Plan A+ publication) (7.9), and substantial misrepresentation of views and facts (questioning the 'provenance' of individuals) (5.7). This amounts to a clear case of unjust and unfair treatment.

### 8.2 Actors in good faith

The PV found that JOB's comment:

*"the British media, has fallen into the trap of treating these people like good faith actors" – JOB1*  
would have been

*"understood by listeners as being a criticism of the media and its treatment of particular organisations" – PV*

This was on the basis that

*"the reference to good faith actors was clearly framed as the presenter's view that the majority of British media had failed to treat organisations, such as the IEA, with sufficient scrutiny when it came to their apparent failure or unwillingness to disclose who funded of their work"*

and so

*"would have been understood by listeners as being a criticism of the media and its treatment of particular organisations, rather than a direct allegation that the IEA, or those who represent it, were not 'good faith actors'" – PV.*

But this is not logical. Such criticism of the rest of the media could only have been due if the IEA and its representatives were not, in fact, good faith actors.

Treating the IEA and its representatives as acting in good faith can only be falling into a metaphorical 'trap' if they are not, in fact acting in good faith. Treating good faith actors in good faith, would not warrant criticism. The very use of the entrapment metaphor is itself suggestive of underhand

behaviour, seeking to deceive the media and their audiences. Suggesting that a think tank and its spokespeople are acting in bad faith and actively seeking to obfuscate and entrap is highly likely to materially and adversely affect listeners' opinions in a way that it unfair to it and them.

The response of LBC itself shows how little genuine research had been done into the work of the IEA and the content of publication such as Plan A+, the report that forms the basis for many of the allegations. LBC claimed that Plan A+ "had called for a rejection of a close working relationship with the EU". This is categorically false. The objective of Plan A+ was a comprehensive free trade agreement with the EU – a 'Free Trade Plus' deal.

Entering into a withdrawal agreement and close cooperation in respect of the Irish border were accepted as vital parts of that. By displaying such a lack of research into the matters discussed in the broadcasts, even many months later, LBC has shown that no reasonable steps can have been taken at the time to establish the real position of the IEA and its researchers on the matters under discussion. The proposition that JOB's statements were based on research and motivated by a desire to correct the lack of scrutiny elsewhere in the media is not borne out by the facts.

### 8.3 Proper experts

JOB remarked: *"You won't believe your eyes and then you'll turn your radio and your telly on and there will be some Herbert from the Institute of Economic Affairs popping up once again being treated with the same respect as proper experts who disclose their funding".*

Ofcom considered in the PV that it

*"did not consider listeners would have regarded this brief remark as being a statement of fact that those who represent the IEA are not "proper experts"... the presenter's reference to "proper experts" was clearly framed in the context of his earlier criticism of the treatment by some parts of the British media to those associated with the IEA (and other organisations)",*

and took the view that:

*"this comment would have conveyed to listeners the presenter's view, based on investigations which had been carried out by openDemocracy, that he considered a distinction should be drawn between "experts" associated with organisations that disclose their funding, and "experts" who are associated with organisations that do not."*

Ofcom therefore considered that:

*"a distinction should be drawn between "experts" associated with organisations that disclose their funding, and "experts" who are associated with organisations that do not."*

and therefore

*"the way in which this comment was presented in the programme would not have materially and adversely affected listeners opinions of the IEA so as to result in unfairness."*

With respect, these findings also do not follow logically. The PV disregards entirely the use of the pejorative term 'some Herbert' to contrast IEA spokespeople with those whom JOB considers to be 'proper experts'. The term 'Herbert' is defined by the Oxford English Dictionary as *"an undistinguished or foolish man or youth"* and listeners would clearly have understood that JOB was casting aspersions on the capability and qualities of the IEA representatives, quite apart from any matter of funding.

By doing so, JOB misrepresents the qualifications and standing of the IEA's researchers and spokespeople (details of which are publicly available on our website and in their publications). This is patently intended to materially and adversely affect listeners' opinions of the IEA, and given the absence of any balancing view, we submit that this was manifestly unfair.

The comparison with “proper experts who disclose their funding” is also unfairly misleading and omits material information that JOB ought reasonably have presented. In particular, the IEA provides a significant amount of information about funding<sup>10</sup> (described further below), and names specific donors who agree to be so named. This is normal practice for think tanks and charities. His failure to account for this or qualify his comments accordingly shows a lack of impartiality.

#### **8.4 Questionable provenance, ideas of dubious validity**

*Geoghegan asserted:*

*“And, what’s really obvious is that it’s very easy for people of questionable provenance, or of ideas that are of dubious kind of validity, to get into the process. So, what we’re hearing is people turning up on television, whether its Shanker Singham from the IEA or other politicians” – JOB1*

But the PV found that

*“Taking this into account, we did not consider that listeners would have understood Mr Geoghegan to be making a specific claim against the IEA, but was rather making a comment directed towards a particular class of “people” who, through their personal connections, had the potential to influence Government policy, one of whom Mr Geoghegan had named.” - PV*

We submit that this also does not reflect a natural reading or understanding of the words uttered, and proceeds on a baseless and itself unfair proposition that unfair and inaccurate remarks about an individual are permitted if they relate to them as a member of a class or perceived class.

