

Decision by Ofcom

Sanction: to be imposed on Khalsa Television Limited

Non-confidential version – redacted for publication [X]

For material broadcast on KTV on 4 July 2018, 7 July 2018 and 9 July 2018¹ and for material broadcast on 30 March 2019², and other breaches³

Ofcom's Decision

of Sanction against:

Khalsa Television Limited (“KTV Ltd” or the “Licensee”) in respect of its service KTV (TLCS 101501BA/2).

For:

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

Rule 2.1: “Generally accepted standards must be applied to the contents of television and radio services and BBC ODPS 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 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 2.11: “Broadcasters must not use techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds without their being aware, or fully aware, of what has occurred”;

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

¹ The material broadcast on KTV and found in breach of the Code is detailed in: [Broadcast and On Demand Bulletin 373, 25 February 2019](#).

² The material broadcast on KTV and found in breach of the Code is detailed in: [Broadcast and On Demand Bulletin 391, 18 November 2019](#).

³ Breaches of KTV Ltd's Television Licensable Content Service Licence and the Code are set out in: [Broadcast and On Demand Bulletin 370, 14 January 2019](#); [Broadcast and On Demand Bulletin 373, 25 February 2019](#); [Broadcast and On Demand Bulletin 378, 13 May 2019](#); [Broadcast and On Demand Bulletin 380, 10 June 2019](#); and [Broadcast and On Demand Bulletin 382, 8 July 2019](#).

Ofcom's Decision:

To impose financial penalties (payable to HM Paymaster General) of £20,000 and £30,000;

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

To direct the Licensee not to repeat certain programmes.

Executive Summary

1. KTV is a television channel broadcasting to the Sikh community in the UK, which is available on satellite subscription services and online. The Ofcom licence for this service is held by KTV Ltd. Ofcom granted this Television Licensable Content Service (“TLCS”) licence (TLCS 101501BA/2) on 26 May 2016. The Licensee does not currently hold any other broadcasting licence.
2. Condition 6 of a TLCS licence requires the licensee to ensure compliance with the Ofcom Broadcasting Code (“the Code”).
3. On 4, 7 and 9 July 2018, at 22:56, 21:26 and 14:30 respectively, KTV broadcast a music video for a song called *Bagga and Shera*, by the musical artist Nav Sandhu. In Ofcom’s Decision on *Music video, Bagga and Shera* (“the *Music video, Bagga and Shera* Breach Decision”), published on 25 February 2019 in Issue 373 of the Broadcast and On Demand Bulletin (“the Bulletin”)⁴, Ofcom’s Executive found that this material (“the Music Video”) breached Rules 2.3, 2.11 and 3.1 of the Code.
4. On 30 March 2019, KTV broadcast a live discussion programme, *Panthak Masle*. In Ofcom’s Decision on *Panthak Masle* (“the *Panthak Masle* Breach Decision”), published on 18 November 2019 in Issue 391 of the Bulletin⁵, Ofcom’s Executive found that this material (“the Discussion Programme”) breached Rules 2.1, 2.3 and 3.1 of the Code.
5. In Issue 370 of the Bulletin⁶, published on 14 January 2019; Issue 373 of the Bulletin⁷, published on 25 February 2019; Issue 378 of the Bulletin⁸, published on 13 May 2019; Issue 380 of the Bulletin⁹, published on 10 June 2019; and Issue 382 of the Bulletin¹⁰, published on 8 July 2019, Ofcom made a series of further breach findings against KTV. These related to:
 - i. TLCS Licence Condition 4(3), which requires that the Licensee provide Ofcom with the information it requires for the purposes of determining the level of fees to be paid by the licensee to Ofcom, within 28 days of a request to do so.
 - ii. Broadcasting Code rules on appropriate scheduling for children, Rule 1.3, and violence pre-watershed, Rule 1.11; and also on harm and offence, Rule 2.3, all relating to a depiction of sexual violence.
 - iii. Broadcasting Code Rule 2.1, on harm and offence relating to inappropriate medical advice; and also Rules 9.4 (products and services must not be promoted in programmes) and 9.5 (products and services must not be given undue prominence in programmes), in relation to commercial references.
 - iv. Licence Condition 17(2) of the TLCS licence, which requires licensees to adopt procedures to ensure their programmes comply in all respects with their licence conditions and ensure that such procedures are observed.

⁴ See footnote 1.

⁵ See footnote 2.

⁶ See footnote 3.

⁷ See footnote 3.

⁸ See footnote 3.

⁹ See footnote 3.

¹⁰ See footnote 3.

- v. Licence Condition 13(1), which requires the Licensee to notify Ofcom of any change in the persons having control over the Licensee.
 - vi. Licence Condition 20(1), which requires the Licensee to comply with directions and requests for information from Ofcom in relation to a fairness complaint, in particular providing to Ofcom and the complainant a written statement in answer to the complaint.
 - vii. Broadcasting Code rules on appropriate scheduling for children (Rule 1.11, violence not appropriately limited; and Rule 1.14, the most offensive language must not be broadcast before the watershed) and also Rule 2.3 on harm and offence, relating to two videos featuring scenes of violence and offensive language, included in the programme to illustrate the issue of marital disputes being exposed on social media.
 - viii. Broadcasting Code rules on fairness.
 - ix. Broadcasting Code rules 9.4 and 9.5, in relation to promotional and unduly prominent commercial references.
6. Ofcom considered that the breaches set out above, taken overall, represented a very serious compliance failure on the part of the Licensee.

The Sanction Decision

7. In accordance with Ofcom's procedures for the consideration of statutory sanctions in breaches of broadcast licences (the "[Sanctions Procedures](#)"), Ofcom considered whether the Code and licence condition breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case. Having taken into account the Licensee's representations, Ofcom considered that a sanction is warranted in relation to two of these breaches since the breaches were serious for the reasons set out below.
8. Ofcom's Decision is that the appropriate sanction is to:
- i. Impose a financial penalty of **£20,000** in respect of the Music Video, and **£30,000** in respect of the Discussion Programme;
 - ii. direct the Licensee to broadcast a statement of Ofcom's findings in relation to the Music Video and the Discussion Programme, on a date and in a form to be determined by Ofcom; and
 - iii. to direct the Licensee not to repeat the Music Video or the Discussion Programme.
9. This paper sets out Ofcom's final Decision on the type and level of sanction to be imposed on the Licensee, taking into account all the relevant material in this case and Ofcom's Penalty Guidelines (the "[Penalty Guidelines](#)")¹¹.

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 Published 14 September 2017.

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 Sections One, Two and 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)).
13. In accordance with its duties under the Act, Ofcom has set standards in the Code, which has been drafted in light of the Human Rights Act 1998 and the European Convention on Human Rights (“the Convention”). 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 intended to assist broadcasters to interpret and apply the Code.
14. The Act requires Ofcom to include licence conditions for securing the standards, as set out in the Code, are observed in the provision of that service. Licensees must therefore comply with the standards set by Ofcom in the Code from the point at which they are awarded their TLCS licence.
15. It is a condition of the TLCS licence issued under the Broadcasting Act 1990 that “the Licensee shall ensure that the provisions of [the Code] are observed in the Licensed Service”. The Licensee must therefore comply with the standards set by Ofcom in the Code.

Human Rights Act 1998

16. 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 Convention. In particular, in the context of this case, Ofcom has taken account of Articles 9 and 10 of the Convention as appropriate.
17. 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”.
18. 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 a 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)).

19. 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

20. 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

21. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code.
22. Accompanying Guidance Notes¹² 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.
23. The relevant Code rules in this case are set out in full at the beginning of this Decision.

Remedial action and penalties

24. 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 TLCS licence, Condition 6 of the licence requires the Licensee to ensure that provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.
25. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the Act insofar as relevant to the case.
26. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme which was in contravention of a licence condition.
27. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and 5 per cent of the qualifying revenue from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force.
28. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence where a licensee is in contravention of a condition of a TLCS licence or direction thereunder.
29. Section 239 of the Act provides Ofcom with the power to suspend and then revoke a TLCS licence where the holder of the licence has breached the Broadcasting Code by including in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder; and the contravention is such as to justify the revocation of the licence.

¹² See: [Guidance Notes Section 2: Harm and offence](#); and [Guidance Notes Section 3: Crime, Disorder, Hatred and Abuse](#).

Background – The Breach Decisions

***Music video, Bagga and Shera* Breach Decision (material broadcast on 4 July 2018, 7 July 2018, 9 July 2018)**

30. In the *Music video, Bagga and Shera* Breach Decision, the Executive found that the material broadcast by the Licensee on KTV breached Rules 2.3, 2.11 and 3.1 of the Code. The *Music video, Bagga and Shera* Breach Decision set out the reasons for each of these breach findings.
31. The *Music video, Bagga and Shera* Breach Decision included relevant background information on the secessionist movement in favour of an independent Sikh state known as Khalistan in the Punjab region in India:
 - In 1984, the Indian Army carried out “Operation Bluestar”, to remove a Sikh religious leader Sant Jarnail Singh Bhindranwale and his followers from a Sikh temple in Amritsar which they had occupied. The operation resulted in many deaths, including that of Sant Jarnail Singh Bhindranwale. In retaliation, Indian Prime Minister Indira Gandhi, who had ordered the operation, was assassinated by her two Sikh bodyguards, which in turn led to anti-Sikh violence and thousands of deaths in Delhi. In addition, General Arun Vaidya, who had planned the operation, was murdered in Pune by members of a proscribed Sikh militant organisation, Harjinder Singh Jinder (“Jinda”) and Sukhdev Singh Sukha (“Sukha”), who were subsequently tried and executed for this crime.
 - Though it remains a divisive issue within the Sikh community, the Khalistan secessionist movement has gained more prominence in recent years, in particular among members of the Sikh diaspora including in the UK, following further tensions in India. These tensions have involved the Khalistan Liberation Front (“KLF”), an organisation which India’s National Investigating Agency (“NIA”) initiated the process of banning in October 2018. The NIA has indicted a number of individuals linked to the KLF, including the prominent Sikh activists Ramandeep Singh Bagga (“Bagga”) and Hardeep Singh Shera (“Shera”), for their alleged participation in a transnational conspiracy to carry out targeted killings in India. Of particular relevance in the UK context, the British Sikh activist Jagtar Singh Johal, known as “Jaggi”, has also been arrested and held in India.
32. The Music Video comprised a music video for the song *Bagga and Shera* by Nav Sandhu, which included lyrics in Punjabi with some Gurmukhi and English script. As noted in the *Music video, Bagga and Shera* Breach Decision, Ofcom obtained an English translation of the Punjabi and Gurmukhi lyrics and text, and gave the Licensee an opportunity to comment on its accuracy. The Licensee did not raise any issues with the translation.
33. The Music Video included dramatised scenes of two fictional characters who appeared to be preparing to carry out assassinations in the UK, juxtaposed with images of real people who have been convicted or charged with committing murders for political reasons.
34. The *Music video, Bagga and Shera* Breach Decision described how the music video began with a sequence in which one man (“Man A”) showed another (“Man B”) a video of protestors burning an effigy of Sant Jarnail Singh Bhindranwale, then gave him a hooded sweatshirt bearing statements in support of Sikh secessionism, which appeared to condone violent action (e.g. “Peace will come via the bullet”). This sequence also featured images of a roaring tiger and lion, and the lyrics “They pierce through enemies’ heart like a bullet, Bagga and Shera keep roaring like a lion”.
35. Ofcom considered that the sequence was likely to have been understood by viewers as depicting Man A recruiting Man B to join a group advocating the use of violence in pursuit of the political aim of the creation of Khalistan. The *Music video, Bagga and Shera* Breach Decision

noted the symbolic significance of lions in Sikh culture, concluding that the sequence implicitly condoned the violent actions of Sikh militants.

