

Sanction: Decision by Ofcom

Sanction: to be imposed on Panjab Radio Ltd

For material broadcast on Panjab Radio on 24 August 2018 at 22:00¹.

Ofcom’s Sanction Decision against: Panjab Radio Ltd (“Panjab Radio” or “the Licensee”) in respect of its service **Panjab Radio** (Ofcom RLCS000121BA/2).

For: Breaches of the [Ofcom Broadcasting Code](#) (the “Code”) in respect of:

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...religion or belief...”.

Rule 3.1: “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in...radio services”.

Decision: To impose a financial penalty payable to HM Paymaster General) of £30,000; and,

To direct the Licensee to broadcast a statement of Ofcom’s findings on a date and in a form to be determined by Ofcom.

¹ See [Broadcast and On Demand Bulletin 396](#), 10 February 2020 (“the Breach Decision”).

Executive Summary

1. Panjab Radio is a faith and cultural radio station for the UK Asian community, broadcasting in Punjabi. The relevant licences for this station are held by Panjab Radio Ltd.
2. On 24 August 2018 at 22:00 Panjab Radio broadcast the *Shamsher Singh Rai Programme*, an occasional show on the station, with around four editions per month. The programme focused on Punjabi poetry and featured live calls from listeners expressing their feelings through poetry.
3. During this programme, the presenter advocated, justified and supported violent retributive action against those he considered to have shown disrespect towards Sikh places of worship. He did this without challenge or other sufficient contextual justification.

The Breach Decision

4. In the [Breach Decision](#) published on 10 February 2020 in issue 396 of the Broadcast and On Demand Bulletin, Ofcom's Executive found that this programme contained material likely to encourage or incite the commission of crime or to lead to disorder and that this content was potentially highly offensive, breaching Rules 2.3 and 3.1 of the Code.
5. The Breach Decision set out the broadcast material that was in breach, along with reasoning as to why the material had breached each rule.
6. Ofcom put the Licensee on notice that it considered these breaches to be extremely serious, and that it would consider them for the imposition of a statutory sanction.

The Sanction Decision

7. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences (the "[Sanctions Procedures](#)"), Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on Panjab Radio.
8. Having considered the representations made to us, Ofcom has decided to impose a financial penalty of £30,000 and to direct the Licensee to broadcast a statement of Ofcom's findings on a date and in a form to be determined by Ofcom. This paper sets out the basis for Ofcom's Decision, taking into account all the relevant material in this case and the Penalty Guidelines.

Legal Framework

Communications Act 2003

9. Ofcom's principal duty, set out in Section 3(1) of the Communications Act 2003 ("the Act"), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure, among other things, the application to 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 (section 3(2)(e)).
10. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives 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)). This requirement is reflected in Section Two and Section Three of the Code.
11. In performing its duties, Ofcom is required to 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 any other principles representing best regulatory practice (section 3(3)); and, where relevant, to 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)).

Human Rights Act 1998

12. Under section 6 of the Human Rights Act 1998, Ofcom (as a public authority) has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (the “Convention”). In particular, in the context of this case, Ofcom has taken account of the related rights under Article 9 and Article 10 of the convention.
13. Article 9 of the Convention provides for the right to freedom of thought, conscience and religion. This Article makes clear that freedom to “manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of rights and freedoms of others”.
14. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster’s freedom to impart and the audience’s freedom to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1)). The exercise of these freedoms may be subject only to conditions and restrictions which are “prescribed in law and are 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 maintaining the authority and impartiality of the judiciary” (Article 10(2)).
15. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms 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.

Equality Act 2010

16. Under Section 149 of the Equality Act 2010, in the exercise of its functions, Ofcom must also have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic, such as race or religion, and persons who do not share it.

The Ofcom Broadcasting Code

17. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code.
18. 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.
19. The relevant Code rules in this case are set out in full at the beginning of this Decision.

Remedial action and penalties

20. The programme in breach was broadcast on a service for which, at the time, the Licensee held an analogue licence, an RLCS licence and a national DSPS licence. Since then, due to a range of corporate transactions and restructurings which took place with Ofcom’s knowledge and consent, the licensing arrangements for the service have changed. The analogue licence concerned is now held by an unrelated person and is used to broadcast a different service. A

² See [Guidance Notes](#) to the Ofcom Broadcasting Code.

different analogue licence is currently held by the Licensee's sister company and used to broadcast the service. The Licensee has ceased to broadcast the service on the national DSPS licence but is now broadcasting it on a London wide DAB multiplex.

21. Ofcom carefully considered how best to exercise our enforcement functions in all the circumstances, and took the view that it would be fairest and most transparent to proceed under the RLCS licence for the service which was and still is held by the licensee which broadcast the content concerned.
22. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 are observed by the licensee. Condition 5 of the RLCS licence requires the licensee to ensure that it complies with the provisions of any Code made under section 319.
23. Where Ofcom has identified that a condition of a RLCS licence has been contravened, its powers to take action are set out in sections 109 to 111B of the Broadcasting Act 1990 (the "1990 Act") as modified by section 250(3) of the Act, insofar as relevant to the case.
24. Section 109 of the 1990 Act provides Ofcom with the power to direct the holder of a RLCS licence to broadcast a correction or a statement of Ofcom's findings (or both).
25. Section 110(1)(a) of the 1990 Act provides Ofcom with the power to impose a financial penalty on the holder of a RLCS licence. S110(3) provides that the maximum penalty which may be imposed in respect of each contravention is £250,000.
26. Section 110(1)(c) of the 1990 Act provides Ofcom with the power to suspend the licence for a specified period not exceeding six months.
27. Section 111 of the 1990 Act provides Ofcom with the power to revoke a licence where a licensee is failing to comply with a condition of a RLCS licence or direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence. It is not relevant in this case, as the breach is not an ongoing breach which is susceptible to being remedied.
28. Section 111B of the 1990 Act gives Ofcom a duty to suspend an RLCS licence, pending a decision on whether that licence should be revoked, if satisfied that the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder; that, in doing so, it has contravened licence conditions; and that the contravention is such as to justify the revocation of the licence.

Background – The Breach Decision

29. In the Breach Decision, Ofcom found that material broadcast on Panjab Radio breached Rules 2.3 and 3.1 of the Code. The Breach Decision set out the reasons for each of these findings.
30. In summary, Ofcom's Breach Decision found that the presenter's comments in an edition of the *Shamsher Singh Rai Programme* amounted to a direct call to action to members of the Sikh community to carry out violent action against people he considered to be disrespecting the Sikh faith.
31. The presenter spoke about an event that had taken place during a festival being celebrated in a Punjabi village when girls had danced and sung folk songs in the complex of a Gurdwara³ whilst others looked on. The presenter said that this breached the Sikh code of conduct and was disrespectful of Guru Granth Sahib.⁴ He said that those involved should be ashamed and should have known better but blamed the events on "our enemy", who he said was playing "tricks" on

³ A place of worship for Sikhs.

