

Sanction (107)17 Kanshi Radio Limited

Sanction: Decision by Ofcom

Sanction: to be imposed on Kanshi Radio Limited

For material broadcast on Kanshi Radio on 30 June 2016 at 01:59¹ and 1 September 2016 at 00:05

Ofcom's Decision

of Sanction against:

Kanshi Radio Limited ("KRL" or the "Licensee") in respect of its service **Kanshi Radio** (RLCS-000098BA/1).

For:

Breaches of the Ofcom Broadcasting Code (the "Code")² in respect of:

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

Rule 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, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

Rule 3.2: "Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context"; and

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 £17,500; and

¹ See Broadcast and On Demand Bulletin 318, 5 December 2016 (the "Decision"): https://www.ofcom.org.uk/_data/assets/pdf_file/0025/95137/Issue-318-of-Ofcoms-Broadcast-and-On-Demand-Bulletin,-to-be-published-on-5-December-2016-revision-01.pdf

² The version of the Code which was in force at the time of the broadcast took effect on 9 May 2016.

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

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Executive Summary

1. Kanshi Radio is a satellite radio station that provides speech and music programming for the Asian Punjabi speaking community in the UK. The Ofcom licence for Kanshi Radio is held by Kanshi Radio Limited. The Licensee currently holds no other broadcasting licences.
2. On 1 September 2016 at 00:05³, the Licensee broadcast a song *Pinky Pinky* (“the Song”) in Punjabi, which lasted approximately 11 minutes. The lyrics contained a number of aggressively pejorative references to the Muslim community, and Muslim women in particular.

The Breach Decision

3. In Ofcom’s decision (the “Breach Decision”) published on 5 December 2016 in issue 318 of the Broadcast and On Demand Bulletin⁴, Ofcom’s Executive found that the Song constituted hate speech⁵ and breached Rules 2.1, 2.3, 3.2 and 3.3 of the Code.
4. The Breach Decision set out specifically the broadcast material that was in breach, along with reasoning as to why the material had breached each rule.
5. Ofcom put the Licensee on notice in the Breach Decision that it considered these breaches to be serious, and that it would consider them for the imposition of a statutory sanction.

The Sanction Decision

6. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (the “Sanctions Procedures”)⁶, Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case. It reached a decision that a sanction was merited in this case since the breach was serious for the reasons set out in paragraphs 24 to 30 below.
7. Ofcom’s decision is that the appropriate sanction should be a financial penalty of £17,500 and that the Licensee be directed to broadcast a statement of Ofcom’s findings, on a date and in a form to be decided by Ofcom.

Legal Framework

Communications Act 2003

8. 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)).
9. 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

³ In its representations, KRL confirmed that the song had also been broadcast at 01:49 on 30 June 2016.

⁴ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0025/95137/Issue-318-of-Ofcoms-Broadcast-and-On-Demand-Bulletin,-to-be-published-on-5-December-2016-revision-01.pdf

⁵ Section three of 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”.

⁶ See:

https://www.ofcom.org.uk/_data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf. These procedures took effect on 3 April 2017.

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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.

10. 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

11. 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.
12. 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".
13. 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).
14. Ofcom must exercise its duties in the 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

15. 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.

Ofcom Broadcasting Code

16. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code.
17. 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 Code⁷.

⁷ See Section Two and Section Three of the Code and Ofcom's Guidance Notes on the Code.

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18. The relevant Code rules in this case are set out in full at the beginning of this Decision.

Remedial action and penalties

19. 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 radio licensable content service (“RLCS”) licence, Condition 5 of the licence requires the Licensee to ensure that provisions of any Code made under section 319 are complied with. The Licensee holds a RLCS licence.
20. 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 111 of the Broadcasting Act 1990 (“the 1990 Act”) as modified by section 250(3) of the Communications Act 2003 insofar as relevant to the case.
21. 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).
22. If Ofcom is satisfied that the holder of an RLCS licence has failed to comply with any licence condition or any direction given by Ofcom, section 110(1)(a) of the 1990 Act provides Ofcom with the power to: impose a financial penalty (max £250,000 in respect of each contravention: see section 110(3)); reduce the licence term for a period not exceeding two years; or suspend the licence for a period not exceeding six months.
23. Section 111 of the 1990 Act provides Ofcom with the power to revoke a licence where a licensee fails to comply with a condition of a RLCS licence or direction thereunder and the failure, if not remedied, is such as to justify revocation.