36. A second sequence featured the two men wearing their Khalistan hooded sweatshirts and riding a motorbike, interspersed with archive images of Jinda and Sukha. At one point, Man A imitated the action of firing a gun at a man on the street. This was immediately followed by a picture depicting the murder of General Vaidya, shot by two Sikh men riding a motorbike. These images were accompanied by the lyrics *"Enemies are always scared of them...They extract the sins of sinners from the coffins"*. Ofcom understands that this last phrase is a Punjabi colloquialism for murder.
37. The *Music video, Bagga and Shera* Breach Decision set out Ofcom's view that the juxtaposition of images in this sequence sought to draw direct parallels between the fictional characters in the music video and the murder of General Vaidya by Jinda and Sukha. We understand that Jinda and Sukha are considered martyrs by some in the Sikh community, and images of them have become part of Sikh iconography. In combination with the lyrics and other images of a roaring tiger and lion, the Music Video clearly sought to glorify the fictional characters and their implied future actions, by depicting them as heroes like Jinda and Sukha.
38. In a final sequence, Man A was shown loading a shotgun, being driven in a vehicle (with a UK number plate), and then firing the shotgun. This was followed by text listing the names of people allegedly killed by Sikh separatists linked to the KLF in 2016-2018, and pictures of leaders of the KLF who had allegedly been murdered. These images were accompanied by the lyrics *"Together they are like Jinda and Sukha. Enemies are always scared of them...They extract the sins of sinners from the coffins"*.
39. Ofcom considered that various elements of the Music Video linked the KLF to the list of murdered people which appeared on screen. Further, the Music Video implied that the shots fired by Man A would have a similar target, i.e. members of groups considered to have a different political viewpoint from the KLF.
40. The *Music video, Bagga and Shera* Breach Decision also noted several examples of archive footage, graphics of and lyrics about individuals accused and/or convicted of murder and/or terrorist acts. Those referred to included Bagga and Shera, Johal or "Jaggi", and former leaders of the KLF. In addition, a caricature of Indira Gandhi, depicted with blood dripping from her mouth, was accompanied by the caption *"You drank the blood of innocents you evil woman"*, and the lyrics *"Warriors will destroy your kingdom"*, along with images of flames superimposed on the Red Fort in Delhi (a symbol of the Indian state). In Ofcom's view, these images and text reinforced the Music Video's narrative advocating violent action against the Indian state, and glorifying those who carry it out.
41. In its representations to Ofcom, KTV Ltd said that it undertakes "concerted efforts to ensure all content broadcast remains within the parameters of the Broadcasting Code" and that it "treats all compliance matters with the utmost importance and accordingly, we attempt to address any potential breach of the Broadcasting Code with immediate action". However, the Licensee explained that it had "recently suffered on account of the departure of employees responsible for assessing and enforcing compliance". As noted in the *Music video, Bagga and Shera* Breach Decision, KTV Ltd is required as a condition of its TLCS licence to have adequate compliance procedures in place to ensure that it meets its obligations under the Code.
42. According to the Licensee, the Music Video was assessed prior to broadcast in what it described as a "cursory" way. Once alerted to the complaint by Ofcom, KTV Ltd removed this music video from its playlist and conducted an internal investigation. It concluded that the subject matter was "inappropriate" and decided not to broadcast the content again. As set out in the *Music video, Bagga and Shera* Breach Decision, the Licensee requested a meeting with Ofcom to

discuss its compliance procedures¹³. It also responded to further questions about the Music Video. KTV Ltd did not provide any comments as to how the content complied with Rule 2.11.

43. In terms of Rule 3.1, the *Music video, Bagga and Shera* Breach Decision considered the cumulative effect of:
 - the dramatised fictional narrative depicting the recruitment of a man in the UK to a group using violent means to further its political aim of the creation of Khalistan;
 - the several positive visual references to the murders of people who had been instrumental in “Operation Bluestar”;
 - the lyrics glorifying or condoning violence committed by individuals convicted of or charged with murder and/or terrorist acts; and
 - the list of names and pictures of individuals who had recently been murdered, allegedly by members of the KLF.
44. Ofcom’s view was that the cumulative effect of these elements created an indirect call to action for Sikhs living in the UK to commit violence, up to and including murder, against members of organisations considered to have opposing views to the KLF and/or who did not support the creation of Khalistan.
45. The *Music video, Bagga and Shera* Breach Decision then considered the likelihood of the Music Video indirectly encouraging or inciting the commission of crime or leading to disorder, including taking account of the context in which it was broadcast. Ofcom’s Guidance Notes to Section Three of the Code list a number of contextual factors.
46. The *Music video, Bagga and Shera* Breach Decision acknowledged the importance of freedom of expression, including in music videos which may include challenging material. However, the Music Video was a standalone piece of content, with no warning or information given before, during or after the broadcast, nor was there any challenge to, criticism of or explanation of the violent behaviour it condoned. This lack of contextualisation and challenge, in Ofcom’s view, made it more likely that the music video would be taken as an indirect call to action.
47. Ofcom also considered the likely impact of the Music Video on audiences. The *Music video, Bagga and Shera* Breach Decision noted that the Music Video was likely to appeal in particular to a younger and potentially more impressionable audience among the Sikh community in the UK. It acknowledged that some viewers may have viewed the song as reflecting the bravado common in this genre but concluded that the very specific references to the KLF and the killings to which this organisation has been linked added to the impression that the Programme encouraged emulation of the violent actions referred to in it. The *Music video, Bagga and Shera* Breach Decision also acknowledged the importance of the concept of martyrdom to many religions including Sikhism, however it considered that in this case the references to recent criminal acts allegedly committed by members of the KLF, in relation to this very current and controversial issue, meant that viewers among the Sikh community in the UK would be more likely to interpret the message of the music video literally.
48. The Music Video therefore breached Rule 3.1 of the Code.
49. In relation to Rule 2.3, the *Music video, Bagga and Shera* Breach Decision noted that the Code does not prohibit the broadcast of material, including the views and actions of groups and individuals that have the potential to cause offence, as to do so would, in Ofcom’s view, be a disproportionate restriction of the right to freedom of expression. However, potentially offensive content must be justified by the context.

¹³ Ofcom opened an investigation and did not invite the Licensee for a meeting.

50. As discussed in relation to Rule 3.1, the Music Video condoned and glamorised violent acts, amounting to an indirect call to action to commit violence, up to and including murder. As such, Ofcom considered that it clearly had the potential to be extremely offensive. In addition, the fact that Sikh secessionism is a very current and controversial issue among the Sikh community in India and the UK would have compounded the likely offence.
51. The *Music video, Bagga and Shera* Breach Decision next considered the impact of contextual factors on that potential for offence. It took into account that KTV is a service focusing on Sikh-related issues and aimed primarily at a Sikh audience. However, the Music Video was broadcast on three occasions as a standalone item between unrelated programmes, with no warning or information, challenge or criticism, or wider context which might have minimised the potential offence. It was not a scheduled programme, so viewers would have come across it unaware, increasing the potential for offence. It was broadcast once in the afternoon and twice late in the evening, but although viewers may expect more challenging material after the watershed, Ofcom's view was that the scheduling of this music video would not have mitigated the potential offence. Overall, the *Music video, Bagga and Shera* Breach Decision concluded that, given all these factors and the strength of the material, the channel's audience was unlikely to have expected to view content of this sort without contextualisation on KTV. As there was insufficient context to justify the broadcast of this highly offensive material, the Music Video was found in breach of Rule 2.3.
52. In relation to Rule 2.11, Ofcom noted that the Music Video included brief flashes on at least seven occasions, which, when the music video was slowed down, revealed frames of on-screen text which were not otherwise visible. This included large text stating "*It just waits for the sequel*", which appeared on three occasions: once over an image of the motorbike; once over an image of a leader of the KLF; and once over an image of the seats in the car. We considered that this message could be understood as reinforcing the suggestion that further murders should be committed, in addition to those referred to in the music video. The *Music video, Bagga and Shera* Breach Decision expressed concern that the content appeared to be seeking to influence viewers in this way, by conveying a message to them or otherwise influencing their minds without their being aware, or fully aware, of what has occurred.
53. On this basis, the *Music video, Bagga and Shera* Breach Decision recorded a breach of Rule 2.11.
54. Ofcom stated in the *Music video, Bagga and Shera* Breach Decision that the contraventions of Rules 2.3, 2.11 and 3.1 of the Code were extremely serious and were therefore being considered for a statutory sanction.

***Panthak Masle* Breach Decision (material broadcast on 30 March 2019)**

55. In the *Panthak Masle* Breach Decision, Ofcom's Executive found that the material broadcast by the Licensee on KTV breached Rules 2.1, 2.3 and 3.1 of the Code. The *Panthak Masle* Breach Decision set out the reasons for these breach findings.
56. The Discussion Programme was broadcast live from KTV's studios in the UK. It featured a presenter and panel of guest contributors, five of whom were spiritual and community leaders known as the Five Beloved. The panellists included: Baldev Singh; Balkar Singh; Reshmi Singh; Dawinder Singh; and Sukhdev Singh. The topic of discussion was Harnek Singh, also referred to in the programme as "Neki", a Sikh radio presenter resident in New Zealand who was said to have been "criticising" various aspects of the Sikh faith.
57. As the Discussion Programme was broadcast in Punjabi, Ofcom commissioned an English translation, which the Licensee's representations on our Preliminary View disputed. In response, we commissioned a new translation and issued a revised Preliminary View based on this. In its representations on this revised Preliminary View, KTV Ltd said Ofcom's new translation was "more precise...but still not 100%". In particular, it said that Baldev Singh did

not say that he was “*alright with*” the Babbar Khalsa (paragraph 62) and that Punjabis would understand that when reference was made to “*black wood*”, this meant that the tangli was “strong enough to beat [someone] with” (paragraph 58).

