

**Sanction: Decision by Ofcom**

**Sanction: to be imposed on Radio Ikhlas Limited**

---

**For material broadcast on Radio Ikhlas on 7 September 2017 at 15:50<sup>1</sup>**

**Ofcom’s Sanction Decision against:** Radio Ikhlas Limited the “Licensee”) in respect of its service **Radio Ikhlas** (CR000011BA/3).

**For:** Failing to ensure compliance with the Code in breach of Condition 5 and Condition 15(2) of the Licence resulting in the following breaches of the Ofcom Broadcasting Code (the “Code”):

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 offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

Rule 3.2: “Material which contains hate speech<sup>2</sup> must not be included in television and radio programmes except where it is justified by the context”.

Rule 3.3: “Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context”.

**Decision:** To impose a financial penalty (payable to HM Paymaster General) of £10,000;

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

To direct the Licensee not to repeat the programme.

---

<sup>1</sup> See Broadcast and On demand Bulletin 350, 19 March 2018 (“the Breach Decision”), [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/112187/Broadcast-and-On-Demand-Bulletin-350.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/112187/Broadcast-and-On-Demand-Bulletin-350.pdf)

<sup>2</sup> The Code defines “hate speech” as: “all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion or sexual orientation”.

### Executive Summary

1. Radio Ikhlas is a community radio station serving the Asian (primarily Pakistani) community and other smaller ethnic communities in the Normanton area of Derby. The Ofcom licence for this station is held by Radio Ikhlas Limited. The Licensee does not currently hold any other broadcasting licence.
2. The conditions of the Licence require the Licensee to ensure compliance with Ofcom's Broadcasting Code (Condition 5) and to adopt procedures and ensure that such procedures are observed by those involved in providing the Radio Ikhlas service for the purpose of ensuring that programmes included in the service comply with the provisions of the Licence and applicable statutory requirements (Condition 15(2)).
3. On 7 September 2017 at 15:00, the Licensee broadcast a two-hour phone-in programme discussing the on-going crisis surrounding the treatment of the Rohingya Muslim community in Myanmar.
4. In the middle of the programme, at around 15:50, there was a 21-minute segment, during which the presenter discussed the beliefs of the Ahmadiyya community in offensive and pejorative terms<sup>3</sup>. For example, the presenter referred to Ahmadi people as: *"dangerous"*; *"liars"*; *"enemies of Islam, enemies of Pakistan, and enemies of our religion"*; and, *"hypocrites who frequently engage in propaganda to defame Muslims"*. The presenter also referred to the founder of the Ahmadi faith as being *"a liar"* and described the religious beliefs of Ahmadi people as *"very dangerous beliefs"*. In the course of the broadcast, the presenter said: *"we will have to identify them with[in] our ranks"* and *"protect yourself from them"*.
5. In Ofcom's Decision (*"the Breach Decision"*) published on 19 March 2018 in issue 350 of the Broadcast and On Demand Bulletin<sup>4</sup>, Ofcom's Executive found that material in this afternoon phone-in programme (*"the Programme"*) breached Rules 2.3, 3.2 and 3.3 of the Code.
6. The Breach Decision set out specific examples of broadcast material that were in breach, along with reasoning as to why, in relation to each breach, the material had breached each rule.
7. Ofcom put the Licensee on notice in the Breach Decision that it considered these breaches were very serious and would be considered for the imposition of a statutory sanction. In accordance with Ofcom's Procedures for the consideration of a statutory sanctions in breaches of broadcast licences (the *"Sanctions Procedures"*<sup>5</sup>), Ofcom decided that the Code breaches were very serious and occurred deliberately or, at the very least, recklessly so as to warrant the imposition of a statutory sanction on the Licensee.
8. Ofcom's decision is that the appropriate sanctions are: a financial penalty of £10,000; a direction that the Licensee must broadcast a statement of Ofcom's findings on a date and in a form to be decided by Ofcom; and a direction that the Licensee must not repeat the programme.
9. Ofcom has also found that the at the time of the broadcast, the Licensee did not have effective procedures in place to ensure compliance with the Code, in breach of Condition 5 and Condition 15(2) of its Licence. Taking account of the penalty it has imposed for the Code breaches, Ofcom

---

<sup>3</sup> The Ahmadiyya community (or Ahmadi movement) identifies itself as a Muslim movement, which follows the teachings of the Qur'an. However, it is regarded as heretical by orthodox Islam since they differ on the interpretation of the finality of prophethood. There are Ahmadiyya communities around the world. They face restrictions in many Muslim countries and are described in publicly available reports as one of the persecuted communities in Pakistan. There have been reports of discrimination and threats against the community in the UK.

<sup>4</sup> See footnote 1.

<sup>5</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/71967/Procedures\\_for\\_consideration.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf)

has decided not to impose a penalty in respect of these breaches of licence conditions on this occasion.

### **Legal Framework**

#### **Communications Act 2003**

10. 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 a number of other matters. These include 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 (section 3(2)(e)).
11. Ofcom has a specific duty under section 319(1) 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.
12. In performing these 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**

13. 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.
14. 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".
15. 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 by 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 or 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)).
16. Ofcom must exercise its duties in light of this right 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**

17. 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 (but not limited to) race or religion, and persons who do not share it.

#### **Ofcom Broadcasting Code**

18. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code<sup>6</sup>.
19. Accompanying Guidance Notes to each section of the Code are published and from time to time updated on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
20. The relevant Code rules in this case are set out in full at the beginning of this Preliminary View.

