

Head of Legal
BBC Legal Department

By email.

URGENT

Strictly Private and Confidential

6 May 2014

Our ref: LD/Top Gear

Your ref:

Dear Madam

Clarkson-gate

Race complaints about "Top Gear" and Jeremy Clarkson

We refer to our complaint of 1 May 2014 about Clarkson and Top Gear using the N-word.

We act for the following clients who wish to complain about the use of BBC staff, equipment and resources in the filming of the N-word comment by Jeremy Clarkson:

Ms Somi Guha, actress/writer

Mr Anthony Robinson, former Director of Casework, Equality and Human Rights Commission

Mr Fred Jacobs, US entrepreneur and former Director at the Solicitors Regulation Authority

Mr Richard W. Rogers, US entrepreneur

The above complain that the following BBC staff must be sacked for gross misconduct for repeated use and approval of racist language on the Top Gear Show:

Mr Brian Klein, Director

Mr Andy Wilman, Executive Producer

Mr Robert Porter, Script-editor and writer

Mr Jeremy Clarkson, writer and presenter

Mr Richard Hammond, presenter



Background

Mr Clarkson has a long-history of using racist abuse for humour.

In "Clarkson on Cars", he wrote:

"If it turns out that a Malaysian customs officer cannot be bribed, I shall renounce Christianity and move to the Orkneys where, I'm told, everyone is Lucifer's best mate."

"We know also that the French are rude, the Italians are mad and the Dutch are a bunch of dope-smoking pornographers."

"Each Wednesday, I have to make a 120-mile journey from Nairobi, south London, to Bombay, near Birmingham."

In his "Jeremy Clarkson's Motorworld" he added: "My only experience of Vietnamese people was either at a restaurant in Fulham or as a lot of scuttling midgets in straw hats throwing hand grenades into Huey helicopters."

In 2005, he did the Nazi salute on Top Gear and suggested BMW German cars' sat nav "only goes to Poland".

We assume that the BBC interviewed and challenged Mr Clarkson on his racist views before engaging him for the Top Gear show and subsequently as they emerged?

In early 2011, several of our clients complained about the racist comment used against Mexican people on the Top Gear show. In the next show, we now know he used the N-word.

In July 2011, he described watching a black screen on his tv as something that "looks like it is being presented by Lenry Henry (a black comedian) in a cave".

In 2012, he made racist comments about Indian people. He also laughed at Chinese swimmers and likened them to the Chinese people who drowned in the bay of Morecombe in 2004.

In 2014, he described an Asian person as a "slope" (a racial slur, short for "slope-eyed").

Despite this horrific history, he denies being a racist and the BBC did not sack him. His co-presenters aided and abetted most of the Top Gear racism.

It is important to note that all of these racist comments were used deliberately and scripted by Richard Porter and/or Jeremy Clarkson, except for the attack on the Mexican ambassador which Mr Clarkson improvised on the same racist theme.

Richard Porter (white male, whose aliases include "Richard Chapati" and "Archbishop Desmond Porter" according to the IMDb website) has commented in an interview:

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If you could have a face-to-face with BMW's Chris Bangle, what would you say / do to him?

I think I'd challenge him to a game of Pictionary. "What the hell is that? A door? You twat [sexist comment], that doesn't look anything like a door. Why is it on the wonk?" Alternatively, I suppose I could wait until he's asleep and then shave off the moustache part of his beard so that he looks like a religious cult leader. *Or a Belgian.*

How does it feel to know that Clarkson's dry humour and "rapier wit" is the handiwork of (largely unsung) others?

It's not really. He still writes an awful lot of Top Gear. I just chip in with gags and suggestions. Most of our scripts are a team effort, resulting from a bunch of blokes sitting in a room talking bollocks and trying to make each other laugh.

The scripted racism against Indians, Mexican and Roma people is initially approved by Mr Andy Wilman (Executive Producer) and Mr Clarkson, before Mr Clarkson receives the script to rehearse.

As insiders have commented on various blogs:

"Porter had said to Clarkson and Wilman that a joke or scene wasn't funny and wouldn't work and they just went ahead and *did it anyway*".

"It must be said that with *Clarkson and Wilman making the show* that they want instead of the show that they think their audience wants, things will never turn out well. And let's also remember that *it's Jeremy who writes most of the script*, not Porter".

"Porter is the "script editor" so he could take bits out if he wanted but ultimately it is *Jeremy and Andy's show and they will always have final say*".

In that regard, when Clarkson was complained of for attacking "special needs" people, Mr Wilman responded:

"Please direct your anger towards myself and the production team, rather than at Jeremy and James.

This was our fault, not theirs, and we unreservedly apologise to all the viewers we have upset as a consequence".

Mr Clarkson then rehearses the discriminatory lines with his co-presenters, Mr Hammond and Mr May.

The rehearsals then lead to several takes of what is being filmed. The presenters normally needing more than one take to finesse and nuance in the racist comment. BBC staff are present at all times.

