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29 May 2026

**PRE-ACTION LETTER: Proposed claim for judicial review of Ofcom's decision not to investigate certain programmes concerning trans issues on Talk**

Dear Ofcom,

1. This is a letter before claim, sent in accordance with the Pre-Action Protocol for Judicial Review.
2. Good Law Project ("**GLP**") proposes to challenge the Office of Communications' ("**Ofcom**") decisions not to investigate certain Talk programming discussing issues relating to transgender persons. Those decisions disclose errors of law in the proper construction of Ofcom's Broadcasting Code, or alternatively irrationality in the application of its rules, and are therefore unlawful (Grounds 1, 2 and 3). Further, or alternatively, Ofcom has acted irrationally in its determinations on due impartiality (Ground 4).

**The Proposed Claimant**

3. The Claimant to the proposed claim is GLP, which has its registered address at 3 East Point High Street, Seal, Sevenoaks, Kent, United Kingdom, TN15 0EG.

4. Please address the reply to this letter and all court documents to [REDACTED]  
[REDACTED] of GLP at the above registered address.

### **The Proposed Defendant**

5. Ofcom is the UK's regulator for communication services.

### **The Proposed Interested Party**

6. News UK Limited holds the broadcasting licence for the television channel Talk ("**Talk**"). It has its registered address at 1 London Bridge Street, London, England, SE1 9GF.

### **The Decision**

7. GLP proposes to challenge Ofcom's decision not to investigate certain Talk programmes concerned with trans issues. GLP made complaints to Ofcom concerning the compliance of this programming with Ofcom's Broadcasting Code, and in a decision published in Ofcom's Broadcast and On Demand Bulletin (Issue 542) on 23 March 2026, Ofcom decided not to investigate the majority of the programmes identified (the "**Decision**").

### **Factual Background**

#### Talk

8. Talk is a broadcaster and its channel was available on Freeview at the relevant time. Talk's programming is primarily composed of talk shows hosted by regular hosts. These shows tend to last several hours and are comprised of the discussion of various current affairs stories in distinct segments, as indicated by headlines that appear at the bottom of the screen for viewers. Talk has an estimated weekly viewership of around 500,000 people.<sup>1</sup>

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<sup>1</sup> Alex Brooker, 'RAJARs Q4 2025: Strong audience growth for Talk and GB News' (*Press Gazette*, 5 February 2026) [https://pressgazette.co.uk/media-audience-and-business-data/media\\_metrics/rajars-q4-2025-strong-audience-growth-for-talk-and-gb-news/](https://pressgazette.co.uk/media-audience-and-business-data/media_metrics/rajars-q4-2025-strong-audience-growth-for-talk-and-gb-news/).

9. The Decision relates to Talk's programming on trans issues in June and July 2025.

#### Programming on trans issues

10. On 18 July 2025, GLP filed complaints with Ofcom relating to 11 programmes in which trans rights were discussed between 21 June 2025 and 9 July 2025. Those complaints were supported by 21,795 complaints from GLP's supporters, which GLP sent to Ofcom on 29 July 2025.
11. As background, frequent references are made in the challenged programmes to the decision of the Supreme Court in *For Women Scotland v The Scottish Ministers* [2025] UKSC 16, [2025] 2 WLR 879 ("***For Women Scotland***") which was handed down in April 2025. This decision determined that, for the purposes of the Equality Act 2010, references to "man", "woman" and "sex" refer to biological sex rather than identified or certificated sex, for example through a gender recognition certificate.
12. The following programmes were referred to in GLP's original complaint:<sup>2</sup>
- a. Alex Phillips – "Stephen Fry BLASTED For Suggestion JK Rowling 'Radicalised' Over Trans Issue" (21.06.25) – interview with a Telegraph columnist about Stephen Fry's comments on JK Rowling's anti-trans views and claimed dangers of trans activism, including commentary on puberty blockers, gender affirmative care, trans women in sport, and paedophilia.
    - i. The interviewee expressed her view that JK Rowling should be applauded for standing up for the principle that "*women are women and men are men*" and that this is a "*serious political issue*". The interviewee later refers to the "*gender wars*" and the ruling in *For Women Scotland*, making passing references to gender affirmation procedures as "*mutilation*".
    - ii. The host said that it must be apparent to Stephen Fry that it is wrong "*allowing a man with a girl beard to put on a frock and go into the Brownie tent. Or to allow some sort of auto gynephile with a fetish for, you know, urine to share toilets with women*" and described such people as "*hulking great perverts going into children's toilets*".

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<sup>2</sup> In each programme the phrase in quotation marks refers to the title of the relevant segment in the respective Talk show. Representative examples of the topics of discussion are highlighted.

- b. Ian Collins – “It’s All So BONKERS! | Judges Advised To REJECT Rape Defendants’ Chosen Pronouns” (23.06.25) – interview with the Director of Advocacy at Sex Matters, about changes to internal judicial guidance on the use of criminal defendants’ preferred pronouns.
- i. The host referred to For Women Scotland which appears to have triggered the change to the guidance.
  - ii. In discussing gender identity, the host said that *“spoiler alert non-binary is just an invented thing that somebody came up with”*.
  - iii. The interviewee, responding to a clip of a BBC newsreader referring to pregnant people as *“women”*, said that there is a *“pretence that men can get pregnant too - it's actually women who identify as men who are getting pregnant obviously yes and it's just erasure of the actual fact that there are two sexes.”*
- c. Alex Phillips – “All Of The Women Would Be TERRIFIED! | Trans Suspects Able To Get Women To Search Bottoms & Men Top” (27.06.25) – interview of a member of For Women Scotland (the campaign group that was the claimant in the For Women Scotland decision) about guidance from Police Scotland on body searches of trans individuals and the alleged risk to female officers.
- i. The host referred to the For Women Scotland judgment.
  - ii. The host claimed that there is a *“Venn diagram”* with an *“overlap of certain men who like to sort of dress up as women and fetish of actually getting a sexual kick out of all this”*. The interviewee agreed, suggesting that those individuals being arrested could have committed sexual offences.
- d. Alex Phillips – “Trans Row - NHS Trains Midwives In Trans Breastfeeding Workshops” (29.06.25) – interview of political commentators about NHS workshops on lactation and breastfeeding for, among others, trans women.
- i. The host described the use of medicine by trans women in order to lactate as *“ghoulish and gross [...] and probably shouldn't be allowed”*, suggested that such people *“fetishize breastfeeding... using experimental drugs so you can grow*

