

Ofcom Content Sanctions Committee

Consideration of sanction against:

ARY Digital UK Limited, TLCS 290 (“ARY Digital UK” or “the Licensee”) in respect of its service ARY Digital

For:

Breaches of Ofcom’s Broadcasting Code (“the Code”) of:

Rule 2.1: “Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.”

Rule 10.3: “Products and services must not be promoted in programmes...”

Rule 10.4: “No undue prominence may be given in any programme to a product or service.”

Relating to the following conduct:

(i) The potentially harmful promotion of ‘medicinal’ products of, and practices encouraged by, Dr Surjeet Kaur

(ii) The promotion and undue prominence of the products sold by Dr Kaur

in *The Weekend Show*;

On:

18 February 2006

Decision:

To impose a financial penalty (payable to HM Paymaster General) of **£15,000** and, in addition, to require ARY Digital UK to **broadcast a statement of Ofcom’s finding** on its service in a form to be determined by Ofcom on one specified occasion.

1. Summary

- 1.1. For the reasons set out in full in the Decision, under powers delegated from the Ofcom Board to Ofcom's Content Sanctions Committee ("the Committee"), the Committee decided to impose a statutory sanction on ARY Digital in light of the serious nature of its failure to ensure compliance with Ofcom's Broadcasting Code ("the Code").
- 1.2. This adjudication relates to the broadcast of *The Weekend Show* broadcast on ARY Digital on 18 February 2006.
- 1.3. ARY Digital is a Pakistani television channel available in Pakistan, the Middle East and Europe. It is part of a network of channels, owned by the ARY Group. ARY network channels include ARY One World, ARY Digital, the Musik and QTV. ARY Digital broadcasts news, films, and general light entertainment programmes. Its Ofcom licence was granted on 28 June 1999.
- 1.4. A consultant surgeon based in the UK complained about an edition of *The Weekend Show* transmitted on 18 February 2006. On this magazine programme broadcast on a Saturday morning an alternative health practitioner, Dr Surjeet Kaur, was interviewed. The complainant objected to the programme being used to promote "Dr" Kaur's alternative health practice and to allow Dr Kaur to make what the complainant considered potentially dangerous medicinal claims.
- 1.5. Ofcom launched an investigation into this edition of the programme. It contained a segment in which Dr Surjeet Kaur, who treats various diseases with herbal medicine, was interviewed for about 30 minutes about various illnesses. During this interview Dr Kaur made various claims – not supported by any evidence – about ways to treat successfully serious medical conditions, including cancer, sterility, sciatica, psoriasis and leprosy. Dr Kaur said these could all be treated by various alternative health practices, including cooking with garlic, and also by the use of special medicines which were sold by her practice.
- 1.6. Dr Kaur also promoted medicines sold by her practice at some length on the programme. These medicines included a "special formula" called ASN which she said treated "many diseases". She also repeatedly promoted her alternative health practice throughout the 30 minute programme, unchallenged by the presenters, and invited viewers to visit her offices in Birmingham and Southall personally or to order alternative medicines from her over the telephone. She gave the addresses of these practices and landline and mobile telephone numbers. The numbers were displayed prominently on the screen on a strap line.
- 1.7. Ofcom concluded that the Licensee allowed Dr Kaur's claims to be broadcast unchallenged in the programme and without any substantiating scientific evidence. This created a material risk that potentially vulnerable viewers, and in particular any suffering from life threatening illnesses such as cancer, would follow this advice and that they might do so without seeking proper medical help. Inevitably, this risked serious harm being caused to such viewers. Ofcom therefore found the Licensee in breach of the requirement of the Code that broadcasters must provide adequate protection for the public from harmful material (Rule 2.1).