The show is then edited on the Wednesday and approved for broadcast by Mr Andy Wilman, and the producers, including the Executive Producer, Mr Brian Klein.

Mr Hammond always acts as Mr Clarkson's foil. His comments help to disguise and legitimise Clarkson's racist comment. Like, James May, he is very much part of the problem and a willing accomplice.

The N-word

On a high after the racist attack on Mexican people, in their next show Mr Porter and/or Mr Clarkson wanted to go one step further and use the N-word.

They decided to use the N-word by Mr Clarkson reciting a racist nursery rhyme. This was scripted for Mr Clarkson to use.

Mr Clarkson was excited to use it having remarked upon why only Tarrantino (among white people) could use the N-word in his earlier autobiography. He enthusiastically said that there was only one way to tell between two cars and that was to use the racist nursery rhyme.

Indeed, one of our staff members' children, stopped reading Clarkson's autobiography when he read the N-word; even a 12 year old knew it had no place in a book about a car enthusiast.

The well-trodden trick was to weave the N-word into the narrative of the show without being censored or criticised.

The decision (presumably by Clarkson or the Director, Klein) was for the normally loud Clarkson to mumble the word; thus securing the badge of honour (among their racist fans) of including it but at the same time, disguising it. They did exactly the same thing by scripting the "slope" word (from the racial slur, slope-eyed) to attack Asian people in the show earlier this year. Once the slope word was said by Clarkson, co-presenter, Richard Hammond immediately pretended that Clarkson was referring to the angle of the bridge which he was not.

The show specialises in making a profit *from deliberate but deniable racism*.

Clarkson did several takes to perfect the mumble of the N-word. It is akin to saying the N-word under your breath when a black man passes. It is enough for him to hear it but not enough that he can prove it.

Clarkson thought he got it right on the second or third take.

All of the BBC staff present heard the N-word being repeatedly mumbled but did nothing.

Clarkson heard it back later and thought the N-word was too identifiable and asked if another take could be used.

In the end, probably because we had accused Top gear of racism in relation to the anti-Mexican show, they got cold feet and substituted the N-word for "teacher". Their racist viewers would still get the pun though.

The Daily Mirror subsequently accused Clarkson of using the N-word.

He tweeted immediately that he had never used the N-word; "I did not use the n-word. Never use it. The Mirror has gone way too far this time." That was a lie. He used it in his autobiography and he repeatedly stated/mumbled it in rehearsals and various filmed takes.

Clarkson said he used the c-word but not the N-word. The fact that he defended himself with disgusting sexism did not concern the BBC, despite the fact that the show had previously been accused of being institutionally sexist.

The Daily Mirror then released the footage of Clarkson mumbling the N-word in his attempt to get it into the broadcast programme.

Clarkson then issued an apology for mumbling the N-word in the clip and begged forgiveness.

Neither Porter nor Clarkson apologised for scripting the N-word into the show. Mr Klein and Mr Wilman did not apologise for sanctioning that usage so that it could be rehearsed by Clarkson and the BBC staff.

Indeed, Porter disrespectfully reacted as follows on his Sniff Petrol site: "Clarkson denies using N-word to describe Daily Mirror" ("I would never call it a Newspaper"). This was the un-apologetic response from the script-editor who had deliberately scripted and/or approved the use of the N-word.

The BBC investigation

We have asked the BBC to investigate the use of the N-word and to re-investigate the anti-Mexican and slope remarks which our clients had previously complained about in that context.

Instead of investigating the matter it transpires that the BBC met with Clarkson and forced him to issue an apology. This was presumably a behind the scenes deal to save him under which he would appear to be contrite and then the BBC's sanction of not dismissing him may appear to some viewers to be reasonable.

Having ignored the matter until then, the BBC publicised the apology on its website. The aim was to save face and not to root out the racism.

The apology was simply a ruse to fool the British people that the BBC and Clarkson were sorry for the use of the N-word. They were not.

In fact, Clarkson has now withdrawn his apology completely. He has said (in what must be a breach of confidentiality) that he was forced to make it by the BBC. He has also stated that the final written warning was unjustified and has mocked the BBC over their action to date.

In short, his apology was stage-managed and forced and therefore not sincere and hence not, in any sense, a mitigating circumstance.

The people responsible for the use of the N-word, that is Porter, Klein and Wilman among many other BBC staff, were not similarly disciplined or even investigated. These racists have thus far escaped (yet again) without censure. It is a national disgrace.

Clarkson-gate goes to the heart of the BBC management. Top Gear is the only remaining popular show to which racists lay claim. The BBC has to choose between justice and profiteering from illegal racism or the public will choose for it.

To date, therefore, we have had a sham investigation which was essentially a cover up, to protect the culpable BBC staff lurking in the shadows behind Clarkson and the BBC's most profitable tv show.

The BBC has one last chance to re-establish its credibility as a non-racist and professional organisation.