⁴ The religious scripture of the Sikh religion.

the Sikhs and “testing our patience”. The presenter spoke of the need to take action against those who disrespect the Sikh place of worship and referred to attacks on Muslim cattle farmers which had been carried out by members of the Hindu community.

32. In our breach decision Ofcom was concerned that the presenter suggested that Sikhs needed to take similar action (“*We also have to do such things. Only then disrespect of Guru Granth Sahib will be stopped*”). He called for people not to go to the police about such matters, but to take the law into their own hands by carrying out violent attacks against people he considered to have acted in a sacrilegious way. We were particularly concerned that the presenter referred to killing or beheading such people (“*we have to take their heads off*”) and made repeated comments that referred to or justified taking violent action. For example:

- “*Read them the Kirtan Sohila⁵, only then will it get better*”;
- “*if someone is caught red-handed, kill that person. A lot of people were caught red-handed. Their cases are going on, but nothing will happen to them*”;
- “*Guru Granth Sahib will be disrespected until we take their heads off. It will keep happening*”;
- “*Our governments are sleeping. What will we do?*”;
- “*Why shouldn’t I do it? When a cow is carried by our Muslim brother or sister, they are surrounded...No questions asked. They are killed there...Now...those who used to take cows have been stopped. We also have to do such things. Only then disrespect of Guru Granth Sahib will be stopped*”; and
- “*We cannot survive without taking the law in our hands*”;

We were equally concerned by the repeated instruction to act as part of a crowd to avoid arrest, for example:

- “*To take their heads, come in masses...Then who will the police catch? You should also do the same*”; and,
- “*Like a crowd, gather a crowd and pull over the car. As it is said, doing things as part of a crowd. So, you should also do the same. Pull the car over from within the crowd. How many will they catch?*”

33. In Ofcom’s view, the cumulative effect of the above statements was to condone and promote violent behaviour including killing people who the presenter considered to have disrespected the Sikh religion. We therefore considered the content amounted to a clear and unambiguous call to action which was likely to encourage or incite the commission of crime or lead to disorder. Taking into account that no content was broadcast that provided any challenge to the violent behaviour that the presenter’s statements served to condone and promote, nor any criticism or explanation of those statements, we considered the content contained in this broadcast was a direct call to action which was likely to encourage or incite the commission of crime or lead to disorder, in breach of Rule 3.1.
34. We did not accept the Licensee’s contention that this broadcast was unlikely to encourage or incite someone to crime because it “did not concern matters in the UK”. UK-related matters were clearly referred to during the broadcast. In particular, the presenter discussed with a caller

⁵ The Licensee translated this as “*we will do his last prayers*”, which is described within Sikhism and in Punjabi as the Kirtan Sohila. The Licensee told us that the Kirtan Sohila is the night time prayer recited by observant Sikhs and is also recited before cremation following death. Ofcom understands that the expression is a common Punjabi colloquialism and may be used as a euphemism meaning to kill a person.

an occasion when girls had danced at a Gurdwara in Southall. The caller mentioned that the organiser of the dancing was a Muslim person and the presenter expressed a view that the girls were “*harlots*” and that people needed to “*stand up against these things*”. He made no attempt to distinguish his views about this from the views he expressed in his earlier comments about the events in the Gurdwara in Punjab and the need to take action against those responsible for disrespecting the Sikh place of worship. We also considered it significant that there have been documented reports of sections of the Sikh community in the UK taking directly disruptive and sometimes violent action in the name of preserving the sanctity of Gurdwaras and/or their faith⁶. In any event, Panjab Radio’s target audience were likely to have close connections to Punjab, to travel there and to have a continuing interest in the expression of their faith there.

35. We took into account Panjab Radio’s acknowledgement that some of the content was “likely to be seen as inflammatory” and should not have been broadcast. We acknowledged Panjab Radio’s representations that it did not tolerate any content that would be viewed as extreme or could be interpreted as material likely to incite violence or the commission of crime. We also considered the steps it said it had taken since the broadcast had aired (paragraph 38) and its representations that this programme was broadcast late at night and therefore the size of the potential audience exposed to any risk of harm was small. However, given the strength and nature of the statements, the target audience and the evidence that there are sections of the Sikh community in the UK which are prepared to take violent action in response to a perceived threat to the Sikh religion and beliefs, we considered that the content was such that it was likely to incite crime or disorder. Our Decision was therefore that Rule 3.1 was breached.
36. Similarly, our Decision also set out Ofcom’s reasons for finding that the programme had the clear potential to be highly offensive. We considered that the audience was unlikely to have expected the advocacy of such acts of violence without any challenge or other sufficient contextual justification and that this would have been the case no matter what the time of broadcast. In our view, this would have exceeded the expectations of listeners of Panjab Radio, however small the audience. Our Decision was therefore that Rule 2.3 was also breached.

Ofcom’s Decision to impose a statutory sanction

37. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
38. During the investigation and sanction proceedings in this case, Panjab Radio made written representations to Ofcom as to why the breaches did not warrant the imposition of a statutory sanction. In addition to the above point about the time of broadcast and the likely size of the audience, the Licensee said that it was “surprised” and “perplexed” that Ofcom was minded to consider the imposition of a statutory sanction. Panjab Radio said that it had not sought to defend the “problematic” material, had been fully transparent with Ofcom and had taken swift action which was “extremely important in mitigating any potential sanction”. In particular, Panjab Radio said it had:
- permanently taken the presenter off air and took active steps to prevent him from entering its building and studio, including changing its locks and instructing staff to deny him entry;
 - suspended telephone call-ins, “with some limited exceptions”;

⁶ Protests have taken place against interfaith marriages in Gurdwaras in the UK in which the wedding participants have felt “terrorised”. See e.g. “[The British Sikh men trying to stop women marrying outside their religion](#)”, The Independent, 4 October 2015 and “[I never thought I’d be terrorised by my fellow Sikhs at a wedding](#)”, The Guardian, 3 November 2016.

- reissued the Code to all presenters, who also had individual meetings with the Managing Editor to ensure they understood its requirements and the issues raised by this case. Presenters were also asked to sign a new side-contract confirming this and their obligations as a presenter;
- given extra compliance training to all staff;
- transferred responsibility for compliance issues to the Managing Editor of the station and sourced an external compliance expert to provide further training;
- started pre-broadcast checks with presenters to ensure the editorial content of their programmes was compliant; and,
- discussed the matter at board level.

It added that it had “recognised the issues” and that it had broadcast an apology at 22:00 after the news on 17 and on 18 September 2018, in order to capture the same audience who was likely to have heard the programme on 24 August 2018 at 22:00. The apology, broadcast in Punjabi, said:

“Now, an apology from us at Panjab Radio. Last month, on the 24 August, one of our former presenters, Shamsher Singh Rai, talked about girls holding festivals within the confines of a Gurdwara in Sangroor district. Shamsher Singh Rai spoke in terms that were totally unacceptable and used intolerant and inflammatory language. We would like to apologise – unreservedly – for this and assure listeners that Panjab Radio do not, in any way, share or endorse such views of Shamsher Singh Rai. Panjab Radio believe in peace and tolerance and our mission is to unite and not to divide the Asian community. Once again an apology from Panjab Radio and its entire team for this mistake made by Shamsher Singh Rai”.