58. During the Discussion Programme, Baldev Singh described how, following “*an incident of sacrilege*”, Surinder Singh Sodhi¹⁴ had used a farming instrument called a tangli, which is similar to a rake or fork, to give about five men “*a good thrashing*”. The guest said these men were “*hooligans*” and like Harnek Singh. He then set out that Harbans Lal Khanna¹⁵ had opposed committed Sikh people in India and been assassinated.
59. Reshmi Singh said that he wanted to tell Harnek Singh that there were people like him at the time of Guru Gobind Singh (1666-1708) who had “*uttered blasphemies and insults, but...didn’t last forever*” and been “*punished*”. The guest added:

“[the blasphemers] “***didn’t die a natural death***”. Therefore, fear the Maharaj, respect God, ***otherwise you don’t have many days left***. Therefore, forget these things. No matter how great the powers and the agencies that support you, ***when the time comes, when the honourable/glorious King needs someone’s services, you will not find any path to run away***. Then you will know. It is written in the Maharaja’s Gurbani¹⁶: ‘Until hit hard with a stick on the back, the sleeper doesn’t wake’. Then you will awake from your sleep. These blasphemies that you are spewing out against the personalities of the Sikh nation, against Sant Jarnail Singh¹⁷, martyred committed Sikhs, the Citadel of Faith Harmandir Sahib¹⁸ and Akal Takht, you will find out [the meaning of]: ‘***Until hit hard with a stick on the back, the sleeper doesn’t wake***’. Only then you will come to your senses ***but then your remorse will be of no use***. You still have time. Come to the committed Sikhs and apologise. Only then you will be forgiven. ***Otherwise, you will have no place*** [to hide]. ***One day, your time will come and this will definitely be your end***. [Sikh salutation]”. [Ofcom’s emphasis added].

60. Dawinder Singh said:

“So, I would definitely want to say one thing to the Sikh nation. The word butcher has been associated with the name of Beant Singh¹⁹. You cannot say his name, you just say Butcher and it is known whose name is being said...but Neki, ***I don’t know what’s going to be left of you and what not***. I don’t know if something will be attached to your name. Considering the way you are speaking out, ***it seems to me that not even your name will be left behind***. ***I don’t know whom God will choose to do this service, putting His hand on his head*** [to bless him], ***to go and deal with you, and who is going to make you the target of his bullet...Neki is nothing***. He’s a small man, not even small, ***he’s not human anymore because the Lord says, when we were born as humans: deeds of an animal though human in species***. You [Neki] obtained humanity but ***your acts at the moment, I would say, are not of animals but***

¹⁴ Surinder Singh Sodhi: A Sikh militant killed by a rival Sikh faction who “Police sources said...was suspected in a number of murders – mostly of police officers – ...and was wanted for questioning in the April 2 killing of Harbans Lal Khanna, a Hindu opposition party leader and former legislator shot and killed at his drug store in Amritsar”. See “[Sikh terrorist killed by female assassin](#)”, UPI archives, 14 April 1984.

¹⁵ Harbans Lal Khanna was an Indian politician who was assassinated by Sikh gunmen in 1984 in retaliation for what his killers considered blasphemy against the Sikh religion. See also footnote 5.

¹⁶ ‘Gurbani’ is the term used by Sikhs to refer to various sections of Sikh holy scripture.

¹⁷ Sant Jarnail Singh Bhindranwale was the Leader of the Sikh organisation Damdami Taksal. He symbolized the revivalist, extremist and terrorist movement in the 1980s in Punjab. He was killed in 1983 during the Indian army’s Operation Blue Star as they attempted to remove him and his militant cadre from the Golden Temple. In Sikhism, Sant refers to a very pious person having saintly qualities.

¹⁸ Harmandir Sahib: Sikh Golden Temple situated in Amritsar, Punjab, India.

¹⁹ Beant Singh was the Chief Minister of Punjab. He was assassinated in 1995.

worse than those of animals. You have lost your worth. I would say that if Neki has to be punished, I don't know who God will choose to perform this service". [Ofcom's emphasis added].

61. A third guest, Balkar Singh, expressed firmly that religious and political leaders were not taking action in response to Harnek Singh *"insulting"* the religious scripture of the Sikh religion and the supreme seat of Sikh political power. He then said:

"...If they cannot put their hand on this hilt [he puts his hand on his sword] then they should take assistance from the government. They are completely attached to the government. They can put a stop to this, but I don't know why they have left this path open. It is deeply saddening that all of our great sages too aren't listening to this. Don't they even see what he is saying about our nation?"

62. Baldev Singh also referred to a proscribed terrorist organisation, the Babbar Khalsa, saying:

"We have no arguments with anybody...Babbar Khalsa, we eat and drink with them, we have good links with all of them".

63. Balkar Singh also said that Harnek Singh was *"not a Sikh"* and *"a non-Sikh"*.

64. In its representations to Ofcom, the Licensee apologised for its "error in judgement". It said that it had used its most experienced presenter, discussed compliance with the guests before the broadcast and had them sign "pre-show forms".

65. KTV Ltd said that the Discussion Programme was made in Punjabi for a Punjabi audience of the Sikh faith to whom the Five Beloved were "the guiding light throughout the UK and Europe". It said that viewers would know that they had a theological, passive role and that they "[could] not and would not encourage anyone to perform a violent task". The Licensee said that the language of the Five Beloved "may come across as violent" but that was not the intention. It said that rather their language was similar to non-violent colloquialisms such as "to throw the book at someone". It added that its Punjabi audience could understand these linguistic nuances and that there were elements of religious, colloquial and idiosyncratic language of which even the most skilled interpreter would not be aware.

66. The Licensee said that Harnek Singh had "defamed and criticised the Sikh religion since 2013"; that petitions had been made to the government in New Zealand to stop his radio station and YouTube channel; and that the Akal Takht had excommunicated him in 2018. It added that at no point had anyone sought "physical punishment towards him". It said that in this context the way the Five Beloved had talked about Harnek Singh in the programme was understandable. It added the programme host had felt that the language used was slightly harsher than he would have expected from them, but he had subsequently realised that the audience does expect them to show their disappointment in Harnek Singh due to their status while "not forgetting that they cannot and will not condone physical behaviour". It said that it had spoken with the Five Beloved and that the view they had expressed in the programme was that Harnek Singh should take heed of history and that "historically these situations have resulted in the following 'acts' of God (a higher power) taking control".

67. The Licensee said that according to Baldev Singh his mention of Harbans Lal Khanna was "as a historical reference". KTV said that Baldev Singh "was saying that historically going against a faith...can result in an unnatural death as a punishment from God" and that he was "not saying that anyone should take up arms and go against Harnek Singh".

68. The Licensee said that, according to Reshmi Singh, he had spoken of the fixed consequences of the Akaal Takht and not of any sort of violent retribution. It said that his "reference to an unnatural death [was] an historical reference"; his reference to the teaching in the Gurbani was

“no different to saying that bad people are punished by God”. KTV said that Reshmi Singh had told it that he was teaching that “the punishment is from God, not man and as we don’t know how long any of us have to live, we should repent to God and ask for his forgiveness [as] when we are dead it is too late to repent”. The Licensee said that this was a common type of general religious teaching and not a targeted threat.

69. The Licensee said that Ofcom’s original translation of what Dawinder Singh had said was incorrect and that he had actually said:

“...I don’t know if there will be a reference added to your name, moreover I think you may not have a name left the way in which you are speaking. I don’t know who God is going to choose to bless and put you on a plane, or someone may make you a target of a bullet...”

70. It said that, according to Dawinder Singh his meaning was that “the Sikh community would rather forget [Harnek Singh’s] name than add a reference by which to remember him”, and that “God may bless someone by taking [Harnek Singh] to a safe place where [he] can reflect on what [he has] been doing”. It said that Dawinder Singh had said he was referring to the blessing a pious person needed to “save a character who has been sacrilegious...from what history has shown us can result in a bullet”.
71. The Licensee said that, according to Balkar Singh, he had put his hand on his sword to “to indicate putting the sword back in the sheath [and so] to indicate controlling the situation”. The Licensee added that, according to Balkar Singh, he was calling on the Sikh authorities to ask the government to make representations on their behalf.
72. KTV Ltd said that the reference in the programme to the proscribed terrorist organisation Babbar Khalsa²⁰ was not as Ofcom had translated it, but as follows:

“As for different organisations, we are with the Sikh Federation of the UK. As for Bab[b]ar Khalsa and Akhand Kirtani we are separate”.

73. In its initial response, the Licensee said that the presenter had told it he “was shocked... and didn’t expect this sort of language from such religious people” and that after the programme he was “extremely upset” as he felt he had been misled by the guests and was shocked that such religious members of the community would behave in such a way. In its later responses, the Licensee said that in the programme the presenter had “mention[ed] that the statements made by Reshmi Singh [were] his own” and that when he “felt that Dawinder Singh...was going off topic, but as he [was] aware of the rules and regulations that we are obliged to work under he ask[ed] Dawinder Singh to clarify that the statements [were] his own opinions”. The Licensee added that the presenter “was shocked before he himself realised that the [Five Beloved] did not mean what they said in the way he originally thought they did”.
74. Ofcom considered that Reshmi and Dawinder Singh’s statements contained implicit threats of violence towards Harnek Singh. The latter referred to the assassinated chief minister of Punjab, Beant Singh. Given that Beant Singh’s assassination, and the responsibility the Babbar Khalsa had claimed for it, were widely reported²¹, we considered that viewers were likely to be aware of these events. We considered therefore that viewers would have understood that Dawinder

²⁰ The Babbar Khalsa (BK) is a Sikh movement that aims to establish an independent Khalistan within the Punjab region of India. It has been a proscribed terrorist organisation in the UK since 2001. See the Home Office [list of proscribed terrorist organisations](#).

²¹ See: [Punjab Leader Slain](#), the Washington Post, 1 September 1995; [Chief Minister of Punjab, 12 Others, Killed in Bomb Blast](#), AP News, August 31, 1995; [Assassination Reminds India That Sikh Revolt Is Still a Threat](#), the New York Times, 3 September 1995; [I have no regret, says Pro-Khalistan terrorist who assassinated former CM Beant Singh](#), Times of India, updated 17 March 2018; and [Obituary: Beant Singh](#), the Independent, 2 September 1995.

