

SUSPENSION NOTICE

NOTICE OF SUSPENSION OF LICENCE FOR BROADCASTING MATERIAL LIKELY TO ENCOURAGE OR INCITE CRIME OR TO LEAD TO DISORDER

PURSUANT TO SECTION 111B OF THE BROADCASTING ACT 1990 AS AMENDED (THE "1990 ACT") BY SECTION 91 OF THE DIGITAL ECONOMY ACT 2017

TO IMAN MEDIA UK LIMITED ("THE LICENSEE")

IN RESPECT OF LICENCE NUMBERED CR100152 (THE "BA LICENCE") GRANTED ON 17 OCTOBER 2014 AND PRESENTLY HELD BY IMAN MEDIA UK LIMITED TO PROVIDE A COMMUNITY RADIO SERVICE UNDER PART III OF THE 1990 ACT

NOTICE OF PROPOSED REVOCATION OF LICENCE NUMBERED CR100152WT/1 (THE "WTA LICENCE") GRANTED ON 17 OCTOBER 2014 AND PRESENTLY HELD BY THE LICENSEE FOR THE TRANSMISSION OF COMMUNICATION RADIO BROADCASTING SERVICES UNDER THE WIRELESS TELEGRAPHY ACT 2006 (THE "WTA")

PURSUANT TO SCHEDULE 1 PARAGRAPH 7 OF THE WTA

WHEREAS

- i.** Iman Media UK Limited ("the Licensee") holds the BA Licence to provide a community radio service under the 1990 Act.
- ii.** Condition 5 of the BA Licence requires the Licensee to ensure that the provisions of the Code are observed in the provision of the community radio station broadcasting service, and refers to section 319 of the Communications Act 2003 ("the Communications Act").
- iii.** Section 319 of the Communications Act sets out a list of the standards objectives which are reflected in Ofcom's Code for the content of programmes to be included in television and radio services. These objectives include *"that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services"* and *"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"*.¹
- iv.** Pursuant to section 87(1)(a), (d) and (f) of the 1990 Act which empower Ofcom to include appropriate conditions in broadcast licences, Condition 15 of the BA Licence requires the Licensee to adopt procedures and ensure that such procedures are observed by those involved in providing the community radio service for the purposes of ensuring that programmes included in the service comply in all respects with the provisions of the BA Licence, the 1990 Act, the Broadcasting Act 1996 and the Communications Act. This includes a duty to ensure that there are sufficient persons involved in providing the community radio service who are adequately versed in these provisions as well as all relevant codes and guidelines as may be drawn up and from time to time revised by Ofcom, and that such persons are able to ensure compliance with such requirements on a day-to-day basis.

¹ Sections 319(2)(b) and 319(2)(f) respectively.

- v. 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.
- vi. 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 society, for the protection of...health...or for the protection of rights and freedoms of others”.
- vii. 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) of the Convention). 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 for maintaining the authority and impartiality of the judiciary” (Article 10(2) of the Convention).
- viii. 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.
- ix. On Tuesday 4 July 2017, Ofcom sent a decision (“the Breach Decision”) to the Licensee in which Ofcom found that two pre-recorded lectures, broadcast on Iman FM on 14 June 2017 as part of a series of lectures during the month of Ramadan, breached (inter alia) Rule 3.1 of the Ofcom Broadcasting Code (“the Code”). 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 Rule 3.1.
- x. Ofcom considers these breaches to be extremely serious, and we have considered them in the context of our power to suspend the BA Licence for broadcasting material likely to incite or encourage the commission of crime or to lead to disorder under section 111B of the 1990 Act as amended by section 91 of the Digital Economy Act 2017.²
- xi. Section 111B(1) (as amended) provides that Ofcom must serve a notice under section 111B(2) on the Licensee if it is satisfied that—
 - a. the licence holder has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,

² Pursuant to section 118 of the Digital Economy Act 2017 which received Royal Assent on 27 April 2017, this provision entered into force on 27 June 2017. The full text of section 91 of the Digital Economy Act 2017 is provided in the Explanatory Notes to this Suspension Notice.

- b.** in doing so the licence holder has failed to comply with a condition included in the licence in compliance with section 263 of the Communications Act, and
 - c.** the failure would justify the revocation of the licence
- (“the s111B Conditions”).