- 1.8. Ofcom also found ARY Digital UK in breach of Rule 10.3 (products and services must not be promoted in programmes) and 10.4 (no undue prominence for a product or service). This was because in the 30 minute programme Dr Kaur was allowed to promote, unchallenged, her alternative health practice and products.
- 1.9. Ofcom considered the breaches of the Code in this case were sufficiently serious to merit the imposition of a statutory sanction. In particular, Ofcom considered the breaches were serious for the following reasons:
- as a result of breaching Rule 2.1 by broadcasting the unsubstantiated claims of Dr Kaur, there was a material risk to vulnerable viewers suffering from the serious illnesses discussed in the programme. As a consequence of following her advice, they could have abandoned, or delayed, seeking appropriate and timely medical treatment from a qualified medical practitioner. This had the potential to cause such viewers to suffer serious detriment to their health. (In considering the seriousness of this breach, Ofcom had regard to the fact that it is a criminal offence under the Cancer Act 1939 to publish an “advertisement”¹ offering to treat any person with cancer or prescribe any remedy or to give any advice in connection with the treatment of cancer);
 - Dr Kaur appeared unchallenged as the sole guest for a complete segment of *The Weekend Show*, which lasted 30 minutes;
 - in broadcasting advice about serious medical conditions, the programme failed to treat them with due objectivity and responsibility; and
 - whilst the programme itself was not repeated, this was not the first time that the Licensee had been found to have contravened Rules 10.3 and 10.4 of the Code². This suggested to the Committee that the Licensee, on the date in February 2006 when the breach took place, did not have adequate compliance staff and procedures in place to ensure due compliance with the Rules in Section 10 of the Code.
- 1.10. In light of the seriousness of the breaches, and having given careful consideration to all the evidence, and having regard to Ofcom’s Penalty Guidelines, Ofcom decided it was appropriate to impose a financial penalty on ARY Digital UK of £15,000 (payable to HM Paymaster General). Ofcom also decided to direct ARY Digital UK to broadcast a statement of its findings on its service in a form to be determined by Ofcom on one specified occasion.

2. Background

- 2.1. ARY Digital is a Pakistani television channel with an Ofcom licence and available in Pakistan, the Middle East and Europe and is part of an expanding network of channels, owned by the ARY Group.
- 2.2. *The Weekend Show* is a one-hour lifestyle magazine programme broadcast from London at 10:00 on Saturday mornings.

¹ Defined very broadly to include “any announcement made orally or by any means of producing or transmitting sounds”.

² See the Hutch Cup coverage and Allianz Cup coverage finding decision against ARY Digital UK, Ofcom Broadcast Bulletin, Issue 68, dated 4 September 2006