#### **Remedial action and penalties**

21. 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. In the case of a Community Radio licence, Condition 5 of the licence requires the licensee to ensure that the provisions of any Code made under section 319 are complied with. Condition 15(2) requires the Licensee to adopt procedures and ensure that such procedures are observed by those involved in providing the Radio Ikhlas service for the purpose of ensuring that programmes included in the service comply with the provisions of the Licence and applicable statutory requirements. The Licensee holds a Community Radio licence.
22. Where Ofcom has identified that a condition of a community radio licence has been and/or are being contravened, its powers to act are set out in sections 109 to 111B of the Broadcasting Act 1990 (the "1990 Act") insofar as relevant to the case.
23. Section 109 of the 1990 Act provides Ofcom with the power to direct the holder of a Community Radio licence to broadcast a correction or a statement of Ofcom's findings (or both).
24. Section 110 of the 1990 Act provides Ofcom with the power to impose a financial penalty on the holder of a Community Radio licence. S110(3) provides that the maximum penalty which may be imposed in respect of each contravention is £250,000.
25. Section 110 of the 1990 Act also provides Ofcom with the power to shorten a Community Radio licence by a specified period not exceeding two years or suspend a licence for a specified period not exceeding six months, where a licensee is in contravention of a condition of a Community Radio licence or direction thereunder.
26. 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 Community Radio licence or direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.

#### **Background – The Breach Decision**

27. In the Breach Decision, the Executive found that material broadcast by the Licensee on Radio Ikhlas breached Rules 2.3, 3.2 and 3.3 of the Code. The Breach Decision set out the reasons for each of these breach findings.
28. The Breach Decision noted that the two-hour programme featured a phone-in programme discussing the on-going crisis surrounding the treatment of the Rohingya Muslim community in Myanmar. In the middle of the programme, there was a 21-minute segment which commenced

---

<sup>6</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0005/100103/broadcast-code-april-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0005/100103/broadcast-code-april-2017.pdf)

with the presenter referring to the fact that the programme was being broadcast on the anniversary of 7 September 1974. This was the day on which the Pakistani National Assembly voted on a Bill and constitutional amendment declaring Ahmadi people to be non-Muslim.

29. The material included several statements which were highly pejorative about the Ahmadi people, including their leader, Mirza Masroor Ahmad, and their religious beliefs. For example, the presenter described Ahmadi people as: *“dangerous”*; *“liars”*; *“enemies of Islam, enemies of Pakistan, and enemies of our religion”*; *“hypocrites who frequently engage in propaganda to defame Muslims”*; and, people who have *“inflicted the greatest damage to Islam and to the believers of Islam”*. The presenter referred to the founder of the Ahmadi faith as being *“a liar”* and described the religious beliefs of Ahmadi people as *“very dangerous beliefs”* and *“filthy beliefs which shatter the true faith and promote untruths”*. He used the simile of filling a bottle of holy Zamzam water<sup>7</sup> with alcohol to convey his view that the Ahmadiyya community is a polluting influence on Islam. He also said that when the members of the community preach to others about their beliefs *“they rob them of their faith ...That is what they try to do”*. In the context of these criticisms, the presenter said: *“we will have to identify them with our ranks”*, *“Protect yourself from them”* and asked *“how can we tolerate one who uses the title Muslim, which represents Muslims?”*.
30. In relation to Rule 3.2, Ofcom considered that the various statements made by the presenter were expressions of hatred based on intolerance of the Ahmadiyya community’s religious beliefs and that their broadcast spread, encouraged and incited such hatred among listeners. We considered therefore that it was a clear example of hate speech as defined in the Code. We did not accept the representations put forward by the Licensee, in our investigation of this matter, that the broadcast content was about the relevance of the anniversary of 7 September 1974 in the context of Islamic and Pakistani history. Instead, we considered that the anniversary was used as platform to broadcast a sustained, highly-critical attack on the Ahmadiyya community and their beliefs. Therefore, given the very strong nature of the material in this case, we considered that there was clearly insufficient context to justify the inclusion of hate speech in this broadcast, and Rule 3.2 was breached.
31. In relation to Rule 3.3 of the Code, we considered that the 21-minute segment constituted abusive and derogatory treatment of the Ahmadiyya community. This included referring to its members as *“dangerous”* and *“enemies of Muslims”*, comparing them to a person who sells alcohol as holy water, and describing their religious beliefs as *“filthy”* and *“very dangerous”*. As with Rule 3.2, there was insufficient context to justify this derogatory treatment.
32. In relation to Rule 2.3 of the Code, for the reasons highlighted above, we considered that this content contained material which we identified as hate speech and abusive treatment. As such the content clearly had the potential to be extremely offensive. As for Rules 3.2 and 3.3, we considered that there was no context to justify this high level of offence, and therefore Rule 2.3 of the Code was also breached.
33. Ofcom stated in the Breach Decision that the contraventions of Rule 2.3 and Rule 3.2 and 3.3 of the Code were very serious and were being considered for statutory sanction.

#### **Licensee’s representations on the appropriate sanction**

34. As set out in paragraph 1.13 of the Sanctions Procedures<sup>8</sup>, 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.

---

<sup>7</sup> A water source in Mecca whose water is considered holy and attributive of medicinal properties.

<sup>8</sup> See footnote 5.

