

BBC/Ofcom Complaint – Summary

[NB. This is a summary of two fuller complaints that have been issued to the BBC and Ofcom]

Overview

On 24 January and again on 23 February, the BBC broadcast 'The Truth about Brewdog'. The programme was anything but.

In response BrewDog has now submitted a formal complaint to Ofcom (the broadcast regulator), on the basis that the programme fell well below basic editorial standards of fairness and accuracy, and responsible public interest journalism. A formal legal complaint has also been sent to the BBC on the grounds that the programme is inaccurate, misleading and defamatory of BrewDog and of James Watt.

Both complaints are, necessarily, lengthy and what follows is a summary of some of the central issues about which we have complained, but it is not intended to be exhaustive.

As will be clear from what follows, the BBC was either informed about the truth of many of the most serious allegations broadcast by it in advance, but chose to ignore the facts, or it failed to respond to requests to provide proper detail of the allegations being put to us in order that a proper response could be provided, and the allegations rebutted.

Under its Charter, the BBC must ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality. In The Truth About BrewDog, the BBC broadcast significant amounts of false, inaccurate, and misleading information.

The public have been, to a great extent, misinformed. It should have been apparent to BBC that many of their sources were ex-employees with malicious intent towards the business. Pre broadcast, BBC was given fair notice that many of them would be undoubtedly tainted. They were referred to a recent independent review on BrewDog. And to a quote indicating that "this had been the most extreme case we've seen of a small group of former employees on a mission to cause damage to a brand". They were also advised that an independent company had stated that there had 'definitely been a small group of people who had a personal vendetta against James Watt - willing to go to all lengths to take down BrewDog.'

That conclusion should have given BBC cause to reflect on the motives of their sources and the tone and allegations to be broadcast. They proceeded without providing any reasonable specification of the allegations, that they would later broadcast, despite repeated requests to do so, and where it transpires many were entirely unfounded and could have been so proved. This was not responsible journalism.

There are numerous other elements of the complaint that goes into documented detail on individuals backgrounds that cast serious doubt on the motives of the ex-employees involved that, for confidentiality reasons, we have not included in this summary version.

Complaint Key Points

1) Share Selling - The BBC wrongly stated that as part of the TSG deal, Equity Punks can only sell their shares on “special trading days”. This is factually inaccurate. Hundreds of thousands of Equity Punks’ shares have been sold outside of ‘special trading days’ with many Equity Punks using this service: www.brewdogshares.com

2) Share Ranking - The BBC wrongly stated that James Watt and Martin Dickie sold nearly a quarter of the company to TSG “effectively guaranteeing their investment over equity punks’ investments.”. This is factually inaccurate. James and Martin’s shares rank exactly the same as Equity Punks shares. There is not any guarantee of their shares over EFPs shares.

3) Share Selling Part 2 – The BBC stated that Equity Punks can only sell a ‘fraction’ of their shares at special trading days, whereas Mr Dickie & Mr Watt sold a ‘pile’ to TSG. The clear implication is that they sold substantially more than EFPs were permitted to sell. This is also inaccurate, and unfair. Mr Watt, Mr Dickie and Mr Neil Simpson sold 17.8% of their shares, and the other “A” shareholders sold less (Griffin 14.95% and Digby 12.5%) So, on average the “A” shareholders sold around the same proportion as the 15% that EFPs were entitled to sell as part of the TSG deal. Over 50,000 shares were sold to TSG from EFPs.

4) Private Air Travel Part 1 - The BBC wrongly stated that in the period when BrewDog raised money to install a biogas unit and other planet saving measures at their facility in Ellon, that the Mr Watt “charged the company up to £4,000 per hour” for private air travel.

This is not an accurate account of the position. BrewDog did indeed raise millions from crowd funding to install a biogas unit and other planet saving measures at their facility in Ellon. The money was mostly raised in 2021. The crowd funding was launched on 9th September 2020 and ended 8th September 2021. The biogas plant was built in 2021. Since 1st Jan 2021 there has been no private air travel or charter flights which have been charged to the company. The statement in the programme is accordingly inaccurate and misleading.