Shanker Singham is named specifically as an example of a person of questionable provenance, who, it is claimed, has benefited from the perceived ease of getting into the processes of British politics. As above, this misrepresents Mr Singham’s qualifications and reputation.

Ofcom’s finding that claiming that someone belongs to a class of people who exploit their personal connection to influence policy, and failing to present any balancing viewpoint, is not unfair, could be read as an acceptance of the underlying claim that such a ‘class’ exists. We expect that Ofcom will wish to correct this.

### **9 Political bias (A2)**

#### **9.1 Argument of unfairness under the code**

By misrepresentation of facts about the Plan A+ launch through bias and omission (5.7) the IEA were treated unfairly (7.9). We note this element has been partially addressed by JOB3, but not fully as there was no reference to the withdrawal of the Official Warning (7.11).

Central to the LBC case and much of the Ofcom commentary is an assertion that assuming bias on the basis of an organisation respecting donor privacy is reasonable.

This is alluded to throughout A1a, and appears to be considered so self-evident that the PV does not even attempt to address the matter.

It is unclear why; it rests on a misrepresentation of the IEA and other organisation’s position on this topic (5.7) that amounts to unfair treatment (7.9) in an area of significant controversy (5.13).

---

<sup>10</sup> <https://iea.org.uk/wp-content/uploads/2020/09/Who-Funds-You-FAQ-v9-1.pdf>

## 9.2 Assuming bias on the basis of selective reporting of the Plan A+ dispute.

It is not unusual for the IEA to be described by some commentators and Wikipedia trolls incorrectly as 'right-wing'. More reputable organisations and broadcasters, by which we mean ones that attempt to uphold the Code, like the BBC, refer to us, correctly, as 'free market'. We will return to this in section B.

LBC assert that this comment by Geoghegan was a reasonable basis upon which to assume bias:

*"The presence of Jacob Rees-Mogg and others from the ERG at the launch, kind of, might make it look as if the think tank was politically biased". – LBCBS1*

This shows Geoghegan being selective with facts to suit a narrative of bias that shows bias on his part. He fails to mention for example that Gisela Stuart, a Labour party member, who served 20 years as an MP was on the panel and is clearly not a member of the ERG.

He fails to mention that the invited audience to the Plan A+ launch included members of the public and media inclined to anti-free market, left-wing, pro-Remain views. It contained supporters of the Government plan, and different plans. Invitees included James O'Brien and other LBC hosts.

But LBC's response misses the point. It is straightforwardly not reasonable to assert on the basis of misrepresentation by selective omission, of one event and one publication, that an organisation or an event is politically biased.

The IEA submitted substantial evidence to the Charity Commission on 'balance in the round', from our wider work on EU affairs, to challenge this assertion, and this was accepted, forming part of the basis for the withdrawal of the Official Warning, both generally, and that assertion in particular.

The PV asserts *"we took into account all the relevant context"* – PV

We would respectfully submit that the context summarised in the paragraph above has manifestly not been considered. We would request that it is taken into consideration for the final adjudication. All of this information is publicly and easily available and, we submit, should reasonably have been reflected in the Broadcasts in order to avoid unfairness and inaccuracy.

## 9.3 Assuming bias on the basis of respecting donor privacy

LBC assert that JOB's position on think tank funding is reasonable:

*"James O'Brien states at one point during the programme that it is reasonable for the public to presume that the IEA and other groups are motivated by their donors, given that the IEA does not publish a list of these. This is a reasonable argument that the presenter states he would change should the charity's financiers be made known, and the motivations of the IEA found to be different:*

*"You have to conclude when you look at outfits like the Taxpayers Alliance or the Institute of Economic Affairs, that until they reveal their financial backers, you just have to presume that everything they do is on the say so of the financial backers that they refuse to reveal. I'll be happy to correct on that, of course, by knowing who the financial backers are and then being able to conclude that 'oh, they're not remotely interested in the agenda that's pursued by the Institute of Economic Affairs and the Taxpayers Alliance". -*

*LBC does not believe that the above content can be seen to be inaccurate or unfair towards the IEA. James O'Brien is simply expressing his opinion based on clear underlying facts."* – LBCBS1

This far from modest assertion is undermined by a number of things, most notably the absurdity of an opinionated commentator on a commercial radio station suggesting that it is reasonable to assume commentators assert the opinions of their commercial sponsors. It takes no investigation at all to note that JOB himself is solid evidence against the point JOB is making.