35. The Licensee provided the following representations in respect of the appropriate sanction in this case.
36. The Licensee said it was “deeply apologetic” for the broadcast. It also accepted that it has responsibility for compliance with the Code but said that the programme in this case “was not a deliberate broadcast that was sanctioned by us”. It said that the broadcast was a “single one-off event which has not been repeated, nor is on-going”. It said that the Licensee had “hundreds” of presenters broadcasting live and that it had a good compliance record in over 12 years of broadcasting.
37. The Licensee clarified the circumstances that had led to the broadcast of the breached material in this case, including that:
- the presenter in this case was a new presenter on the station. However, the Licensee said that the presenter had worked on TV and radio in other cities previously and therefore it expected him to understand his obligations;
  - the presenter had informed the station manager on that day that he would do a show on the Rohingya crisis in addition to his usual show on the Arabic Language, however the presenter did not show up for his designated time of broadcasting between 12:00 and 13:00, nor did he notify anybody connected with the station that he would be broadcasting a show later;
  - the station manager was on bereavement leave on that day, but there was a staff member present in the studio until 13:00; and
  - usually during the afternoon, pre-recorded content, such as Nasheeds,<sup>9</sup> is broadcast and the Licensee therefore did not consider that the output needed to be monitored. However, the presenter turned up at 15:00, and using his own keys to enter the studio he broadcast his programme without notifying any members of staff and without any supervision.
38. The Licensee confirmed that it had ended the presenter’s association with the station following internal disciplinary procedures because the presenter had breached the Code and had not adhered the Licensee’s internal training and procedures.
39. In relation to its compliance processes, the Licensee said that pre-recorded content was always vetted and monitored to ensure it complies with the Code. It added that live programmes were usually monitored by one station staff member “unless it’s somebody who’s been there for a quite a long time and can produce their own show and do their own show and are very trusted”.
40. The Licensee said that the split of its output was roughly 40-60% live and 60% pre-recorded. It admitted that at the time of the broadcast there was no mechanism in place to monitor the live output of the radio station if the station manager or other members of staff were away.
41. The Licensee said that it had taken action to remedy its compliance processes. It explained:
- “We are in control; we know who is in at the radio station and who is broadcasting at the time. Previously, we feel that there was a weakness, because it was a matter of trust. We now know that that trust doesn’t allow us to go far, because that’s why we’re here. So we’ve now taken away that idea, and now the only time that we broadcast live would be when there is somebody there present.”*
42. The steps it had taken to improve compliance included:
- installing new locks on the doors in the Radio Ikhlas premises with only the station manager and another employee having keys;

---

<sup>9</sup> A Nasheed is a piece of devotional vocal music that is sung either a capella or accompanied by percussion instruments.

- “refresher training” to remind presenters of “Ofcom guidelines and their responsibilities to adhere to them” would be carried out on a six-monthly basis, rather than annually as previously;
  - a “presenter obligation agreement” which presenters are required to sign, which “specifically makes mention of not digressing from their content matter or their subjects without prior authorisation from the Station Manager”; and
  - requiring that no live programmes are broadcast unless a member of Radio Ikhlas staff is present on site, so that “swift and robust action” can be taken if any harmful content were to be broadcast live on air.
43. In relation to sanction, the Licensee said that licence revocation was “too severe and not proportionate with other sanctions or precedents.” It said that through its revised procedures it had now “mitigated risks that may lead to breaches to the Ofcom Broadcasting Code from now on”.
44. The Licensee said that a revocation of its licence would be devastating for the local community in Derby, and gave the following examples of the contributions it had made to the local area:
- “pioneers of easing community relations during a time where radicalisation and Islamophobia were in the spotlight daily historically in our local area of Derby”;
  - “successful with working with young people to keep them away from negative influences such as substance abuse, radicalism and crime”; and
  - “often seen as the link between the local community and organisations from different sectors, such as the police, schools and local councils.
45. The Licensee produced letters from: the MP for Derby North, Chris Williamson, the Mid Derbyshire and Derby Conservative Association, the Derbyshire Healthcare NHS Foundation Trust, and, the Derby Bosnia-Herzegovina Community Association, all of which confirmed that the station made an important contribution to the local community.
46. In respect of a financial penalty, the Licensee said it was not currently profitable so would struggle to pay a penalty of £10,000. It said that a penalty at this level would affect the financial viability of the radio station and it may mean closure. The Licensee also said that such a penalty would affect its quality of service.
47. In relation to its broadcast, the Licensee said that the presenter was an imam who was relatively new to the community and did not have much prominence or following locally. It also said that the programme was broadcast at a time when the station would not have had a large number of listeners.
48. The Licensee highlighted past sanction decisions by Ofcom in which lower financial penalties had been imposed (Radio Asian Fever Community Interest Company)<sup>10</sup> and (Karimia Limited)<sup>11</sup> in relation to broadcasts where it said more serious Code breaches had been found - incitement to crime –as opposed to hate speech. The Licensee contended that any financial penalty should be closer to the financial penalty of £2,000 imposed on Karimia Limited.

**Ofcom’s decision on the appropriate sanction for the Code breaches**

49. In reaching its decision on whether to impose a statutory sanction and if so, what type and level of sanction, Ofcom was not bound by its Preliminary View. Ofcom took account of all the

---

<sup>10</sup> See paragraph 101.

<sup>11</sup> See paragraph 110.

evidence and representations made by the Licensee. In addition, we had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines<sup>12</sup> in reaching our Decision.