5) Private Air Travel Part 2 - Moreover, the sting of the allegation was incorrect even prior to January 2021. On the occasions before January 2021 when Mr Watt used private aircraft, while on company business, he covered more than half of the cost personally. This meant that the true cost was around £2,000 per hour and not the £4,000 per hour figure referenced.

6) Tree Planting – The BBC stated that the reason why there aren’t any trees planted in the Lost Forest is because “BrewDog aren’t planning to pay for them with their own cash.” BBC were advised pre broadcast that all trees will be planted in the Lost Forest once the necessary forestry planning permissions are finalised.

Having concluded the purchase of Kinrara Estate in December 2020, BrewDog immediately engaged with Scottish Forestry, the authority with control over forestry permissions in Scotland, and the Cairngorms National Park, via their forestry advisers Scottish Woodlands, to start a wide-ranging consultation process for the project at the Lost Forest. This consultation involved neighbours, statutory and other stakeholders and explored the topics relating to the establishment of the Lost Forest.

The consultation process helped to identify the surveys that were required to ensure that the proposed works were in keeping with the area, the existing ecology and the objectives of both BrewDog and the Scottish Government's woodland expansion targets. The agreed surveys were carried out over the spring and summer of 2021 at the most appropriate time for each specific survey to ensure the full range of data was collected to properly inform the design.

Following on from the surveys an iterative design process for Phase 1 of the Lost Forest was started using the data collected to identify suitable planting sites. This design process was further consulted over a series of iterations to come up with the final design. This final design was submitted to Scottish Forestry before Christmas 2021 and BrewDog awaits the outcome of their formal consultation process. BrewDog has followed the proper process as laid down by Scottish Forestry and given the scale of the plans for the Lost Forest, it is not a surprise that the permission for planting has taken the length of time it has. Only once they have final approval from Scottish Forestry, can they commence planting of the Lost Forest.

The BBC were fully informed of this pre-broadcast yet they did not broadcast any relevant response from BrewDog to balance its assertion that the reason for not planting is entirely financial.

Only once they have final approval from Scottish Forestry, can planting commence or BrewDog will be in breach of planning regulations. BrewDog has invested £10 million into the project so far (land acquisition, land management in conjunction with Scottish Woodlands, planning, initial peat work etc.) and to complete the project will require a further £5 million. BrewDog has applied for a Government grant to support the project of £1.2 million.

The suggestion BrewDog isn't using its own money is completely false and defamatory, £15m of BrewDog money is committed to this project.

7) Lost Lager - The BBC stated: "And look their website says right here they'll plant a tree there for every pack of Lost Lager sold".

This is not an accurate account of the position. "The Buy One Get One Tree offer", were not trees in the Lost Forest, but rather trees with BrewDog's partner, Eden Restoration Projects. BrewDog has a dedicated area where trees are planted in an Eden Project Forest in in Madagascar where we have planted 1million trees. In support of this allegation, BBC showed a screen grab accompanying the words "says right here they'll plant a tree there for every pack of Lost Lager sold": However, this is not the Lost Lager webpage for consumers, which has correctly stated the true position at all times (see for example <https://www.brewdog.com/uk/bogot-terms-and-conditions>).

What the BBC showed, and falsely suggested that this is what BrewDog's website "says", is in fact a capture of an erroneous trade page on a non-accessible link, not linked to from anywhere on our client's website. In particular, consumers could not access this link. This page in total had 1,300 visitors whereas the actual Lost Lager page that was accessible to consumers, where all the text was correct, received 1.9 million page views over the same period and remains live today. A quick internet search would have revealed the true position.

BrewDog only became aware of this issue because earlier this year it was contacted by another journalist. In this case that journalist made clear to what they were referring (ie an erroneous webpage) and BrewDog was able to clarify the position. As a result no article, based on incorrect information, was run. This was fair and responsible journalism, and the opposite of how the BBC conducted itself.