Self-evidently his views are not being driven by the taxi apps and government information films that fund his show (or whoever does), but his own opinions. The transparency of those sponsors is irrelevant. That most of us could not name LBC's advertisers, let alone those during the show, without listening, but could mostly guess JOB's stances on issues is proof enough.

He attracts support because his populist views and polemical style attract audience. The IEA similarly attract donors because they find our output attractive, insightful, or wish to support it. Almost all think tanks are in the same position, and many start up without much funding until such a time as they attract support.

If it is not reasonable for the public to assume JOB is a mouthpiece for LBC's commercial interests, and they don't, why is it reasonable for to assert the same of think tanks or their authors?

Second the IEA position is not to block transparency but to support privacy. It is rooted in our charitable purpose to support the institutions of a free society and is as follows:

*"Our policy is to leave it to our funders to decide whether to disclose their support. Many do choose to do so, which we welcome <...>*

*As an educational charity that believes in individual freedom and the right to privacy, we believe if someone wants to keep their donation private, that wish should be respected. This is based on an important point of principle, which is that people should be free to associate with whomever they like and back any cause, without fear or favour. This has been widely recognised as a bedrock of democracy, both in the UK, the EU, and elsewhere. Indeed, attempts to force organisations to reveal their membership lists were a key part of the attack on the civil rights movement in the US.*

*In our view, the principle of privacy matters as much as the principle of transparency. This is particularly important for the IEA because our staff often take positions on subjects such as the NHS or Brexit with which others strongly disagree. As a result, they have at times been subject to extreme personal abuse, or worse."* – IEA WFU FAQ<sup>11</sup>

'Worse has included burglary of our offices, intimidation at home, rape and murder threats, We therefore take strong issue with commentators inciting hatred against them personally and institutionally with inaccurate and inflammatory claims of bad faith and criminal conduct.

Finally, it is unclear what the disclosure standard for appearance on the JOB's programme actually might be. Does full disclosure of funding mean full disclosure? Does he have a privacy threshold test for small donations? On what grounds might JOB consider donor privacy reasonable? Do credible threats of rape and murder against staff count? Is not the absence of a clear test not further evidence that JOB's actual test is arbitrary and partial? We will return to this in section C.

We contend then that while we agree with LBC that this position is JOB's opinion, it is based on ill-informed assumptions and bias, that would benefit from challenge from alternative points of view, not 'clear underlying facts'.

To conclude, it is not a reasonable position to assume an agenda, good or bad, based on an absence of evidence. Where that includes a presumption of malintent, without any attempt to seek comment or offer a right to reply, it is a wilful misrepresentation, by omission. Wilful misrepresentation that on repetition amounts to a smear campaign.

This in turn justifies a claim of unfair treatment. It is self-evidently not fair comment to assume political bias on the basis of a reasonable desire to protect privacy.

## **10 Correction of material error (A3)**

We note that the incorrect attribution of a conference on tariffs to the IEA was corrected in the LBC statement on August 2<sup>nd</sup> 2019. This matter needs no further consideration.

---

<sup>11</sup> <https://iea.org.uk/wp-content/uploads/2020/09/Who-Funds-You-FAQ-v9-1.pdf>

## 11) Hard right (B)

### 11.1 Argument of unfairness under the code

By misrepresentation of facts about what ‘hard right’ means (5.7) the IEA have been treated unfairly (7.9). This is a significant allegation of extremism (7.11) and deserves a right to reply, not addressed by JOB3. We detect a bias in the analysis of this complaint in the PV that we expect Ofcom will wish to address as soon as possible.

### 11.2 Further misrepresentation of support for Plan A+

*“Hard-right lobby groups mysteriously funded by foreign billionaires? Just a theory!” – JOB1*

In defence of the allegation of ‘hard right’ LBC contended that:

*“The IEA’s report ‘PLAN A+ Creating a prosperous post-Brexit UK’ called for a rejection of a close working relationship with the EU and was endorsed by prominent Brexiteers, who could legitimately be described as holding hard-right views on the issue of Britain’s future relationship with Europe.” – LBCBS1*

Wired.gov<sup>12</sup> have a neutral overview of the contents of Plan A+, noting less prosaically that it was concerned with quite detailed options for future trade policy (“*unilateral, bilateral, plurilateral and multilateral pillars*”) including those that would “*maximise its chances of a good agreement with the EU.*” Or to ensure “*that we have a better framework for negotiations with the EU.*”

We have already noted in section A that Plan A+ was endorsed and challenged at launch by a wider range of political opinions that those that LBC choose to label as hard right, including those on the left, and against the claim, Plan A+ called for a close and cooperative relationship with the EU.