*breasts and have a baby suckle them” and later as “sick. It’s a perversion quite frankly”, and “it’s all sick”.*

- ii. The interviewees agreed, noting it is *“bizarre”* and *“dehumanising to actual women”*, and that *“there is genuine serious concerns about potential deformities that occur in children”*. One of the interviewees noted that *“I think this is one of the few things that we sort of might agree on”*.
- e. Julia Harley-Brewer – “It’s Quite Bizarre | Media Regulator Says To Air View That Trans Women Are Women” (30.06.25) – interview with the Director of Campaigns at Sex Matters about Ofcom’s approach to sex and gender. This appears to be in response to Ofcom’s draft guidance on providing a safer online environment for women and girls.<sup>3</sup> The programme also discussed claimed dangers of preferred pronouns.
- i. The host claimed *“there are certain issues that are considered to be settled matters that [...] you can’t just broadcast one side [...] according to Ofcom, the media regulator in this country, [biological sex is] not settled’.”* She states that *“trans women are not women [...] there is no one from Ofcom, there is no one that is going to convince me that I have to have a second opinion on that [...] I don’t believe that’s an opinion I have to have on”*. The interviewee said that *“it’s very disappointing that the regulator isn’t prepared to declare it as a settled matter”*. The host was clear that *“I won’t do it, end of, I don’t care about Ofcom [...] I refuse to lie on air”*.
  - ii. The host said that if you use pronouns *“you go down a slippery slope where a woman who’s been sexually assaulted is in court having to refer to the man who attacked her and her penis”*. The guest said that respecting trans people’s identities is a *“mutual mass delusion”* and that by doing so we have allowed many trans people to *“mutilate their own bodies, devastating consequences.”*
- f. Ian Collins – “Digital ID Confusion - Campaigners Worry Men Could Pretend To Be Women Unless Safeguards In Place” (30.06.25) – an interview with the Director of

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<sup>3</sup> Ofcom, ‘A Safer Life Online for Women and Girls: Practical Guidance for Tech Companies’ (draft, 25 February 2025)

<https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-on-draft-guidance-a-safer-life-online-for-women-and-girls/main-docs/annex-a-draft-guidance.pdf?v=403596>.

§3.13(a)(ii) refers to gendered abuse such as deliberate misgendering.

Advocacy at Sex Matters about the UK Data (Use and Access) Bill 2025 (now Act) where the interviewee claims that individuals will be able use a gender recognition certificates to obtain a digital ID and carry out online sexual abuse including child sexual abuse. The interview also covered Ofcom's approach to sex and gender Ofcom's position on due impartiality and discussion of the impact of For Women Scotland in which the host and guest said it's "not true" that trans women are women.

- g. Kevin O'Sullivan - "Will NOT Stop Fighting | Nurses Wage War On NHS Over Female Only Changing Rooms" (01.07.25) - an interview with one of the "Darlington Eight" nurses who was engaged in litigation against the NHS concerning access to a female changing room by a transgender woman colleague.
- i. The host referred to the interviewee's transgender colleague as "*a bloke called Rose who was a bloke*" and later "*Rose, I should stress, is a bloke [...] who wants to pretend that he's a female*". He later claimed that "*Rose is a bloke who wanted to invade your private safe female space*".
  - ii. The host repeatedly referred to For Women Scotland noting that it was "*the right decision*". He stated that, in relation to the interviewee's case against the NHS, "*I can't really get my head around it when there's been a Supreme Court ruling*" and "*they can't win this case, can they?*".
  - iii. Generally, the host claimed that "*in my view, the NHS has become consumed, saturated, if you like, by wokery, you know, by trans issues*" and that trans policies are "*sexist*" and responsible for "*the elimination of women*". Further the guest said, "*It is the sort of insidious ideology that's crept into the NHS [...] it's very detrimental to women*".
- h. Kevin O'Sullivan - "Trans Showdown - Council Staff 'Lied About Cop Probe To Block Artist From Her Show'" (02.07.25) - an interview with a woman who alleged she had been denied access to her own exhibition and the police had been called after expressing her views on transitioning children. The conversation also discussed the impact of transitioning on children and the Tavistock clinic. When the interviewee said "*I thought the Tavistock should be shut down*" the host responded "*I couldn't agree with you more*" and goes on to describe it as a

*"Frankenstein's castle where for some reason the NHS mutilated children for a disastrous decade".*

- i. Julia Harley-Brewer – “Man Banned From Westminster After Trans Protest During Pride | Montgomery Toms” (07.07.25) – an interview with a right-wing activist who was arrested for attending Trans Pride with a sign equating transness with mental illness. The programme also discussed whether being transgender is “real” and the impact of trans rights on others. The host says that *“trans is an ideology”,* that she and the guest *“don’t believe it’s a real thing”* and that *“no one is born in the wrong body”*. The interviewee said that trans *“ideology”* is *“very harmful”* to children.
  
- j. Julia Harley-Brewer – “People Are Done With It | Labour Embroiled In Trans Row Again” (09.07.25) – an interview with a trans woman discussing a different trans woman who was standing for election as Women’s Officer in an LGBTQ+ group connected to the Labour Party. It was also discussed whether trans women should be treated as and referred to as women and whether trans people should be grouped with gay, lesbian and bisexual people under the label LGBTQ+.
  - i. The host makes repeated references to the *For Women Scotland* ruling. In a passing reference to Women’s Hour on BBC Radio 4, the host notes that its content *“never about trans issues, the biggest single issue [...] women have faced in the last few years”*.
  