Singh and Reshmi Singh were speaking of intentional acts of violent retribution in the name of God against Harnek Singh, and not speaking from a purely spiritual, hypothetical or historical viewpoint, or of an 'act of God' apart from any human involvement, as the Licensee's representations suggested was the case.

75. Ofcom considered that Reshmi Singh was clearly directing his comments towards Harnek Singh (*"As regards men like Neki, I want to tell him one thing..."*) and that his words were a threat that someone would kill him, not a reference to the "fixed consequences" the Akaal Takht might apply. Ofcom took into account that the Akaal Takht had already excommunicated Harnek Singh in 2018 and that Reshmi Singh did not refer to this and was referring to future possible consequences of Harnek Singh's actions.
76. We further considered that these guests' likening of Harnek Singh to past blasphemers who had been punished, calling him inhuman and his acts worse than those of animals and their references to dealing with him as being a blessed service to God, endorsed and promoted the view that a violent response to him was both acceptable and to be expected. We were concerned, therefore, that viewers could have been encouraged to believe that Harnek Singh should be killed and that the statements could have been interpreted by some viewers as an implicit or indirect call to act. We did not accept the Licensee's alternative translation to the effect that Dawinder Singh was referring to God blessing someone to take Harnek Singh on an aeroplane to a peaceful place to lead him to repentance. Neither of the translations that Ofcom commissioned referred to an aeroplane and in our view the statement *"...if Neki has to be punished, I don't know who God will choose to perform this service"* clearly associated a person punishing Harnek Singh with service to God.
77. We also considered that the comments made by Balkar Singh could have been understood (in the context of other statements made during the programme) as suggesting the need for devout Sikh believers to take matters into their own hands in relation to Harnek Singh. We acknowledged that Balkar Singh stated that as an alternative to the use of violence (*"If they cannot put their hand on this hilt [he puts his hand on his sword]"*) religious leaders should seek help from the government. However, he did not condemn the use of violence. We took into account the Licensee's view that Balkar Singh's gesture was that of keeping his sword sheathed to indicate controlling the situation. However, in our view it was clear from watching the footage that his gesture had a stronger meaning, that of removing the sword from its sheath, as it coincided with the statement *"If they cannot put their hand on this hilt"*. We considered this would have reinforced to viewers the implicit threat of violence by him towards Harnek Singh.
78. The Licensee said that Baldev Singh had pointed out to it that responses to Harnek Singh had been non-violent. However, we took into account that the examples he presented to viewers of responses to the *"men of the type of Neki"* were violent. Against this context, we considered that Balkar Singh's statement went further than simply making "a historical reference". In our view, it would have had the likely effect of: encouraging members of the Sikh community to take violent vigilante action against Harnek Singh and possibly other people who criticise the Sikh faith; and suggesting to KTV's viewers that it was appropriate for members of the Sikh community to take violent action against Harnek Singh, when the relevant religious authorities were not considered to have taken appropriate action.
79. In Ofcom's view the cumulative effect of the guests' statements was to present violent action, including murder, as an acceptable response in such circumstances. In appearing to condone such action, we considered that these statements, taken as a whole, could be interpreted as promoting and encouraging violent behaviour towards Harnek Singh and possibly others like him who criticise the Sikh faith. KTV Ltd said that role of the Five Beloved, and viewers' understanding of their role, negated this. However, in Ofcom's view, it remained clear that throughout the programme, and to its end, the presenter felt the need to disassociate KTV from

the guests' comments and, according to the Licensee's first representations, he also remained concerned by their behaviour after the programme had ended. We considered that this would have been unnecessary if, as the Licensee argues, the language of the Five Beloved was readily identifiable with their role as pacifistic theologians to a Sikh audience. We considered that the host's impression of the guests' comments during the programme and immediately following it gave a clear indication of how viewers would have understood their comments.

80. The *Panthak Masle* Breach Decision then considered the likelihood of the Discussion Programme indirectly encouraging or inciting the commission of crime or leading to disorder, including taking account of the context in which it was broadcast.
81. The *Panthak Masle* Breach Decision set out and acknowledged that, to some extent, references made by the presenter and Sukhdev Singh to non-violent and peaceful ways of responding offered a more moderate approach by suggesting there might still be room for public debate regarding the controversy surrounding Harnek Singh's views. It also set out and acknowledged that comments from Baldev Singh also suggested peaceful ways for devout Sikhs to take action. However, these were limited, and we did not consider they went far enough to provide sufficient context or to challenge the implicit threats of violence made towards Harnek Singh.
82. The *Panthak Masle* Breach Decision set out that Ofcom was greatly concerned that the presenter did not provide any clear challenge to the highly inflammatory views expressed in the programme or seek in any way to moderate them. Instead, the objective of his interventions, which are set out in the *Panthak Masle* Breach Decision, appeared to be to remove responsibility from KTV Ltd for the views expressed by the programme's guests.
83. Ofcom considered the contextual factors which the Licensee had pointed to in its representations. Ofcom did not consider the fact that KTV Ltd had made other programmes about Harnek Singh served to contextualise the content of this stand-alone discussion. The programme did not refer viewers to any other programmes and, in any event, Ofcom considered that the audience would have afforded special respect to the opinions of the Five Beloved, given their role in the Sikh faith.
84. Ofcom considered the Licensee failed to provide sufficient and effective challenge or context to the extreme views presented within this programme and that the programme provided a platform for several guests to express views which amounted to indirect calls to action and were likely to encourage or incite the commission of crime or lead to disorder. In Ofcom's view, this indicated a fundamental lack of understanding of the Licensee's compliance obligations under the Code. Our Decision, therefore, was that Rule 3.1 was breached.
85. In relation to Rule 2.1, the *Panthak Masle* Breach Decision found, on the basis of the consistency of the translations that Ofcom commissioned from two different translators, that Baldev Singh did refer to the Babbar Khalsa and that his words expressed a good relationship with them. Ofcom took into account that it is a proscribed terrorist organisation which has been responsible for assassinations and other violent attacks. It was Ofcom's view that Baldev Singh's comments could be taken as legitimising it and normalising its aims and actions in the eyes of viewers. Consequently, we considered this created a risk that some viewers might have been encouraged to support a proscribed terrorist organisation. In Ofcom's view, therefore, this statement posed clear potential harm to the viewers of the Discussion Programme.
86. In considering whether KTV had provided adequate protection for members of the public from the inclusion of this potentially harmful content, we took into account that Baldev Singh's statement was not challenged, and no alternative view was given to help contextualise it and reduce the potential for harm. We recognised that KTV is a television channel delivering content focusing on Sikh-related issues to a primarily Sikh audience and that *Panthak Masle* is a live current affairs discussion programme that covers topical issues relevant to its audience and the

wider Sikh community. However, we considered that the channel's audience was unlikely to have expected to view such content without sufficient context. Our Decision therefore was that the Licensee failed to apply generally accepted standards so as to provide adequate protection to members of the public from the inclusion of potentially harmful content in breach of Rule 2.1.

87. In relation to Rule 2.3, the *Panthak Masle* Breach Decision took into account Ofcom's consideration under Rule 3.1 that this programme condoned and justified violent acts, and, in our view, the material amounted to indirect calls to action to commit violence, up to and including murder. As set out under Rule 2.1, the programme also expressed good links with a proscribed terrorist organisation which has been responsible for assassinations and other violent attacks. In our view, this treatment of a proscribed terrorist organisation such as the Babbar Khalsa was contrary to standards generally accepted by society as a whole, including the Sikh community. We therefore considered that the content clearly had the potential to be highly offensive. We also considered that the programme contained other potentially offensive material such as the comments that Harnek Singh was "*not a Sikh*" and "*a non-Sikh*", "*nothing*", "*a small man*", "*not human*", that his acts were "*worse than those of animals*" and that he had "*lost [his] worth*". These comments would have been offensive to some Sikh people whether or not they agreed with Harnek Singh's views. For example, we understand that some still consider him to be a member of the Sikh faith and that while many others oppose his views, they would not consider that an intemperate or violent response is the appropriate way to challenge those views.
88. Considering next whether the broadcast of potentially offensive material was justified by the context, Ofcom acknowledged that Harnek Singh is an individual who holds views critical of aspects of Sikh faith and that many Sikhs find his views offensive. Therefore this was a legitimate issue for the programme to discuss. However, in our view there was no challenge, criticism or wider context which justified the inclusion of the highly offensive material which concerned us, to avoid or minimise the potential offence. As with Rules 3.1 and 2.1 we took into consideration the Licensee's representations on the measures it took to comply the programme before broadcast, the steps it said it was considering putting in place to prevent a recurrence, its subsequent confirmation that it had done so, and its apology for what it described as an "error in judgement". We also took into consideration KTV Ltd's further representations that in a number of programmes it had "discussed a variety of opinions on [Harnek Singh] from all angles." However, given the strength of the material and our assessment of the relevant contextual factors, it was Ofcom's view that the channel's audience was unlikely to have expected to view content of this type broadcast without sufficient contextual justification or appropriate information to avoid or minimise the level of potential offence. Therefore, our Decision was that Rule 2.3 was also breached.
89. Ofcom stated in the *Panthak Masle* Breach Decision that the contraventions of Rules 2.1, 2.3 and 3.1 of the Code were extremely serious and were therefore being considered for a statutory sanction.

The Other Breach Decisions

90. Ofcom also stated in the following breach decisions that we considered that, taken overall, the contraventions represented a very serious compliance failure on the part of the Licensee, and that we were therefore putting it on notice that we would consider the breaches for the imposition of a statutory sanction.
- In our decision **Good Morning KTV** (KTV, 20 February 2018, 09:00: Bulletin Issue 373²²), Ofcom found that a depiction of sexual violence included in a documentary strand on a

²² See footnote 3.

breakfast magazine show, immediately following content aimed at children, was inappropriately scheduled, not sufficiently limited for a pre-watershed programme, and offensive without being justified by the context. The content was therefore in breach of Rule 1.3 (children must be protected by appropriate scheduling from material that is unsuitable for them), Rule 1.11 (violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed) and Rule 2.3 (in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context).