### 11.3 Definitions

LBC go on to cite a number of largely hostile media sources that refer to the IEA as ‘right wing’, but not as ‘hard right’. This is misdirection and misrepresentation. LBC rely on “dictionary definitions”, accordingly we draw OFCOM’s attention to two of the ‘hard right’:

*“the extreme right wing” – Collins Dictionary<sup>13</sup>*

*“noting or relating to the extreme right wing; extremely conservative.” – Dictionary.com<sup>14</sup>*

Here conversely is a definition of right-wing from the same source LBC refer to, to define lobbying:

*“In Europe, economic conservatives are usually considered liberal, and the Right includes nationalists, idealists, nativist opponents of immigration, religious conservatives, and, historically, a significant number of right-wing movements with anti-capitalist sentiments, including conservatives and fascists, who opposed contemporary capitalism because they believed that selfishness and excessive materialism were inherent in it.” – Wikipedia.com<sup>15</sup>*

---

<sup>12</sup> <https://www.wired-gov.net/wg/news.nsf/articles/IEA+Report+%E2%80%93+Plan+A++Creating+a+prosperous+postBrexit+U.K.+25092018093500?open>

<sup>13</sup> <https://www.collinsdictionary.com/dictionary/english/hard-right>

<sup>14</sup> <https://www.dictionary.com/browse/hard-right>

<sup>15</sup> [https://en.wikipedia.org/wiki/Right-wing\\_politics](https://en.wikipedia.org/wiki/Right-wing_politics)



Here is how the IEA describes itself:

*“The IEA is a free market think tank. Our emphasis on economic freedom, the positive role of markets, and the protection of civil liberties, is consistent with a wide range of political positions, including no position at all. Free-market ideas have been used by groups who would self-identify as left, centre or right. This becomes less apparent when national politics are particularly polarised, but it does not change the commitment of the IEA to support ideas, not parties.”* – IEA FAQ<sup>16</sup>

LBC’s assertion that an association with extremism amounts to fair comment is outrageous. The assertion of right-wing is merely inaccurate. Hard-right or far-right are typically positions associated with racist and nationalist parties. It is terminology used by the Government’s Prevent strategy for the monitoring of groups engaged with terrorism.

It is as a defence against the extremist ideologies of the hard right and hard left that the IEA’s inspiration, Friedrich von Hayek, wrote his seminal works on defending freedom from tyranny ‘The Road to Serfdom’<sup>17</sup>.

Extremism is not typically associated with people who, based on research, consider that there are better ways of encouraging prosperity through free trade than membership of the European Union, or association arrangements such as those adopted by Norway and Switzerland, or trade deals such as Canada or South Korea. All of those positions have been discussed by IEA authors. All based on arguments from free trade, liberalism, and supporting the institutions of a free society.

#### 11.4 OFCOM’s political analysis

*“Ofcom took into consideration the broadcaster’s comments on the commercial interests of the big businesses which are thought to fund the charity’s work; tobacco, junk food and fossil fuel industries”. In that context, Ofcom took the view that listeners would have understood the reference to “hard right” to refer to the political and economic interests of the organisations which the presented speculated on that funded the IEA’s work or that the IEA represented, rather than necessarily indicating a position which the IEA held on the political spectrum.”* – PV

We respectfully ask that Ofcom reconsider its conclusion that those selling burgers, nicotine products or energy hold extreme views. It is not logical to assert that a reference to ‘hard right lobby groups’ in a piece where the groups are clearly identified as think tanks, actually refers to the commercial interests cited instead. Overall, we submit that to imply guilt by association with extremism cannot amount to fair treatment of the IEA.

Accepting that such a proposition can be sustained itself seems to display certain political values and we expect that Ofcom will wish to correct this.

#### 11.5 Summary

LBC’s conclusion is pure misdirection:

*“It can clearly be demonstrated that there is a foundation of reputable media which make reference to the IEA as right-wing, and therefore, James O’Brien’s comments were not baseless or unfair in this instance.”* – LBCBS1

Hard right is a very different allegation to right-wing. Both are wrong, but the former is exceptionally offensive misrepresentation and should have been corrected. We submit that LBC should be required

---

<sup>16</sup> <https://iea.org.uk/wp-content/uploads/2020/09/Who-Funds-You-FAQ-v9-1.pdf>

<sup>17</sup> <https://www.economist.com/schools-brief/2018/08/23/hayek-popper-and-schumpeter-formulated-a-response-to-tyranny>

to correct this now, to mitigate the unfair and inaccurate portrayal of the IEA and its representatives. We submit that Ofcom would wish to correct an impression that they regard unsubstantiated allegations of extremism or the attachment of such political positions to apolitical and legal businesses operating in the UK as fair comment.

## 12 Right to reply (C)

### 12.1 Argument of unfairness under the code

It is self-evident that JOB's interview with Peter Geoghegan about his article (5.13) would be substantially rooted in making serious allegations about the IEA on matters of political controversy that required consideration of alternative points of view (5.9) that was not provided, or the omission explained, amounting to unfair and unjust treatment (7.11).