  - ii. The host refers to the candidate standing for election as *“a man who has a Gender Recognition Certificate saying that he is a woman”*. The guest that a trans woman holding the role of Women’s Officer would be *“madness”* and *“nonsense”*. The host further notes that *“if you’ve had to get a piece of paper to say that you are a woman, you must accept then that you are a man”*. She goes on to say *“LGB [i.e. being Lesbian, Gay or Bisexual are] actual things, T [i.e. being Transgender] you’re not actually born in the wrong body”*.
  
- k. Kevin O’Sullivan – “Mental Illness | Displaying Trans-Critical Sign Gets Man Arrested” (09.07.25) – an interview with a right-wing activist who was arrested for attending Trans Pride with a sign equating transness with mental illness. The programme covered the issue of the police’s decision to arrest the campaigner and whether gender dysphoria is a mental illness. The interviewee claimed the

World Health Organisation's decision to no longer classify being trans as a mental illness occurred because "*cultlike mentality*" had taken over the West.

13. On 8 September 2025, in its Broadcast and On Demand Bulletin 529 Ofcom rejected the complaints as "*assessed, not pursued*".
14. On 11 September 2025, GLP sent a letter questioning Ofcom's decision not to pursue GLP's complaints and requesting reasons.
15. On 17 September 2025, Ofcom sent a letter briefly detailing why it did not consider these programmes to raise substantive issues warranting further investigation.
16. On 31 October 2025, GLP wrote to Ofcom with questions about its reasons for rejecting the complaints.
17. On 25 November 2025, Ofcom confirmed that it had "*decided, exceptionally, to withdraw the 11 decisions and to consider afresh whether your complaints raise potentially substantive issues under the Broadcasting Code which warrant investigation by Ofcom*". Ofcom also undertook to publish its reasons.
18. On 23 March 2026, Ofcom announced that it had launched an investigation into one of the programmes complained of (the Ian Collins talk show on 23 June 2025). The remaining 10 programmes were "*assessed, not pursued*". Ofcom published reasons for rejecting GLP's complaints about those 10 programmes in a 129-page report (the "**Trans Issues Decision**").

## **The Decision**

19. The Decision contained a general exposition of Ofcom's approach to the specific rules of its Code that were engaged by GLP's complaints, as well as specific decisions in relation to each programme that was assessed as 'not pursued' (collectively, the "**Programmes**"). Those individual decisions applied common reasoning across the Programmes. The following elements of the Decision form the subject of the proposed challenge.
20. Ofcom considered that "*the programmes [under consideration] were all dealing with a matter of political controversy and a matter relating to current public policy as opposed to*

*a matter of "major" political controversy and a "major" matter relating to current public policy" (Decision, page 6). Ofcom consequently did not consider the compliance of the Programmes with Rules 5.11 and 5.12 of the Code.*

21. *As to Rule 5.7, Ofcom noted that "accuracy is not a statutory requirement outside of news content" and that "broadcasters must ensure that they are articulating alternative viewpoints in a duly objective manner" (Decision, page 6).*
22. *As to Rule 5.9, Ofcom highlighted that "broadcasters are free to include 'issue-led' presenters in their programming, as long as they maintain due impartiality as appropriate" but that "alternative viewpoints should be adequately represented" (Decision, page 7).*
23. *Finally, Ofcom explained in relation to Rule 2.3 that "Where content carries the potential for offence and/or harm, however, the Licensee must ensure that it provides adequate protection to its audience, for example by providing sufficient context under Rule 2.3" (Decision, page 18).*

## **Legal Background**

### The Communications Act 2003 and Broadcasting Code

24. *Ofcom's statutory functions were established by the Communications Act 2003 (the "**2003 Act**"), which governs, *inter alia*, "the regulation of broadcasting and of the provision of television and radio services" (headnote). Pursuant to s.319(1), Ofcom is required to establish standards "best calculated to secure the standards objectives" listed in (2) in the form of a code (s.319(3)) setting out "minimum standards applicable to all programmes included in television and radio services" (s.319(5)(a)).*
25. *Ofcom publishes and maintains its Broadcasting Code (the "**Code**"). Section two of the Code addresses harm and offence and was published on 3 March 2021 and last updated on 19 February 2024. Section five addresses due impartiality and was published on 5 January 2021 and last updated on 17 March 2025. The relevant rules are:*
  - a. **Rule 2.3:** *"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context"*

*below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership), and treatment of people who appear to be put at risk of significant harm as a result of their taking part in a programme. Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."*

- b. **Rule 5.5:** *"Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole."*
- c. **Rule 5.7:** *"Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes"*.
- d. **Rule 5.9:** *"Presenters and reporters [...], 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 [...]"*.
- e. **Rule 5.11:** *"In addition to the rules above, due impartiality must be preserved on matters of major political or industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes."* The Code clarifies that matters of major political or industrial controversy and major matters relating to current public policy *"will vary according to events but are generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance, or are of similar significance within a smaller broadcast area."*
- f. **Rule 5.12:** *"In dealing with matters of major political or 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 Guidance

26. Ofcom publishes guidance notes in relation to the sections of its Code as well as its investigation procedures.
27. Ofcom's guidance on section two (the "**Section Two Guidance**")<sup>4</sup> includes the following in respect of Rule 2.3: *"If there is an underrepresentation, the use of stereotypes and caricatures or the discussion of difficult or controversial issues involving that community may be seen as offensive in that it is viewed as creating a false impression of that minority."* (Page 7)
28. Ofcom's guidance on section five (the "**Section Five Guidance**")<sup>5</sup> includes the following in respect of Rule 5.9: programming where there are 'issue-led' presenters is permissible, and" *[i]n clearly signalled 'personal view' programmes, many in the audience are comfortable with adjusting their expectations of due impartiality"* (§1.53). However, this does not obviate the requirement that *"alternative viewpoints should be adequately represented"* (§1.53). In respect of such alternative viewpoints, they *"must not be included in a way that they are merely dismissed by the presenter and used as a further opportunity to put forward the presenter's own views"* (§1.55). For example, *"a presenter should not use alternative viewpoints, contrary to the presenter's own, only in a dismissive way, and only as a means of punctuating the presenter's own viewpoint"* (§1.55).
29. It also includes the following in respect of Rule 5.12: *"...a matter of major political or industrial controversy or major matter relating to current public policy is of a significant level of importance and is likely to be of the moment"* (§1.59).