- In our decision **Acupressure Show** (KTV, 12 March 2018, 21:30: Bulletin Issue 373²³), Ofcom considered that complementary or alternative medicine was recommended in a way which was potentially harmful to potentially vulnerable viewers who might as a consequence not seek conventional medical advice. We therefore recorded a breach of Rule 2.1 (generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material). The programme also promoted and gave undue prominence to a guest's business, resulting in breaches of Rule 9.4 (products and services must not be promoted in programmes) and Rule 9.5 (products and services must not be given undue prominence in programmes).
- In our decision **Homeopathic Clinic** (KTV, 8 June 2018, 16:00: Bulletin Issue 373²⁴), Ofcom considered that this programme recommended complementary or alternative medicine in a potentially harmful way, and featured promotional and unduly prominent references to a guest's business. Rules 2.1, 9.4 and 9.5 were therefore breached.
- In our decision **Sangeen Mamlay** (KTV, 20 September 2018, 16:00: Bulletin Issue 378²⁵), Ofcom considered that two videos featuring scenes of violence, included in the programme to illustrate the issue of marital disputes being exposed on social media, were not appropriately limited or justified by the context, and therefore in breach of Rule 1.11. The programme also breached Rule 1.14 (the most offensive language must not be broadcast before the watershed) and Rule 2.3.
- In our decisions **F&P complaint by the Sher Group, made on its behalf by Mr Gurmail Singh Malhi** (Sri Guru Singh Sabha Southall Elections Debate, KTV, 27 September 2017: Bulletin Issue 380²⁶); and **F&P complaint by Mr Gurmail Singh Malhi and the Sher Group** (Programming, KTV, 30 September 2017: Bulletin Issue 380²⁷), Ofcom also found KTV in breach of the Code in relation to fairness. In the first case, Ofcom considered that the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to the Sher Group and failed to provide it with an appropriate and timely opportunity to respond. In the second, Ofcom considered that the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Malhi and the Sher Group. We also considered that the comments made in the programme amounted to significant allegations about Mr Malhi and the Sher Group and that the

²³ See footnote 3.

²⁴ See footnote 3.

²⁵ See footnote 3.

²⁶ See footnote 3.

²⁷ See footnote 3.

broadcaster's failure to provide them with an appropriate and timely opportunity to respond resulted in unfairness to them.

- In our decision **Homeopathic Clinic** (KTV, 15 March 2019, 16:00: Bulletin Issue 382²⁸), Ofcom found KTV Ltd in breach of Rules 9.4 and 9.5 of the Code, on account of promotional and unduly prominent references to a guest's business which featured in this programme.
- In Issues 370 and 373 of the Bulletin²⁹, Ofcom also found KTV in breach of its licence conditions as follows:
 - Licence Condition 17(2) requires, amongst other things, that licensees adopt procedures to ensure their programmes comply in all respects with their licence conditions, and ensure that such procedures are observed. In particular, it obliges the licensee to ensure there are enough sufficiently qualified or trained people to ensure compliance, and that they have sufficient seniority to ensure the licensed service complies "in all respects" with the Code. The Licensee had acknowledged that it had no members of staff with responsibility for ensuring compliance between 9 July 2018 and January 2019. It continued to broadcast during this period.
 - Ofcom also recorded breaches of Licence Conditions 4(3), 13(1) and 20(1) which occurred during this period. These breaches concerned failures to provide various types of information required by Ofcom.

Compliance record

91. Although the Licensee has been licensed since 26 May 2016, according to its [filing history](#), it continued to file accounts as a dormant company up to 31 October 2017.
92. In addition to the breaches above for which we considered the imposition of sanctions, the following breaches are also part of KTV's compliance record:
 - In [Issue 342 of the Bulletin](#), published on 20 November 2017, Ofcom resolved a breach by KTV Ltd of Licence Condition 12(1) (general provision of information), after it supplied its relevant turnover return late.
 - In our decision **Indian Law** (KTV, 14 January 2018, 19:30: [Bulletin Issue 357](#)), Ofcom found that this programme promoted and gave undue prominence to a guest's business, in breach of Rule 9.4 (products and services must not be promoted in programmes) and Rule 9.5 (products and services must not be given undue prominence in programmes) of the Code.
 - In our decision **Free Jaggi Now** (KTV, 6 January 2018, 21:30: [Bulletin Issue 358](#)), Ofcom recorded a breach of Rule 5.5 (due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved), in relation to coverage of the arrest of the British Sikh activist Johal or "Jaggi" in India.
 - In addition, in our decision **Vadhiyan Ji** (KTV, 30 August 2019, 18:00: [Bulletin Issue 398](#)), Ofcom recorded a breach of Rule 9.5 (products and services must not be given undue prominence in programmes) of the Code, in relation to references to a guest's business included in the programme.
 - In [Issue 413 of the Bulletin](#), published on 26 October 2020, Ofcom found KTV in breach of Conditions 12(1) and 20(1)(a) of its license for failing to provide information (qualifying

²⁸ See footnote 3.

²⁹ See footnote 3.

revenue) when requested by Ofcom and failing to provide recordings when requested by Ofcom.

93. In total (and including the breaches which are the subject of this Decision), Ofcom has recorded 33 breaches of licence conditions and Code rules, in 17 separate decisions, against KTV Ltd since the granting of its licence on 26 May 2016, with the first such breach (resolved) published on 20 November 2017.

Ofcom's Decision to impose a Statutory Sanction

Seriousness

94. 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.

Music video, Bagga and Shera

95. In relation to the Code breaches set out in the *Music video, Bagga and Shera* Breach Decision, Ofcom considered the breaches were serious because, as set out above, the Music Video featured a dramatized, fictional narrative depicting a man in the UK being recruited to an organisation using violent means in support of Sikh secessionism in India, in combination with lyrics, text and images glorifying or condoning violence, including the murders of people who had been instrumental in "Operation Bluestar", and other murders and/or terrorist acts allegedly committed by members of the KLF. The cumulative effect of these elements of the music video created an indirect call to action for Sikhs living in the UK to commit violence, up to and including murder. The lack of contextualisation and challenge increased the likelihood of the Music Video indirectly encouraging or inciting the commission of crime or leading to disorder.
96. Second, the Music Video was potentially extremely offensive, because it condoned and glamorised violent acts, and indirectly encouraged others to commit violence, up to and including murder. This high level of potential offence was not justified by the context.
97. Third, the Music Video included subliminal messages, one of which could be understood as emphasising the indirect call to action to commit violence, up to and including murder.
98. Finally, the Music Video was broadcast on KTV on three separate occasions, exacerbating the seriousness of the breaches.

Panthak Masle

99. In relation to the Code breaches set out in the *Panthak Masle* Breach Decision, Ofcom considered the breaches were serious because, as set out above, the Discussion Programme featured a number of statements made by the Five Beloved which amounted to implicit threats of violence towards Harnek Singh. The cumulative effect of these statements was to suggest that violent action up to and including murder was an appropriate response to Harnek Singh's criticism of the Sikh faith, potentially encouraging members of the Sikh community to take vigilante action against him. These extreme views were presented without sufficient and effective challenge or contextualisation, and amounted to indirect calls to action which were likely to encourage or incite the commission of crime or lead to disorder.
100. Second, the Discussion Programme included potentially harmful content without applying generally accepted standards so as to provide adequate protection for members of the public. Specifically, Baldev Singh made comments which could be taken as normalising and legitimising the aims and actions of a proscribed terrorist organisation, creating a risk that some viewers might have been encouraged to support that organisation.

101. Finally, the Discussion Programme was potentially highly offensive, because it condoned and justified violent acts in statements that amounted to indirect calls to action to commit violence up to and including murder; and referred to good links with a proscribed terrorist organisation responsible for assassinations and other violent attacks. There was no challenge, criticism or contextualisation which justified the inclusion of this material.

Other breaches

102. Individually, the other content-related breaches and licence condition breaches outlined in this Decision would not ordinarily be considered so serious as to warrant the imposition of a statutory sanction. In this case however Ofcom was concerned about the very large number of breaches that were committed by the Licensee in a short time once it had been licensed and by the harm to audiences including children that may have resulted.

103. On or around 14 September 2018, a Director of KTV Ltd indicated that the Licensee's compliance officer had left the organisation. In a letter to Ofcom dated 4 October 2018 regarding the Music Video investigation, the Licensee stated: "[T]he compliance procedures at KTV have recently suffered on account of the departure of employees responsible for assessing and enforcing compliance". Ofcom understood from this that the departure of compliance staff pre-dated this broadcast on 4, 7 and 9 July 2018. The service continued to be broadcast. On 26 September 2018, the Director of KTV Ltd emailed Ofcom indicating again that the Licensee had no compliance officer and was finding it difficult to recruit one, and requesting a meeting with Ofcom.

104. We were particularly concerned that during a period when the Licensee was aware that Ofcom was actively considering the *Music video, Bagga and Shera* case, which concerned an incitement to murder, the case of *Good Morning KTV* which concerned exposing children to images of sexual violence, two fairness cases and two cases involving inappropriate provision of harmful medical advice, the Licensee nevertheless continued to broadcast, knowing that it did not have any compliance function.

105. We considered the case of *Sangeen Mamlay* to be particularly serious and reckless in this context.

106. We were also concerned that after new compliance staff were put in place from January 2019, KTV Ltd broadcast further material that was subsequently found in breach of the Code, in its programmes *Homeopathic Clinic* on 15 March and *Panthak Masle* on 30 March 2019. Taken as a whole, we considered that the breaches represented a compliance failure on the part of the Licensee that was so serious it gave rise to doubts that the Licensee remained fit and proper to hold a broadcast licence. However, after a process which included written representations and two oral hearings ("the Previous Process") with the Licensee, during which it presented evidence that it understood the seriousness of the case against it and had taken substantial steps to establish appropriate compliance procedures, we determined that it would not be appropriate at this stage to find the Licensee unfit to hold a licence.

107. Ofcom considers that this very serious compliance failure on the part of the Licensee also lay behind the two very serious breaches it has committed. Although the volume and nature of the other breaches committed were very concerning, the principal purpose of a sanction is to act as an appropriate deterrent to the Licensee and others. In that context, we considered that the deterrent effect to the Licensee and to others of sanctioning the two most serious breaches arising out of this underlying compliance failure was likely, in this case, to be sufficient. We have therefore had regard to the compliance history of the Licensee in determining the appropriate sanction, but the sanctions we have decided to impose relate to the two programmes involving incitement to crime: *Music video, Bagga and Shera* and *Panthak Masle*.

108. Ofcom issued a Preliminary View that we were minded to impose statutory sanctions on 22 July 2020. The Licensee made oral representations and submitted some written evidence in support of them on 10 December 2020 (“the Representations”). The Representations are summarised in paragraphs 109 to 125 below.