Worse, by enforcing a corporate policy of no-platforming organisations and commentators on the basis of JOB's political assessment of their suitability, adequate corrections become impossible. This raises serious questions of discrimination on the basis of belief (Article 14 Human Rights Act) amounting to a chilling effect on freedom of expression (A10 HRA). Rights that underpin the Broadcasting Code generally, and whose breach amounts specifically to unfair and unjust treatment (7.11)

### 12.2 Prior to broadcast

We strongly disagree with this statement by LBC:

*"It would not have been appropriate to offer the IEA a right of reply before the programme was broadcast on 26 February 2019, given that the presenter and the programme makers were unaware of what the IEA would need to respond to until the discussion fully unfolded during the live interview."* – LBCBS1

This assertion lacks credibility. It is directly contradicted the opening statement

*"The live discussion held between the presenter and guest Peter Geoghegan on 26 February 2019 was centred on the factual context of an investigative article written by Mr Geoghegan for openDemocracy. The article states that openDemocracy had uncovered emails from the IEA's trade advisor Shanker Singham, in which he was "personally arranging for interest groups to meet with then Brexit minister Steve Baker"<sup>18</sup>. Further factual background for the discussion was provided by the Charity Commission's Official Warning to the IEA, published on 5 February 2019."* – LBCBS1

To be clear, in what was a short article for an unregulated comment site, Geoghegan mentions the IEA at least 39 times. The CC OW in turn is entirely about the IEA, not the ERG or other things mentioned in the Geoghegan piece. Both contain significant criticisms of the IEA to which we would clearly have wished to respond.

It is self-evident then that LBC knew the IEA would wish to have our alternative point of view represented. It is self-evident that is not contingent on the discussion 'fully unfolding'. The only relevance of that comment to the complaint is that we might have wished a further right to reply should the conversation covered matters materially outside the pre-published work. Work that we have already noted was not materially different to a smear campaign already in the public domain and dismissed by two regulators.

---

<sup>18</sup> <https://www.opendemocracy.net/en/dark-money-investigations/revealed-how-dark-money-is-winning-brexit-influencing-ga/>

### 12.3 Conditional right to reply after broadcast

The IEA strongly disagrees with this statement by LBC:

*We would argue that the presenter's added comment that the right of reply is conditional on the IEA revealing their financiers was tongue in cheek, and the right of reply evidently was not denied to the IEA, proving that this was not a serious material condition. – LBCBS1*

Which in turn is based on this statement by JOB at the end of JOB1

*"Speaking of which I will be happy to offer a full right of reply to anybody who has just been mentioned. As long as they tell me who funds them". – JOB1*

This defence of humour does not survive a test of truth. JOB makes it clear he will only offer a right to reply to organisations that conform to his policy, which we have noted above is arbitrary and unclear.

In evidence, we note the comment above and also the following:

- 1) The prior broadcast of JOB's conversation with Silkie Carlo of Big Brother Watch (BBW), February 1<sup>st</sup> 2019<sup>19</sup>.
- 2) JOB2
- 3) JOB3

#### 12.3.1 JOB conversation with Silkie Carlo of Big Brother Watch.

This interview, at the time of writing, is still on the LBC website. It establishes the policy of the JOB show, which was enforced on Ms. Carlo, with the termination of the call without allowing her to comment on the matter in hand - a public debate about privacy and facial recognition software - in which she and her organisation are experts and campaigners.

There is clearly no humour in this. It is simply the case that JOB refused to allow participation in his show on two grounds.

- i) BBW's funding practices (or protecting donor privacy).
- ii) That he personally disagreed with BBW's agenda

JOB *But, but hang on do you publish a full account of who pays your wages and your costs?*

SC *Um, we publish company accounts like any non-governmental organisation.*

JOB *So there's a list of everyone who has donated to you?*

SC *James, James, James. None of the other organisations we work with... I used to work at Liberty, Liberty doesn't publish who funds it. Open Rights Group doesn't publish who funds them.*

JOB *But I'm not troubled by their agenda...*

- JOB 1<sup>st</sup> Feb 2019<sup>20</sup>

In this assertion, backed up by the specific action of refusing to discuss privacy with her and terminating her participation, it is clear the policy is real and serious. That LBC continue to promote this interview on their website, shows corporate endorsement for the policy.

It is further clear that this policy is discrimination on the grounds of belief, in that it would not be applied equally to at the very least Open Rights Group or Liberty, who are typically considered left-wing liberal organisations. It is in that regard likely a breach of Article 14 of the Human Rights Act

---

<sup>19</sup> <https://www.lbc.co.uk/radio/presenters/james-obrien/james-obrien-presses-big-brother-watch-funding/>

<sup>20</sup> See Appendix 1 for full transcript of the JOB interview with Silkie Carlo.

1998, and Equality Act 2010.

That the denial of the policy has not been clearly stated by either JOB or LBC, and in fact remains present on their website, is likely a breach of Article 10 of the HRA98, freedom of expression, on grounds of 'chilling effect'. Clearly JOB intends to dissuade commentary from certain groups and encourage them to believe they do not have the same right to reply as all other participants.