8) Licenses "were on the line" - The BBC told how a domestic importer was unaware that BrewDog may have submitted false information to a US government agency and that BrewDog's action would mean that the domestic importer's license "would have been on the line". In terms of federal statute and regulations, 27 USC Section 204 and 27 CFR Section 1.50 Revocation or suspension, the Importer would need to "wilfully" violate the conditions of the TTB permit in order to face revocation of the permit.

The importer's licence would never have been in any jeopardy, as he would need to "wilfully" violate the conditions, which he did not. BBC were informed by a former senior counsel of TTB that their interpretation of the TTB's labelling laws and regulations was a 'monumental overreach at best'. The BBC was also informed by the TTB that no action would be taken yet broadcast the claim the licence was "on the line" regardless of this claim being completely false.

9) James Watt's Personal Investments Part 1 - The BBC told how in 2017 James Watt bought shares in a large brewer and how he presently holds at least £500,000 of shares in this company. He does not and has not for a considerable period of time. The purpose of that share purchase was to assist BrewDog in a business venture. The reason BBC got this wrong is because the information was confidential and was unlawfully obtained. There is no public interest in disclosing false confidential information.

10) James Watt's Personal Investments Part 2 - The BBC stated they had 'found out about some investments that James Watt would probably rather be kept quiet. For example, in 2017 he invested more than £2m in a hedge fund in the Cayman Islands - one of the world's most secretive offshore tax havens.'

The BBC asserted in the programme that Mr Watt's portfolio is private, but then broadcast information concerning it. There is no public interest justification for this breach of privacy. The BBC accepted and informed the reasonable ordinary viewer that Mr. Watt would wish this information kept private, yet inexplicably broadcast it. The BBC did not allege any illegality or tax evasion/avoidance and we shared a statement with them in advance showing all UK tax was paid on this investment. Absent illegality there can be no public interest in the publication of information self-evidently obtained in breach of express duties of confidence or otherwise unlawfully obtained.

11) Survey NPS - The BBC broadcast wholly misleading claims about a survey that we commissioned to assess staff morale. The BBC said that the Net Promoter Score (NPS) for Head Office staff was minus 54. The figure was not determinative of the overall NPS which was minus 19 and was not mentioned in the programme by comparison. Given that the programme had referenced “an all-staff survey”, it was misleading to focus on the headline figure from one department within the organisation. It was substantially misleading when that department amounted to only 23.9% of BrewDog’s employees.

12) Survey not acted upon Part 1 - The BBC reported that the results of this 2019 staff survey were not acted on. This was not supported in the programme by any member of staff, past or present. The statement is inaccurate. As a consequence of the Survey, a strategy was implemented to review key themes by department. Those outcomes included setting up meetings with Heads of Departments/Operations Manager/General Managers to specifically spend time on where BrewDog could improve. One specific outcome was team discussion and actively discussing team results to gain feedback/suggestions from teams on how to improve in specific areas.

13) Survey not acted upon Part 2 - Furthermore, as a consequence of the survey, BrewDog:

- (a) changed their People Director
- (b) Launched the BrewDog Crewprint available online for review at:
<https://d1fnkk8n0t8a0e.cloudfront.net/docs/FINAL12560+BrewDog+Crewprint+2019+V5+20pp+A5+AW.pdf>
- (c) Introduced the BrewDog Academy
- (d) Introduced Top Dogs monthly awards
- (e) Introduced Hop Stock – employee share scheme
- (f) Introduced ‘£500 to quit’ scheme
- (g) Gave each team member £100 to spend in BrewDog bars each year
- (h) Introduced new customer service incentive program.

These are documented outcomes. The suggestion that the survey was not acted upon is entirely false.

