



**FSU**  
FREE SPEECH UNION

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Dame Melanie Dawes  
Chief Executive  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

23<sup>rd</sup> April 2021

Dear Dame Melanie,

**Re. Julia Hartley-Brewer on 'This Morning', 15 April 2021**

I am writing to you in my capacity as General Secretary of the Free Speech Union, a mass-membership public interest body that stands up for the speech rights of its members and campaigns for free speech more generally.

According to the [MailOnline](#) on 16 April 2021 and other news platforms, a number of viewers complained to Ofcom in relation to an interview with the journalist and broadcaster Julia Hartley-Brewer on ITV's *This Morning* on 15 April 2021.

In the segment, Ms Hartley-Brewer comments on a photograph of the Queen and Prince Philip with seven children taken in 2018, before the birth of the son of the Duke and Duchess of Sussex. She says:

It's a beautiful photograph, taken back in 2018 of seven of the grandchildren, of course before Archie was born to Meghan and Harry.

I wonder if Meghan has managed to take offence to this photograph that doesn't include her son. She probably thinks it's a racist photograph taken before her son was even conceived. But I'm sure she's managed to take offence at it anyway.

The other interviewee in the segment, Nicola Thorp, objected that that comment was unacceptable and that Ms Hartley-Brewer was pushing an "agenda". Some Twitter users who had, one presumes, watched the segment, accused her of "racism" and "hate". Some of them may, in turn, have complained to Ofcom. We understand that 203 complains have now been sent to Ofcom.

We ask that, in considering any complaints against Ms Hartley-Brewer, Ofcom comply with its Broadcasting Code, specifically section 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.

Ms Hartley-Brewer's comment clearly offended some people, even though it was intended as a joke, something she indicated by smiling while saying it and which she subsequently made clear. However, insofar as she was making a serious point – that the Duchess of Sussex has in the past claimed to be offended for apparently spurious reasons – that point does not qualify as “material which may cause offence” that needs to be justified by context since her criticism was of the Duchess as an individual, not as a representative of a particular race or gender.

The Duchess has chosen to speak publicly, in a television interview broadcast around the world, about her relationship with the Royal Family, including her unsubstantiated claim that an unnamed member of that family made comments about her unborn baby that she interpreted as racist. Given that context, it is entirely appropriate for a journalist and broadcaster to comment on the Duchess's view that the Royal Family acts in a racist way towards her.

Even if the comment could be deemed offensive in accordance with section 2.3, the context clearly did justify it. Ms Hartley-Brewer was referring to an ongoing controversy about the veracity of the Duchess's claims about racism within the Royal Family – claims which potentially affect the Queen's standing as head of state and head of the Commonwealth. As you will be aware, Article 10 of the European Convention on Human Rights, which Ofcom must act in accordance with, grants a wide freedom to discuss matters of public interest and controversy, and especially so for journalists and broadcasters such as Ms Hartley-Brewer.

Any offence felt by viewers was mitigated by the fact that another contributor, Nicola Thorp, gave voice to those feelings of anger. This was a fair balance between Ms Hartley-Brewer's right to speak freely and lawfully on a matter of public interest, and the interest of the audience in hearing two sides of the ongoing debate referred to above. Any sanction against ITV for allowing the comments to be aired would be tantamount to Ofcom taking the Duchess's side in this debate.

We understand that some complaints to Ofcom have accused Ms Hartley-Brewer of laughing at or joking about “racism”. This is untrue. Ms Hartley-Brewer was mocking the attitude of a specific person, and was not making light of the issue of racism.

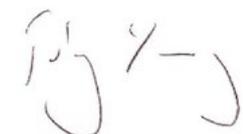
In considering the complaints against the segment, as Ofcom must do, we ask that it give proper weight to Ms Hartley-Brewer's free speech rights, and refrain from giving undue weight to the objections of over-sensitive viewers.

It is also worth noting that a large number of tweets were posted on Twitter by people claiming to be fans of Meghan after the Royal Family released the photograph – before Ms Hartley-Brewer appeared on ITV – claiming the absence of Archie was evidence of the family's racism. After other social media users pointed out that the photograph was taken before Archie's birth in 2019, some still claimed that the fact that this photograph had been released to the media, rather than a more recent one that included Archie, was evidence of the Royal Family's racism. This is the context in which Ms Hartley-Brewer's comments should be understood – she was gently mocking the Duchess and her fans for their uncharitable habit of interpreting the innocent behaviour by members of the Royal Family as evidence of their racism.

Liberal democracy thrives on controversy, and controversy unfailingly invites controversial comment. If television is to thrive in our liberal democracy, Ofcom must allow room for comments such as those made by Ms Hartley-Brewer.

In the interests of full disclosure I should say that Ms Hartley-Brewer is a member of the Free Speech Union's Media Advisory Council.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Toby Young'.

Toby Young  
General Secretary  
The Free Speech Union  
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Cc: Lord Burns, Chairman, Ofcom  
Dame Carolyn McCall, Chief Executive, ITV  
Julian Knight, Chair, The Digital, Culture, Media and Sport Select Committee, the House of Commons