- xii.** Section 111B(2) (as amended) provides that a notice under that section must—
 - a.** state that OFCOM is satisfied as mentioned in subsection (1),
 - b.** specify the respects in which, in its opinion, the licence holder has failed to comply with the condition mentioned there,
 - c.** state that OFCOM may serve a notice to revoke the licence after the end of the period of 21 days beginning with the day on which this Suspension Notice is served on the licence holder, and
 - d.** inform the licence holder of the right to make representations to OFCOM in that period about the matters that appear to OFCOM to provide grounds for revoking the licence.
- xiii.** Section 111B(3) (as amended) provides that the effect of a notice under subsection (2) is to suspend the licence from the time when the notice is served on the licence holder until either the revocation of the licence takes effect, or Ofcom decides not to revoke the licence.
- xiv.** Condition 3 of the WTA Licence provides that pursuant to schedule 1, paragraph 8 of the WTA, Ofcom may not revoke the WTA Licence before its termination date except (inter alia) if the BA Licence ceases to remain in force.
- xv.** Schedule 1 paragraph 7 of the WTA provides that where Ofcom proposes to revoke a wireless telegraphy licence, they must give the person holding the licence a notification—
 - a.** stating the reasons for the proposed revocation; and
 - b.** specifying the period during which the person notified has an opportunity to make representations about the proposal.
- xvi.** Condition 22 of the BA Licence provides (inter alia):
 - a.** Any notification to be served, given or sent under or in relation to the BA Licence may be delivered to the party to be served or sent by first-class post to him at his proper address or left at that address;
 - b.** Any such notification or document shall be deemed to have been served:
 - i.** if so delivered or left, at the time of delivery or leaving; or
 - ii.** if so posted, at 10.00 am on the second business day after it was put into the post;
 - c.** Notices may also be served by Ofcom on the Licensee in electronic form subject to the requirements set out in sections 395 and 396 of the Communications Act.
- xvii.** Section 97 of the 1990 Act provides that any person who provides any relevant regulated radio service without being authorised to do so by or under a licence shall be guilty of a criminal offence which is punishable by an unlimited fine.

NOW THEREFORE

1. Ofcom hereby gives notice to the Licensee that pursuant to section 111B of the 1990 Act (as amended) it is satisfied that the s111B Conditions are met, namely that—
 - a. the Licensee has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,
 - b. in doing so the Licensee has failed to comply with a condition included in the BA Licence in compliance with section 263 of the Communications Act, namely Conditions 5 and 15 of the BA Licence; and
 - c. the failure would justify the revocation of the BA Licence.
2. The respects in which Ofcom is satisfied that the s111B Conditions are met are set out in the “Ofcom is satisfied the s111B Conditions are met” section of this Suspension Notice.
3. The effect of this Suspension Notice is to suspend the BA Licence from the time when the Suspension Notice is served on the Licensee, i.e. **Tuesday 4 July 2017** until either—
 - a. the revocation of the BA Licence takes effect, or
 - b. Ofcom decides not to revoke the BA Licence(“the Suspension Period”).
4. During the Suspension Period, the Licensee must not broadcast any material on the licensed service Iman FM.
5. Ofcom also hereby gives notice to the Licensee that pursuant to Schedule 1 paragraph 7 of the WTA, it proposes to revoke the WTA Licence. The reason for the proposed revocation of the WTA Licence is that Ofcom proposes to revoke the BA Licence. If this proposal is confirmed, the BA Licence will cease to remain in force.
6. Ofcom hereby informs the Licensee of its right to make written and oral representations to Ofcom during a 21-day period beginning with the day on which this Suspension Notice is served about the matters that appear to Ofcom to provide grounds for revoking the BA Licence and the WTA Licence (see covering letter).
7. Pursuant to section 97 of the 1990 Act, failure to comply with this Suspension Notice by broadcasting material on the Iman FM service during the Suspension Period would amount to a criminal offence which is punishable by an unlimited fine.
8. Ofcom may serve a further notice to revoke the BA Licence after the end of the period of 21 days beginning with the day on which the Suspension Notice is served on the Licensee.

