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Dear Ms McKenna

**The One Show, BBC One, 30 November 2011, 19:00**

Thank you for your letter to Ed Richards of 2 December 2011 in which you expressed your concerns with regard to comments about striking public sector workers made by Jeremy Clarkson in the programme above. In summary, the comments you refer to were that:

- Jeremy Clarkson said striking public sector workers should be “shot”;
- that he would take the striking workers outside and “execute them in front of their families”; and,
- how could the workers dare to go on strike when they have “gilt-edged pensions... while the rest of us have to work for a living.”

In your letter you state that “these extreme and wholly unjustified statements were in clear breach of Rule 2.1 of the Ofcom Broadcasting Code as they exposed members of the public to harmful and offensive material. They were also in breach of Rule 2.3 as they were liable to cause unjustified offence. They were in breach of Rule 2.4 as they condoned violent behaviour”.

Your letter was forwarded to me as the relevant senior member of the Ofcom Executive responsible for Ofcom’s work setting and maintaining broadcasting standards.

Ofcom investigates cases under the procedures for handling broadcast complaints and cases (see <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>). In line with these procedures Ofcom therefore reviewed the broadcast and asked the BBC formally to provide comments on how this material complied with the Broadcasting Code.

After careful consideration, Ofcom has reached the decision that the material was not in breach of the Broadcasting Code (“the Code”). I have set out the reasons under the relevant Code rules below.

### Rule 2.3

In deciding whether a broadcaster has complied with generally accepted standards in any particular case, Ofcom considers a range of factors, including: the nature of the broadcast material; the concern expressed by viewers; and relevant requirements of the Code.

In this case, our investigation focussed primarily on Rule 2.3 of the Code which deals with material which may cause offence.

Rule 2.3 states:

*"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Context includes (but is not limited to): the degree of harm and offence likely to be caused, the likely expectation of the audience, the extent to which the nature of the content can be brought to the attention of the viewer and the editorial content of the programme."*

I acknowledge that the comments made by Mr Clarkson could be controversial and were potentially offensive to some individuals, and, in particular, the members of your union working in the public sector. Rule 2.3 of the Code, however, requires Ofcom to consider the *context* in which remarks are broadcast. This is to assess if the broadcaster ensured that the comments were justified by the context in which they were presented.

In applying Rule 2.3 Ofcom also takes due account of the important principle of a broadcaster's right to freedom of expression. In deciding whether Rule 2.3 was breached in this case, we therefore reviewed whether Jeremy Clarkson's comments were justified by the context.

The *One Show* is a weekday magazine programme that includes topical reports, features and interviews on daily issues with a range of guest contributors. The editorial nature of the programme is intended to be light and it is not presented as a serious daily news analysis. In particular, Ofcom noted that when introducing Mr Clarkson at the start of the interview, the presenters Matt Baker and Alex Jones stated:

Matt Baker: *Now at the end of the day in which Britain has seen the biggest strikes in a generation, what we need is someone calm and level headed.*

Alex Jones: *Yeah, a guest with balanced uncontroversial opinions who makes great efforts not to offend.*

Matt Baker: *And we've got Jeremy Clarkson. Jeremy – schools, airports, even driving tests, all been affected. Do you think the strikes have been a good idea?*

In the introduction to the item, the programme therefore clearly alluded, with light hearted irony, to Mr Clarkson's provocative and outspoken nature. Consequently, the editorial content and the editorial nature of the programme as a whole would have prepared viewers for the type of comments Jeremy Clarkson would be likely to make.

In Ofcom's opinion, viewers' expectations would also have been influenced by Jeremy Clarkson's well-established public persona. His often controversial (and, to some, offensive) views are widely publicised in both print and on television. Jeremy Clarkson had also already appeared on the *One Show* on two previous occasions. In light of these factors, it is Ofcom's view that the audience for this edition of *The One Show* would have expected Jeremy Clarkson to make potentially controversial or offensive statements.

Further, we considered that it would have been clear to most viewers that his comments were not an expression of seriously held beliefs or views that should be literally interpreted.

Additionally, Mr Clarkson's joke was aimed to a considerable extent at the BBC. Mr Clarkson made two contrasting comments about whether the strikes were a good idea. In response to the presenter's question "do you think the strikes were a good idea?", Mr Clarkson said "absolutely" because London's streets were empty. In response to the question of whether he knew of anybody on strike today, Mr Clarkson replied no, and said "we have to have balance don't we because this is the BBC" and proceeded to make the comment about executing strikers. This underlined that Jeremy Clarkson was not making his comments in earnest, and that the target of his humour was partly the BBC and its requirement for balance.