Background – The Breach Decision

24. In the Breach Decision, the Executive found that material broadcast by the Licensee on Kanshi Radio breached Rules 2.1, 2.3, 3.2 and 3.3 of the Code. The Breach Decision set out the reasons for each of these breach findings.
25. The Breach Decision noted that the song *Pinky Pinky*, broadcast in Punjabi, which lasted approximately 11 minutes, included lyrics that contained a number of aggressively pejorative references to the Muslim community, and Muslim women in particular. We noted that well known sacred Islamic phrases were interspersed with very offensive terms while the sounds of gunshots were heard. Further, a female voice was heard exclaiming the Islamic words for “God” and “God is Great” (“*Allah*” and “*Allaho Akbar*”) to the sound of sexualised pants and groans. In addition, the song contained a distorted recitation of the Islamic profession of faith, the Shahada, in which words had been replaced by sexual offensive language. The fact that this song was clearly an expression of an extreme Sikh perspective in opposition to the Muslim community was, in our view, shown by lyrics such as “*Motherfuckers you want to mess with Punjabis* [i.e. a reference to Sikhs]”. “*Pakistani* [i.e. a reference to Islam], *you sister fucker!*” and the repeated sounds of gunshots throughout the song.
26. In relation to Rule 3.2, Ofcom first considered whether the content constituted “hate speech” as defined⁸ by the Code. In our view, the lyrics and surrounding content of the Song constituted a violent and menacing message, from an extreme Sikh perspective. The Song therefore promoted and justified hatred towards Muslims and towards Muslim women. In addition, despite the Song being broadcast at 00:05, we considered that the frequent repeated examples of violent and sexual imagery and extremely offensive references to the Islamic faith, comprising as they did hate speech, would have been, in our view, highly upsetting to those who heard it and

⁸ 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”.

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potentially highly detrimental to relations between Muslim and Sikh people. We therefore considered that there clearly was not sufficient context in this case to justify the broadcast of this example of hate speech. For all the reasons set out in the Breach Decision, the content was in breach of Rule 3.2 of the Code.

27. In relation to Rule 3.3, we considered that the Song, and the tone and manner in which it was performed, constituted both abusive and derogatory treatment of Muslims – the song containing as it did various derogatory references to the Islamic faith, such as the exclaiming of sacred Islamic phrases to the sound of sexualised pants and groans, gunshots and a highly offensive recitation of the Islamic profession of faith, the Shahada. We also considered that the song constituted highly abusive and derogatory treatment of women. As described above, it contained a number of sexually aggressive and abusive phrases, delivered in a pejorative manner that objectified women. We considered there was insufficient contextual justification for the broadcast of these derogatory statements against Muslims and the abusive and derogatory treatment of women. Therefore, the content was also in breach of Rule 3.3 of the Code.
28. In relation to Rule 2.1, we first considered whether these programmes contained potentially harmful and/or offensive material. As already discussed, we considered this song to be a form of hate speech and to be abusive and derogatory. Therefore, as such, the song would have had the potential to be extremely offensive to listeners. We also considered that the content taken as a whole had the potential to cause harm. This is because of the likely overall effect that this content would have had in increasing tensions between the Sikh and Muslim communities and to promote the objectification and abuse of women. Ofcom therefore also found that the content was in breach of Rule 2.1 of the Code.
29. In relation to Rule 2.3 we considered, for the reasons highlighted above that the Song contained highly challenging material which we identified as hate speech and as abusive and derogatory towards women. As such we considered that the content would have had the potential to be extremely offensive. As already discussed, we did not consider this high level of offence could be justified by the context, and therefore the content was in breach of Rule 2.3 of the Code.
30. Ofcom stated in the Breach Decision that the contraventions of Rules 2.1, 2.3, 3.2 and 3.3 of the Code were serious and were therefore being considered for statutory sanction.