50. We first considered the seriousness of the breaches and whether they occurred deliberately or recklessly before deciding which sanction would be appropriate in this case.

### Serious nature of the breaches

51. Ofcom regards any breach of Rules 3.2 and 3.3 of the Code as a serious matter because of the potential for such content to cause significant harm and offence. In this case, there were features of the broadcast that led us to find that these breaches were particularly serious.
52. First, Ofcom found that there was a sustained, highly critical attack amounting to hate speech against the Ahmadiyya community and their beliefs which lasted for 21 minutes. The duration of the content found to be in breach was therefore material and it was broadcast unchallenged and without context. For these reasons, we considered it had a greater potential to cause significant harm.
53. Second, the presenter was a local imam. We noted the Licensee's representations that the imam was new to the community and so had a limited following. However, we considered that the broadcast by a presenter preaching religious intolerance against Ahmadis would have carried particular weight with listeners because of his status and because Radio Ikhlas is a community radio station providing content with a focus on Islamic matters to a primarily Muslim audience. This further increased the risk that the broadcast could have had very serious, harmful effects.
54. Third, we found that the hate speech had been directed at the Ahmadiyya community. The presenter had characterised Ahmadis as "*dangerous*" and "*enemies of Muslims*" and had called upon the audience "*to look for them and locate them from amongst us*". This content had been broadcast against a background of reported threats and violence against Ahmadiyya community in the UK and around the world<sup>13</sup>. In this context, we considered the broadcast was likely to have made Ahmadi people extremely fearful, as well as causing them distress and humiliation.

### The breaches were deliberate or at least reckless

55. The Licensee said that prior to the broadcast, the presenter had agreed and signed its "presenter's agreement" which explains the Code. He had also received training on the Code. Although the Licensee said that the presenter accepted that some of the words used in the broadcast were not appropriate, it also said that he did not believe that he had used offensive language or hate speech.
56. The Licensee explained that on the day of the broadcast the presenter had informed the station manager that he wanted to broadcast a programme on the Rohingya crisis on that day but did not turn up at the time he was expected. He subsequently accessed the station with a key provided by the station, when no member of the radio station staff was present. According to the Licensee, a pre-recorded Nasheed<sup>14</sup> would normally have been scheduled at the time the presenter broadcast on that day.

---

<sup>12</sup> See: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/106267/Penalty-Guidelines-September-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf)

<sup>13</sup> <https://www.reuters.com/article/us-pakistan-election-ahmadis/pakistans-long-persecuted-ahmadi-minority-fear-becoming-election-scapegoat-idUSKBN1DG04H>; <https://www.dawn.com/news/1302057/mob-besieging-ahmadi-place-of-worship-in-chakwal-dispersed-by-police>; [http://news.bbc.co.uk/1/hi/world/south\\_asia/8711026.stm](http://news.bbc.co.uk/1/hi/world/south_asia/8711026.stm); <https://www.thetimes.co.uk/article/mosques-on-guard-over-death-threats-from-muslims-5t7hq9l0t>; [https://www.huffingtonpost.co.uk/entry/kill-ahmadis-leaflets-found-in-stockwell-green-mosque-in-south-london\\_uk\\_570b5ea6e4b0ae22c1dff607](https://www.huffingtonpost.co.uk/entry/kill-ahmadis-leaflets-found-in-stockwell-green-mosque-in-south-london_uk_570b5ea6e4b0ae22c1dff607)

<sup>14</sup> See footnote 9.



57. We considered that the breaches were intentional or, at the very least, reckless. We did not consider it credible that the presenter was not aware at the time of the broadcast that the content amounted to hate speech and was abusive towards and offensive about Ahmadi people, given the language that he used and the sustained and repeated denigration of Ahmadi people and their beliefs. Although the Licensee said that the programme in this case “was not a deliberate broadcast that was sanctioned by us”, we considered that the presenter deliberately engaged in hate speech, broadcasting abusive and offensive content which was intended to spread, incite, promote or justify hatred against Ahmadi people on religious grounds.
58. In view of the training that the Licensee said the presenter had received and the “presenter agreement” that he had signed, we considered that he should have been aware that this content was in breach of the Code.
59. Under the conditions of the Licence, the Licensee is required to ensure compliance with the Code and to adopt procedures and to ensure such procedures are observed in order to secure compliance with the Code. The effect of these provisions is to make the Licensee responsible for the actions of its presenters. We noted that the Licensee accepted this in its representations. Accordingly, given our finding that the presenter deliberately broadcast content in breach of the Code, we regarded the Licensee as having committed the Code breaches intentionally.
60. Alternatively, for the reasons set out in more detail at paragraphs 83 to 88 below, we considered that the Licensee was at the very least reckless as it did not have sufficient and appropriate systems in place to prevent the breaches occurring or to take swift action to mitigate their adverse effects.
61. Accordingly, Ofcom concluded that the breaches were very serious, and deliberate or at least reckless. They therefore warranted the imposition of a statutory sanction. As mentioned in paragraph 22 to 26 above, Ofcom’s powers to take action are set out in sections 109 to 111B of the 1990 Act. Ofcom therefore considered which of the sanctions available to it were appropriate in the present case.