39. Panjab Radio said it had an impeccable compliance record and Ofcom risked being disproportionate and intervening needlessly. It indicated that delays to the progress of the investigation had had a significant chilling effect on its editorial output and had impacted on the business.
40. Ofcom remained concerned about the broadcast of this material notwithstanding the actions the Licensee said it had subsequently taken. We acknowledged that this was the first time the Licensee had been found in breach of the Code, but we regarded the contravention of Rule 3.1 involving incitement to murder as a particularly serious matter given the potential for significant harm to members of the public. Ofcom was particularly concerned that the programme included material which condoned, justified and encouraged violent acts up to and including murder. We also considered that Panjab Radio should have been on notice from previous decisions Ofcom had published of the importance of complying with the rules in this area, particularly with regard to Rule 3.1, and Ofcom’s approach to enforcement against providers who fail to ensure compliance⁷.
41. We acknowledged that the investigation had taken some time. However, we did not consider that the time taken to come to a breach finding in this case caused harm to the Licensee’s ability to exercise its rights of defence. It had full access to the programme material and a full opportunity, which it took advantage of, to make representations. Given seriousness of the

⁷ Ofcom has imposed significant financial penalties (having regard to their resources) on broadcasters who commit very serious breaches, notwithstanding their previous good compliance records. E.g. Karimia Limited (£2,000, February 2018) (paragraph 117); Ariana Television and Radio Network (£200,000, July 2017) (paragraph 115), Regis 1 Limited (£30,000, August 2013) (paragraph 114).

breach, we considered that it was necessary to proceed to a conclusion including consideration of sanction. The Licensee argued that the delay in the investigation chilled its freedom of expression and harmed its business. That is a separate matter, Ofcom does not have jurisdiction over such issues.

42. In view of the factors set out above, Ofcom went on to consider the case for a statutory sanction. It reached the Preliminary View that the breaches on Panjab Radio were serious and so warranted the imposition of a statutory sanction in the form of a financial penalty and a direction to broadcast a statement of Ofcom's findings. The Licensee provided its written representations to Ofcom on 20 April 2020 and gave oral representations on 17 August 2020. The representations are summarised in paragraphs 45 to 73 below.
43. In reaching its final Decision on whether to impose a statutory sanction, and if so, what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee, including those on the Preliminary View, and has had regard to the Sanctions Procedures and Ofcom's Penalty Guidelines in reaching its Decision.

The Licensee's representations

44. The Licensee made written and oral representations on Ofcom's Preliminary View as set out below.

Delay and process

45. Panjab Radio set out a timeline of the case, from which it stated that "despite initially requesting that Panjab Radio respond to its investigation in 3 working days (subsequently increased to 5 working days), Ofcom took one year and two months to reach a Preliminary View on the complaint and one year and five months to publish the [Breach Decision]". It added that it was then six months before the oral hearing of the sanction case. It said that there was no communication from Ofcom to Panjab Radio about the case from October 2018 to November 2019. It said this was wholly unreasonable behaviour which did not accord with the provision in Article 6 of the Human Rights Act that trials be heard "within a reasonable time". Panjab Radio added that having "such allegations hanging over it for more than a year resulted in a significant chilling effect, restricting [its] freedom of expression". It said that any responsible broadcaster will, during such a period, severely limit what programmes can editorially explore and what presenters can say. It added that during the investigation of the case in question, Ofcom also looked at another programme which concerned music and poetry, and took 10 months to say there was no breach. During this period it said, it "seriously restricted what it played as Ofcom had not made clear where the line was [and] it had to err on the side of caution, and simply withdrew some material".
46. By way of example of the limitations it had made to its service, it said that Ofcom had requested that it take the presenter off air until the completion of our investigation. (It also noted that it had in any event permanently removed the presenter.) It added that since the breaches it had stopped "on-air phone calls", other than for a limited range of subjects in programmes presented by its Director and one other presenter who had "years of experience". It said nobody else was allowed to do any kind of programme or speak about matters "affecting the community here or in India", and only the qualified, religious presenter was allowed to talk about religion. Noting the length of the investigation, it said it had been treated unfairly and that this approach was against natural justice and that Ofcom "must take this unreasonable delay into account when considering the imposition of a statutory sanction".

Seriousness of the breach

47. Referring to the time Ofcom took to reach its Preliminary View and Breach Decision, Panjab Radio stated that the "seriousness with which Ofcom claim[ed] to be taking this case [was] not

matched by its conduct". It said that if the breach warranted the amount of penalty proposed in Ofcom's Sanction Preliminary View, or if Ofcom was seeking "to send out a message to the industry and stop other broadcasters committing similar breaches, it would not be unreasonable to expect Ofcom to act with due pace". The fact Ofcom had not acted with due pace, added to the Licensee's view that it was being treated unfairly and victimised.

48. Panjab Radio added that the case was not complicated in any way, as it involved one programme and the breaches were not disputed. It said Panjab Radio had admitted in its first letter to Ofcom that there was an issue and also showed by its actions how seriously it had taken the case (paragraph 38). It said that limited discussion about the translation had not substantially changed Ofcom's view⁸ and added that there were no third-party representations from those involved in the case, only four pages of representations on the programme, of which barely half a page was on the provisional view, and full cooperation with the investigation. It said the time taken to reach a Preliminary View provided clear evidence that the proposed fine was entirely out of proportion to the contravention that had occurred.
49. Panjab Radio said that the substantial delay by Ofcom had caused Panjab Radio significant and material harm. It restated that it had an enormous chilling effect on all its output and had left it "in limbo". It said it became risk averse and reduced its range and variety of output. It added that its presenters were all extremely nervous about broadcasting content. It stated that it resulted in uncertainty about the viability of the radio station which had "weighed heavily" on its Director. It added that it "appreciate[d] that there were some other programmes that Ofcom wished to assess and content needed to be translated⁹, [but, nevertheless,] there ha[d] been an unreasonable amount of time taken on this case".

Proportionality

50. Panjab Radio said that the proposed fine was wholly disproportionate as it failed to take into account:

- the actions taken by Panjab Radio;
- the qualifying revenue, profits and turnover; and,
- the fact that it is a small ethnic radio station with very few listeners and run mostly by volunteers.

Panjab Radio stated that it was a small community focused station aimed at the Sikh diaspora living in the UK. It said it had never made any money, but, broadcasting in Punjabi, it provided an important public service to an under-served ethnic minority community. It said that during the Coronavirus pandemic it was "literally a lifeline" for this community, providing it with safety and health advice, government information and support. It added that it had also featured in its programming a range of professionals and experts to answer listeners' questions and advise on financial, religious and health matters. Without this service it said "many of the Punjabi community would have not had this vital information". It said this service, "the only nationally available Punjabi radio station in the UK", would be placed in significant jeopardy by Ofcom's approach.

⁸ Across three pages of a letter dated 3 October 2018, the Licensee disputed a number of aspects of Ofcom's translation of the programme.