- 2.3. A consultant surgeon based in the UK complained to Ofcom that an edition of *The Weekend Show* transmitted on ARY Digital on 18 February 2007 featured Dr Surjeet Kaur promoting her alternative health practice and making medicinal claims which he considered to be potentially dangerous.
- 2.4. In particular, the complainant was concerned that Dr Kaur claimed that cancer could be treated with garlic and with products available from her company. The complainant was particularly concerned because this was a programme in Urdu for the Asian community which, he said, suffered from poor health education. It was therefore his view that the advice in this programme had an even greater potential to endanger the lives of potentially vulnerable members of the audience.
- 2.5. Ofcom investigated the edition of *The Weekend Show* broadcast on 18 February 2006. The programme contained a segment in which a presenter introduced a guest on the programme as Dr Surjeet Kaur, an alternative health practitioner who treated various diseases with herbal medicine. Then two presenters interviewed Dr Kaur about various illnesses. During this interview Dr Kaur made various claims – not supported by any evidence – about ways to treat successfully various serious medical conditions. In particular, and of most concern to Ofcom, these conditions included various types of cancer. Other illnesses that Dr Kaur claimed to be able to treat included sterility, sciatica, psoriasis and leprosy. Dr Kaur said these could all be treated successfully by various alternative health practices, including cooking with garlic, and also by the use of special medicines which were sold by her practice.
- 2.6. For example, during her interview, she advised viewers to: *“...use as much garlic as you can for cancer. Garlic, I mean, as much as you can in cooking pulses and vegetables, if someone has a severe problem of cancer, and they have come to know that they have cancer, they should first get from me a medicine for cleaning the stomach/intestines, so that all the dirty things/all toxic, that is, poisonous things which have accumulated inside them, should go out. We give medicine only for fifteen days for that. Additionally, with whatever instructions I give, cancer can be cured...And, moreover, those who have the disease of cancer today should start eating garlic at home every day in cooked pulses, as they fry and season these dishes”.*
- 2.7. Dr Kaur went on to promote and praise the benefits of medicines sold by her practice. For example she said: *“To cure all these [medical problems], we have prepared a special formula. It is called ASN, it improves the digestive process, and increases flesh, semen and power...Just one medicine covers so many diseases.”* She continued that: *“...any problem of the heart, whatever problem it may be, we treat it with a medicine to be taken in the manner of tea. However high cholesterol may be, it will go away completely...The results of our medicines are very good, people are already coming and taking it, and they get cured.”* She was allowed repeatedly to promote her alternative health practices in the programme, unchallenged by the presenters. She invited viewers to visit her alternative health practices in Birmingham and Southall personally, setting out the days of the week when she was at each address. She also explained how to order an array of her medicines over the telephone. She gave the addresses of these practices and landline and mobile telephone numbers. These numbers were then

displayed prominently and for long periods during the programme on the screen on a strap line.

3. Legal Framework

The Communications Act 2003

3.1. Ofcom has a duty under section 319 of the Communications Act 2003 (“the Act”) to set standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives.

The standards objectives are set out in section 319(2) of the Act. They include:

- that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)); and
- that the international obligations of the United Kingdom are complied with (section 319(2)(i))³.

3.2. In carrying out its functions, Ofcom’s principal duty under section 3(1) of the Act includes a duty to further the interests of citizens in relation to communications matters. In carrying out this duty, Ofcom is required to secure a number of things, including, in accordance with section 3(2)(e):

- The application in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services.

3.3. Ofcom must also have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and to any other principles representing best regulatory practice (section 3(3)).

3.4. Where relevant in the circumstances, Ofcom must also have regard to a number of other considerations including:

- The need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)); and
- The vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3(4)(h)).

³ In this case the relevant international obligation is with respect to advertising included in television services, contained in the Television Without Frontiers Directive (89/552/EEC as amended by 97/36/EC). This duty requires advertising and programming to be kept separate.

The Human Rights Act 1998

- 3.5. Section 6 of the Human Rights Act 1998 requires Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention of Human Rights (“the Convention”).
- 3.6. Article 10 of the Convention establishes the right to freedom of expression. This encompasses a broadcaster’s right to “impart information and ideas” and the audience’s “right to receive information and ideas without interference by public authority”. Such rights may only be restricted if the restrictions are *“prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary”* (Article 10(2) of the Convention).
- 3.7. Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Ofcom Broadcasting Code

- 3.8. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code, which came into force on 25 July 2005 and which has been drafted in light of the Human Rights Act and the Convention.
- 3.9. Accompanying Guidance Notes to each section of the Code are published and from time to time updated, on the Ofcom website². The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.

Remedies for contravention of TLCS licence condition(s)

- 3.10. Where there has been a contravention of a TLCS licence condition, section 236 of the Act provides Ofcom with the power to direct the holder of the licence to broadcast a correction or statement of findings (or both) or not to repeat a programme.
- 3.11. Similarly, section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence of a maximum of whichever is the greater of £250,000 and 5% of its qualifying revenue.
- 3.12. Lastly, section 238 of the Act provides Ofcom with the power to revoke a TLCS licence.