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<sup>4</sup> Ofcom, 'Guidance Note: Section Two: Harm and offence' (18 July 2017)

<https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-guidance/programme-guidance/broadcast-code-guidance/section-2-guidance-notes.pdf?v=322622>.

<sup>5</sup> Ofcom, 'Guidance Note: Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions' (17 March 2025)

<https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-codes/2025/guidance-notes-section-five-17-march-2025.pdf?v=392773>.

30. Ofcom has prepared guidance in relation to complaints against on demand programme services (the “**Complaints Guidance**”).<sup>6</sup> In relation to the assessment stage: “Ofcom will first consider whether, on its face, a complaint raises **potentially substantive issues** under the rules for ODPS which warrant investigation by Ofcom. It will take into account the gravity and/or extent of the matter complained of, including, for example, whether it involves ongoing harm and/or harm to minors.” (§1.28, emphasis added); “Based on an initial assessment of the complaint and a review of the relevant material, Ofcom will consider **whether there may have been a breach of the rules** for ODPS which Ofcom considers requires a response from the ODPS provider. If not, Ofcom will decide not to investigate further [...]” (§1.30, emphasis added).

### **Proposed Grounds of Challenge**

31. The Code is to be interpreted in line with the natural and ordinary meaning of the words used, viewed in their particular context and the light of common sense: *GB News v Ofcom* [2025] EWHC 460 (Admin), [2025] 1 WLR 3164 (“**GB News**”) at §46 (per Collins Rice J), citing with approval *Lambeth LBC v Secretary of State for HCLG* [2019] 1 WLR 4317 at §19 (per Lord Carnwath JSC). Further:

*“Interpreting any statutory code begins with the question of whether any ambiguity genuinely arises about any individual point. If it does, then the next question is whether any such ambiguity can be resolved by considering the code as a whole. If not, then the context must widen to consider whether the necessary light can be shed by the parent statute, and in particular the provisions relating to the code itself. That engages principles of statutory interpretation, which in turn may or may not involve wider historical or policy perspectives.”* (*GB News* at §52).

And:

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<sup>6</sup> Ofcom, ‘Procedures for investigating breaches of rules for on demand programme services’ (updated 11 September 2023) <https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/on-demand/rules-and-guidance/procedures-for-investigating-breaches.pdf?v=334364>. If Talk is regulated as a satellite broadcaster rather than as an OPDS, identical formulations appear in the relevant complaints guidance for satellite broadcasters at §§1.22 and 1.24: Ofcom, ‘Procedures for investigating breaches of content standards for television and radio’ (3 April 2017) <https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-guidance/march-2017/breaches-content-standards.pdf?v=383574>.

*"[...] guidance [...] is not an aid to the construction of the statutory code – the interpretative hierarchy works the other way around."* (GB News at §61).

32. Ofcom has erred in law in its interpretations of several of the Code's Rules, or alternatively has acted irrationally in the application of those Rules. The Decision is unlawful on various alternative bases.

Ground 1 – Error of law or irrationality (Rules 5.11 and 5.12)

33. Ofcom decided that the trans issues raised in the Programmes *"were all dealing with a matter of political controversy and a matter relating to current public policy as opposed to a matter of "major" political controversy and a "major" matter relating to current public policy"* (Decision, page 7). Ground 1 applies to all Programmes.
34. The Code defines matters of *"major" political controversy* as those of *"national, and often international, importance"*. This is in line with the ordinary meaning of the word *"major"* as a descriptor of *"political controversy"* or *"current public policy"*. This definition has been applied in various Ofcom decisions which have held matters of *"major"* political controversy or *"major"* matters of public policy to include:
- a. Immigration and asylum policy in the UK, including: the Conservative Party Government's policies to address illegal immigration; small boats crossing the English Channel; the administrative backlog in processing claims for political asylum; arrangements for housing asylum seekers while their claims are processed; the deportation of foreign criminals; the Labour Party Opposition's approach to these issues; and Reform UK's proposals to the same;<sup>7</sup>
  - b. The Government's approach to economic and fiscal policies in the context of the forthcoming Spring Budget;<sup>8</sup>
  - c. The ongoing conflict in the Donbas region;<sup>9</sup> and

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<sup>7</sup> Ofcom Broadcast Bulletin Issue 484 (23 October 2023)  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/270057/in-breach-martin-daubney-gb-news-160623.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/270057/in-breach-martin-daubney-gb-news-160623.pdf).

<sup>8</sup> Ofcom Broadcast Bulletin Issue 481 (18 September 2023)  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/268146/Saturday-Morning-with-Esther-and-Philip%2C-G-B-News%2C-11-March-2023.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/268146/Saturday-Morning-with-Esther-and-Philip%2C-G-B-News%2C-11-March-2023.pdf)

<sup>9</sup> Ofcom Broadcast Bulletin (27 February 2022)  
<https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/bulletins/broadcast-bulletins/2022/issue-454/rt-news-rt-various-dates-and-times.pdf?v=328233>.