Ofcom's Decision to impose a Statutory Sanction

31. 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.
32. In this case, Ofcom issued a preliminary view (“Preliminary View”) that Ofcom was minded to impose a statutory sanction in the form of a suspension of KRL’s licence for a period of six months 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. Ofcom sent a copy of the Preliminary View to the Licensee on 13 April 2017 and at the same time gave the Licensee the opportunity to provide written and oral representations on the Preliminary View.
33. The Licensee responded to the Preliminary View in a letter dated 5 May 2017 in which it provided written representations. The Licensee also provided oral representations on 7 June 2017 and further written representations on 16 June 2017. The oral and written representations of the Licensee (“the Representations”) are summarised in paragraphs 35 to 40 below.
34. 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 the Preliminary View. Ofcom took account of all the evidence and representations made by the Licensee, including the Representations on the

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Preliminary View, and further representations made at the oral hearing. In addition, we had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines in reaching its Decision (see further below).

Licensee's Representations

35. In its Representations, the Licensee reiterated its apology and said it was “remorseful” for the breaches in this case, adding that it “would expect a statutory sanction” for what had happened. KRL stressed the following by way of mitigation, namely that: it had not broadcast the material with intent; “not vetting the song” before broadcast was a “mistake”; and the time of broadcast meant that it was “difficult to assess the level of harm” in this case. In this regard, KRL pointed to the fact that there had only been one complaint and that when Ofcom published its original breach decision “no member of the public came forward to make contact”. It added that it had; apologised to the sole complainant (although it accepted that it “should have “also broadcast an apology); no history of past contraventions and that it had cooperated with Ofcom’s investigation. The Licensee also said that only two listeners were recorded to have been listening to the online transmission of Kanshi Radio on 1 September 2016 at 00:05.
36. The Licensee explained the circumstances that had led to the song being broadcast in this case, including that following a burglary in which all its studio equipment was stolen, KRL, in rebuilding its song catalogue copied songs onto its music database that people had provided to the Licensee. This included the song *Pinky Pinky*, which was subsequently broadcast because of a power failure which meant that the “system jumped and [the song] got onto the schedules”. KRL said that since the incident all CDs are checked before loading onto the music database. It added that it had also taken other appropriate steps to prevent such an incident happening again, including: checking and “cleans[ing]” the station’s database; and KRL’s “board of directors and the management team [taking] on board the repercussions of this event and the seriousness of the issue [and being] more focussed in sharing compliance”.
37. The Licensee stressed that it is a “community type” radio station, broadcasting content to various South Asian communities in the UK, adding that many of its listeners are elderly.
38. In relation to the type of sanction that Ofcom might wish to impose on KRL, the latter argued that any move to suspend KRL’s licence would be “tantamount to a radio closure” and that the Licensee would still have “contractual obligations...to pay monthly fees [e.g. satellite transmission costs] but without revenue being generated” The Licensee said that even suspending KRL’s licence for a short period would “destroy the fabric of the community cohesion that we are building” and that it would not be able to get back “the goodwill that we’ve actually generated with the community” The Licensee added that at present, it sought to raise funds through: donations; fund-raising events; and some sponsorship, but that the financial shortfall was being funded by a senior member of programming staff. However, KRL said its revenue shortfalls were getting smaller year by year.
39. KRL suggested that a financial penalty would be “appropriate”. In this regard, it differentiated the present case from past sanction decisions imposed by Ofcom which involved “‘live’ discussions with intent on behalf of the broadcasters” with “audience participation”. KRL said that in the present case was not “created by any of our presenters intentionally”. It added that radio stations have a “much lower turnover than TV stations, and that it was “making a loss”. It further added that the level of penalty imposed on Radio Asian Fever⁹ would be a “comparable” precedent in this case, rather than financial penalties imposed on television licensees.
40. On the issue of its ability to pay any proposed financial penalty KRL stated that “we feel that as a group...we should be able to pay a fine... The Board of Directors, as well as some members from

⁹ See paragraph 74.