Relevant provisions of the Ofcom Broadcasting Code

3.13. Rule 2.1: *“Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.”*

3.14. Rule 10.3: *“Products and services must not be promoted in programmes. This rule does not apply to programme related material.”*

Rule 10.4: *“No undue prominence may be given in any programme to a product or service.”*

4. Background

4.1. Ofcom carried out an investigation of *The Weekend Show* transmitted on ARY Digital on 18 February 2006 after it was alleged that an alternative health practitioner called Dr Kaur made claims regarding the treatment of various conditions with herbs including that cancer could be treated with garlic, and that the products available from her company can cure serious diseases including cancer. In light of the evidence, and the Licensee’s responses, Ofcom concluded that this edition of *The Weekend Show* was in breach of the Code.

4.2. In addition, Ofcom found the breach to be sufficiently serious to warrant the referral of the case to Ofcom’s Content Sanctions Committee (“the Committee”) for consideration of a statutory sanction. Accordingly, ARY Digital UK was invited to attend an oral hearing before the Committee and was given the opportunity to make written representations in advance of attending, as well as at the hearing itself. A summary of these is set out below at paragraphs 4.4 to 4.7 and 8.1 to 8.12.

Ofcom’s investigation

4.3. In its investigation, Ofcom notified ARY of the complainant’s concerns and asked it to comment with specific regard to Sections 2 and 10 of the Code. It also asked ARY to comment as to why it had not retained a copy of the programme when it had originally submitted a copy to Ofcom and knew the programme was under investigation.

ARY’s response to Ofcom’s investigation

4.4. ARY Digital stated that the programme was a discussion with an expert on alternative medicine and that the programme refrained from presenting Dr Kaur’s opinions as fact. It said no breach of Section 2 had occurred because the programme did not present alternative medicine as being superior to established ways of practising medicine. It went on to say that it did not consider there had been a breach of Section 10 of the Code because the programme did not promote Dr Kaur’s medical practice. However, it added that it had not retained a copy of the programme and that it had based its response on the English translation made for Ofcom and which Ofcom had provided to ARY Digital UK with its request for the Licensee’s representations.

- 4.5. ARY Digital UK said that the translation supplied by Ofcom was inaccurate. It said that the transcript from which the translation had been made was not scripted in Urdu (the primary language of the channel) but “Gurmukhi”, which it said was a Sanskrit based script used primarily for the Punjabi language. It therefore decided, in order to check discrepancies in the translation, to have the programme transcribed again and then translated into English.
- 4.6. Based on its own translation, ARY Digital UK stated that Dr Kaur talked about the benefits of herbal medicine but at no point in the programme was this medicine promoted as the “be all remedy or panacea for any of the serious medical conditions being talked about”. It said that the medical claims made by Dr Kaur had a different meaning in their translation, and that she was talking about medicine in general and not medicine available from her in particular.
- 4.7. It went on to say that the references to Dr Surjeet Kaur’s practice during the programme were intended to encourage viewers to consult their GP or other qualified medical practitioner, rather than to rely on the programme alone for advice in relation to remedies for any of the serious medical conditions referred to in the programme. However, it did consider it a “blunder” on the producer’s part that Dr Surjeet Kaur’s telephone numbers were as placed on screen and admitted this should not have occurred. It explained this had happened as a result of the large numbers of calls to the studio

5. Ofcom’s finding on the breaches

- 5.1. Ofcom considered these matters under the following rules from the Ofcom Broadcasting Code:
 - Rule 2.1: “Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material;”
 - Rule 10.3: “Products and services must not be promoted in programmes...”; and
 - Rule 10.4: “No undue prominence may be given in any programme to a product or service.”
- 5.2. On 30 January 2007, Ofcom concluded that there had been serious breaches of these Rules as follows:

(i) The potentially harmful promotion of ‘medicinal’ products of, and practices encouraged by, Dr Surjeet Kaur