This is material evidence that the policy is real and not a joke. If that is not the case LBC need to clearly say so and prevent JOB from enforcing the policy.

#### 12.3.2 JOB2

*"The minute they reveal who funds them we can have a proper conversation about what it is they're shilling for and punting'." – JOB2*

JOB makes it clear again the right to reply is conditional on his policy, while attaching it again to a false allegation of illegal lobbying.

#### 12.3.3 JOB3

*"We don't know who funds their work, so I offered them the chance to come on the show - if they told us. They didn't."*

JOB makes it clear again, nearly 6 months later that the policy is real and not a joke.

There are then at least four separate pieces of evidence that the policy is real and one that is applied in a discriminatory fashion, which is materially unfair. Either way it should not be endorsed by Ofcom through failure to consider it seriously, with full context.

### 12.4 Context to the Broadcasting Code

We should note further that the HRA 1998 underpins the Communication Act 2003 that established OFCOM, and Article 14 it is clearly stated as a material concern in the 'Legislative Background to the (Broadcasting) Code' expanded upon in Appendix 3 (January 2019 update)<sup>21</sup>.

We should note Ofcom open their analysis of the complaint with the following *"Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression"* - PV

We invite Ofcom to consider whether it wishes to endorse a corporate policy of discrimination on the basis of belief, by a regulated broadcaster, creating a chilling effect restriction on free expression, by accepting a defence of humour, that is demonstrably untrue versus hard evidence it is real, was enforced, and is still endorsed by the broadcaster.

### 12.5 Adequacy & fairness of JOB3 – LBC's version of the IEA's request for a Right to Reply

The IEA contend that LBC's version of the IEA's right to reply was inadequate.

*"On this show, I think in February, we took a look at the Institute of Economic Affairs and the role it plays in shaping Government policy. We don't know who funds their work, so I offered them the chance to come on the show - if they told us. They didn't."*

*However, I am happy to make clear that the IEA maintains it is not politically biased and says it does not receive any tied funding from corporations for its research and publications. It also wants to make clear that a news conference at which one of its leading figures appeared was not organised by the IEA". – JOB statement August 2<sup>nd</sup> (LBCBS2)*

---

<sup>21</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0016/132073/Broadcast-Code-Full.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0016/132073/Broadcast-Code-Full.pdf)

The IEA notes that the first paragraph of this correction is an editorialised addition to what Ofcom communicated to the IEA would be sent.

**From:** Ofcomfairnessandprivacy <[Ofcomfairnessandprivacy@ofcom.org.uk](mailto:Ofcomfairnessandprivacy@ofcom.org.uk)>

**Sent:** Tuesday, July 30, 2019 5:47 PM

**To:** N\*\*\*\* <[n\\*\\*\\*\\*@iea.org.uk](mailto:n****@iea.org.uk)>

**Subject:** Re: Ofcom Complaint 728286

Classification: CONFIDENTIAL

Dear N\*\*\*\*,

Further to my email of 18 July 2019, LBC have not accepted your counter proposal and instead are going to read out the original statement LBC proposed during James O'Brien's programme on Friday, 2 August 2019 at 11:45. For ease, the statement LBC said it would out is:

*"I'm happy to make clear that the IEA maintains it is not politically biased, and does not receive any tied funding from corporations for its research and publications. It also wants to make clear that a news conference at which one of its leading figures appeared was not organised by the IEA".*

As the IEA did not accept this initial proposal as resolution of your complaint, we wanted to confirm whether you still wanted to pursue your complaint with Ofcom? Please can you let me know by **6 August 2019** how you wish to proceed.

Kind regards

R\*\*\*\*

**Ofcom Fairness and Privacy Team**

Standards and Audience Protection

Content and Media Policy

Tel: 020 7981 3708

**Email:** [Ofcomfairnessandprivacy@ofcom.org.uk](mailto:Ofcomfairnessandprivacy@ofcom.org.uk)

We submit the material difference between the agreed statement and broadcast statement should have been given greater weight in the PV. We now turn to this statement:

*"The right of reply as above was accurate, fair and covered all main points of the IEA's suggested response."* – LBCBS1

Ofcom accept this statement as true. We contend this is in error. We have included the IEA's requested right of reply, from May 29<sup>th</sup> 2019, in full in Appendix 2. There are substantial differences, notably around the failure to address the central charge of a false allegation of illegal lobbying.

On this point the IEA requested commentary on the ORCL ruling, false allegations of shilling and false allegations that the IEA only 'purports certain analysis and views because we are paid to'. JOB was only prepared to concede a reference to our protocols. This is inadequate.

The reference to political bias further seems rather inadequate compared to what was requested.