⁹ Ofcom asked the licensee to provide recordings of all previous Shamsheer Singh Rai programmes that it had retained, in order to assess whether the presenter had made similar comments in past editions. This led to Ofcom assessing 11 three-hour programmes, two of which we initially took forward for further consideration with the Licensee. The Licensee's comments were made in a 51-page document.

51. Panjab Radio said the proposed fine was not appropriate and proportionate. It added that such a fine would essentially take away its licence by putting it out of business, without following due process or complying with the legal safeguards for such an action.
52. Panjab Radio said that it had taken full responsibility for the breaches, understood their nature and never sought to defend them. It referred to the “immediate action” it had taken (see paragraph 38), which consisted of “a number of serious steps to remedy the consequences of its contravention”. It added that the two apologies it had made were “voluntarily transmitted” and “full and frank”.
53. In addition, it said it undertook quarterly, compulsory training on the Code for all its editorial staff. Panjab Radio said that it did not consider that Ofcom had taken these actions into account in proposing the fine we proposed. It said it was “difficult to see how Ofcom could have imposed a higher sanction on Panjab Radio for a first offence on one programme for a breach that was not deliberate, repeated or reckless”, and that such a fine did not reflect Panjab Radio’s previously perfect compliance record since Ofcom was founded in 2003 and incorporation of Panjab Radio “over 20 years ago”. Panjab Radio said that it considered that a fine was inappropriate in the circumstances, but if Ofcom were to impose one, and taking into account precedent, it had thought the fine would be in the region of a substantially smaller amount.
54. Panjab Radio referred to Ofcom’s Preliminary View that Panjab Radio should broadcast a statement of Ofcom’s findings and to the fact that Ofcom had commented “critically” that it had aired two apologies some three weeks after the broadcast. It accepted that such a direction and its apologies served different purposes. However, it asked Ofcom to take into account that this proposed direction would be broadcast a very long time after the programme was transmitted.

Qualifying Revenue and Turnover

55. Panjab Radio noted that Ofcom’s Preliminary View had stated that its qualifying revenue was £, but Ofcom had subsequently acknowledged that qualifying revenue was in fact £.
56. Panjab Radio gave details of its finances, costs and accounting forecasts, and the impact on it of the coronavirus crisis, and submitted that the proposed penalty would result in it ceasing to exist. It also questioned whether it was appropriate for Ofcom as the statutory regulator for the communications industry to be levying such fines on small, volunteer-led, radio stations aimed at specific minority groups. It said that Ofcom was ignoring important factors by “failing to take into account Panjab Radio’s profit among other financial information”.

Precedent

57. Panjab Radio said that the precedent cases that Ofcom had cited in its Preliminary View were so wide-ranging and the sanctions so varied, it was almost impossible to find any common theme or consistency. It said it was unclear how Ofcom had reached its Preliminary View of an appropriate fine. It noted that the Preliminary View stated that more recent cases were more relevant (paragraph 109) and therefore went on to discuss the precedents set by Karimia Ltd, Ariana Television and Radio Ltd (“Ariana”) and Club TV Ltd (for its service Peace TV Urdu).
58. Panjab Radio noted that the content it broadcast had breached Rule 3.1, but not Rule 3.2 (hate speech), but these three precedent cases involved breaches of both these rules.
59. Panjab Radio said that the present case bore no comparison to Ariana, noting that in Ariana:
 - The content incited people to join ISIL, a proscribed terrorist organisation, which has been responsible for some of the most barbaric acts of terrorism this century.

- The individual in the video spoke directly to camera and spoke about his intention to carry out extreme violence to the people of Germany. He brandished a knife and boasted about an upcoming attack he was going to commit.
 - The licensee had actively chosen to transmit the recorded content.
 - The individual in the video, Muhammad Riyad carried out an attack.
 - Ofcom considered the case to be so serious that it questioned whether Ariana was a fit and proper person to hold a licence and stated it would review this, if there were further breaches.
60. The Licensee said that Club TV Ltd's breach was so serious that Ofcom originally suspended the licence¹⁰. It said the breach related to content which contained hate speech, threatening language, and violent imagery. It added that this content was deliberately repeated three times and, even after Ofcom had reached its breach decision, a number of other very serious breaches were also recorded at the same time. The Licensee also noted that Club TV Ltd had also been fined previously £65,000 for antisemitic material.
61. The Licensee said that in both the Ariana and Club TV Ltd precedents, the programmes "concerned incitement and hate speech, and that was their sole editorial purpose"¹¹. It added, "These weren't just comments, but problematic material delivered at length and pre-recorded".
62. Panjab Radio said, "Unlike other cases cited by Ofcom, Panjab Radio immediately understood the issue, never sought to defend it, took swift action and it was never repeated". It added that it had not sought to defend the comments, but they "must be seen in context and judged against the other cases". It further said:
- "[the presenter] was speaking alone for a relatively short period, late at night, pontificating. It was not accompanied by bloodthirsty or violent images...Panjab Radio had no reason to believe that [he] would do this and, unlike other cases, it was not pre-recorded, premeditated or approved for transmission...this was an aberration".
63. The Licensee added that it had a "close-knit family" of listeners who brought any concerns, such as a delay to a scheduled broadcast, to the attention of its Director. It said that, therefore, if the presenter had included similar content in a previous broadcast, listeners would have alerted the Director.
64. The Licensee added that the presenter was the last person it would have expected to "do anything like this to harm the station". It also said that its Director personally read all of Ofcom's broadcast bulletins and decisions and ensured that staff were made aware of all relevant cases. It added that its Director had spoken to staff "during this period (2018)...about Ofcom's concerns on violent material [but,] with the benefit of hindsight, it was clearly not effective". It said the Director had "obviously learnt a lesson from this".
65. Panjab Radio said that, of all Ofcom's precedents, Karimia was the closest to the present case and also one of the more recent cases. In this regard it listed the following factors: nature of the broadcast content; reasons for the breach; remedies (i.e. how the licensee behaved after it

¹⁰ Ofcom did not suspend Club TV Limited's licence for its service Peace TV Urdu. Ofcom began consideration of the suspension of Club TV Limited's licence for the re-broadcast of content that Ofcom had found in breach of the Code, but discontinued after Club TV Ltd chose to surrender its licence. Ofcom did sanction Club TV Limited for the original broadcast of the content, imposing a fine of £200,000. It is this latter sanction precedent to which Ofcom had consideration in the present case. See paragraph 118.

¹¹ In the case of Ariana Television and Radio Ltd, the content featured in a news item. Its editorial purpose was ostensibly to inform viewers. However, given the very strong nature of the content, Ofcom considered that there was clearly insufficient context to justify its inclusion in the broadcast. See paragraph 115.

became aware of the breach); and compliance record (i.e. no previous contraventions of the Code). It accepted that the licence for Karimia belonged to a community radio station (Radio Dawn), but said that Panjab Radio also relied heavily on donations and volunteering. It said it hardly made a profit and was significantly in debt. It stated that Ofcom also provided no other reason than deterrence for proposing the fine it did. It added that paragraph 1.8 of Ofcom's penalty guidelines¹² appeared to provide Ofcom with "unfettered powers and the ability to override its regulatory principles and its guidelines to impose disproportionate fines". Referring to the penalty guidelines, it noted that it did not have a large turnover and iterated that a large proportion of its donations were spent on non-broadcast activities, including charity work.