This edition of *The Weekend Show* seriously breached Rule 2.1 of the Code by allowing an alternative health practitioner to make unfounded and unchallenged claims regarding: (a) the ability of products she sold to cure cancer and of the cancer-curing benefits of consuming garlic and of her advice generally to assist with the treatment of cancer; and (b) the efficacy of her company’s products in curing medical conditions such as leprosy, sciatica, psoriasis and sterility. These claims were potentially harmful because the broadcast of unsubstantiated and unchallenged medicinal claims, including the claim that cancer and other serious medical conditions could be cured by following the advice provided and using products available from Dr Kaur’s company, created a material risk to viewers suffering from the

illnesses Dr Kaur claimed to be able to treat. This risk was however particularly serious for any viewers suffering from life-threatening illnesses, such as cancer. They might follow this advice or not seek proper medical advice in a timely fashion as a result, so potentially causing very serious harm.

- 5.3. The risk of harm resulting from the claims made for Dr Kaur's products and their potential efficacy in curing serious and life-threatening illnesses was increased because the claims were not challenged or questioned at all by the presenters of the programme.

(ii) The promotion and undue prominence of the products sold by Dr Kaur

- 5.4. The promotion of Dr Kaur's practice and medicines resulted in undue prominence being given to these products and services and so breaching Rules 10.3 and 10.4 of the Code. This was because of the disproportionate and extensive references to both her products and their efficacy and to her alternative health practice. Some illustrative examples are set out in paragraph 2.7 above.
- 5.5. The Executive further noted that ARY Digital UK had been found in breach of Rules 10.3 and 10.4 in respect of another programme broadcast around the same time in early 2006, indicating inadequate compliance procedures regarding the Rules in the Code concerning products or services in programmes. (See the Hutch Cup coverage and Allianz Cup coverage finding decision against ARY Digital UK, Ofcom Broadcast Bulletin, Issue 68, dated 4 September 2006.)

6. ARY's written representations on the possible imposition of a sanction

- 6.1. The Licensee stated that its Board of Directors had accepted the resignation of its Chief Executive Officer as a result of editorial lapses and non-compliance with the Code. It went on to say that it did not disagree with the observations made in Ofcom's investigation and said that its compliance department had been strengthened. In other words, ARY Digital UK admitted the breaches Ofcom recorded against it. The Licensee also clarified that it no longer disputed Ofcom's translation of the programme.
- 6.2. ARY Digital UK said that its Board of Directors had issued new guidelines in respect of live programmes and content for the ARY Digital Network to ensure strict compliance with the Code. It also confirmed that its compliance department would be reporting from now on to the Board. In light of these factors, the Licensee requested Ofcom to take a lenient view of the breaches of the Code.

7. Referral to the Content Sanctions Committee

- 7.1. In all the circumstances, and having regard in particular to the seriousness of the breaches and the potential for significant harm to viewers, Ofcom considered the breaches were sufficiently serious to warrant referral to the Committee for consideration of a statutory sanction.

- 7.2. Therefore, in accordance with Ofcom's outline procedure for the consideration of statutory sanctions in content cases, the case was referred to the Committee.