LBC themselves refer to the Guidance to section 7 (7.11) in justification for their partial response. However they appear to ignore the concluding paragraph

*"However, the broadcaster should explain the reasons for the absence of a contribution and reflect any material facts in relation to the position of the individual or organisation in the programme, if it would be unfair not to do so."* – Ofcom guidance notes on section 7: Fairness.<sup>22</sup>

No explanation was offered for the differences, it is then self-evident this response was not fair.

---

<sup>22</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0017/24713/section7.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0017/24713/section7.pdf)

## 12.6 Summary

To conclude, although not requested in May (as the CC case review was ongoing), by the time LBC published their correction the CC had withdrawn the Official Warning. It seems clear that in claiming the OW was central to their justification for allegations made by JOB, LBC made it clear that a further comment on this should now be added to the right to reply. Indeed, that a new right to reply may now be required in light of the material facts now known.

## 13 Conclusion

The IEA have provided substantial and substantive evidence that our original complaint (however brief) was correct and very little of it was addressed by JOB3. We note much of the PV is rooted in assumptions that political statements by JOB and his guest were reasonable, and that LBC's misdirection and misrepresentation worthy of consideration.

We contend both contain or imply pejorative allegations of specific criminal wrongdoing, extremism, bias and other misconduct, rooted in misrepresentation, underscored by a refusal to consider a genuine right to reply that amounts to unfair treatment.

We have demonstrated that JOB's policy of no-platforming groups is real and grounded in discrimination. We have noted it is endorsed at a corporate level by LBC. We note that if allowed to stand unchallenged, or worse endorsed by OFCOM, it directly undermines the foundations of the Broadcasting Code by breaching articles 10 and 14 of the Human Rights Act.

We believe OFCOM's initial Preliminary View has given far too much latitude and credibility to LBC's position, based principally on an imbalance of evidence in the process.

We very much hope this short synopsis of complex matters helps redress the balance and the final analysis upholds all points bar A3 which we agree is settled. We thank you for your consideration. We look forward to a constructive resolution with LBC should one be on offer.

Andy Mayer, Chief Operating Officer & Company Secretary – Institute of Economic Affairs

Victoria Hewson, Head of Regulatory Affairs – Institute of Economic Affairs

## Appendix 1: JOB – Silkie Carlo interview

Dated 1<sup>st</sup> February 2019<sup>23</sup>

James O'Brien – JOB

Silkie Carlo - SC

Context – SC had rung in as an expert on personal privacy to comment on an issue of a man being arrested using facial recognition cameras, a topic JOB had selected for public discussion. The call was accepted on that basis.

### Speaker Content

- JOB Silkie Carlo who I mentioned a moment ago as a Director of an organisation called Big Brother Watch and she's rung in from Westminster.
- Silkie, we've got a problem. I just notice that you're based at 55 Tufton Street does that mean that your funding is secret?
- SC Um no we're funded by members of the public...
- JOB It's all published...
- SC ... and we care about... and we care about
- JOB ...and I can see a list of who donates and how much they donate can I?
- SC Well we're a Non-governmental Organisation and a campaign organisation.
- JOB I respect that completely. But, I know that all the other organisations at 55 Tufton Street don't disclose their funding while they seek to change public policy. I'm just seeing if you're in that category.
- SC O.k. we're completely unlike the other organisations in the building and we're moving soon.
- JOB But, but hang on do you publish a full account of who pays your wages and your costs?
- SC Um, we publish company accounts like any non-governmental organisation.
- JOB So there's a list of everyone who has donated to you?
- SC James, James, James. None of the other organisations we work with... I used to work at Liberty, Liberty doesn't publish who funds it. Open Rights Group doesn't publish who funds them.
- JOB But I'm not troubled by their agenda...
- SC ... It would be wrong to publish...
- JOB ...I'm troubled by Tufton Street. Let's not argue about this...
- SC ...I'm talking about...
- JOB ...Are you part of the Tufton Street Nexus or not?
- SC Absolutely not part of any nexus whatsoever.
- JOB So how have you ended up in the same building as Patrick Minford's economists?
- SC Um, look, I joined Big Brother Watch 1 year ago, and as I said we're moving offices this this year and I don't think this is really the point...

---

<sup>23</sup> <https://www.lbc.co.uk/radio/presenters/james-obrien/james-obrien-presses-big-brother-watch-funding/>



JOB No it is the point. I can't let people on this programme unless they've disclosed their full funding if they're seeking to influence public policy.

SC So how is it I've been on LBC many times before...

JOB Not this programme.

SC ... and with Liberty...

JOB Not this programme.

SC ... and other organisations...

JOB Not, not this programme. That's all, sorry. It is a slight misunderstanding, and if I've got the wrong end of the stick we will get you before the end of the hour. But if you are based at 55 Tufton Street, you're not coming on my programme to seek to influence public policy without a full disclosure as to who funds you.

SC Could I just have a right to reply on that...

JOB Um, yeah.