- d. Protests in Hong Kong, initially in response to the Hong Kong Government's Extradition Law Amendment Bill which made provision for criminal suspects in Hong Kong to be sent to mainland China for trial.<sup>10</sup>
35. Trans issues are both major matters of political controversy, and/or current public policy, in line with the examples above as identified by Ofcom. These are of unequivocal national and international importance. Regrettably, the denigration of trans individuals is widespread, and their treatment in public and private spaces and access to gender affirming care are major topics of political debate, as well as current public policy. In particular:
- a. Trans issues are "*of the moment*" and feature regularly in political discourse. During the 2024 General Election, gender and trans issues featured in the manifestos of every major political party.<sup>11</sup> Trans issues are even more prominent following the recent decision of the Supreme Court in *For Women Scotland*. Ofcom has itself confirmed that "*the Judgment constitutes a significant development in the continuing public and political debate over the appropriate political and societal approach to sex and gender-based rights*".<sup>12</sup> Indeed, this is apparent in many of the Programmes considered in that decision which referred explicitly to the Supreme Court's judgment and the anticipated updated guidance to be introduced by the Government following its handing down.
- b. Further, and in any event, trans issues are a matter of major current public policy. Following the *For Women Scotland* judgment, updated guidance from the Equality and Human Rights Commissioner was laid before Parliament on 21 May 2026.<sup>13</sup> Talk also underscored in its representations to Ofcom that it is the Government's policy to implement that decision (Decision, page 13).<sup>14</sup> Other legal

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<sup>10</sup> Ofcom Broadcast Bulletin Issue 403 (26 May 2020)

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/195781/The-World-Today-and-China-24%2C-CGTN.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/195781/The-World-Today-and-China-24%2C-CGTN.pdf).

<sup>11</sup> Eleanor Lawrie, 'What are the parties saying about women's rights and gender identity?' (*BBC News*, 29 June 2024) <https://www.bbc.co.uk/news/articles/c4nng2j42xro>.

<sup>12</sup> Letter from Ofcom to GB News (26 June 2025)

<https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/foi/2025/july/letter-to-gb-news-26-jun-e-2025.pdf?v=401223>.

<sup>13</sup> Libby Brooks, 'Single-sex toilets must exclude transgender people, says EHRC' (*The Guardian*, 21 May 2026) <https://www.theguardian.com/world/2026/may/21/single-sex-toilets-exclude-transgender-people-england-wales-scotland-code-of-practice>.

<sup>14</sup> Statement from Bridget Phillipson MP, "For Women Scotland" Supreme Court Ruling, House of Commons (22 April 2025),

cases concerning trans rights have also receive significant national attention, including claims by Darlington nurses<sup>15</sup> and Sandie Peggie<sup>16</sup> against the NHS. The two cases were the subject of more than 25 articles published by the BBC, while the Daily Mail published over 100 articles about the Peggie case and 30 articles about the Darlington nurses.

- c. Other specific issues pertaining to trans rights have also received significant coverage including:
  - i. In December 2024, the government announced that it would make the ban on puberty blockers permanent and that a trial would be established in 2025.<sup>17</sup> That trial was launched in November 2025 and then paused in February 2026.<sup>18</sup>
  - ii. The issue of trans women in sport received national media coverage when The Football Association<sup>19</sup>, England Netball<sup>20</sup>, The England and Wales Cricket Board<sup>21</sup> and England Netball all changed their rules in April and May 2025 to exclude trans women.
- d. Finally, Talk's own view is that trans issues constitute significant issues of national importance. In its representations to Ofcom, summarised in the Trans

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<https://hansard.parliament.uk/commons/2025-04-22/debates/31A6C620-BC92-41FE-B375-E37E84B45DA7/%E2%80%9CForWomenScotland%E2%80%9DSupremeCourtRuling>.

<sup>15</sup> Jonny Manning, 'Staff object to trans nurse using changing rooms' (*BBC News*, 2 April 2025)

<https://www.bbc.co.uk/news/articles/cpwzrxv5d8vo>.

<sup>16</sup> BBC News, 'Changing room trans row nurse 'felt intimidated'' (3 February 2025)

<https://www.bbc.co.uk/news/articles/cy8p41z972vo>.

<sup>17</sup> Department of Health and Social Care, 'Ban on puberty blockers to be made indefinite on experts' advice' (11 December 2024)

<https://www.gov.uk/government/news/ban-on-puberty-blockers-to-be-made-indefinite-on-experts-advice>.

<sup>18</sup> Amy Walker and Alison Holt, 'Puberty blockers trial paused over concerns from medicines watchdog' (*BBC News*, 20 February 2026) <https://www.bbc.co.uk/news/articles/cjd9z0p27k5o>.

<sup>19</sup> The FA, 'An FA update following the recent Supreme Court transgender ruling' (1 May 2025)

<https://www.thefa.com/news/2025/may/01/fa-transgender-policy-update-statement-supreme-court-ruling-2025-0105>.

<sup>20</sup> Sean Ingle, 'FA to ban transgender women from playing women's football in England' (*The Guardian*, 1 May 2025)

<https://www.theguardian.com/football/2025/may/01/fa-ban-transgender-women-from-playing-womens-football-in-england>.

<sup>21</sup> Jamie Gardner, 'ECB bans transgender women from taking part in women's and girl's cricket' (*The Independent*, 2 May 2026)

<https://www.independent.co.uk/sport/england-wales-england-netball-scottish-equality-and-human-rights-com-mission-b2743708.html>.

Issues Decision at pages 8-9, Talk explained that “[a]ll of the programmes being considered touch on an issue of current debate and very significant public interest” (emphasis added). Further, its hosts explained that the policy in relation to trans individuals is “the biggest single issue that women have faced in the last few years” (Julia Harley-Brewer, 09.07.25) and a “serious political issue”. (Alex Phillips, 21.06.25).

36. Ofcom’s error in construing the meaning of major matters resulted in its (unlawful) failure to consider potential breach of Rules 5.11 and 5.12 when determining whether Talk complied with its due impartiality requirements under the Code. Alternatively, Ofcom has acted irrationally in the application of those Rules.