Ofcom is satisfied the s111B Conditions are met

A. Inclusion in the licensed service of one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder

9. Ofcom received a complaint from a listener who alleged content broadcast on Iman FM 14 June 2017 encouraged violence and religious hatred. The broadcast cited by the complainant consisted of two lectures by an unidentified male speaker in English, interspersed with recitations of verses from the Qur'an and Hadith³ in Arabic.
10. By way of background, between 26 May and 16 June 2017 (during Ramadan),⁴ Iman FM broadcast on a daily basis a series of pre-recorded lectures on the life of Prophet Muhammad which it obtained from YouTube. This was in place of the station's usual live breakfast show (8-10 am). The total broadcast duration of these lectures was in excess of 25 hours.⁵ Prior to broadcasting the lectures, no background checks were run as against the identity of the speaker. The Licensee listened in full to the first 12 hours of lectures prior to broadcasting them, while for the remainder only samples of the individual lectures were reviewed before broadcast. We understand that the lectures were edited in preparation for the broadcast on Iman FM, in that the lectures did not contain the introduction to the speaker (contrary to the source material available on YouTube) and advertising breaks were weaved into the recordings.
11. Ofcom investigated the two lectures which were broadcast on 14 June 2017, prepared a Preliminary View and after considering written and oral representations from the Licensee, reached a final Breach Decision on 4 July 2017. In the Breach Decision, Ofcom found that the two pre-recorded lectures breached Rules 3.1, 3.2 and 2.3 of the Code. The Licensee should refer to the Breach Decision for further details.
12. Based on the Breach Decision, Ofcom is satisfied that the Licensee included in the licensed service two lectures containing material likely to encourage or incite the commission of crime or to lead to disorder.

B. Failure to comply with a condition included in the BA Licence in compliance with section 263 of the Communications Act

13. Condition 5 of the BA Licence requires the Licensee to ensure that the provisions of the Code are observed in the provision of the community radio station broadcasting service. By including two lectures in the licensed service containing material likely to encourage or incite the commission of crime or to lead to disorder contrary to Rule 3.1 of the Code, the Licensee has failed to comply with Condition 5 of the BA Licence.
14. In addition, Condition 15 of the BA Licence requires the Licensee to adopt procedures and ensure that such procedures are observed by those involved in providing the community radio service for the purposes of ensuring that programmes included in the service comply in all respects with the provisions of the BA Licence, the 1990 Act, the Broadcasting Act 1996 and the Communications Act. This includes a duty to ensure that there are sufficient persons involved in

³ Hadith: Sayings of Prophet Muhammad.

⁴ Ramadan in 2017 started on around 26 May 2017.

⁵ The Licensee indicated in its representations that 20 hours' worth of lectures were selected by the Licensee from a total of 53 available recordings of lectures by Anwar al-Awlaki on the life of Prophet Muhammad. However, the Licensee's detailed breakdown of individual broadcasts revealed that a total of 25 hours 16 minutes 46 seconds (of which 2 hours 7 minutes and 21 seconds were repeats of earlier broadcasts).

providing the community radio service who are adequately versed in these provisions as well as all relevant codes and guidelines as may be drawn up and from time to time revised by Ofcom, and that such persons are able to ensure compliance with such requirements on a day-to-day basis.

15. The context in which the two lectures were broadcast shows that the Licensee did not have adequate procedures in place to ensure compliance with the Code, contrary to the requirements of Condition 15 of the BA Licence:
 - a. at the very least, it did not carry out any basic checks about the background of the lecturer. A simple online search would have shown him to be a designated terrorist;
 - b. it did not review the two lectures prior to broadcasting them;
 - c. it appears that no-one at the radio station raised any concern upon hearing the material during its broadcasting.
16. The Licensee accepted that it had breached Rule 3.1 of the Code (and therefore Condition 5 of the BA Licence). The Licensee also accepted that it did not have adequate procedures in place in terms of ensuring that background checks are carried out on content sources prior to their broadcasting.⁶
17. Based on the above, Ofcom is satisfied that the Licensee failed to comply with two conditions included in the BA Licence in compliance with section 263 of the Communications Act, namely Conditions 5 and 15.

C. The failure would justify the revocation of the BA Licence

18. In Ofcom's view, the findings contained in the Breach Decision and the failure to comply with conditions of the BA Licence would justify the revocation of the BA Licence.
19. In addition to the seriousness of the failures identified in the Breach Decision and above, Ofcom has also taken into consideration the Licensee's representations as to its knowledge of Anwar al-Awlaki's background and some of the steps it took following the complaint.

Licensee's knowledge of Anwar al-Awlaki's status as a designated terrorist

20. The Licensee submitted that volunteers and management working at Iman FM were unaware of the background of the speaker Anwar al-Awlaki. The Licensee provided Ofcom with the link they used to access the material on YouTube and information accompanying these lectures on the source site refers to Anwar al-Awlaki's arrest and detention in Yemen in 2006. It also refers to his death in a US drone strike in 2011. In Ofcom's view, given the notoriety of the Anwar al-Awlaki and the information provided at the YouTube source, it does not appear credible that the Licensee did not know any of the background information about the preacher before broadcasting these two lectures.