Imposition of sanction

109. We summarise the Licensee’s oral representations below.

Seriousness of the Breaches

110. The Licensee did not dispute Ofcom’s argument that the breaches were extremely serious and acknowledged there had been major failings in its compliance processes.

Music Video and Discussion Programme

111. The Licensee said that its presenter, who is also its “head of the channel” and part owner, had been unable to control the discussion between the Five Beloved during the discussion programme as their role was created during the foundation of the Sikh religion, and therefore the Five Beloved command a lot of respect in the Sikh community.

112. The Licensee said it had made a mistake in broadcasting the Discussion Programme and Music Video. It said the latter was an error on the part of its technical team who did not know what they were broadcasting. [§].

Compliance processes

113. KTV said that since November 2019 it had been trying to “work through Ofcom”, but [§]. It said that the head of the channel, who had experience himself, was now “fully controlling” matters with the help of the new staff member who had joined in March 2020, two other staff members who had compliance experience, and a compliance consultant, whom it said it had retained from 1 December 2020 until at least the end of March 2021. After that, it said the consultant would continue to support KTV to respond to any matters relating to Ofcom. It said its compliance consultant had broadcasting experience with a major television channel. It acknowledged that the new staff member did not have compliance experience. It said this member of staff had joined it to fulfil a different function, and initially focused on its community services and programming. However the new staff member assumed responsibility as the Ofcom compliance contact from July 2020. It said that since then, KTV had been taking advice and working hard to establish its compliance processes. It added that from now on, this new member of staff would be working solely on compliance with the assistance of the compliance consultant to “put everything right” and ensure mistakes are not repeated.

114. The Licensee said that, with the help of its compliance consultant, it had put an action plan together. It said that it had reviewed the programmes that had breached the Code (including those involving Fairness and Privacy issues) and programmes that had received complaints. It said that it had identified three particular programmes in this review and that it had permanently cancelled one of them which had Fairness and Privacy issues. It added that, as of 9 November 2020, it had not broadcast the other two programmes pending training from its compliance consultant. It said the action plan included a timetable for the completion of each step, after which it would brief Ofcom on its new compliance processes. The Licensee emailed its action plan to Ofcom immediately after it had made its oral representations.

115. More broadly, the Licensee said that it would no longer broadcast controversial programmes live. Instead, it said it would pre-record and edit them and its compliance consultant would review the content before broadcast. It added that it had removed controversial programmes that had caused problems in the last three or four years.

116. The Licensee said that, as of the following day, it would only repeat content originating from India which had received no complaints in the last three months. It said that it would not broadcast other content originating from India until it was “absolutely Ofcom compliant”.
117. The Licensee said that it was hoping to start a two-week review of its UK-produced programmes from 30 December 2020. It said it hoped to complete that by 30 January 2021 and that it would update Ofcom fortnightly. It said that it would also review “all the briefing documents for presenters and contributors, the consent forms, all the compliance guidance [and] the contract” between 11 to the 21 December” adding that its compliance consultant had identified that these needed to be much more detailed, with a view to being “completely compliant by 7 January [2021]”. It said that it would then send its new documents to Ofcom.
118. The Licensee said that its biggest problem had been a lack of staff. It said it was going to start advertising two, full-time compliance roles and it was looking for candidates with two to three years’ experience to join it as soon as possible and by the end of January 2021. It offered to brief Ofcom fortnightly on its progress.
119. The Licensee said that it had already informed its staff and that it was going to give initial brief training to every key member of staff on 16 December 2020. It said that it would complete the training of its staff, “even down to the last presenter that might come in once a week”, by 28 December 2020. It offered to log this training and send the log to Ofcom. It added that it wanted to train every member of staff in India as well. It said its compliance consultant would conduct this training. It said it would do “deep training” on a regular basis with the help of the compliance consultant.
120. The Licensee said that these were the assurances it wanted to give to show that it had received the “wakeup call” it needed. It said that its head of the channel would take responsibility for completing its action plan on time and making sure the situation it found itself in was not repeated. It said that he would be responsible for compliance with the assistance of new colleagues, and not those who were overseeing compliance previously (i.e. when the breaches occurred). It pointed to the sacrifices its head of the channel had made for it and by extension the Sikh community. It said he had worked day and night for it for the last five years, [redacted]. The Licensee said that the head of its channel, new staff member and compliance consultant would “give it 110%” to “make sure that everybody is fully, fully compliant, and understand the implications of having to have this kind of conversation” with Ofcom. It added that it had learnt a lot and noted that since November 2019 it had been applying itself to compliance, albeit with some staff absences from March to June 2020 [redacted]. However, it said it had a good team in place now.
121. In response to the question of why it had not put its action plan in place following the breaches which took place from 2018, the Licensee said that, previously, different people were involved to look after these matters, but over time they had left and now the head of the channel was controlling everything. It said that prior to this, the head of the channel had made the mistake of not overseeing these matters himself and left them to the compliance officer whose remit was to deal with matters concerning Ofcom, on the mistaken belief this officer would be doing everything correctly. It said the head of the channel, and two other members of staff who had been with it for three years, had broadcasting experience at other television channels. It said they were presently complying content and had much more experience than the staff who had been overseeing compliance when the past breaches occurred.
122. For all these reasons, the Licensee asked Ofcom to give it a “last chance” and reconsider the imposition of financial penalties.

Freedom of speech/Community channel

123. The Licensee said that as of March 2020 it had been focusing on making KTV a more community-based channel, working with charities to support people during the Covid-19 pandemic. It said it had been working with the [Acorns Hospice](#). It added that it had worked closely with the [Black Country Women's Aid](#) to produce six programmes purely in English tackling the issue of domestic violence. It added it had worked on programmes to do with mental health, healthy eating and fitness. It said it was trying to move away from the Punjabi content that had breached the Code and make the channel "English led". It said this programming had been well received by its viewers and that it received many telephone calls from viewers seeking help following its programmes on domestic violence and mental health. The Licensee said it felt the channel was "heading in the right way". It said it wanted to continue to make a difference and asked Ofcom to reconsider the imposition of penalties, and to guide it in the right direction and "take us away from all these issues that have been happening historically".

Finances

124. The Licensee said that, as a "community channel", it was not financially astute. It said its finances were limited and so it worked with "minimum staffing". It added that it wanted to focus its spending on compliance and asked Ofcom to reduce the amount of the penalties. It said this would enable it to hire more professional people to continue its service, and noted that it would be expensive to hire an expert in compliance. The Licensee acknowledged that, whatever the outcome of this sanctions case, it was expected to have sufficient compliance in place, and said it was going to retain the compliance consultant whatever happened.

125. The Licensee made representations on its financial situation. [§].

Imposition of sanction

126. In view of the factors set out above, the following paragraphs set out the enforcement action we have considered and the sanctions we have decided to impose.

Revocation

127. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence if the licensee is in ongoing contravention of a licence condition or direction, and that the contravention or failure, if not remedied, would justify the revocation of the licence. Licence revocation is a significant interference with freedom of expression. It is not relevant in this case, as the breaches associated with the Music Video and the Discussion Programme are not ongoing.

128. Section 239 of the Act gives Ofcom a duty to take steps to suspend and then revoke a licence if the holder of the licence has breached the Code by including in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder and Ofcom is satisfied that the contravention is such as to justify the revocation of the licence.

129. We considered the breaches of Rule 3.1 to be particularly serious. The Music Video and the Discussion Programme each constituted an indirect call to action to carry out violent acts up to and including murder, and in our view were likely to encourage or incite the commission of crime or lead to disorder among Sikhs living in the UK. The potential for harm was therefore significant in both cases.

130. The Music Video was broadcast three times between 4 and 9 July 2018. Ofcom is not aware of it being broadcast again on the channel since the Licensee took the decision to remove it from its schedule.

131. However, it was an indirect call to action in the form of a pop song and the first serious breach recorded against this licensee. We recognised that the Licensee was a new and inexperienced broadcaster and that at the time of the breach its compliance function was staffed principally by short term volunteers. While the Licensee is required to have an adequate compliance function in place from the point the licence is granted, we did not consider that this contravention alone was such as to justify revocation of the licence.
132. The Discussion Programme was broadcast live on 30 March 2019. Ofcom is not aware of it being repeated on KTV.
133. This was the second serious breach recorded against KTV, which occurred after new compliance staff were in place from January 2019. As such, it was an extremely serious matter. The breach constituted an indirect call to action. The nature of the breach was different from the first, in that the programme was not pre-recorded. At the time, although new compliance staff were in place, the changes they introduced had not been fully implemented. During the Previous Process, the Licensee told us it had:
- employed and trained five members of full-time staff with responsibility for compliance;
 - taken training from a third-party consultant, as well as provided in-house training;
 - put in place a documented content compliance sign-off process;
 - put in place strengthened contracts and pre-show briefings for contributors;
 - chosen not to work again with guests whom presenters and/or compliance staff may, for cultural reasons, find it difficult to control;
 - placed multiple staff in the gallery during live shows;
 - introduced a delay system for live broadcasts to give output operators time to listen to and watch programmes and rectify any mistakes before they are seen by viewers;
 - taken a decision to avoid controversial topics in such broadcasts, until it is completely confident that it can ensure compliance; and
 - undertaken to secure that no further breaches will be committed.
134. Ofcom therefore took the decision not to revoke the licence.
135. Based on the Licensee's Representations of December 2020, Ofcom was deeply concerned that some of these steps, on the basis of which Ofcom had previously taken a decision not to revoke the licence, no longer seemed to be in place: in particular, the staff with responsibility for compliance no longer seemed to be in post. In its Representations of December 2020, the Licensee indicated that some of these actions required improvement, and that it was yet again short of compliance staff (paragraphs 113 to 122). However, Ofcom acknowledged that the Licensee had not been found in breach of Section 3 of the Code since the breaches being considered for sanction.
136. Taking all the circumstances into account, and in the light of the Previous Process, Ofcom did not consider that this breach warranted revocation of the licence. We will however be following up on KTV Ltd's assurances set out above, and will require confirmation that its compliance function and the changes it has undertaken to implement remain in place.

Directions

137. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme which was in contravention of a licence condition.