#### Ground 2 – Error of law or irrationality (Rule 5.7)

37. Ofcom erred in its interpretation on what constitutes a misrepresentation of views or facts under Rule 5.7 of the Code. Ground 2 is advanced in relation to Alex Phillips (27.06.25) and Julia Hartley-Brewer (30.06.25).
38. While Ofcom noted that “accuracy is not a statutory requirement outside of news content”, it provided no explanation of where programming may involve a “misrepresent[ation]” of views or facts for the purposes of Rule 5.7. Instead, Ofcom found across the Decision that “Ofcom could not identify how this statement, or any statements by either the presenter or the guest, misrepresented views or facts. Our assessment is that these were personal, strongly expressed opinions [...]. As such, we considered these various statements to be strong personal opinions, but that they did not misrepresent others’ views or facts.” (e.g. Decision, page 24).
39. Ofcom’s analysis of the Programmes reveals that it has failed properly to distinguish between statements of personal views (which fall outside the scope of Rule 5.7) and representations of the views of others or of facts (which fall inside its scope). A common feature of those Programmes is that their participants make inaccurate representations of the decision of the Supreme Court in For Women Scotland:
  - a. Alex Phillips (27.06.25) – the host claimed that “[t]he Supreme Court said, ‘a woman’s a woman and a man’s a man’”.

- b. Julia Hartley-Brewer (30.06.25) – the host claimed that the fact that trans women are women *“is as a matter of fact, factually not true and is legally factually not true by the Supreme Court judgment”*.
40. These statements purport to describe (as a matter of fact) the decision of the Supreme Court but are false, and therefore amount to misrepresentations:
- a. As Ofcom has itself explained, *“the Judgment was concerned to establish the correct interpretation of the Equality Act 2010 [...] and, in particular, the meaning of the terms “sex”, “man”, “male”, “woman” and “female” when they are used in the EA 2010 to define the parameters of sex-based discrimination and sex-based harassment for the purposes of that statute”* and that *“the assumption that the Judgment should also be understood to have effectively “settled” wider debate about the appropriate meaning, usage and effect of such terms in all contexts outside the scope of the EA 2010, including in broadcast programmes in which issues relating to sex and gender-based rights are discussed generally”* is incorrect.
- b. As a result, *“beyond its articulation of the correct legal approach to sex-based discrimination for the purpose of the EA 2010, it does not appear to us that any useful “overarching principles” can properly be divined from the Judgment for the purposes of Ofcom’s assessment of broadcasters’ compliance with the Code”*.<sup>22</sup>
- c. However, the reference to the Supreme Court’s decision in these Programmes misrepresents the finding as a broader conclusion that in law there is no trans gender identity. This is plainly wrong.
41. Further, in Julia-Hartley-Brewer (30.06.25) a guest claimed that *“trans feelings or gender dysphoria is a mental health condition”*. This was expressed as a statement of fact rather than personal opinion, and is false. There is clear guidance from the NHS that *“[g]ender dysphoria is not a mental illness, but some people may develop mental health problems because of gender dysphoria”*.<sup>23</sup>
42. Ofcom failed even to consider these misrepresentations and has consequently acted contrary to its Code.

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<sup>22</sup> Letter from Ofcom to GB News (26 June 2025)

<https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/foi/2025/july/letter-to-gb-news-26-june-2025.pdf?v=401223>.

<sup>23</sup> NHS, ‘Overview: Gender dysphoria’, <https://www.nhs.uk/conditions/gender-dysphoria/>.

### Ground 3 – Error of law or irrationality (Rule 5.9)

43. Ofcom also erred in its interpretation of Rule 5.9. The last sentence of that rule provides that *“presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality”*. Ground 3 is advanced in relation to Alex Phillips (29.06.25).
44. Viewed in the context of the Code, and in particular against the general due impartiality requirement in Rule 5.5, this element of Rule 5.9 introduces an additional obligation (beyond the scope of Rule 5.5) not to take advantage of regular appearance as a talk show host to promote personal views in a manner that compromises due impartiality. In particular, in the context of opinion-based ‘personal view’ programmes, the substantive requirements for due impartiality are lower given this context (see e.g. Decision, page 7). However, the corollary of the lower requirement for due impartiality is that the hosts of such programmes are under a lesser obligation to invite alternative viewpoints and thereby have a more prominent role in broadcasting their opinions.
45. Rule 5.9 seeks to prevent abuse of that position of privilege by requiring Ofcom to assess whether, notwithstanding general observance of due impartiality in a programme through the presentation of a range of views, the host of ‘personal view’ programmes grants their own views outsized prominence. By way of example, Ofcom’s Section Five Guidance in respect of Rule 5.9 clarifies that, in the context of ‘issues-led’ broadcasting *“a presenter should not use alternative viewpoints, contrary to the presenter’s own, only in a dismissive way, and only as a means of punctuating the presenter’s own viewpoint”* (at §1.55).
46. In Alex Phillips (29.06.25), concerning guidance on breastfeeding for trans women, the host said that *“[n]ow the NHS apparently has been training midwives in a trans workshop that is promoting male breastfeeding. The Queer Birth Club, **of course there’s one**, with LGBTQ plus competency and lactation classes using the tagline “Birthing people ain’t all women” (emphasis added). The host immediately described this as “ghoulish and gross untested science”*.
47. In considering Rule 5.9 in respect of each of the Programmes, Ofcom’s analysis revealed that it considered compliance on the basis of the exposure of multiple views

to the audience rather than the prominence of the host's views. Ofcom explained in the introductions to decisions under Rule 5.9 that "*alternative viewpoints should be adequately represented*" (Decision, page 7) and this was the only criterion against which Rule 5.9 was assessed. For example:

*"Whilst Alex Phillips did promote her personal views strongly in the programme on the matter of political controversy and matter of current public policy concerned, Ofcom did not consider that she used her role within this programme to do so in a manner that prevented the audience from being adequately exposed to other relevant views or that undermined due impartiality."* (Decision, page 32).