8. Sanctions Hearing

- 8.1. Ofcom's Content Sanctions Committee held an oral hearing on 1 October 2007 at which ARY Digital UK was given the opportunity to make oral representations for the Committee to take into account in deciding whether the breaches warranted the imposition of a statutory sanction, and if so, at what level.
- 8.2. The Committee was addressed by Hussain Lawai, Company Secretary for ARY Digital, and Fayaz Ghafoor, Chief Executive Officer of ARY Digital UK.
- 8.3. The Licensee stated from the outset that it agreed that the breaches had taken place and there were mistakes and lapses on its part. It explained that *The Weekend Show* was a live interactive programme and that two mistakes were made in the course of the discussions with Dr Kaur. Firstly, the programme's presenter did not challenge Dr Kaur to prove her credentials regarding claims she made during the programme about the special medicine that she claimed to have developed. Secondly, the presenters should have advised viewers to discuss their medical problems with their GP before contacting Dr Kaur.
- 8.4. ARY Digital UK said that two senior executives had accepted responsibility for not taking immediate and firm action to mitigate the breach in the edition of *The Weekend Show* complained of, and had resigned as a result. ARY Digital UK had now introduced regular statements on healthy lifestyle and health issues in various programmes on the channel. Qualified medical professionals were now being invited on to programmes to discuss issues relating to health.
- 8.5. The Licensee stated it did not receive any financial gain from allowing Dr Kaur to exploit her alternative medicines in the programme. It pointed out that her claims regarding a cure for cancer were not made by the Licensee itself but by Dr Kaur. The Licensee confirmed that, nonetheless, these claims should have been challenged by the presenters and that the Licensee had failed to make sure this happened.
- 8.6. Further, ARY Digital UK explained that the Licensee had not repeated this programme in the UK and Europe.
- 8.7. The Licensee said that it had now appointed senior programme producers to oversee the live and interactive programmes it transmits. The Licensee's compliance department had been strengthened to ensure it could remedy any mistakes in a timely and effective manner; and its Board of Directors had given clear directions to management to ensure that the Ofcom Code was adhered to.
- 8.8. The Committee questioned what editorial processes were in place to select Dr Kaur as a guest for *The Weekend Show*, particularly in light of the potential vulnerability of its target audience. ARY Digital UK responded that two of its producers, together with its Chief Executive had since resigned so it could not comment as to how and why Dr Kaur had been selected at that time but

confirmed that no “expert” would be permitted to appear on its programmes now without the prior approval of its CEO, Mr Fayaz Ghafoor.

- 8.9. ARY Digital UK went on to explain that its programme presenters were now given instructions from the gallery by the programme’s producers and they were not allowed to ask questions about products or to refer to them without prior approval from producers. Similarly, guests were now told that they can only respond to the questions put to them and that they cannot display or promote any products or services during interviews. ARY Digital UK also explained that all productions were now further overseen by a senior producer.
- 8.10. The Committee queried whether, during the programme complained of, a senior producer had been present and been in charge of the programme’s editorial content. ARY Digital UK responded that there was a producer and an assistant in charge on that occasion and that the contraventions had occurred as a result of the producer’s failure to ensure due compliance with the Code. It was through that producer’s lapse that the Code was contravened. The Licensee explained that producers no longer have authority to invite guests onto its programmes. Its CEO, Mr Fayaz Ghafoor, was the person who now authorises guests to participate in its broadcasts.
- 8.11. The Committee then asked whether ARY Digital’s management and senior producers were now clear about the implications of commercial prominence and promotion of products and services in programmes. Mr Ghafoor responded that he had put in place a system of weekly meetings where staff can question what they should be doing with regard to relevant broadcast regulation.
- 8.12. ARY Digital UK stated that those representing it at the hearing had not been involved in the current case at the time of broadcast. The Licensee confirmed that since this incident occurred, its Board had requested a one-day compliance training seminar for all producers, technical staff and presenters. Its new policy required guests to be identified by an on-screen caption giving only their name and title. The only phone number that may be featured was that of ARY Digital or its studio.

9. Sanctions Decision

- 9.1. The Committee considered carefully the seriousness of the breaches together with all the written and oral submissions provided by ARY Digital UK. For the reasons set out below, the Committee decided that it was appropriate in all circumstances of the case to impose a financial penalty on the Licensee and to issue a direction requiring ARY Digital UK to broadcast a statement of Ofcom’s finding on one occasion to be determined subsequently by Ofcom. In deciding on the level of financial penalty the Committee had regard to Ofcom’s Penalty Guidelines⁴.

⁴ Ofcom’s Penalty Guidelines are available at <http://www.ofcom.org.uk/about/accoun/pg/>. Section 392 of the Communications Act 2003 requires Ofcom to prepare and publish a statement containing guidelines it proposes to follow in determining the amount of any penalties imposed by Ofcom, which Ofcom must have regard to in setting any penalty.