66. Panjab Radio also referred to a recent Ofcom Decision relating to content broadcast by Uckfield Community Radio Limited ("Uckfield"). Panjab Radio noted that this Decision related to potential harm, even though it concerned a different part of the Code (Rule 2.1) and pertained to what was effectively misleading content. It stated that this content misled about Coronavirus and the false claim that it was somehow linked to 5G technology rollout during the Coronavirus pandemic. It said this had the potential to cause serious harm and at a time where there are significant concerns about public health and noted reports of 5G masts being set alight.¹³ It said that despite this evidence of serious harm being caused, Ofcom's decision was to require the broadcaster to transmit a summary of its decision and no fine was imposed. Panjab Radio said this content had the potential for much greater harm than the content it had broadcast.
67. The Licensee added that a further two recent serious breaches of the Code also went "un-fined" by Ofcom. It said they also concerned "very real and potential harm about conspiracy theories about COVID-19 [with] real potential to cause harm during a global pandemic".¹⁴

Deterrence

68. The Licensee said that it would never intentionally broadcast anything that was considered to be incitement or endorse any extreme views. It said that both its actions and representations showed that it did not need any fine to act as an incentive to comply.
69. Panjab Radio noted that Ofcom considered the case to be serious but not deliberate, repeated or reckless. It said that in light of the precedent cases and its qualifying revenue and profit, it could "only assume that the reason for proposing such an enormous fine is to make an example of Panjab Radio and send a message to the industry". It recognised the role of deterrence, but said Ofcom had taken this matter so far that it was acting in a disproportionate manner that would put the licensee into administration. In this regard, it referred to reasoning in Ofcom's Preliminary View (see paragraph 110 below) and said it was concerned about the manner in which deterrence was referred to in the penalty guidelines, and more specifically, its application in this case. It added that the guidelines only spoke of deterrence in general terms and effectively gave Ofcom "unfettered powers" to impose fines "without any parameters". It said

¹² The Licensee quoted from paragraph 1.8 of Ofcom's Penalty guidelines as follows: "If, in making our assessment in any particular case, we consider that the level of penalties set in previous cases is not sufficient effectively to enforce against the regulatory contravention concerned, and to deter future breaches, Ofcom may set higher penalties under these revised guidelines. Regulated bodies with a large turnover, for example, may be subject to higher penalties in order for a deterrent effect to be achieved. These revised guidelines provide Ofcom with the flexibility to impose higher penalties in appropriate cases and penalties Ofcom has previously imposed should not be seen as placing upper thresholds on the amounts of penalties we may impose".

¹³ The Licensee referred to a report on the BBC News website entitled "[Mast fire probe amid 5G coronavirus claims](#)", 4 April 2020.

¹⁴ The sanction cases to which the Licensee referred are: [22 June 2020, Loveworld Limited](#) (breaches of Rules 2.1 and 5.1); [8 June 2020, ESTV Ltd](#) (breach of Rules 2.1); [6 April 2020, Uckfield Community Radio Limited](#) (breach of Rule 2.1).

this had resulted in a disproportionate fine “based on general deterrence rather than the seriousness” and that the “requirement for proportionality [had] been jettisoned....to punish Panjab Radio and make an example of it to the industry”. It questioned the fairness of imposing a penalty at such a level that it would cause “a much-valued and respected radio station that serves its community so well” to go off air, in circumstances where this was “one presenter speaking on his own, late at night”. It further noted that this case involved one mistake, which was not premeditated, deliberate, reckless, or made through some systematic problem.

Degree of harm

70. Panjab Radio said it had accepted immediately that the content in question should not have been transmitted and understood why Ofcom recorded breaches of the Code. However, it said Ofcom should take into account that according to RAJAR figures the audience for the programme was around 2,500 people and it was transmitted late into the evening. It said this was not to minimise the contravention but an important factor that Ofcom should take into account when setting the appropriate level of sanction and the likely degree of harm that may have occurred. It added that the breach was not on-going.

Gains from the breach

71. Rather than gains, the Licensee said the contraventions had cost it greatly, financially as well as in time. It added that the personal stress and anxiety caused by the sheer length and uncertainty of this investigation had been significant. It said that even without any financial penalty, harm had already been caused to Panjab Radio.

History of contraventions

72. Panjab Radio said that the description in Ofcom’s Preliminary View that its compliance record was “good overall” showed that Ofcom had underplayed factors in Panjab Radio’s favour. It said that, unlike many other cases cited by Ofcom, Panjab Radio did not have a trend of non-compliance and had suffered no previous regulatory intervention or statutory sanction. It said, the proposed penalty on such a small licensee would seem to imply a previously very poor compliance record or an unwillingness to comply. It added that such fines were likely to be after a number of warnings and/or the imposition of previous statutory sanctions, and that none of these applied in the case of Panjab Radio.

Cooperation with the investigation

73. Panjab Radio said it had fully cooperated and been completely transparent. It said it had responded in full to all Ofcom’s questions and Ofcom had not had to ask a series of questions to reach the truth. It said it had fully admitted where mistakes had occurred and taken significant action. It said Ofcom had not taken this into account and had proposed a fine which would “on any reading of the accounts, inevitably put us out of business”.

Imposition of sanctions other than a financial penalty

Consideration of the revocation of the licences

74. Given the seriousness of the breaches in this case, Ofcom has considered whether revocation of the licence would be an appropriate sanction. Section 111B of the 1990 Act provides Ofcom with the power to suspend a licence pending a decision on whether that licence should be revoked, if satisfied that that the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder; that, in doing so, it has contravened licence conditions; and that the contravention is such as to justify the revocation of the licence.
75. In considering the application of section 111B, Ofcom noted that the breaches in this case were extremely serious given that they involved a direct call to action which was likely to encourage

or incite the commission of crime or lead to disorder, up to and including murder. Further, there was no attempt made by the broadcaster, at the time of the broadcast, to stop this material from being played out and nor was any attempt made during the programme to place the remarks in a context to make them potentially less harmful. It appeared to Ofcom therefore that this material had been broadcast without the Licensee's knowledge and that Panjab Radio only became aware of the broadcasts after Ofcom had drawn the content to its attention. In Ofcom's view, there was a clear lack of adequate compliance procedures.

76. We also noted the Licensee's acknowledgement that the content was inflammatory and the steps it has taken in light of the breaches to improve its compliance procedures and prevent similar breaches occurring in the future. These included taking the presenter permanently off air and changing the locks to the studios so he could not re-enter its premises. The breaches have not been repeated and are not ongoing. In addition, in broadcasting its (voluntary) apologies for this content, the Licensee clearly disassociated itself from it and stated its belief in "peace and tolerance". Ofcom also noted that the Licensee had a clean compliance history.
77. Additionally, Ofcom noted that the comments were broadcast on a station providing a variety of programming to the Sikh community. Ofcom therefore noted that, if this licence were revoked, a number of listeners (and their right to receive the service) would be adversely affected by them being deprived of this service.
78. Given these factors, and taking into account the broadcaster's and audience's right to freedom of expression, we considered it would not be proportionate to revoke Panjab Radio's licence under section 111B.