138. As set out in the *Music Video, Bagga and Shera* Breach Decision, the Licensee acknowledged that the Music Video was unsuitable and decided not to broadcast it again. We are not aware of the Discussion Programme being repeated either. However, in light of the seriousness of the breaches, Ofcom nevertheless considers that it should direct the Licensee not to repeat any of the Programmes considered in this Decision.
139. On its own, we did not consider that a Direction not to repeat the programmes would be sufficient to act as a deterrent to further breaches, or to draw audiences' attention appropriately to the breaches.
140. Ofcom therefore considered it is also appropriate to direct the Licensee to broadcast a statement of Ofcom's findings.
141. However, Ofcom's Decision was that, on their own, these directions would not be a sufficient sanction, given the serious nature of the breaches in this case. We considered that a financial penalty would act as a more effective deterrent to discourage the Licensee (and other licensees) from contravening the Code in a similar manner in future. We set out below our reasoning separately for the Music Video and the Discussion Programme.

Financial penalty for the Music Video

142. Under section 237 of the Act, the maximum level of a financial penalty that can be imposed on the holder of a TLCS licence in respect of each contravention of a TLCS licence condition is £250,000 or five per cent of the licensee's qualifying revenue relating to its last complete accounting period for which its licence has been in force, whichever is greater.
143. For the purpose of preparing our Preliminary View on sanction, Ofcom requested from KTV Ltd financial data setting out its qualifying revenue for the last accounting period. The Licensee did not provide this information when requested, despite reminders.
144. However, KTV Ltd's qualifying revenue for the preceding accounting period, previously provided to Ofcom, was [§]. In the absence of up-to-date information, Ofcom took this figure into account when coming to its Preliminary View as to the appropriate level of financial penalty in this case.
145. Subsequently, KTV provided its qualifying revenue for the last accounting period, of [§]. Therefore, the maximum penalty that Ofcom could impose in this case is £250,000.
146. Ofcom's Penalty Guidelines 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". In reaching its Decision on the imposition of a sanction in this case, Ofcom has taken full account of the need to ensure that any penalty acts as a deterrent and has also taken account of the specific factors set out in the Penalty Guidelines.
147. In this case Ofcom believed that a financial penalty was necessary to reflect the serious nature of the Code breaches recorded against the Licensee, and to act as an effective incentive to comply with the Code, for other licensees.

The seriousness and duration of the contravention

148. As set out above, the breaches in relation to *Music Video, Bagga and Shera* were very serious. We were particularly concerned that the Licensee had broadcast content amounting to an indirect incitement to violence up to and including murder. The Music Video was broadcast three times between 4 and 9 July 2018.

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

149. Ofcom is mindful of its duties: under section 3(4)(j) of the Act to have regard to the desirability of preventing crime and disorder; and under section 3(2)(e) of the Act to secure, in the carrying out of its functions, the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services. Under Rule 3.1, Ofcom is not required to identify any causal link between the content included in the programme and any specific actions of criminal behaviour.

150. For the reasons set out in paragraphs 95 to 98, the actual and potential harm in this case was substantial because the Music Video constituted an indirect call to action to carry out violent acts up to and including murder, and in our view was likely to encourage or incite the commission of crime or lead to disorder among Sikhs living in the UK. The potential for harm was therefore significant.

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

151. We do not have evidence to suggest that the Licensee made any financial or other gain from these breaches.

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

152. In its representations during the investigation into its broadcast of the Music Video, the Licensee said it had conducted only a “cursory” assessment of the content prior to broadcast, which it subsequently accepted was unsuitable, once it had been alerted to the complaint by Ofcom. It also explained its approach to compliance had been affected adversely by the very high turnover in its staff responsible for this area.

153. As set out in the *Music video, Bagga and Shera* Breach Decision, on three occasions the Licensee broadcast a music video which condoned and glamorised violent acts up to and including murder, linked to the issue of Sikh secessionism, with the likely effect of encouraging or inciting the commission of crime. This was exacerbated by the insertion of subliminal messages into the Music Video.

154. The Music Video was neither subtle nor difficult to understand. Ofcom considers that even a cursory assessment ought to have identified it as content that was wholly unsuitable for broadcast. Ofcom considered that the Licensee failed to take appropriate steps to prevent the contraventions in that case.

The extent to which the contraventions 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

155. Based on the information available, Ofcom did not consider the breaches to have been deliberate.

156. The Licensee made submissions during the Previous Process that a person or persons responsible for compliance prior to January 2019 actively misled the senior management of the Licensee both as to their ability and qualifications to carry out their role, as to the existence of Ofcom’s concerns and as to whether Ofcom’s concerns had been resolved.³⁰

³⁰ Transcript of oral hearing of 3 October 2019, page 15.

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

157. The breaches set out in the *Music video, Bagga and Shera* Breach Decision occurred in a music video broadcast as a standalone piece of content on three separate occasions within a six-day period. When the Licensee was alerted to the issue by Ofcom, it ceased broadcasting the Music Video.
158. However, the Licensee did not take timely and effective steps to improve its compliance procedures. For a period between the breach occurring and the departure of the compliance officer(s) concerned, the Licensee told us this was because the then compliance officer misled the Licensee's CEO as set out above. However, the Licensee informed Ofcom by 14 September 2018 that it had no compliance officer. On 28 September 2018 the Licensee made representations on the Music Video and reiterated that it had no compliance officer. We were particularly concerned that the Licensee continued to broadcast absent an effective compliance function, while aware that it was already under investigation for a breach of Rule 3.1 and other breaches.
159. We also noted that, having informed us in the Previous Process that the senior management had been misled by those responsible for compliance prior to January 2019, the Licensee made similar submissions in its Representations, that information had been withheld from the senior management by those responsible for compliance prior to July 2020.³¹ The Licensee therefore put to us that the senior management had been misled both by those it placed in charge of compliance prior to July 2018, and by the team which replaced them. Having been misled once, the senior management ought to have known that the Licensee's systems were inadequate to prevent this from happening, and should have taken steps to establish appropriate systems and controls which would prevent it from being misled as to the state of its compliance function in future.
160. Ofcom was concerned that the Licensee's Representations suggested that not all the measures the Licensee had told us it had put in place during the Previous Process appeared to have been maintained, and that it appeared that the presenter involved in the Discussion Programme breach was now responsible for the Licensee's compliance. As noted above, the Licensee informed Ofcom of the measures it has implemented and is going to implement to ensure compliance and employ people with compliance experience. Ofcom will take these assurances into account in considering any future breaches committed by this Licensee.

Any steps taken for remedying the consequences of the contravention

161. Ofcom is not aware of any steps taken by the Licensee to remedy the consequences of the breaches.

Whether the regulated body in breach has a history of contraventions

162. The Licensee was granted its licence on 26 May 2016. As set out above, Ofcom has recorded 33 breaches of licence conditions and Code rules, in 17 separate decisions, by KTV Ltd since 20 November 2017. Ofcom considers that this is a very significant amount of breaches in a relatively short period of time.
163. The breaches of Rules 1.11, 2.1, 2.3, 3.1, 9.4 and 9.5 were repeated. The range of Code rules breached, which cover inciting or encouraging the commission of crime, the protection of under-18s, harm and offence, due impartiality and commercial references, demonstrates the Licensee's poor record on compliance across the board.

³¹ Transcript of oral hearing of 10 December 2020, page [2]

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

164. The Licensee did not cooperate fully with the original investigations which were the subject of this proposed sanction, for example repeatedly failing to respond to requests for information and/or comments by the specified deadlines or at all.
165. At the time of Ofcom reaching our Preliminary View in this sanctions case, we were carrying out a separate process in relation to the Licensee's failure to provide qualifying revenue information for the purposes of this sanction process. The Licensee eventually provided this information, but not before Ofcom found it in breach of Condition 12(1) of its license (paragraph 92) and information subsequently provided in its Representations suggests that the information provided was wrong. It was not until after the oral hearing that Ofcom was provided with a statement of qualifying revenue which appeared to be correct.
166. Ofcom also considered that the Licensee did not cooperate appropriately with the sanctions process generally. Having been delayed by the Licensee's failure to provide information as to its Qualifying Revenue, Ofcom sent a copy of our Preliminary View on sanction to the Licensee on 15 July 2020, giving the Licensee the opportunity to provide written and oral representations. We asked the Licensee to provide its written Representations on 5 August 2020, and an indication of whether it wished to attend an oral hearing on 22 July 2020. Despite multiple reminders, it did not provide its written evidence until the day of its oral hearing. It also requested a late delay to its oral hearing because it had failed to identify representatives to attend it, in spite of having had substantial notice of the date on which it was taking place. Ofcom offered a later oral hearing date on the basis that if the Licensee chose to wait until then, the circumstances of the delay would be taken into account in Ofcom's consideration of the degree of its co-operation with the sanctions case.

Precedent

167. In arriving at its Decision as to the appropriate sanction in this case, Ofcom has had regard to relevant precedents set by previous cases.
168. Ofcom amended its Penalty Guidelines on 3 December 2015 and on 14 September 2017. Both times, this was to secure that penalties had an appropriately deterrent effect. On 14 September 2017 we noted that the update was, in particular, to ensure that we could impose penalties at the appropriate level effectively to deter contraventions of regulatory requirements. Precedents pre-dating these revisions are of less value.
169. 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, for both the Licensee in question and licensees generally, having regard to the seriousness of the infringement. Ofcom has previously imposed a number of financial penalties for breaches of Rule 3.1. The fact that, notwithstanding the imposition of these penalties, similar breaches continue to occur suggests that the level of some of the previous penalties has not acted as a sufficiently strong incentive to compliance. Ofcom has therefore reached the Decision, as we did in the cases of Club TV and Panjab Radio Limited below, that in order to have a proper deterrent effect, any financial penalty imposed would need to be relatively higher than those imposed in previous similar cases, having regard to all the factors set out in the revised Penalty Guidelines of September 2017. However, each case must be considered on its own particular facts. Ofcom has a broad discretion in determining the appropriate penalty in any given case.

Previous cases

170. The cases set out below 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. These cases also include breaches of other rules including Rule 2.3.

171. **23 November 2012, Radio Asian Fever Community Interest Company**³² – 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 3.1, 2.3, 2.4 and 4.1. This case concerned two editions of *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 found that both programmes failed to exercise the proper degree of responsibility required in religious programmes, in breach of Rule 4.1.
172. **5 July 2013, DM Digital Television Ltd**³³ – 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 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, and as part of a religious programme by a religious scholar (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.
173. **15 August 2013, Regis 1 Ltd**³⁴ – 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 "Operation Bluestar" in Amritsar in 1984. The programme contained statements from various contributors that Ofcom considered likely to encourage members of the Sikh community to take violent action against Lieutenant General Brar, other members of the Indian armed forces who had taken part in "Operation Bluestar" in June 1984, or those who supported the military operation.
174. **21 August 2013, Al Ehya Digital Television Ltd**³⁵ – 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 Rules 3.1 and 4.1. This case concerned the broadcast of a live programme in which a presenter answered questions from viewers about a wide range of issues and personal conduct relating to Islam and Islamic teachings. The presenter made various statements which suggested 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.