The seriousness of the breaches

- 9.2. As a result of the breaches, viewers had been exposed to significant potential harm. In the Committee's view there was a material risk that broadcasting the unchallenged and unsubstantiated claims of Dr Kaur may have led potentially vulnerable viewers to follow her advice – not supported by any evidence – about ways to treat successfully serious medical conditions, including cancer, sterility, sciatica, psoriasis and leprosy. This could have had serious consequences for the health of such viewers by causing either a delay in medical treatment or a failure to seek any proper medical treatment at all. The seriousness of the breach of Rule 2.1 was compounded by the presenters of *The Weekend Show* not challenging Dr Kaur's claims.
- 9.3. In the Committee's view, the potential for harm as a result of the breach of Rule 2.1 was particularly serious given Dr Kaur's claims in relation to remedies for different types of cancer. In this respect only, the Committee noted that section 4 of the Cancer Act 1939 makes it a criminal offence for anyone to publish an "advertisement"⁵ offering to treat any person with cancer or prescribe any remedy or to give any advice in connection with the treatment of cancer. Clearly it was not for Ofcom to express any view in relation to criminal legislation. However, it was significant that Parliament had recognised the need for legislation in this area and that the public "advertisement" of any advice on how to treat cancer should be placed in a special category and very tightly regulated in the public interest.
- 9.4. Although the programme was not repeated, the breach was serious because Dr Kaur appeared as the sole guest for a complete segment of *The Weekend Show*, lasting 30 minutes. The fact that Dr Kaur appeared for some considerable time within the programme afforded her products and claims an even greater degree of prominence, thus increasing the potential for harm, and therefore the seriousness of the breach of Rule 2.1. The Committee also considered it relevant to note the likely expectation of television audiences in relation to programmes dealing with significant medical conditions. In the Committee's view, audiences expect such programmes to deal with medical issues with an appropriate degree of objectivity and accuracy. The Committee did not consider that this happened in this case.
- 9.5. Additionally, the breaches of Rules 10.3 and 10.4 were repeated in that the Licensee had been found to have contravened these same Rules in relation to programmes broadcast in January and February 2006.⁶ This provided evidence to the Committee that the Licensee, on 18 February 2006, still did not have adequate procedures in place to ensure compliance with the requirements under Section 10 of the Code.
- 9.6. In view of all these considerations, the Committee reached the view that the breaches of Rules 2.1, 10.3 and 10.4 by ARY Digital UK in relation to this broadcast of *The Weekend Show* warranted the imposition of a financial penalty.

⁵ Defined very broadly to include "any announcement made orally or by any means of producing or transmitting sounds".

⁶ See the Hutch Cup coverage and Allianz Cup coverage finding decision against ARY Digital UK, Ofcom Broadcast Bulletin, Issue 68, dated 4 September 2006

- 9.7. In considering what level of financial penalty was appropriate, the Committee considered all relevant factors.
- 9.8. The Committee took account of the fact that this was the first time it had considered breaches of these rules in relation to this type of material (that is, unsubstantiated and potentially harmful health claims), and that ARY Digital UK had taken a number of steps to improve its compliance procedures. A financial penalty should also reflect the serious nature of the breach, help ensure compliance in future, and be proportionate.
- 9.9. The Committee took account of the fact that the breaches of Rules 10.3 and 10.4 were repeated contraventions (see footnote 6 above). It also noted that the breaches had resulted from compliance failures at a senior level, involving two senior managers who had subsequently resigned as a result of the “editorial lapses” which ARY Digital UK admitted had taken place. The recent initiatives by the Board of Directors of ARY Digital UK to improve compliance at ARY Digital, which had been outlined to the Committee at the hearing, confirmed the earlier ineffectiveness and repeated failure of internal mechanisms or procedures at the Licensee to prevent contravention of the Code.
- 9.10. Further, the Committee noted that the Licensee continued to dispute the breaches of the Code and their seriousness from the outset of the case in July 2006 until June 2007, following the resignation of the two senior executives referred to above. Inevitably, this contributed to the delay in Ofcom’s resolution of the case and caused additional time and resource to be allocated to this matter.