48. This element of the Decision is deficient in two respects.
- a. First, Ofcom has failed to consider whether – notwithstanding the fact that other relevant views were outlined – the host's view had outsized prominence in a manner which would likely influence the audience to adopt those views. When considering compliance with Rule 5.9, Ofcom failed to consider the way Alex Phillips presented the views of others in a derisive manner and in order to underscore her own view. In particular, it made no comment on the host's interjection to discredit Queer Birth Club as set out above.
  - b. Secondly, Ofcom has failed to consider the role of the host's views across different programmes. No attempt has been made to chart the prominence of Alex Phillips' views across the Programmes engaging trans issues.
49. These constituted errors in the interpretation (or irrationality in the application) of the Code.

#### Ground 4 – Error of law or irrationality (Rule 2.3)

50. Ofcom erred in its interpretation of Rule 2.3 and whether "*material which may cause offence is justified by the context*". Ground 4 applies to Alex Phillips (21.06.25), Alex Phillips (27.06.25) and Alex Phillips (29.06.25).
51. Ofcom takes the view in its Decision that external context can mitigate offensive material, however this is contrary to the ordinary meaning of Rule 2.3 which requires that offensive material is justified by the context, not mitigated by the context.

Justification by context means that the inclusion of the harmful or offensive material is warranted in light of the features of the programme, whereas mitigation means that (regardless of its justification) its impact is reduced.

52. Alex Phillips' comments during her programmes were deeply harmful and offensive towards trans individuals – in particular in expounding a trope that trans women are perverts, fetishists and paedophiles – in a manner which was not justified (and could not be justified) by the context of those programmes:
- a. In respect of Alex Phillips (21.06.25), the host made statements that proponents of trans rights are *"allowing a man with a girl beard to put on a frock and go into the brownie tent"* and that this is a question of *"hulking great perverts going into children's toilets"*. These are harrowing statements, describing trans women – notably all trans women without qualification – as paedophiles, perverts and predators who weaponize gender identity to commit horrifying sexual abuse.
  - b. In relation to Alex Phillips (27.06.25) the host made comments about *"the Venn diagram, the overlap of certain men who like to sort of dress up as women, and fetish, of actually getting a sexual kick out of all of this"*, and that *"I can just see it now sort of standing there with their silicon additions and with a big smirk on their face, watching a young female police officer really squirm at having to do that job"*. These comments again rely on extremely hurtful tropes about trans women who are portrayed as fetishists and sexual abusers.
  - c. Finally, in Alex Phillips (29.06.25), the host referred to the practice of trans women breastfeeding as *"ghoulish and gross"* and noted the following: *"Just imagine being so narcissistic, so self-involved, so selfish that your first act of a parent is to **fetishize** breastfeeding and demanding someone using experimental drugs so you can grow breasts and have a baby suckle them. **It is sick. It's a perversion**, quite frankly"* (emphasis added).
53. In considering these comments, Ofcom found that these statements did not raise substantive issues under Rule 2.3 because of the comments by the host's guest. While Ofcom recorded their offensiveness, it decided that the comments were mitigated by the views expressed by guests. For example, in relation to Alex Phillips (21.06.25) Ofcom found that:

*"We recognise that Alex Phillips made certain statements in the segments which could be interpreted as generalised claims about transgender people as a whole. However, Ella Whelan provided strong mitigation to the potentially highly offensive comments made, and served to contextualise the discussion [...]"* (Decision, page 19).

54. Ofcom's interpretation of Rule 2.3 is wrong in law on several bases.
55. First, that rule requires that harmful or offensive material is justified by the context of the relevant programming, for example where offensive statements are broadcast in the context of a drama portraying sensitive themes or topics.
  - a. Contrary to Ofcom's position, no external context can mitigate such statements. Instead, the nature of the programming must justify it. In the context of current affairs programming (which is the nature of the Programmes complained of), nothing about this format warrants deeply offensive (and certainly transphobic) attacks on trans women.
  - b. This interpretation is supported by the scheme of the 2003 Act. Notably, the prevention of the broadcasting of harmful and offensive material is a freestanding obligation (e.g. section 3(2)(e)) separate from the due impartiality regime. That means that the logic of that regime (where extreme views can be balanced off against one another to ensure impartiality) does not apply to rules dealing with offensive and harmful material. Instead, the purpose of the Code's rules on harmful or offensive material is to prevent their broadcast in a manner where such harm and offence is or could be experienced by viewers. Those rules recognise that the mere broadcast of such material – whether or not a contrary view is expressed – legitimises them.
56. Secondly, Ofcom has failed to consider the use of stereotypes – referred to in the Section Two Guidance – increasing the harm and offence of Alex Phillips' statements. Ofcom's Section Two Guidance on Rule 2.3 explains at page 7 that *"the use of stereotypes and caricatures or the discussion of difficult or controversial issues involving that community may be seen as offensive in that it is viewed as creating a false impression of that minority"*. In this Programme, the host described trans women generally as sexual predators and perverts. This is a common trope of transphobic discourse which is frequently used to create a false impression of that minority. However,

Ofcom failed to consider the wider impact of Alex Phillips' statement when assessing compliance with Rule 2.3.