Direction to licensee to take remedial action

79. Section 109 of the 1990 Act provides Ofcom with the power to direct the holder of an RLCS licence to broadcast a correction or a statement of Ofcom's findings (or both).
80. Ofcom took into account that the Licensee transmitted an apology twice following the programme. In our view these apologies, which were broadcast some three weeks after the programme in question was transmitted, were insufficient to adequately mitigate the potential harm and offence the breaches could have caused.
81. Ofcom considers that directing the Licensee to broadcast a statement of Ofcom's findings is necessary to bring the breaches, and Ofcom's action in response to the breaches, to the attention of Panjab Radio's listeners.
82. Ofcom also considers that, on its own, a direction to broadcast a statement of Ofcom's findings would not be a sufficient statutory sanction adequately reflecting the level of seriousness of the breaches in this case. Such a statement by itself would not act as an effective disincentive to discourage the Licensee from repeating similar breaches of the Code or other licensees from contravening the Code in a similar manner. Therefore, in reaching its Decision, Ofcom considers that a direction to broadcast a statement of Ofcom's findings should be combined with another category of sanction, to act as an effective deterrent to incentivise compliance.

Consideration of the temporary suspension of the licences

83. Ofcom has the power to suspend an RLCS licence for a specified period not exceeding six months under Section 110(1)(c) of the 1990 Act. Ofcom therefore carefully considered whether a suspension of Panjab Radio's licence, and if so for what period, would adequately reflect the gravity and seriousness of the breaches in this case, and would be appropriate and proportionate in this case.
84. In Ofcom's view the material broadcast was both highly offensive and potentially harmful as it was likely to encourage or incite violent acts up to and including murder. As set out above, we

were also concerned that there was no attempt made by the broadcaster, at the time of the broadcast, to stop this material from being played out and nor was any attempt made during the programme to place the remarks in a context to make them potentially less harmful. It appeared to Ofcom therefore that this material had been broadcast without the Licensee's knowledge and that Panjab Radio only became aware of the broadcasts after Ofcom had drawn the content to its attention.

85. In Ofcom's view, there was a clear lack of adequate compliance procedures. However, against the factors set out above, we also took into account the Licensee's response to the breaches as set out in paragraph 76, and that the breaches have not been repeated and are not ongoing. Ofcom also noted that the Licensee had a clean compliance history. We also took into consideration that the comments were broadcast on a station providing a variety of programming to the Sikh community. Taking this into account, it was Ofcom's view that, if this licence were suspended temporarily, a number of listeners (and their right to receive the service) would be adversely affected by them being deprived of this service for a period.
86. After careful consideration, Ofcom decided that, although the contravention of the Code in this case is extremely serious, it would not be proportionate to suspend Panjab Radio's licence.

Imposition of a financial penalty

87. Ofcom next considered whether it would be appropriate to impose a financial penalty in this case.
88. Section 110 of the 1990 Act provides Ofcom with the power to impose a financial penalty on the holder of an RLCS licence, where it is satisfied the licensee has contravened a condition of its licence. The maximum level of a financial penalty that can be imposed on the holder of an RLCS licence in respect of each contravention of an RLCS licence condition is £250,000.
89. Ofcom's Penalty Guidelines state (at paragraph 1.11) that "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty".
90. In this case, Ofcom considers that a financial penalty is necessary to reflect the serious nature of the Code breaches recorded against the Licensee, and to act as an effective incentive to comply with the Code, both for the Licensee and other licensees (see paragraph 1.4 of the Penalty Guidelines).

Appropriate Sanction

91. In considering the appropriate amount of a financial penalty for the Code breaches in this case, Ofcom took account of the specific relevant factors set out at paragraph 12 of the Penalty Guidelines as set out below:

The seriousness and duration of the contravention

92. Ofcom regarded the breaches as serious for the reasons set out in paragraphs 37 to 40. We were particularly concerned by the fact that this material condoned and promoted violent behaviour including killing people who the presenter considered to have disrespected the Sikh religion. We considered this programme had the clear potential to cause significant harm and also offence.
93. We are not aware of the material having been repeated following its broadcast on 24 August 2018, and the Licensee confirmed that it had taken steps to ensure that such incidents would not happen again (albeit only after Ofcom's contact about the content).

The degree of harm, whether actual or potential, caused by the contravention, including any increased cost incurred by consumers or other market participants

94. Ofcom is mindful of its duty under section 3(2)(e) of the Act to secure, in the carrying out of its functions, 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.
95. We considered that despite the late time of broadcast and the potentially small size of the audience, this programme contained material which was likely to encourage or incite the commission of crime or to lead to disorder in that it condoned and promoted violent behaviour including killing people who the presenter considered to have disrespected the Sikh religion. As stated above, we were particularly concerned about the strength and nature of the statements, taking into account the target audience and the evidence that some sections of the Sikh community in the UK are prepared to take violent action where they perceive a threat to their religion and beliefs. We considered therefore that the programme posed a potential for significant harm to members of the public and that it would have been highly offensive to some listeners of the programme.

Any gain (financial or otherwise) made by the regulated body in breach (or any connected body) as a result of the contravention

96. We have no evidence to suggest that the Licensee made any financial or other gain from these breaches of the Code.

Whether in all the circumstances appropriate steps had been taken by the regulated body to prevent the contravention.

97. In its representations during Ofcom's investigation the Licensee stated that the breaches were "a single isolated incident by a presenter that had never shown any indication in his past 18 years of working at the station of holding such views" and that it "appear[ed] to have been an aberration". In its oral representations, the Licensee added that it has a "close-knit family" of listeners who brought any concerns, such as a delay to a scheduled broadcast, to the attention of its Director. It said that, therefore, if the presenter had included similar content in a previous broadcast, listeners would have alerted the Director.
98. It appeared to Ofcom that the Licensee's compliance arrangements for this call-in programme relied heavily on the volunteer presenter, which the Licensee confirmed in its oral representations. It stated that it had no additional compliance arrangements to monitor this or any other live broadcast. In our view it therefore had no means, independent of the presenter, to stop this content which it has stated was "totally unacceptable", and which expressed views it did not "in any way share or endorse". Therefore, the Licensee did not appear to have adequate compliance procedures in place at the time to prevent the broadcast of material raising potential issues under the Code.

The extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur

99. In its representations, the Licensee stressed that the breaches were an aberration on the part of the presenter and that it had no reason to believe prior to this broadcast that he would express these views. We have no evidence to suggest the breaches occurred deliberately, recklessly or with the knowledge of Panjab Radio's senior management.

Whether the contravention in question continued, or timely and effective steps were taken to end it, once the regulated body became aware of it.

100. The breaches consisted of a single broadcast which by its nature was not ongoing. The Licensee only became aware of the potentially serious issue raised by the programme on being alerted to the material by Ofcom on 11 September 2018¹⁵.