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the community, will be able to help us with that". It also added that "we have been making progression in generating funding" by way of a membership drive and other fundraising events.

Serious nature of breaches

41. As set out in paragraph 31 above, the imposition of a sanction against a broadcaster is a serious matter. Ofcom considered that for the reasons set out below, the breaches of Rules 2.1, 2.3, 3.2 and 3.3 were serious and therefore warrant the imposition of a statutory sanction. First, and principally, we considered the breaches were serious because, as set out in paragraph 26, the lyrics to the song *Pinky Pinky*, and the manner in which it was delivered, promoted and justified hatred towards Muslims and in particular towards Muslim women. The content therefore constituted hate speech. Ofcom considers the potential harm arising from any form of hate speech to be particularly serious.
42. Second, the Song was in Punjabi and broadcast on a channel which targets the Asian Punjabi speaking community in the UK. As such, and having due regard to our public sector equality duty¹⁰, we considered that the content would have had the potential of increasing tensions between the Sikh and Muslim communities.
43. Finally, the serious nature of these breaches (the repeat broadcast of hate speech in pre-recorded content) on two separate occasions¹¹ but not identified by the Licensee before transmission, indicated a failure by KRL to have sufficiently robust compliance procedures in place at Kanshi Radio.

Sanction

44. In view of the factors set out above, Ofcom considered that the breaches were serious and so warranted the imposition of a statutory sanction

Consideration of the revocation of the licence

45. Given the seriousness of the breaches in this case, Ofcom has considered whether revocation of the licence would be an appropriate sanction. Section 111 of the 1990 Act provides Ofcom with the power to revoke a RLCS licence where a licensee fails 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.
46. In considering the application of Section 111, Ofcom noted that the breaches have not been repeated and are not ongoing. We also noted that the Licensee admitted that it breached Rules 2.1, 2.3, 3.2 and 3.3 of the Code and explained steps it has taken in light of the breaches to improve its compliance procedures and prevent similar breaches occurring in the future. As a general observation, we also noted that the Licensee has not previously been found in breach of these particular Code rules, or the Code more generally. The Licensee gave evidence that the broadcast of the Song was unintentional.
47. In light of these factors, and taking into account the broadcaster's and audience's right to freedom of expression we did not consider it would be appropriate to revoke the licence on the basis of the breaches recorded. However, Ofcom would consider revoking the Licensee's licence if further such breaches were recorded in the future.

Consideration of suspension of licence

48. Section 110(c) of the 1990 Act provides Ofcom with the power to suspend a licence for a specified period not exceeding six months, where a licensee is in contravention of a condition of the licence or direction thereunder.

¹⁰ See paragraph 15.

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49. Ofcom therefore carefully considered whether a suspension of KRL'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.
50. In Ofcom's view the material broadcast¹² was clearly highly inflammatory and offensive to listeners in general, and Muslim people in particular. We were concerned that the material had been broadcast twice, without the Licensee's knowledge, and that KRL only became aware of the broadcasts after Ofcom and the complainant had drawn the first broadcast to the its attention. As discussed above, and having considered the Penalty Guidelines, in Ofcom's view, there was a clear lack of adequate compliance processes. However, against this, we took into account the negative effect of a suspension of service on Kanshi Radio's audience. In particular, we considered the likely effect of any suspension on the on-going viability of Kanshi Radio, given the Licensee's Representations as to the likely detrimental effect on listener goodwill, were Ofcom be minded to suspend KRL's licence even for a period shorter than six months.
51. On balance, after considering all the relevant factors, it is Ofcom's Decision that, although the contravention of the Code in this case is serious, it would not be proportionate to suspend KRL's licence.