### **Appropriate Sanction**

#### *Revocation of the Licence*

62. 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 Community Radio licence or direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.
63. Revocation of a licence is the ultimate enforcement action available to Ofcom. A decision to revoke a licence may only be taken by Ofcom if it is satisfied that it is a proportionate response to the Licensee’s failure to comply with its licence conditions.
64. In considering whether to propose the revocation of a licence under section 111 of the 1990 Act, Ofcom must also have regard to competing rights under the Convention. Specifically, it is necessary to balance, on the one hand, the Licensee’s freedom of expression and the audience’s freedom to receive information and ideas without undue interference under Article 10 and, on the other, the rights and protections of citizens necessary in a democratic society, such as the right to freedom of thought, conscience and religion under Article 9.
65. Ofcom’s Preliminary View was that revocation of the licence was appropriate in this case. We had regard to the fact that the Licensee had provided a community radio service for the benefit of its local audience since 2006 and had a relatively good compliance record.
66. We also took account of the fact that the Code breaches occurred in a single programme and that the Licensee had taken action against the presenter to prevent further broadcasts by him. However, we noted that, at the time of the Preliminary View, there was no evidence that the Licensee had put in place effective procedures to ensure it was able to exercise effective

oversight of live broadcasts or to review its risk management processes in order to identify and act upon compliance risks. Further, we considered the Code breaches in this case were: very serious; capable of causing significant harm and offence to the Ahmadiyya community; and, had occurred deliberately or, at the very least, recklessly on the part of the Licensee.

67. In all the circumstances of the case we considered that the Licensee's Article 10 rights were outweighed by the need for Ofcom to take effective action to enforce the standards it has set to protect UK citizens from harm and offence and secure the rights and protections due to them in a democratic society.
68. Since receiving this Preliminary View, the Licensee has acknowledged its fundamental responsibility for ensuring compliance. It has taken significant steps to improve its processes and ensure that it maintains control of its output, as set out in paragraphs 41 and 42, in order to secure compliance with the Code. We are satisfied that the action it has taken is sufficient to remedy the failures which led to the Code breaches. The Licensee also provided us with letters from a number of prominent and responsible individuals in its local community who endorsed the valuable contribution that the Licensee's service made within its local area. Accordingly, we are satisfied that there is no longer a justification for revocation of the licence.

Shortening or suspension of the licence

69. Ofcom considered that the suspension of the Licence would not be appropriate. We considered that this sanction would primarily penalise listeners in the relevant area, who would not only be deprived of the Licensee's service but also of any alternative service for the duration of the suspension.
70. Ofcom was also concerned that shortening the Licence would not be an appropriate sanction because it would postpone its response to very serious Code breaches. Ofcom considered that this would undermine the effectiveness of the sanction as a deterrent against further breaches by the Licensee and for broadcasters more widely.

Directing the Licensee to broadcast a statement of Ofcom's findings and/or not to repeat the programme

71. Ofcom considered it was appropriate to direct the Licensee to broadcast a statement of Ofcom's findings for the purposes of deterrence.
72. We also considered that it should direct the Licensee not to repeat the programme, given the very serious nature of Code breaches it contained.
73. However, we considered that, on their own, these directions would not be a sufficient sanction, given the very serious nature of the breaches in this case.
74. We therefore concluded that a financial penalty, the only other sanction available to Ofcom, in addition to these directions, was appropriate.

**Amount of the financial penalty**

75. Under section 110 of the 1990 Act, the maximum level of financial penalty that can be imposed on the holder of a community radio licence in respect of each breach of the licence is £250,000.
76. Ofcom's Penalty Guidelines state (in 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."

77. Paragraph 1.12 of Ofcom's Penalty Guidelines sets out the factors which Ofcom may take account of in determining the level of a financial penalty. We consider these factors below.

The seriousness and duration of the contravention

78. As explained in paragraphs 51 to 61, Ofcom considered that the breaches were very serious and deliberate or at least reckless.

79. The Breach Decision related to a 21-minute segment in a broadcast on 7 September 2017. We are unaware of the material having been broadcast again.

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

80. For the reasons set out in paragraphs 52 to 54, the actual and potential harm from the Code breaches was substantial because of its impact on Ahmadi people. We also considered more generally that the broadcast of hate speech is very harmful because it undermines the rights and protections due to citizens in a democratic society.

81. The Licensee's representation that the programme was broadcast at a time when the station did not have a large audience did not alter our assessment of the degree of harm it caused.

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

82. 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 Licensee to prevent the contraventions

83. Ofcom noted that the 21-minute segment of the broadcast which was found to be in breach was not off-the-cuff. Ofcom considered that it had been planned in advance, given that it was broadcast on the anniversary of the historical event which it discussed in detail and with specific references to religious texts. Ofcom considered therefore that the Licensee should have been in a position to take pre-emptive action to prevent the contraventions.

84. The Licensee gave a number of reasons why it had not been able to do so. It said that it was not aware of the broadcast found to be in breach until Ofcom contacted the station about the matter. In its oral representations, the Licensee explained that: "On that particular day, the presenter had informed the station manager that he would talk about the Rohingya crisis [at the usual time], but also present his normal show about the Arabic language". However, the Licensee explained that presenter did not turn up at the usual time for presenting his programme but accessed the station later in the day with a key that he had been given and broadcast the programme found to be in breach at 3pm. The Licensee said that the station manager was absent on that day as a result of a bereavement. In its oral representations, the Licensee confirmed that neither the station manager, nor anyone else was aware that presenter would be broadcasting his programme at 3pm, nor that he would refer to the Ahmadyia community, which the Licensee confirmed was "not sanctioned at all".