101. As set out in paragraph 38, following Ofcom's contact, the Licensee: took the presenter permanently off air and prevented him from re-entering its premises; suspended most telephone call-ins; arranged companywide and targeted training, including the use of an expert; reorganised its compliance function; asked presenters to sign a new side-contract to confirm they understood the requirements of the Code and their obligation as a presenter; started pre-broadcast compliance checks with presenters; and discussed the matter at board level.

Any steps taken for remedying the consequences of the contravention

102. The Licensee broadcast a statement twice to offer an unreserved apology to listeners. The Licensee said that it timed the statements to capture the same audience as the offending programme of 24 August 2018. (See paragraph 38.)

103. We accepted that the Licensee took steps, via the broadcast apology, to try to remedy the consequences of the contravention.

104. We welcomed the wording of this apology, which described the concerning nature of the content, and explicitly stated that Panjab Radio did not "in any way share or endorse" the presenter's views and promoted instead "peace and tolerance". However, we considered that the potential for mitigating the consequences of the contravention was reduced because the apology was not aired until some three weeks after the broadcast of the original harmful and offensive content.

Whether the regulated body in breach has a history of contraventions (repeated contraventions may lead to significantly increased penalties).

105. Although the Licensee has been broadcasting for many years, this is its first recorded breach of the Code or of any of the other conditions of its licence.

The extent to which the regulated body in breach has cooperated with our investigation

106. In Ofcom's view, the Licensee has been cooperative. For example, in response to our first contact with it about the content it immediately and permanently removed the presenter from air, changing its locks to prevent his entry to its premises. It also confirmed that no material in which he appeared would be transmitted pending the outcome of Ofcom's investigation. It provided full representations in response to Ofcom's formal requests for information relating to the material broadcast and gave assurances that it had taken steps to remedy its failure to comply with the Code.

Precedent

107. As set out in our penalty guidelines, the central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to ensure compliance, for both the Licensee in question and licensees generally, having regard to the seriousness of the infringement. In this respect, as noted above, it appears to us that the breach was not deliberate or reckless.

108. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases. Ofcom considered that the three precedent cases to which the Licensee referred at paragraphs 66 and 67 were of minor relevance to the present

¹⁵ Ofcom received the complaint on 3 September 2018.

case. Ofcom acknowledged that they involved the potential to cause significant harm. However, they involved Rules 2.1 (adequate protection from harmful material) and 5.1 (due accuracy and impartiality in news) and not, as in the present case, Rules 2.3, 3.1 and incitement to violent retribution up to and including murder.

109. We note that we amended our Penalty Guidelines on 3 December 2015 and on 14 September 2017. Both times, this was to secure that penalties had an appropriate deterrent effect. On 14 September 2017 we noted that the update was, in particular, to ensure that we could impose penalties at the appropriate level effectively to deter contraventions of regulatory requirements. Precedents pre-dating these revisions are of less value.
110. Ofcom has previously imposed a number of financial penalties for breaches of Rule 3.1. The fact that, notwithstanding the imposition of these penalties, similar breaches continue to occur suggests that the level of the previous penalties has not acted as a sufficiently strong incentive to compliance. Ofcom has therefore reached the view that in order to have a proper deterrent effect, any financial penalty imposed would need to be *relatively* higher than those imposed in previous similar cases, having regard to all the factors set out in Ofcom's Penalty Guidelines.

Previous cases

111. **23 November 2012, Radio Asian Fever Community Interest Company**¹⁶ – Ofcom imposed a penalty of £4,000 on the licensee and directed it to broadcast a statement of Ofcom's findings for breaches of Rules 2.3, 2.4, 3.1 and 4.1. This case concerned two editions of the Sister Ruby Ramadan Special 2011. In the first programme the presenter was highly critical of homosexuality in the context of discussing aspects of the Qur'an. In the second programme the presenter made critical remarks about marriages between Muslims and those of other faiths, in the context of discussing elements of the Qur'an. Ofcom concluded that the material in the first programme was likely to encourage violent behaviour towards homosexual people and was therefore in breach of Rule 3.1. Ofcom also considered the material to breach Rule 2.4 as it could reasonably be considered likely to encourage others to copy such violent behaviour. Ofcom concluded that the material in both programmes had the potential to cause offence, which was not justified by the context, in breach of Rule 2.3. Ofcom held that both programmes failed to exercise the proper degree of responsibility required in religious programmes, in breach of Rule 4.1.
112. **5 July 2013, DM Digital Television Limited**¹⁷ – Ofcom imposed a penalty of £85,000, directed the licensee to broadcast a statement of Ofcom's findings, and not to repeat the programme, for breaching Rule 3.1. In the programme an Islamic scholar delivered a live televised lecture about points of Islamic theology with reference to the fatal shooting in 2011 of the Punjab Governor Salmaan Taseer, who had been a vocal critic of Pakistan's blasphemy law. Ofcom concluded that the material was likely to encourage or incite the commission of crime or to lead to disorder. We did so on the basis that, on a reasonable interpretation of the scholar's remarks, we considered he was personally advocating that all Muslims had a duty to attack or kill apostates or those perceived to have insulted the Prophet Mohammed. Ofcom considered the breach to be particularly serious because the material was delivered to a predominantly Muslim audience by a religious scholar as a part of a religious programme. The breach was compounded by the fact the programme made no condemnation of the acts of killing or violent action referred to.
113. **21 August 2013, Al Ehya Digital Television Limited**¹⁸ – Ofcom imposed a penalty of £85,000 on the licensee, directed the licensee to broadcast a statement of Ofcom's findings and directed it

¹⁶ See: [Sanction 81\(12\), Radio Asian Fever](#)

¹⁷ See: [Sanction 76\(12\), DM Digital Television Limited](#)

¹⁸ See: [Sanction 88\(13\), Al Ehya Digital Television Limited](#)

not to repeat the programme for breaching Rule 3.1. This case concerned the broadcast of a live programme in which a presenter answered questions put to him by telephone by viewers about a wide range of issues and personal conduct relating to Islam and Islamic teachings. The presenter made various statements which appeared to make clear that it was acceptable, or even the duty of a Muslim, to murder any person thought to have shown disrespect to the Prophet Mohammed where the relevant government had failed to take any action. In particular, the presenter made honorific references to individuals who had killed people in the name of Islam, including statements condoning the murder of the Punjab Governor Salmaan Taseer in 2011 by Mumtaz Hussein. Ofcom considered that on a reasonable interpretation of the presenter's remarks, he was personally advocating that all Muslims had a duty to carry out the actions he suggested. Ofcom considered the seriousness of the breaches was further compounded by the fact the statements were delivered to a Muslim audience, in a religious programme, spoken directly to the camera by a person presented to be an expert on Islamic teachings (i.e. a person holding a position of respect and authority in the Muslim community). The seriousness was compounded because the programme made no condemnation of the killings or violent action referred to.