Considerations in relation to directing the Licensee to broadcast a statement of Ofcom's findings

52. 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). We consider it appropriate to do so for the purposes of deterrence and to signal to listeners that the content was unacceptable.
53. Ofcom considers that on its own, a direction to broadcast a statement of Ofcom's findings in this case is not a sufficient statutory sanction, given the 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 noted that a direction to broadcast a statement of Ofcom's findings could be combined with another category of sanction, so as to act as an effective deterrent to discourage the Licensee from broadcasting the same or similar content in future, or other licensees from contravening the Code in a similar manner.
54. Ofcom first considered whether it would be appropriate to determine that a financial penalty should be applied in this case.

Imposition of a financial penalty

55. Under section 110 of the 1990 Act, the maximum level of financial penalty that can be imposed on the holder of an RLCS licence in respect of each breach of the licence is £250,000.
56. Ofcom's Penalty Guidelines¹³ state (in paragraph 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".

The seriousness and duration of the contravention

57. Ofcom regarded the breaches to be serious for the reasons set out in paragraphs 35 to 39 above and as considered further below.

¹² See footnote 4.

¹³ See: http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty_guidelines_2015.pdf.

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58. The Breach Decision related to material broadcast on 1 September 2016. Following an investigation, the Licensee confirmed the song had been broadcast twice, firstly on 30 June 2016 at 01:59, and then on the occasion that prompted the complaint to Ofcom, 1 September 2016 at 00:05. We are unaware of the material having been broadcast again and indeed the Licensee confirmed that it had removed the Song from its database.

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

59. Ofcom regarded the breach of Rules 3.2, 3.3 and 2.1 to be particularly serious. The potential harm in this case was significant because the Licensee broadcast highly offensive and pejorative comments, which we have found to be a form of anti-Muslim hate speech. The potential harm arising from any form of hate speech is particularly serious. We considered it likely that Kanshi Radio's audience was likely to have been drawn from the Punjabi-speaking Sikh community. As such, we considered the broadcasting of this Song, constituting as it did an expression of an extreme Sikh perspective in opposition to the Muslim community, would have been likely to harm relations between the Sikh and Muslim communities. We considered it was likely to be deeply offensive and harmful to Muslims, to women (in particular to Muslim woman) and to any person who understood and did not share the sentiments expressed in the Song. This was irrespective of the time of broadcast in this case, which the Licensee argued meant that it was "difficult to assess the level of harm" in this case, or the likely size of the audience¹⁴.

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

60. 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.

61. In its representations during Ofcom's investigation, and as set out in the Breach Decision, the Licensee explained the sequence of events that led to the Song being broadcast. In particular, it said that following a burglary "a rogue CD" which included the Song was "inadvertently copied" onto its systems in October 2013. It added that following "several power outages" in 2014, it had had to refresh and rebuild its "night time playlists several times to pick up recordings from the drive on a rotational basis through an automatic scheduler". The Licensee further added that "the programme scheduler picked up the night time playlist from the hard drive without [the studio manager's] knowledge" which led to the Song being broadcast on the two occasions in this case, in June and September 2016 respectively. It also said that the studio manager did not "know how the mistake had happened, and was genuinely shocked how this could happen since she normally makes up the playlist herself".

62. Taking into account the matters above, we considered that the Licensee had ample opportunity to review this pre-recorded content. Ofcom was therefore concerned that it was only when Ofcom contacted the Licensee, that the Licensee became aware of the seriousness of the breach in this case, including the fact that the Song had already been broadcast over two months previously, in June 2016. We therefore considered this was evidence of seriously inadequate compliance processes for identifying potentially harmful material.

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

¹⁴ Although KRL did not have audience data for its satellite broadcast it said that Kanshi radio online service had only two listeners at 00:05 on 1 September 2016.

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63. In its Representations, the Licensee stressed that the breaches were in no way intentional. We have no evidence that suggests the breaches occurred deliberately or recklessly. However, Ofcom considers that the Licensee ought to have had adequate compliance and vetting procedures in place to prevent the Song being broadcast both on 30 June 2016 and again on 1 September 2016.