³² See: [Sanction 81\(12\): Radio Asian Fever](#)

³³ See: [Sanction 76\(12\): DM Digital Television Limited](#)

³⁴ See: [Sanction 89\(13\)](#)

³⁵ See: [Sanction 88\(13\)](#)

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.

175. **6 July 2017, Ariana Television and Radio Network**³⁶ – Ofcom imposed a penalty of £200,000, and a direction to broadcast a statement of findings, for breaching Rules 3.1, 3.2 and 2.3 of the Code. This case concerned the broadcast of a news item which featured a video produced by an individual before he carried out an attack on a train in Germany where he injured five people. This individual referred to himself in the video as acting on behalf of the proscribed terrorist organisation the Islamic State of Iraq and the Levant (“ISIL”). He also referred to his and ISIL’s intentions to carry out acts of extreme violence against members of the public, and his words could be interpreted as being a direct call to action to members of the Muslim community to join ISIL and commit violence, up to and including murder, against members of the police and the army in the West. His comments also included hate speech, and were capable of causing extreme offence which was not justified by the context.
176. **27 February 2018, Karimia Ltd**³⁷ - Ofcom imposed a penalty of £2,000, and a direction to broadcast a statement of findings, for breaching Rules 3.1, 3.2, 3.3 and 2.3. The licensee broadcast a Nasheed (a piece of devotional vocal music) which glorified victories on the battlefield by figures from Islamic history, before going on to suggest that similar violent acts committed against non-Muslim people would bring honour to Islam. The Nasheed also made a number of derogatory references to non-Muslim people. In Ofcom’s view, this content was likely to encourage or incite crime or lead to disorder, and also constituted hate speech.
177. **5 May 2020, Club TV Limited**³⁸ – Ofcom imposed a penalty of £200,000 for breaching rules 3.1, 3.2, 3.3 and 2.3. The licensee broadcast a programme discussing the Islamic punishment for magicians, in which it indicated that it is correct to go ahead and kill the magician, and that they should be killed forthwith. Ofcom considered that audiences would have understood magicians to include users of taweez and practitioners of Ruqya. Ofcom understands that within the UK many South Asian and Sunni Muslim people consider such practices as part of a rich long standing historical Islamic tradition which they believe in, and in some cases practice. In Ofcom’s view, this programme was likely to encourage or incite crime or lead to disorder, and also constituted hate speech.
178. **17 August 2020, Panjab Radio Limited**³⁹ – Ofcom imposed a penalty of £30,000 for breaching rules 3.1 and 2.3. The licensee broadcast a programme which focused on Punjabi poetry and featured live calls from listeners expressing their feelings through poetry. Repeated comments by the presenter amounted to a direct call to action to members of the Sikh community to carry out violent action, up to and including murder, against people he considered to be disrespecting the Sikh faith.
179. In relation to the Music Video, Ofcom considers the Regis 1 Limited case to be factually the most relevant precedent for a breach of Rule 3.1. This is because, unlike most of the other cases

³⁶ See: [Sanction 106 \(17\) Ariana Television and Radio Network](#)

³⁷ See: [Sanction \(109\)17 Karimia Limited](#)

³⁸ See: [Sanction 128 \(19\) Club TV Limited](#)

³⁹ See: [Sanction 135 \(20\) Panjab Radio Ltd](#)

summarised, the potential for harm was not exacerbated by the involvement in the incitement of a figure of authority, such as a religious preacher and/or an expert on scripture.

180. While precedent cases are relevant, they are not determinative. Each case is decided on its own facts, having regard to all the circumstances in each case and the need for deterrence.

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

181. 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.

182. As set out above, the Licensee told us that its qualifying revenue for the last accounting period was [redacted]. KTV submitted written evidence as to its financial position in its oral hearing, [redacted].

183. Ofcom recognises that any proposed penalty must be proportionate taking into account the Licensee's rights under Article 10 of the Convention and the fact that deterrence is the central objective of imposing a penalty.

Ofcom's Decision on the imposition of a statutory sanction for the Music Video

184. Having regard to all the circumstances referred to above, including the need to achieve an appropriate level of deterrence, the particularly serious nature of the Code breaches in this case, the Licensee's conduct during the investigation and all the representations from the Licensee, Ofcom's Decision is that an appropriate and proportionate sanction would be a financial penalty of £20,000 in respect of the Music Video.

Financial penalty for the Discussion Programme

185. As previously noted, the maximum penalty that Ofcom could impose in this case is £250,000 (paragraphs 142 to 145).

186. As set out above, Ofcom's Penalty Guidelines 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". In reaching its Decision on the imposition of a sanction in this case, Ofcom has taken full account of the need to ensure that any penalty acts as a deterrent and has also taken account of the specific factors set out in the Penalty Guidelines.

187. In this case Ofcom believed that a financial penalty was necessary to reflect the serious nature of the Code breaches recorded against the Licensee, and to act as an effective incentive to comply with the Code, for other licensees.

The seriousness and duration of the contravention

188. As set out above, the breaches in relation to The Discussion Programme were very serious. We were particularly concerned that the Licensee had broadcast content amounting to an indirect incitement to violence up to and including murder. The Discussion Programme was broadcast once on 30 March 2019.

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

189. As set out above in relation to the Music Video, Ofcom is mindful of its duties to protect audiences. The Discussion Programme constituted an indirect call to action to carry out violent acts up to and including murder, and in our view was likely to encourage or incite the

commission of crime or lead to disorder among Sikhs living in the UK. The potential for harm was therefore significant.

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

190. We do not have evidence to suggest that the Licensee made any financial or other gain from the breaches.

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

191. In its representations during the investigation into its broadcast of the Discussion Programme, the Licensee said that it had used its most experienced presenter, discussed compliance with the guests before the broadcast and had them sign “pre-show forms”.

192. As set out in the *Panthak Masle* Breach Decision, the Discussion Programme contained a number of statements made by the Five Beloved which amounted to an indirect call to action to carry out violent action up to and including murder, which it was suggested was an appropriate response to Harnek Singh’s criticism of the Sikh faith. The likely effect of these statements was to encourage or incite the commission of crime. In addition, the programme had the potential to cause harm by normalising and legitimising the aims and actions of a proscribed terrorist organisation.

193. In Ofcom’s view, the steps taken by the Licensee to prevent the contravention were clearly inadequate in this case, particularly given that at the time, Ofcom had already made a finding against it of breach of Rule 3.1 for the broadcast of the Music Video.

194. KTV Ltd itself acknowledged that further improvements to its compliance function were necessary to ensure compliance in future.

The extent to which the contraventions 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

195. Based on the information available, Ofcom does not consider the breaches to have been deliberate.

196. The contravention took place when a new compliance function had just been established and was taking steps to address the earlier problems. There is no evidence that the senior management knew that the steps taken would be insufficient to prevent the breach. However, we consider the fact that the new compliance function, supervised by the senior management, did not immediately take more effective steps to secure that there would be no further breaches of Rule 3.1 is a significant concern.

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

197. The Discussion Programme, the subject of the breaches set out in the *Panthak Masle* Breach Decision, was broadcast live and to Ofcom’s knowledge not repeated by the Licensee.

198. The Licensee initially took steps to improve its compliance function. However, Ofcom was concerned that the Licensee’s Representations suggested that not all the measures the Licensee had told us it had put in place during the Previous Process appeared to have been maintained, and that it appeared that the presenter involved in this breach was now responsible for the Licensee’s compliance. As noted above, the Licensee informed Ofcom that it has implemented and it is implementing a number of further measures to ensure compliance and employ new staff members with experience in compliance. In particular, it indicated that it would not attempt to broadcast debate programmes on controversial topics unless it was confident that it

could do so without committing further breaches, and in particular that it would pre-record them unless it knew these were guests it could control effectively. Ofcom will take these assurances into account in considering any future breaches committed by this Licensee.

Any steps taken for remedying the consequences of the contravention

199. Ofcom is not aware of any steps taken by the Licensee to remedy the consequences of the breaches.

Whether the regulated body in breach has a history of contraventions

200. The Licensee was granted its licence on 26 May 2016. As set out above, Ofcom has recorded 33 breaches of licence conditions and Code rules, in 17 separate decisions, by KTV Ltd since 20 November 2017. Ofcom considers that this is a very significant amount of breaches in a relatively short period of time.

201. The breaches of Rules 1.11, 2.1, 2.3, 3.1, 9.4 and 9.5 were repeated. The range of Code rules breached, which cover inciting or encouraging the commission of crime, the protection of under-18s, harm and offence, due impartiality and commercial references, demonstrates the Licensee's poor record on compliance across the board.

202. We took into account that the Discussion Programme was broadcast eight months after the broadcast of the Music Video, and little more than one month after Ofcom published the Music video, *Bagga and Shera* Breach Decision on 25 February 2019. Ofcom was particularly concerned that this second breach took place at a time when the Licensee should have been fully aware of Ofcom's very grave concerns about its compliance function and the seriousness of the breach it had already committed.

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

203. Ofcom considered that the Licensee did not cooperate fully with the original investigations which were the subject of this proposed sanction, for example repeatedly failing to respond to requests for information and/or comments by the specified deadlines. We also considered, for the reasons set out at paragraphs 164 to 166, that it did not cooperate appropriately with the sanction process.

Precedent

204. In arriving at its Decision of the appropriate sanction in this case, Ofcom has had regard to relevant precedents set by previous cases, as set out above.

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

205. As set out in our Penalty Guidelines and above, 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. In considering what financial penalty is proportionate and will have a deterrent effect, we have taken into account the financial data provided by the Licensee on its qualifying revenue for the last accounting period. As set out above, the Licensee told us that its qualifying revenue for the last accounting period was [§<]. KTV submitted written evidence as to its financial position in its oral hearing, [§<].

206. Ofcom recognises that any proposed penalty must be proportionate taking into account the Licensee's rights under Article 10 of the Convention and the fact that deterrence is the central objective of imposing a penalty.

Ofcom's Decision on the imposition of a statutory sanction for the Discussion Programme

207. Having regard to all the circumstances referred to above, including the need to achieve an appropriate level of deterrence, the particularly serious nature of the Code breaches in this

case, the Licensee's conduct during the investigation and all the representations to date from the Licensee, Ofcom's Decision is that an appropriate and proportionate sanction would be a financial penalty of £30,000 in respect of the Discussion Programme.

Ofcom

12 February 2021