114. **14 August 2013, Regis 1 Limited (Sangat TV)**¹⁹ – Ofcom imposed a penalty of £30,000, and a direction to broadcast a statement of findings for breaching Rule 3.1 of the Code. This case concerned a programme about an attack on the retired Indian army general Kuldip Singh Brar, who led the controversial military operation against the Golden Temple at Amritsar in 1984. The programme contained statements from various contributors that Ofcom considered likely to encourage members of the Sikh community to take violent action against Lieutenant General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar in June 1984, or those who supported the military operation. Regis 1 Limited did not have a prior history of contraventions of the Code.
115. **6 July 2017, Ariana Television and Radio Network**²⁰ – Ofcom imposed a penalty of £200,000, and a direction to broadcast a statement of findings for breaching Rules 2.3, 3.1 and 3.2 of the Code. The case concerned the broadcast of a news item which featured a two and a quarter minute clip of Muhammad Riyad, before he carried out an attack where he stabbed five people on a train in southern Germany before being killed by security forces. In the video, he brandished a knife; boasted about his forthcoming attack; and made various statements describing in highly positive terms his and ISIL's intentions to carry out acts of extreme violence against the German population. Ofcom considered that the content had clear potential to influence impressionable viewers by encouraging serious crime. We also considered that the content was a clear example of highly offensive hate speech. Ariana Television and Radio Network did not have a prior history of contraventions of the Code.
116. **26 July 2017, Iman Media UK Limited**²¹ – Ofcom exercised its powers under section 111B of the Broadcasting Act 1990 to suspend and then revoke Iman FM's licence. This followed serious breaches of Rule 3.1, Rule 3.2 (hate speech must be justified by the context) and Rule 2.3 of the Code, prior to which the Licensee had not been found in breach of the Code. The breaches occurred through the broadcast of a series of lectures by Anwar al-Awlaki entitled "The Life of Muhammad (Seerat-un-Nabi)" throughout the month of Ramadan which incited and condoned serious violence. This included: a direct call to action to members of the Muslim community to prepare for and carry out violent action against non-Muslim people; statements condoning and encouraging acts of crime, terrorism or violent behaviour and statements sanctifying the belief in and practice of violent Jihad. Some of the lectures also contained hate speech against the

¹⁹ See: [Sanction 89\(13\) Regis 1 Limited](#)

²⁰ See: [Sanction 106 \(17\) Ariana Television and Radio Network](#)

²¹ See: [Revocation Notice, Iman Media UK Limited](#)

Jewish community in breach of Rule 3.2 of the Code. The lectures were broadcast uninterrupted for 1 to 2 hours daily over a three-week period (apart from advertising breaks) and there were no views or statements in the successive programmes which challenged or otherwise softened the inflammatory effect or the potential offence of these lectures. Ofcom was concerned that these statements had the potential to influence impressionable listeners by encouraging serious crime and/or leading to disorder in relation to members of the public. The context in which the lectures were broadcast showed that the Licensee did not have adequate procedures in place to ensure compliance with the Code. Following both written and oral representations from Iman Media UK Limited, Ofcom decided that it was necessary in the public interest to revoke the licensee's Broadcasting Act licence, and that the licensee was unfit to hold a broadcast licence.

117. **27 February 2018, Karimia Limited**²² – Ofcom imposed a penalty of £2,000 and a direction to broadcast a statement of findings for breaching Rules 2.3, 3.1, 3.2 and 3.3 of the Code. The case concerned the broadcast of a nasheed glorifying the victories on the battlefield of figures from Islamic history which then went on to suggest that similar violent acts committed against non-Muslim people would bring honour to Islam. The nasheed further included a number of pejorative references to non-Muslim people. In particular, non-Muslim people were repeatedly referred to as “Kufaar” (a derogatory Arabic word for disbeliever) and on one occasion, “Kaafir I Murdaar” (meaning filthy disbeliever in Urdu). Ofcom considered that the content amounted to an indirect call to action which could be likely to encourage or incite the commission of crime or lead to disorder. Ofcom also found that it constituted hate speech and abusive and derogatory treatment of non-Muslim people. Karimia Limited did not have a prior history of contraventions of the Code.
118. **5 May 2020, Club TV Limited**²³ – Ofcom imposed a penalty of £200,000 in relation to the service Peace TV Urdu for breaching Rules 2.3, 3.1, 3.2 and 3.3 of the Code. The breach under consideration arose from the broadcast of material in one particular programme on one particular occasion.²⁴ In it, an Islamic scholar gave a lecture in which he made a series of statements about killing Muslim people who practice “Sihir” or magic. The Breach Decision noted the recent case of *R v Syeedy* in which a Muslim cleric was murdered for his involvement in such practices. Ofcom concluded that the broadcast content amounted to an indirect incitement to murder, uncontextualised hate speech and abusive or derogatory treatment of a group based on their beliefs. In imposing the penalty, Ofcom took into account the actual and potential harm in this case was substantial because of the impact on Muslim people who practice magic as part of their faith. Ofcom also took into account that the programme was pre-recorded and an appropriate compliance process ought to have identified it as inappropriate for broadcast. We considered that there was no evidence that Club TV Limited had taken any steps for remedying the consequences of the initial contravention. Ofcom noted that three years earlier it had sanctioned Club TV Limited, imposing a £65,000 penalty for the broadcast of a public lecture which Ofcom considered had the potential to be interpreted as spreading antisemitism.
119. We note that, as set out in the Penalty Guidelines, Ofcom may depart from these cases depending on the facts and context of the current case.

²² See: [Sanction \(109\)17 Karimia Limited](#)

²³ See: [Sanction 128 \(19\) Club TV Limited](#)

²⁴ Subsequently, Ofcom identified that the programme had been rebroadcast on three further occasions in November 2019. Ofcom made further breach findings in relation to them and was considering whether the rebroadcasts triggered Ofcom's duty under section 239 of the Act to suspend the licence with a view to revocation. However, Club TV Limited then surrendered its licence and it was unnecessary to consider revocation any further. We did not commence a separate sanction process in relation to the rebroadcasts.

The size and turnover of the regulated body when considering the deterrent effect of any penalty

120. Any proposed penalty must be proportionate taking into account the size and turnover of the Licensee, its rights under Articles 9 and 10 of the Convention and the fact that deterrence is the central objective of imposing a penalty. We have taken into account the financial data provided by the Licensee on its qualifying revenue for the last accounting period (to 31 August 2019), which was £8. We have also taken into account the sharp decline in the Licensee's advertising revenue since the outbreak of the Coronavirus pandemic and that, aside from its qualifying revenue, the other income it receives in the form of donations has proved volatile and fallen sharply in this period.

Decision

121. Ofcom had regard to all the circumstances referred to above, including: the need to achieve an appropriate level of deterrence; the particularly serious nature of the Code breaches in this case; that this was a first and single offence in many years of broadcasting; the impact of the Coronavirus pandemic on the Licensee's finances; and all the representations to date from the Licensee.

122. Ofcom's Decision is that an appropriate and proportionate sanction would be a financial penalty of £30,000²⁵. In addition, Ofcom considers that the Licensee should be directed to broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom.

Ofcom

17 August 2020

²⁵ The penalty under consideration in Ofcom's Preliminary View was a higher amount.