85. The Licensee has accepted that no one was present in the radio station to monitor the broadcast and that by allowing presenters to access the station without any oversight, it relied on trust as a means of securing compliance with the Code. It has accepted that this was not appropriate.

86. The Licensee also explained that the presenter had received full training and had agreed and signed the station's presenter agreement, which explained the Code. The Licensee said the station manager had gone through the agreement with the presenter verbally and that he had signed it on 3 July 2017, a couple of months before the broadcast. It added that the training it gave to presenters gave them the opportunity to "ask any questions regarding matters that they

are unsure about during the training”. The Licensee also noted in its representations that the presenter had previously broadcast on radio and television and therefore they expected him to have a good understanding of the Code.

87. However, according to the Licensee’s representations during the original investigation, the presenter said although he had signed the agreement, “he did not really fully understand it and did not remember all the guidelines fully”. Therefore, Ofcom considered that at the time of the contraventions, the measures that the Licensee had put in place to ensure that its presenters were aware of, understood and complied with the Code were ineffective. The presenter had not understood the Code, even though his training had only taken place a couple of months beforehand. Further, the Licensee failed to identify this through its training and monitoring processes and so failed to take action to guard against the risk to compliance that the presenter represented.

88. For all of these reasons, we considered that the Licensee had not taken appropriate action to prevent the contraventions.

*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*

89. As stated above, paragraphs 57 to 58, we considered that the presenter deliberately engaged in hate speech, broadcasting abusive and offensive content which was intended to spread, incite, promote or justify hatred against Ahmadi people on religious grounds. For the reasons set out in paragraph 59, the Licensee is responsible for the actions of its presenter and therefore it can be treated as having carried out the contraventions deliberately.

90. Alternatively, we considered that the contraventions were reckless as the Licensee did not have sufficient and appropriate systems in place to prevent the breaches occurring or to take swift action to mitigate their adverse effects.

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

91. The Licensee said that it was not aware of the broadcast until Ofcom contacted it on 28 September 2017 about the programme three weeks after the original broadcast. This followed Ofcom receiving a complaint that the programme included statements that included hatred against the Ahmadiyya community.

92. The Licensee said that once it was aware of the broadcast, it suspended the presenter and conducted an internal investigation into his conduct. Upon closure of the investigation, it had informed the presenter that he had breached Ofcom’s rules and his suspension was maintained. In its letter of 13 October 2017, the Licensee proposed a period of “rehabilitation and further advanced training on Ofcom’s guidelines” for the presenter. It said it would not consider allowing him to present another live programme until he fully understood procedures. In subsequent representations, it said that it had re-iterated rules and standards to its presenters regarding contentious topics. It also confirmed during its oral representations on 17 September 2018 that it had terminated the presenter’s contract.

*Any steps taken for remedying the consequences of the contravention*

93. The Licensee broadcast an apology on 9 October 2017 in a different programme at a different time of the day. Ofcom found in the Breach Decision that notwithstanding the reasons put forward by the Licensee, there was a prolonged delay before the apology was broadcast and it could not be treated as context to justify the breach.

94. The Licensee has subsequently taken action to improve its processes and ensure that it maintains control of its output, as set out in paragraphs 41 and 42, in order to secure compliance

with the Code. We are satisfied that the action it has taken is sufficient to remedy the failures which led to the Code breaches.

Whether the regulated body in breach has a history of contraventions

95. In December 2011 Ofcom found the Licensee failed to ensure that due impartiality was preserved in two items in a news bulletin (Rule 5.1). However, taking into consideration the steps taken by the Licensee at the time, we considered the matter resolved<sup>15</sup>.
96. Ofcom however noted that there were similarities with the present case in relation to the circumstances in which the breaches in 2011 occurred. Specifically, the station manager was responsible for checking news bulletins before broadcast but was away on the day in question. Neither the volunteer selecting the stories nor the employee who carried out the check in the manager's absence properly understood the rules about impartiality, and this led to the breaches.
97. In June 2015, Ofcom found the Licensee in breach of Licence Condition 2(4) because it failed to meet some of its key commitments<sup>16</sup>.

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

98. The Licensee has been generally cooperative. It admitted the breaches of the Code in this case and responded to Ofcom's formal requests for information relating to the material broadcast and the service in general.
99. It has accepted responsibility for the breaches and has taken action to prevent similar breaches occurring again by dismissing the presenter and improving its compliance processes.

**Precedent**

100. Ofcom has also had regard to relevant precedents in previous cases where there have been breaches of the same Code provisions.
101. **23 November 2012, Radio Asian Fever Community Interest Company**<sup>17</sup> – 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.
102. **5 July 2013, DM Digital Television Limited**<sup>18</sup> – 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

---

<sup>15</sup> See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0012/51312/obb195.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0012/51312/obb195.pdf)

<sup>16</sup> Following investigations arising from its 2013 Annual Report, Ofcom found the Licensee in breach of their licence conditions for compliance with its Key Commitments: See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/50349/issue\\_282.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/50349/issue_282.pdf)

<sup>17</sup> See: <https://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/?pageNum=2#in-this-section>

<sup>18</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/71072/rehmatul-dm-digital.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/71072/rehmatul-dm-digital.pdf)

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.