SC We're funded by members of the public, and it would be wrong for their privacy to publish their details, no other organisation does, and I think this is really... there's a really serious...

JOB So you're different to the Tax Payer's Alliance, then. Are we different from the Tax Payer's Alliance. How? Just, just reassure me, how? Because it's the address that spooked me a bit. What's the difference between you and them?

SC Okay, I can understand that, we don't work on any of the issues that they work on, that's one major difference. We're an independent NGO.

JOB But how did you end up in the same building?

SC Well that's an historical issue, that I'm not responsible for. There was originally some staff who had similar interests, that was ten years ago.

JOB <typing on his keyboard> But Big Brother Watch was founded by Matthew Elliot, who founded the Tax Payers Alliance.

SC Yes that's true.

JOB Then we're done. <terminates call>

## Appendix 2 – IEA Right of Reply request to Global

Dated 29<sup>th</sup> May 2019.

**From:** Nerissa Chesterfield

**Sent:** 29 May 2019 14:33

**To:** James Rea <James.Rea@global.com>

**Cc:** Tom Cheal <Tom.Cheal@lbc.co.uk>

**Subject:** RE: URGENT: formal complaint from the Institute of Economic Affairs [TWLLP-UKMATTERS.FID5398447]

Dear James,

Following on from our correspondence back in March, I have included a full right of reply from the IEA (see below).

Please also see attached the document that sets out our protocols for non-interference, which is given to all IEA donors seeking to support the IEA. All donors are required to sign or otherwise acknowledge their acceptance of IEA protocols prior to their support being accepted – rendering Mr O’Brien’s assertions to be factually incorrect.

Also, just to let you know, we have submitted a formal complaint to Ofcom.

I would appreciate acknowledgement of receipt of this email as soon as you can.

All best wishes,

Nerissa

### **IEA right of reply, to be read out on air**

In response to comments made about the IEA by James O’Brien on LBC aired on 26<sup>th</sup> February 2019 and 8<sup>th</sup> March 2019

Mr. O’Brien made numerous assertions and accusations about the Institute of Economic Affairs on 26<sup>th</sup> February and 8<sup>th</sup> March that we consider to be factually incorrect and potentially slanderous. Since he has failed to correct these inaccuracies after they were pointed out to him, we take this opportunity to make the corrections for him.

The Institute of Economic Affairs is by legal definition, not a lobby group. The IEA is a registered educational charity. In 2018 the Office of the Registrar of Consultant Lobbyists (ORCL) looked into whether the IEA should be registered as a lobbyist and found no merit to the suggestions.

The Institute of Economic Affairs is not politically biased. We are non-partisan, non-political and we receive no government funding. The role of a think tank is to present and promote different ideas. Our Director General and other IEA representatives will happily meet with any ministers, MPs, policymakers and stakeholders of all stripes and persuasions, who wish to hear our ideas.

The press conference held in February 2019 Mr O’Brien referenced was not an event held or hosted by the Institute of Economic Affairs. It was organised by Competere and Shanker Singham was speaking at the event in a personal capacity.

Mr O’Brien referred to the IEA has a “shill” organisation for external companies. The Institute of Economic Affairs does not “shill” for anyone. The IEA accepts no tied funding from corporations for its research and publications. Our rigorous peer-review process means we can be confident that our output is independent and free from conflict of interest.

Other questionable assertions made by Mr O’Brien in this segment are his opinion, which he is entitled to - but he is not entitled to express these opinions as fact. His unwillingness to debate the issue directly with an IEA representative on air suggests a reticence on his part to be challenged.

Mr O'Brien's insinuation is that spokespeople at the IEA only purport certain analysis and views because we are paid to. This is categorically untrue. If he really believes that IEA authors and spokespeople are socialist, tax-loving, big-state advocates at heart, who only advocate free-market economics for a pay cheque, then he is a) badly mistaken and b) we consider such accusations to be slanderous.

**From:** James Rea <[James.Rea@global.com](mailto:James.Rea@global.com)>

**Sent:** Friday, March 22, 2019 1:12 PM

**To:** Nerissa Chesterfield <[nchesterfield@iea.org.uk](mailto:nchesterfield@iea.org.uk)>

**Cc:** Tom Cheal <[Tom.Cheal@lbc.co.uk](mailto:Tom.Cheal@lbc.co.uk)>

**Subject:** RE: URGENT: formal complaint from the Institute of Economic Affairs [TWLLP-UKMATTERS.FID5398447]

Dear Nerissa,

Thanks again for your email.

We take our Ofcom obligations very seriously and are committed to upholding the highest broadcasting standards.

To that end, we offered a right of reply in a timely manner and we look forward to receiving the wording which you would like us to broadcast to address the issues you wish to raise.

We welcome the opportunity to put all sides of a debate across to our listeners and note that Shanker Singham appeared at length on LBC as recently as March 12th to set out his and the IEA's position on the all-important issue of Brexit.

All my best wishes,

James