Steps taken after the complaint

21. The Licensee indicated in its written representations on 23 June 2017 that it had broadcast an apology that same day and that it would also air an apology providing further context to its listeners on 24 June 2017. The apology of 23 June was in the form of the statement to the effect

⁶ In this regard, the Licensee informed Ofcom that it has revised its internal procedures to ensure that basic background checks are carried out in future.

that a series of lectures had been broadcast on Iman FM earlier in the month by Anwar al-Awlaki for which the Licensee apologised. The radio host stated that Iman FM was “not aware of his controversial background” and apologised unreservedly to its listeners for any offence caused, adding that once it came to the Licensee’s attention that Anwar al-Awlaki was “a proscribed individual by the UN” it became clear that the lectures should not have been aired. The radio host added that “such individuals and what they stand for are condemned in the strongest terms”. The Licensee provided no further context or discussion relating to the material and why it breached the Code.

22. Upon Ofcom requesting a recording of the 24 June apology on 29 June 2017, the Licensee said that it had not broadcast it. The Licensee did not inform Ofcom of this during its oral representations on 27 June 2017. The Licensee stated that it would instead broadcast the apology later that same day, with a repeat planned for Saturday 1 July 2017.
23. In Ofcom’s view, the apologies provided some but not sufficient context to the speaker or his background.
24. The Licensee indicated on 20 June 2017 that it had taken the step of reviewing and updating its procedures for the vetting of material prior to broadcast to ensure that background checks are carried out prior to any recordings being broadcast. We are very concerned that such a basic step did not previously form part of the Licensee’s processes and that the Licensee thought it was acceptable not to listen to the entirety of the lectures prior to broadcasting them.

Conclusion

25. The failures described above and in the Breach Decision are extremely serious. In light of this we have decided, rather than considering these matters in the context of other statutory sanction powers for breaches of the Code (such as financial penalties), to consider these in the context of our power under section 111B of the 1990 Act (as amended) to suspend and revoke the BA Licence for inciting crime or disorder.
26. We have considered this matter very carefully. We recognise that suspension and possible revocation is a major interference with freedom of speech, as it prevents the broadcaster from broadcasting and restricts the number of voices being heard and the range of programming available to audiences. In this instance it is also an interference with the right to freedom of thought, conscience and religion. Ofcom considers that the threshold for suspending and revoking a broadcaster’s licence is, therefore, high.
27. In this case as set out above, we consider that the failures are extremely serious and would justify the revocation of the BA Licence.

We are satisfied that—

- a. the Licensee has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,

- b. in doing so the Licensee has failed to comply with a condition included in the Licence in compliance with section 263 of the Communications Act, namely Conditions 5 and 15 of the BA Licence; and
- c. the failure would justify the revocation of the BA Licence.

SIGNED FOR AND ON BEHALF OF OFCOM ON 4 JULY 2017

A handwritten signature in black ink, appearing to be 'Tony Close', written over a horizontal line.

Tony Close

Director of Content Standards, Licensing and Enforcement

A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

Explanatory Notes

Your attention is drawn to section 111B of the 1990 Act (as amended by section 91 of the Digital Economy Act 2017:

“111B Suspension of licences for inciting crime or disorder

(1) OFCOM must serve a notice under subsection (2) on the holder of a licence granted under this Chapter if they are satisfied that—

(a) the licence holder has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,

(b) in doing so the licence holder has failed to comply with a condition included in the licence in compliance with section 263 of the Communications Act 2003, and

(c) the failure would justify the revocation of the licence.

(2) A notice under this subsection must—

(a) state that OFCOM are satisfied as mentioned in subsection (1),

(b) specify the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned there,

(c) state that OFCOM may revoke the licence after the end of the period of 21 days beginning with the day on which the notice is served on the licence holder, and

(d) inform the licence holder of the right to make representations to OFCOM in that period about the matters that appear to OFCOM to provide grounds for revoking the licence.

(3) The effect of a notice under subsection (2) is to suspend the licence from the time when the notice is served on the licence holder until either—

(a) the revocation of the licence takes effect, or

(b) OFCOM decide not to revoke the licence.

(4) If, after considering any representations made to them by the licence holder in the 21 day period mentioned in subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they must serve on the licence holder a notice revoking the licence.

(5) The revocation of a licence by a notice under subsection (4) takes effect from whatever time is specified in the notice.

(6) That time must not be earlier than the end of the period of 28 days beginning with the day on which the notice under subsection (4) is served on the licence holder.

(7) Section 111 does not apply to the revocation of a licence under this section.”