103. **21 August 2013, Al Ehya Digital Television Limited**<sup>19</sup> – Ofcom imposed a penalty of £85,000 on the licensee, directed the licensee to broadcast a statement of Ofcom's findings and directed it 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 held out 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.
104. **14 August 2014, Regis 1 Limited (Sangat TV)**<sup>20</sup> – 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 Kuldeep 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 Blue Star in June 1984, or those who supported the military operation.
105. **11 November 2016, Club TV Limited**<sup>21</sup> – Ofcom imposed a penalty of £65,000 on the licensee and directed it to broadcast a statement of Ofcom's findings for breaches of Rules 2.1 and 2.3. The case concerned two programmes consisting of public lectures given by the Islamic scholar, Dr Israr Ahmed. Dr Ahmed made a number of discriminatory remarks about Jewish people repeatedly portraying them as a homogenous group and in overwhelmingly negative and stereotypical terms. Ofcom considered that Dr Ahmed's comments had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be seen as a form of hate speech

<sup>19</sup> See:

<https://webarchive.nationalarchives.gov.uk/20160703015525/http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/>

<sup>20</sup> See:

<https://webarchive.nationalarchives.gov.uk/20160703015525/http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/>

<sup>21</sup> See: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf)

and had the potential to cause harm and offence to viewers. We considered the breaches to be serious so as to warrant the imposition of sanctions. This was because the statements consisted of hate speech and were delivered to a predominantly Muslim audience. Dr Ahmed also spoke uninterrupted and there were no views in the programmes which challenged or otherwise softened the considerable level of offence caused. These statements were delivered by a religious scholar, a person who holds a position of respect and authority in the Muslim community.

106. **20 December 2016, Mohuiddin Digital Television Limited**<sup>22</sup> – Ofcom imposed a penalty of £75,000 on the licensee and directed it to broadcast a statement of Ofcom's findings for breaches of Rules 2.1 and 2.3. The programme included recordings of a religious festival commemorating the death anniversary of two Sufi saints. It featured a number of religious scholars and preachers addressing an assembled congregation with short sermons, homilies and poetic verses. One of the speakers recounted a parable that lauded the killing of a Jewish trader as an example of the devotion and obedience of a disciple of the Prophet Mohammed. Ofcom considered that the speaker's comments had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be seen as a form of hate speech which had the potential to cause harm and offence to viewers. In particular, we considered the content had the potential to cause harm by portraying the murder of Jewish people in highly positive terms and promoting a highly negative anti-Semitic attitude towards Jewish people. Ofcom considered the breaches to be serious so as to warrant the imposition of sanctions. Again, this was because the material contained hate speech, which was delivered to a predominantly Muslim audience by a religious scholar, who spoke uninterrupted without his views being challenged or otherwise softened.
107. **6 July 2017, Ariana Television and Radio Network**<sup>23</sup> – 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 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 his 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.
108. **25 July 2017, Kanshi Radio Limited**<sup>24</sup> – Ofcom imposed a penalty of £17,500, and a direction to broadcast a statement of findings for breaching Rules 2.1, 2.3, 3.2 and 3.3 of the Code. The case concerned two broadcasts of a song *Pinky* in Punjabi. The lyrics contained a number of aggressively pejorative references to the Muslim community, and Muslim women in particular. The song also included well known sacred Islamic phrases that were interspersed with very offensive terms while the sounds of gunshots were heard. We also considered that the lyrics of the song, such as "*Pakistani* [i.e. a reference to Islam], *you sister fucker!*" and the repeated sounds of gunshots throughout the song, were an expression of an extreme Sikh perspective in opposition to the Muslim community. Ofcom considered the content was an example of hate speech and abusive and derogatory towards women. We also considered that the content had the potential to cause harm by increasing tensions between the Sikh and Muslim communities and to promote the objectification and abuse of women.

<sup>22</sup> See: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/96124/Noor-TV.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/96124/Noor-TV.pdf)

<sup>23</sup> See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/103949/decision-ariana-television-radio-network.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/103949/decision-ariana-television-radio-network.pdf)

<sup>24</sup> See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/105167/kanshi-radio-sanction-decision.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/105167/kanshi-radio-sanction-decision.pdf)

109. **26 July 2017, Iman Media UK Limited**<sup>25</sup> – Ofcom exercised its powers under section 111B of the Broadcasting Act 1990 to suspend and then revoke Iman FM’s licence for breaches of Rule 3.1<sup>26</sup> of the Code, after it aired a series of lectures by Anwar al-Awlaki<sup>27</sup> entitled “The Life of Muhammad (Seerat-un-Nabi)” throughout the month of Ramadan. In this case, Ofcom found the broadcast in breach of Rule 3.1 were extremely serious because they 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; inflammatory statements against the West; statements sanctifying the belief in and practice of violent Jihad; and statements condoning or sanctioning the mistreatment of prisoners of war. In judging the likely effect of such content on those listening, Ofcom had regard to concerns about al-Qaeda and ISIL’s use of propaganda to radicalise and recruit citizens of the UK and elsewhere. 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 to Muslims and others caused by his statements. 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.
110. **27 February 2018, Karimia Limited**<sup>28</sup> – 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 a series of three Nasheeds<sup>29</sup> in Urdu. Two of these Nasheeds raised no issues under the Code. The third Nasheed lasted approximately 17 minutes and was recited by a young boy. It began by glorifying the victories on the battlefield of figures from Islamic history. It 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. 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 Muslim people.
111. There are various other cases in which Ofcom imposed statutory sanctions for breaches of Rule 2.3, which we do not consider directly relevant in this case. This is because these cases dealt with unrelated matters including offensive language.
112. In considering the precedent cases, we took into account the Licensee’s submissions relating to the sanctions imposed on Radio Asian Fever Community Interest Company (see paragraph 101 above) and Karimia Limited (see paragraph 110 above). In arguing for a lower penalty, the Licensee contended that the breaches in those cases, which related to incitement, were more serious than the present case, which related to hate speech. It said that in the Radio Asian Fever

<sup>25</sup> See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/105269/Iman-FM-Revocation-Notice.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/105269/Iman-FM-Revocation-Notice.pdf)

<sup>26</sup> The breach decisions also recorded breaches of Rule 3.2 and 2.3 of the Code.