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

64. In Ofcom's view, the Licensee only acknowledged the potentially serious issue raised by the Song on being alerted to the material by Ofcom on 27 September 2016¹⁵. (This followed Ofcom being alerted to the material broadcast on 1 September 2016 by a listener.) Ofcom was particularly concerned that KRL had already had a complaint about the content itself and that it did not appear to offer an immediate on air apology once it became aware of the issue, or take any other publicly visible steps to help mitigate the offence and the serious nature of the breach.

65. On 30 September 2016, Ofcom wrote to the Licensee requesting formal comments as to how the content complied with Rules 2.1, 2.3, 3.2 and 3.3 of the Code. On 10 October 2016, the Licensee provided Ofcom with its formal comments. At this time, the Licensee also confirmed that it had removed the Song from its database.

66. As set out in paragraph 59 below, the Licensee has given Ofcom assurances about steps it said it has taken to improve its compliance processes.

Any steps taken for remedying the consequences of the contravention

67. In addition to removing the Song from its database, the Licensee outlined the actions it had taken to make its procedures "more robust", including that: the music database had been "cleansed"; all music would be "vetted for content prior to uploading to [KRL's] hard drive"; all playlists had been "vetted and edited"; and "latest music CDs" would be broadcast on Kanshi Radio "during out of hours on non-live programmes and during breakages in airtime transmission". Ofcom also noted that the Licensee offered its "sincerest apologies" to the complainant for this incident although KRL accepted that it should have also broadcast an apology)

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

68. Ofcom noted that this Licensee did not have a history of contraventions of the Code prior to the breaches now being considered for statutory sanction.

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

69. In Ofcom's view, the Licensee has been cooperative. For example, it admitted the breaches of the Code in this case, provided full representations in response to Ofcom's formal requests for information relating to the material broadcast and the service in general; and expressed a willingness to take, and has given assurances that it has taken, some steps to remedy its failures to comply with the Code.

Precedent

70. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases. In this instance, there are no direct precedents in terms of breaches of Rules 3.2 and 3.3, which are rules which were only introduced by Ofcom in

¹⁵ On 27 September 2016, the Ofcom Executive contacted KRL by telephone to alert the Licensee to the potentially serious nature of the content of the Song.

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May 2016. However, there are two cases which deal with breaches of Rule 2.1 and 2,3 in relation to broadcast of content which in Ofcom's view, constituted hate speech:

71. **11 November 2016, Club TV Limited¹⁶** – 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 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. However, unlike the current case, they were delivered by a religious scholar, a person who holds a position of respect and authority in the Muslim community.
72. **20 December 2016, Mohuiddin Digital Television Limited¹⁷** – 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.
73. There is also one partially relevant precedent which involved, amongst other things, a breach of Rule 2.3.
74. **23 November 2012, Radio Asian Fever Community Interest Company¹⁸** – 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

¹⁶ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf

¹⁷ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0022/96124/Noor-TV.pdf

¹⁸ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/radio-asian-fever.pdf>.

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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.

75. In addition, some other previous Ofcom sanctions decisions also have some relevance in this case. The first three cases concern material broadcast that was found to be so harmful as to be likely to encourage or incite the commission of crime or lead to disorder and hence in breach of Rule 3.1.
76. **5 July 2013, DM Digital Television Limited**¹⁹ – 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 shooting dead in 2011 of the Punjab Governor Salman 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.
77. **21 August 2013, Al Ehya Digital Television Limited**²⁰ – 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 Salman 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.
78. **14 August 2014, Regis 1 Limited (Sangat TV)**²¹ – 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

¹⁹ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Rehmatul-DM-Digital.pdf>.

²⁰ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/noor-tv.pdf>.

²¹ See: <http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/regis1limited.pdf>

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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.