Mitigating Factors

- 9.11. The Committee then considered whether there were any factors which in its view might limit or decrease the level of financial penalty.
- 9.12. The Committee noted the steps taken by the Licensee’s new management to remedy the consequences of the breaches. In particular the Committee took account of the following:
- that the Licensee had taken these breaches seriously. This was evidenced by the fact that two senior executives had resigned as a result of the compliance lapses and been replaced;
 - the Licensee’s own decision to introduce into the channel items by qualified medical professionals to assist viewers by providing information about better health and a healthy lifestyle (a decision which the Committee welcomed in light of the complainant’s concerns about the potential vulnerability of ARY Digital’s target audience);
 - the fact that the programme had not been repeated;
 - ARY Digital UK’s assurances to the Committee that the Licensee had not received any financial benefit from the breaches;
 - the appointment of senior programme producers to oversee live and interactive programmes;
 - the strengthening of compliance procedures and guidelines, including the provision of more and better training for staff at all levels, including presenters, producers and others involved at the channel in programme making; and

- more effective compliance oversight and procedures (e.g. the prior approval of guests by Mr Ghafoor).
- 9.13. The Committee noted that while ARY Digital UK had cooperated with the Ofcom investigation, it had only admitted the breaches of the Code (which were clear and serious), and acknowledged that its compliance procedures needed to be improved, late in the sanctions process.
- 9.14. The Committee wished to make clear that the financial penalty would have been higher had ARY Digital UK not admitted the breaches, and as a consequence improved its compliance procedures. The Committee stressed that all licensees must take seriously and fulfil their duties under the Code as regards sponsorship and commercial references.

Conclusion

- 9.15. A case where the broadcaster has created a material risk to the health and safety of its audience must always be considered a significant breach of the Code. Here, by broadcasting the unsubstantiated claims of Dr Kaur, there was a risk to vulnerable viewers suffering from the serious illnesses discussed in the programme, such as cancer. As a result of following her advice, viewers could have abandoned, or delayed, seeking appropriate and timely medical treatment from a qualified medical practitioner. This had the potential to cause such viewers to suffer serious detriment to their health.
- 9.16. Although the Committee noted that in mitigation ARY Digital UK stated that there was no evidence of financial gain by the channel, it is a serious matter when a broadcaster repeatedly breaches its duties under the Code as regards commercial references. These rules are vital to ensure products and services are not advertised to viewers during programmes, to maintain a broadcaster's editorial independence and to ensure that the legal obligation to ensure the separation of programmes (i.e. editorial content) and advertising is fulfilled.
- 9.17. The Committee noted that the two members of ARY Digital UK's staff who appeared before the Committee could provide no answers as to why the breaches of the Code were allowed to occur, mainly because the relevant people had resigned from the Licensee.
- 9.18. As set out above, the extensive steps taken by ARY Digital UK to rectify the breaches were taken into account in the Committee's decision. The Committee however expects the Licensee to follow through and implement fully its new compliance procedures and arrangements.
- 9.19. Having considered the relevant facts as outlined above and all the representations made by ARY Digital UK, the Committee decided to impose a financial penalty on ARY Digital UK of **£15,000** (payable to HM Paymaster General) which it considered to be a proportionate and appropriate penalty in all the circumstances. In addition, the Committee directed ARY Digital UK to broadcast a statement of its findings on its service in a form determined by Ofcom on one specified occasion.

Content Sanctions Committee

Tim Suter
Sue Balsom
Anthony Lilley

1 November 2007