Ofcom therefore concluded that the statements made by Jeremy Clarkson that you refer to would not – on balance - have exceeded the likely expectation of the audience.

Nonetheless, I acknowledge that some viewers, less familiar with the programme and Mr Clarkson's individual style, may have considered that the comments you refer to went too far and were offensive. We note that presenter Alex Jones made a wide ranging apology at the end of the programme that encompassed: "Jeremy's strong views, which he sometimes exaggerates for comic effect". Further, we note that - subsequent to the programme - the BBC publicly acknowledged that there was an element of misjudgement and apologised again for any offence caused. The BBC commented that this misjudgement was "in relation to a broader context of strong views in the aftermath of a day of widespread strike action, in which the expression of any provocative attitude, even if humorously intended, would be more usually liable to misinterpretation".

Taking all these factors into account, it is Ofcom's view that on balance Jeremy Clarkson's comments were justified by the context and Rule 2.3 was not breached on this occasion.

#### **Rules 2.1 and 2.4**

Rule 2.1 requires broadcasters to apply generally accepted standards to ensure "adequate protection for members of the public from the inclusion in such services of harmful or offensive material." When the issue is whether a broadcaster has applied generally accepted standards in the context of offensive material Ofcom normally assesses the matter under 2.3 – see above. You refer briefly to Jeremy Clarkson's statements exposing "members of the public to **harmful**... [my emphasis] material" but it is not at all clear in what way his remarks were likely to cause harm to viewers.

Where Ofcom has previously found a broadcaster to be in breach of Rule 2.1 it has been the case that the material has been found to have the very clear potential to cause serious harm. For example, Ofcom recently sanctioned a broadcaster, The Light Academy, for

broadcasting material which suggested that serious medical conditions such as cancer could be healed through faith healing or healing with products such as olive oil soap alone and that conventional medical treatment could be abandoned or not even sought. In this case Ofcom considered that the Licensee did not take steps to provide viewers with adequate protection from this potential harm by providing any context to the claims made and this was a clear breach of Rule 2.1.

Ofcom did not consider the programme raised issues with reference to Rule 2.4 as this particular rule requires Ofcom to consider two separate elements. First, whether the material, taking into account the context, condones or glamorises violent dangerous or seriously anti-social behaviour; and secondly, if is likely to encourage others to copy such behaviour. Ofcom must consider these two requirements *taken together* when considering whether material has breached this rule. Given that in this case it is our view that Jeremy Clarkson's comments about the execution of strikers were not made seriously (and were not at all likely to encourage members of the public in fact to act on them in any way), it is Ofcom's view that there was no breach of this rule.

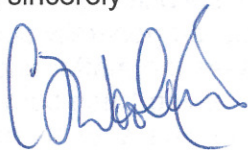
To provide you with a clearer idea of the kind of content that is likely to be in breach of Rule 2.4 I would draw your attention to another recent case. Aden Live which broadcasts from the UK to audiences in South Yemen was found in breach of Rule 2.4 of the Code for including material which, taken together, condoned and in some cases glorified: people dying in support of the southern Yemeni cause; revolt against the established government; and the carrying of weapons. In Ofcom's view, this clearly was material which could reasonably be considered to condone or glamorise violent or dangerous behaviour.

### **Preparations for the programme**

I note your concerns that press reports had suggested that the producer of the programme was aware in advance of the detail of Jeremy Clarkson's comments and that therefore the remarks were "pre-approved and endorsed by the BBC." We have looked into this issue. Jeremy Clarkson was booked to appear on the programme three months beforehand when it was not known that 30 November 2011 would be a day of strike action by public sector workers. In the event, the production team discussed the issues with Mr Clarkson before going on air and in fact advised him that it would not be appropriate to make the sort of remarks he later went on say. The presenters were therefore not aware in advance that Jeremy Clarkson would make the comments he did. For this reason, the producer instructed the presenters to apologise on behalf of the *One Show* during the programme.

Although I appreciate that this may not be the response you would have liked, I do hope the reasoning set out in this letter is helpful. Given the wider public interest in this case, I will be making a copy of this letter available on the Ofcom website on Monday 20<sup>th</sup> February.

Yours sincerely



**Christopher Woolard**