<sup>27</sup> Freely available information on Anwar al-Awlaki indicates that he was an American born radical Muslim cleric of Yemeni descent who was designated a global terrorist by the US Government in 2010. In November 2011, the United Nations Security Council placed al-Awlaki on its UN Security Council Resolution list of individuals associated with al-Qaeda.<sup>8</sup> In 2011, President Obama authorised the targeted killing of Anwar al-Awlaki in a drone strike in Yemen. Following his death, his writings and sermons remain available online.

<sup>28</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/111568/Decision-Karimia-Limited.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/111568/Decision-Karimia-Limited.pdf)

<sup>29</sup> See footnote 9.



case, the harmful effect of the broadcasts was likely to have been greater because the content was broadcast on Ramadan and in Leeds, which is a bigger city than Derby. It added that the breach involved a longer piece of content and a member of staff was also monitoring the content as it was being broadcast.

113. While Ofcom considers that the nature of the content in the cases listed above are relevant to the current case, as set out in the Penalty Guidelines, Ofcom may depart from them depending on the facts and the context of the current case.
114. We noted that the decision in the Radio Asian Fever case was made in 2012. We considered the penalty imposed had not proved an effective deterrent, given that Ofcom has taken a series of sanctions decisions since then in relation to similar Code breaches. We noted that there were more recent sanctions decisions in relation to Code breaches involving hate speech where Ofcom has imposed larger financial penalties, for example the decisions in Club TV, Mohuiddin Digital Television Limited and Kanshi Radio Limited.
115. Further, as noted at paragraphs 51, hate speech, by its nature, is a serious breach of the Code and the features of this case set out at paragraphs 52 - 61 made the breaches particularly serious and justified a large penalty. We also took into account the failures on the part of the Licensee to have effective risk management and compliance procedures in place at the relevant time so that it failed to identify the compliance risk associated with the particular presenter and to monitor its broadcast output.

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

116. 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 compliance, having regard to the seriousness of the infringement. Ofcom obtained financial data setting out the Licensee's qualifying revenue and other turnover for the last accounting period for the purposes of its assessment.
117. In its written representations, the Licensee said that the financial penalty proposed by Ofcom, would affect its financial viability and may lead to the closure of the station. Any penalty which Ofcom imposes must be proportionate, taking into account its central objective of securing deterrence on the one hand and on the other, the rights of the Licensee and its audience under Article 9 and 10 of the Convention. If a financial penalty was to be so high that its effect would be to close a service down, then it might be disproportionate interference with the Licensee's and the audience's right to freedom of expression in particular and exceed the purposes of imposing a penalty.
118. We are satisfied, having regard to the Licensee's most recent financial data, that the level of the financial penalty should operate as an effective deterrent and does not represent a disproportionate interference with the Licensee's freedom of expression or that of its audience. In making this assessment, we have also taken into account the fact that it is open to the Licensee to go to existing or any new potential sources of finance who may, if they consider the business is fundamentally sound and worth maintaining, provide the investment that is needed to defray the penalty. It is also possible for the Licensee to pay a penalty as a one-off payment or by instalment over a period of time.

**Sanction Decision**

119. Having regard to all the factors referred to above in the round, including the need to achieve an appropriate level of deterrence and the very serious nature of the Code breaches that have resulted from this failure, Ofcom's Decision is that an appropriate and proportionate sanction for the Code breaches is a financial penalty of £10,000.

120. In addition, Ofcom will issue directions to the Licensee to (i) broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom; and (ii) not to repeat the programme.

**Breaches of Licence Conditions**

121. Condition 5 of the Licence requires the Licensee to ensure that the provisions of any Code made under section 319 are complied with. Condition 15(2) requires the Licensee to adopt procedures and ensure that such procedures are observed by those involved in providing the Radio Ikhlas service for the purpose of ensuring that programmes included in the service comply with the provisions of the Licence and applicable statutory requirements.

122. As set out at paragraphs 83-88, Ofcom has found the Licensee failed to identify through its training and monitoring processes that the presenter did not fully understand the requirements of the Code and so failed to take action to guard against the risk to compliance that the presenter represented. We have also found that the Licensee failed to monitor its live output on the day of the contravention and relied on trust as a means of securing compliance with the Code. The Licensee has accepted that this was not appropriate. On the basis of these findings, Ofcom is satisfied that the Licensee has breached Condition 5 and Condition 15(2) of its Licence.

123. Having regard to the action that the Licensee has taken to correct these failings, as set out at paragraphs 41 and 42, and the penalty that Ofcom has imposed in respect of the Code breaches, Ofcom has decided not to impose a sanction in respect of the breaches of the Licence conditions.

**Ofcom**

19 December 2018