57. Finally, and in any event, Ofcom erred in its approach to Article 10 ECHR in respect of this programme. Ofcom explained that *"in line with freedom of expression, Ofcom recognises broadcasters' editorial freedom to broadcast controversial viewpoints on matters of public debate [...] including views that some may find upsetting, provocative or offensive"* (Decision, page 18). However, Alex Phillips' comments are not merely *"provocative"*. As explained above, they were deeply discriminatory towards trans individuals.
- a. Those statements undermine the protections enshrined in the ECHR and thereby constitute hate speech which falls outside the scope of Article 10 ECHR protection by operation of Article 17 ECHR. That provision provides that *"any activity [...] aimed at the destruction of any of the rights and freedoms"* does not enjoy protection under the Convention. For example, in *Lenis v Greece* (Application No. 47833/20, 27 June 2023) the ECtHR found at §57 that statements referring to homosexuals as *"the scum of society"* and *"social felon[s]"* fell outside of the scope of Article 10 protection by virtue of Article 17.
  - b. Talk consequently enjoyed no freedom of expression protections in broadcasting those views (nor, for the avoidance of doubt, did any member of the audience enjoy a right to receive such views) and this constituted an irrelevant consideration undermining its lawfulness.

#### Ground 5 – Irrationality (Rule 5.5)

58. Further, and in any event, Ofcom acted irrationally in its decisions on due impartiality under Rule 5.5. Ground 5 applies to Alex Phillips (29.06.25) and Julia Hartley-Brewer (30.06.25).
59. The Complaints Guidance clarifies that, at the assessment stage, Ofcom will decline to pursue an investigation into potential breaches of its Code where complaints do not raise *"potentially substantive issues under the rules"* (at §1.28, emphasis added), and it has been assessed that the complaint has not established the relevant programme *"may have been a breach of the rules"* (at §1.30). The clear implication is that where potentially substantive issues are found, the complaint will be investigated. The

guidance thereby establishes a low bar which a complaint must satisfy before it proceeds to full investigation.

60. Ofcom acted irrationally in determining that the Programmes did not "*potentially*" raise due impartiality issues under Rule 5.5. In particular, following the reopening of investigations after GLP's initial complaints were made, and through detailed decisions prepared over several months and running to 129 pages in length, the suggestion that the majority of those complaints (10 out of 11 of the trans issues programmes) do not even potentially raise substantive issues under the Code is plainly irrational.
61. Further, it is apparent from the Decision that the purported impartiality achieved on Ofcom's analysis of the Programmes was illusory. Ofcom relied heavily on statements from policy makers or organisations to ensure the representation of opposing views as a means of maintaining due impartiality. However, these views were the matter being discussed and were identified solely for the purpose of ridicule by the host and guests, and they therefore amounted to nothing more than a strawman to allow for the personal views of the participants of the Programmes to be expressed and promoted.
62. In Alex Phillips (29.06.25), the format of the programme in which the relevant segment occurred involved guests with opposing views discussing various current affairs topics. The discussion concerned a trans workshop promoting male breastfeeding in which both guests echoed the views of the host without any pushback on her characterisation of the practice as "*ghoulish and gross*". Indeed, one guest doubled-down and described it as "*dehumanising*". Ofcom considered that due impartiality was maintained because an "*alternative view*" was identified by one of the guests who explained that "*the Queer Birth Club as they call themselves [...] have said that it is 'trans misogyny' to raise any concerns about the quality of the milk that people are producing*" (Decision, page 30). However, this was the view being discussed by the participants, and was raised solely for the purpose of criticism and ridicule by the host and guests.
63. Indeed, it is clear from the content of the Programmes themselves that the hosts considered that they were under no obligation whatsoever to observe due impartiality. This is apparent from Julia Hartley-Brewer (30.06.25). That segment was titled "*Ofcom trans chaos*" and concerned when commenting on Ofcom's approach to

sex and gender in its draft guidance on providing a safer online environment for women and girls.<sup>24</sup> The host explained in no uncertain terms that “*there are certain issues that are considered to be settled matters that [...] you can’t just broadcast one side [...] according to Ofcom, the media regulator in this country, [biological sex is] not settled*” and that “*trans women are not women [...] there is **no one from Ofcom, there is no one that is going to convince me that I have to have a second opinion on that** [...] I don’t believe that’s an opinion I have to have on*”. She was clear that “*I won’t do it, end of, I don’t care about Ofcom [...] I refuse to lie on air*” (emphasis added).

64. It is apparent from this segment that the host considered that she had no due impartiality obligations under the Code in relation to trans issues. Notwithstanding these express statements wholly disavowing due impartiality in respect of trans issues, Ofcom considered that it had been observed on the basis of passing comments that the host and guest historically and as a matter of courtesy used the preferred pronouns of trans identifying persons (Decision, pages 45-46). This finding – that due impartiality was observed in a programme where the host claimed expressly that she was not bound to observe due impartiality – falls outside the range of reasonable decisions open to a responsible regulator.

### Next Steps

65. In light of the above, GLP invites Ofcom to withdraw its decisions and assess afresh whether the GLP’s complaints potentially raise substantive issues as to Talk’s compliance with the Code.

### ADR

66. GLP is prepared to consider any proposal you may make in respect of alternative dispute resolution, and to attend any meeting for that purpose.

### Disclosure

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<sup>24</sup> Ofcom, ‘A Safer Life Online for Women and Girls: Practical Guidance for Tech Companies’ (draft, 25 February 2025) available at <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-on-draft-guidance-a-safer-life-online-for-women-and-girls/main-docs/annex-a-draft-guidance.pdf?v=403596>.  
§3.13(a)(ii) refers to gendered abuse such as deliberate misgendering.

67. As you are aware, GLP is entitled at this stage to relevant documents which are necessary for them to understand the issues in dispute. In particular, the duty of candour requires Ofcom to disclose materials "*which are reasonably required for the court to arrive at an accurate decision*": *R (Quark Fishing) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1409 at §50. This duty applies at the pre-action stage.
68. GLP requests disclosure of the full copies of: (i) all complaints received by Ofcom in respect of the Programmes; and (ii) all representations provided by News UK in respect of GLP's complaints and Ofcom's initial assessment.

### **Reply Date**

69. We require a response to this letter by **4pm on 12 June 2026**. If you do not respond by that time, GLP may apply for judicial review of the Decision.

Yours faithfully,



Good Law Project