79. A fourth case involved the broadcast of abusive treatment of a particular religious community, which amounted to breaches of Rules 4.1 and 4.2 of the Code. These rules require that broadcasters must exercise the proper degree of responsibility with respect of religious programmes, and must not subject the views and beliefs of members of particular religions to abusive treatment. While the current case does not concern religious programming, the nature of the abuse was similar, in that it was abusive treatment directed at a particular community.
80. **23 August 2013, Takbeer TV Limited**²² – Ofcom imposed a penalty of £25,000 and directed the licensee to broadcast a statement of Ofcom’s findings for breaching Rules 4.1 and 4.2. This case involved two programmes, one of which was a live ‘phone-in’ programme, which included various statements that amounted to abusive treatment of the Ahmadiyya religion and the Ahmadi community more generally, and were derogatory about the Mirza Ghulam Ahmad Qadiani, the founder of the Ahmadiyya religion. Ofcom considered that the breaches were serious because they related to a long standing and inflammatory dispute between two religious groups, the Ahmadi community and the Sunni Muslim community. Given the historical tensions between the two communities, Takbeer TV would have been reasonably expected to take care at broadcasting such derogatory statements, especially given that it is aimed at members of the Sunni Muslim community in the UK and internationally. Further, Ofcom also considered the breaches were serious, in light of previous Code breaches concerning abusive treatment of Ahmadis on Takbeer TV, together with previous assurances given by the Licensee that steps had been taken to avoid recurrence of such breaches.
81. There are various other cases in which Ofcom imposed statutory sanctions for breaches of Rules 2.1 and 2.3 which we do not consider directly relevant in this case. This is because these cases dealt with unrelated matters including sexual material, harmful health claims and the pre-watershed use of offensive language.
82. While Ofcom considers that the nature of the content in the cases listed in paragraphs 71 to 81 are relevant to the current case, we note that, as set out in the Penalty Guidelines, Ofcom may depart from them depending on the facts and the context of the current case.
83. In considering the precedent cases, we took into account KRL’s submissions that past sanction cases involved “‘live’ discussions with intent on behalf of the broadcasters” with “audience participation”. It added that radio stations have a “much lower turnover than TV stations” and that it was “making a loss”. It further added that the level of penalty imposed on Radio Asian Fever would be a “comparable” precedent in this case, rather than financial penalties imposed on television licensees. However, the relatively low level of financial penalty in the Radio Asian Fever case reflected the relatively small footprint of a community radio station broadcasting within a narrow geographical area. As such, although the breach was serious in that case, the overall impact of that particular broadcast may therefore have been somewhat tempered by the limited audience reach of the station. By contrast, Kanshi Radio was available on the Sky satellite platform with a significantly larger potential audience. Our Decision on the level of financial penalty in this case therefore reflects that fact.

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

84. 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 effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom obtained financial data setting out the Licensee’s qualifying revenue for the last accounting period to decide upon a

²² See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/takbeer.pdf>.

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proportionate penalty. In its Representations, KRL provided information about the potential impact of the fine proposed by Ofcom in its Preliminary View on Kanshi Radio Limited. Ofcom took that information fully into account when determining an appropriate level of financial penalty in this case.

85. Ofcom recognised that any proposed penalty must be proportionate taking into account the Licensee's rights under Articles 9 and 10 of the Convention and the fact that deterrence is the central objective of imposing a penalty. If any financial penalty was to be so high that its effect would be to close a service down, then it might be a 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. However, the imposition of a substantial financial penalty leaves open the prospect that funds may be found and the business continued, and it is open to the Licensee to go to existing or any new potential sources of finance who may, if they consider that the business is fundamentally sound and worth maintaining, provide the investment that is needed to defray the penalty. Ofcom therefore took these factors into account and carefully considered them in reaching its decision on the proportionality of any financial penalty it may consider.

Decision

86. Having regard to all the circumstances referred to above, including the need to achieve an appropriate level of deterrence and the particularly serious nature of the Code breaches in this case, and all the representations from the Licensee, Ofcom's Decision is that an appropriate and proportionate sanction would be a fine of £17,500. In addition, Ofcom considers that the Licensee should broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom.

Ofcom

25 July 2017