14) Speedbird 100 - Footage was shown of Martin Dickie saying: “what you have in your glass is the first ever beer made on an aeroplane”. The BBC wrongly said that this was all a stunt and the beer had in fact been brewed in Ellon. It was explained to BBC pre broadcast, that Speedbird is the first ever beer brewed on an airplane; that larger full commercial batches of this beer were also brewed in Ellon and that Martin’s comment was not misleading.

15) Ex-Employee A - In the programme an ex-employee (Ex-Employee A) was critical of BrewDog. However, Ex-Employee A was not dismissed for simply taking a damaged 6 pack of beer or for 'questioning things' as the BBC alleged in an attempt to neutralise her malice. They were dismissed, for serious theft (not isolated) and numerous documented instances of misconduct and poor performance.

16) Scheduling Part 1 - The BBC said that another former employee Ex-Employee C would try to arrange the shift rota, so that Ex-Employee D would not work on the days that James Watt was going to be there. This is false. It is not possible that Ex-Employee C would change the schedule for Ex-Employee D to avoid James Watt because, during the only period while Ex-Employee C was scheduling and Ex-Employee D was working at BrewDog, James Watt was never in the USA due to Covid-19 travel restrictions.

17) Scheduling Part 2 – The BBC said Ex-Employee C would schedule more men at nights when James Watt was there. This claim is false. Detailed analysis of shift data and payroll data, held by a 3rd party, shows that proportionally, there were actually more women on at night than men, when Mr Watt was in town – 61% when Mr Watt was in town versus 59% when he was not in town. The reality is the exact opposite of what Ex-Employee C states. This information is with our lawyers.

18) Rumour Ex-Employee E - made the highly improbable statement that at a meeting, a manager told her “she was James Watt’s type”. In fact, 5 managers were present at the meeting (including Ex-Employee E). All other available witnesses have confirmed that what Ex-Employee E said happened, did not. Again, the BBC were informed of this fact yet broadcast false claims regardless.

19) Charlotte Cook Involvement – Charlotte Cook is an ex-employee who resigned in 2014 pending a disciplinary hearing into her conduct. Her role as a founder of Punks With Purpose (PWP) and its leading spokesperson should have been made clear in the broadcast. She has an extreme and documented antipathy towards both BrewDog and Mr Watt. In a tweet after the documentary aired it was noted by one of her compatriots that the documentary was ‘all Charlotte’. We have sight of various pre-broadcast messages by her positively encouraging people to jump on the bandwagon and actively encouraging participation by those who were negative. Yet the BBC entrusted her to act as de facto researcher, evidence gatherer, and participation encourager on their behalf. Her motivations and her contempt for Mr Watt and BrewDog are long standing and well documented.

20) Clear Attempt to Distort Timelines - there has been a clear attempt to distort the timeline of events to try to countermand the truth that what is being portrayed is historic. For example, it is said in the programme: - “But we’ve been told that in the very recent past some BrewDog staff have felt anything but.’ The viewer is then told by of an incident in 2017. It very misleading to refer 2017 as “the very recent past” (particularly where it predates the numerous changes made by BrewDog).

21) Disregarding of contrary submissions regarding BrewDog - A well respected private individual posted a report discussing his conversations with the BBC's researchers regarding BrewDog. We now set out his comment in full:

'They spoke to me for nearly an hour over the phone a few months ago. It was pretty clear that they hadn't got a clue what a private equity investment was. It was also clear that they only wanted me to say negative things like the staffing issues and the 'it's a con not an investment' Twitter shite. I'm pretty sure the whole programme will be the usual rubbish by people that haven't got a clue, and those haters that do, but to whom truth and honesty are about as familiar to them as to Boris Johnson. But it's the BBC, and those haters who are conspiring to bring the company down will spread it far and wide online.'

BrewDog is aware of other similar responses which were expressed to BBC researchers.

It is telling that one of the shows contributors even described it as a hatchet job: *'Well done for fighting the insinuations and unjustified opinions from the documentary, James. It was a hatchet job and the BBC should be ashamed.'*

22) Ignoring The Wiser Report - The BBC completely ignored the detailed and comprehensive review of BrewDog culture completely only 2 months ago.