The Law

We say that the Race Directive 2000 applies to racist comments made at work by your staff. We say that the exceptions created in the Equality Act 2010 in section 29 and 149 are illegal and contrary to that Directive. They must hence be disapplied and ignored.

It is only the Gender Directive 2004 which regrettably authorised such exemptions for broadcasts and editorial decisions. The Race Directive did not.

The Race Directive and/or article 47 of the Fundamental Charter of Rights also disapplies the also Communications Act in this regard.

The reason why the Race Directive was silent on it was because the EU was worried about broadcasts by people like Le Pen (and now Clarkson and Wilman) and wanted such racism to be capable of being challenged in the courts.

Racism?

Some of the race hate emails aimed at our firm and our original client, Ms Guha (who also like our previous female clients received sexist emails as well) say these complaints are about political correctness rather than racism.

However, that is not true. After the anti-Mexican broadcast, we were contacted by (among other people) Mexicans based in the UK who were bullied at work (and school) as a direct result of Top Gear's casual racism.

The Top Gear show encourages and legitimises racist stereotypes and attitudes.

Top Gear is the last bastion of racism in the UK. It is currently the only popular programme being broadcast that racists claim for their own.

This is why criticism of Clarkson is reacted to by racist threats; his fans want to "cull" the gypsies in Clarkson's defence.

We have been contacted by Chinese and/or Asian origin people who have been targeted for bullying since the "slope" broadcast.

Of course, there are worse forms of racism. However, a programme that legitimises racist stereotypes to millions of adults (and children) both in the UK and abroad cannot be ignored.

British humour defence

The defence of the BBC to the allegation of racism against Indian people, Mexican people and more recently Asian people is that it is simply "British humour".

However, it is not and they know it.

It is not a part of multicultural British humour. It is a part of the racist humour peddled by the Victorians up to the early 1970s when racism finally became illegal in the UK.

Further, when the BBC broadcast the anti-Mexican show in the USA they removed all of the racist "British humour" material. Why? It is because they knew it to be racist and that any civilised country like the USA would see it for what it is; racism, pure and simple.

Similarly, having deliberately used the "slope" word to describe an Asian person and admitted they knew the term was used to describe such people, they have decided not to broadcast the same in the USA or Australia because it is offensive there. But it is offensive here for exactly the same reason.

Cronyism

It is well-known that Clarkson is a personal friend of the Prime Minister, David Cameron. Last week, the PM's right-hand man, Michael Gove, whom we know well, spoke out in defence of Clarkson, while the PM stayed silent. Gove said that Clarkson should not be axed.

Gove did so before your investigation had concluded and with no understanding of the factual matrix. This was a disgraceful act of cronyism by the Minister responsible for our children's education. In his eyes, a dishonest racist who gives a false and forced apology should not be dismissed and the scripting of the N-word and enduring racism can simply be swept under the carpet?

We note that Gove believed much more in due process when we worked with him against Ed Balls over the procedural failures in the Baby P case.

Now in power, it seems cronyism is more important to him than due process and therefore, justice.

Please do not be swayed by political interference positive (Harriet Harman's comments) or negative (Gove and Farage), or by your profit margins. You work for the British public not for politicians or your profit-margin so investigate the matter properly and act accordingly.

Our and our clients' views

Lawrence Davies – "Until the dark forces behind Clarkson and his co-presenters are sacked, racism will remain part of the DNA of Top Gear. *Not a penny of public money* should facilitate their exit. Racism and dishonesty is gross misconduct and that is a fundamental breach of contract which entitles the BBC to sack them without compensation"

Somi Guha - 'With a covert wink to their fans, the Top Gear team find it a sport to re-introduce words and slurs while pretending they haven't. These words are the very words that racists have used while attacking, abusing, ganging up on and/or lynching someone from a visible minority. I refuse to fund their sport.'

Anthony Robinson – "This is totally unacceptable for the BBC to permit this kind of racist language. It is very clear what is being said, but even if the word had not been used the decision to recite the saying knowing that viewers would fill in the missing racist "N" word themselves is nevertheless unacceptable from the BBC. The BBC is under a legal duty to eliminate discrimination, advance equality of opportunity and foster good relations between people. The failure to take action against this kind of racism or racist banter is a dereliction of the legal duties on the Corporation. The BBC must take the strongest actions possible against Jeremy Clarkson and those involved in the writing, editing and production of the programme".

Our demands

Our clients ask the BBC to investigate the deliberate use of racism on the show by its writers, editors and producers and if this is proven to dismiss those staff and to return the profits from those particular shows and to donate them to an anti-racist charity.

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Striving for better justice

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Unless Clarkson, Wilman, Porter and Klein et al are dismissed further to a thorough investigation we are to call for non-racists to boycott the show, until it is de-commissioned, and we will consider additional legal action, including judicial review, next week.

We look forward to hearing from you.

Kind regards

Equal Justice solicitors

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Equality and Human Rights Commission
Minister for Equality
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