Allan Leighton (chairman of The Co-operative Group since February 2015, former CEO of Asda, former chief executive of Pandora, and former non-executive chairman of the Royal Mail) stated that 'During my many years working in business, I have never seen such a deep dive into an organisation's culture.' The findings and outcomes of the report are available here: www.brewdog.com/uk/independent-culture-review

Our lawyers drew also drew the BBC's attention to the existence and content of the Wiser Report. The statistical base for the Wiser Report was broader than the BBC's investigation, the extent to which it enquired into detail more forensic and more scientific than the self-selecting and anecdotal approach adopted by the BBC.

Had the BBC properly engaged, BrewDog could have informed the BBC of Wiser stating in terms that "We offered all of these people members conversations - as you know only a few of them responded to us and spoke to us directly." [...] "What they said to us in conversations and their surveys was much more negative than current employees or even former employees that were with you in the same era".

The BBC ought to have recognised that such a report merited very close consideration, not least since the findings of the Wiser Report present such a radically different picture to that presented by the Programme's contributors. The disparity should have caused the BBC to reassess its approach.

Overview

It should also have been apparent to the BBC that many of the BBC's sources were ex-employees who have an axe to grind, and if their accounts were broadcast at all then full information on this point should have been put before the viewer in order to properly weigh their accounts. Indeed, pre-broadcast, we gave the BBC fair notice that many of the BBC's sources in this matter would be undoubtedly tainted. We, in particular quoted the view of an independent third party: "there are always ex-employees that have left the business and feel mistreated or unjustly defeated. That being said, this had been the most extreme case we've seen of a small group of former employees on a mission to cause damage to a brand" and that there had 'definitely been a small group of people who had a personal vendetta against Mr Watt - willing to go to all lengths to take down BrewDog' (underlining ours). We indicated that the wording of that conclusion should give the BBC cause to reflect on the motives of the BBC's (then-unidentified) sources and the tone and allegations that the BBC sought to broadcast.

The publicly available statistics of the Wisser Report ought also to have given the BBC pause, indicating that the information they were receiving from individuals (overwhelmingly former employees) put forward by PWP might not be reflective of the current culture at the company, and instead indicative of potential extraordinary biases and/or dishonesty within their self-selecting sample. Notwithstanding all the above, the BBC saw fit to broadcast PWP's allegations, while simultaneously not making the viewer aware of (i) the sources' close shared history, (ii) Ms Cook and others' coordination of these sources and management of the sources' engagement with the BBC, (iii) Ms Cook and the others' own readily-discoverable history of personal antipathy towards Mr Watt, (iv) the possibility that the reported comments were not representative of the experience of over 2,400 employees and over 5,000 former employees; (v) the findings of the published Wisser report regarding the company's culture, drawn from a much wider sample than their own sources or (vi) the existence, and the precise nature of Wisser's comments regarding PWP and their motive.

Where BrewDog indicated that it may have evidence to rebut the allegations, if they were better particularised, the BBC's response was not to particularise its allegations or to re-examine its own assumptions, sources or conclusions but instead to move to broadcast and then, within the Programme, briefly and high-handedly acknowledge the limited information that BrewDog had been able to provide and move on. That is not how the law says they should behave: in *Financial Times Ltd. & Ors v Interbrew SA* [2002] EWCA Civ 274, Lord Justice Sedley said:

What the media cannot do...is to plead a public duty to circulate any story of sufficient interest which comes into their hands, subject only to an ethical obligation to leaven it with any on-the-record denial which is offered.

It now transpires that many of the broadcast claims which are entirely unfounded and could have been proved to so be. There was no rush for the BBC to broadcast historic allegations, yet the BBC left BrewDog in the dark as to the particular claims, lest they might be rebutted. That is not responsible journalism. The BBC have also opted to publish private financial information obtained by unlawful means without consent and where such an action cannot be otherwise warranted, and that is indefensible.

- End of Summary -