

## Sanction: Decision by Ofcom Imposed on Al Ehya Digital Television Limited

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For material broadcast on 3 May 2012<sup>1</sup>.

**Ofcom's Decision  
of Sanction against:**

Al Ehya Digital Television Limited (the "Licensee") in respect of its service **Noor TV** (TLCS-1049).

**For:**

*Paigham-e-Mustafa* found to be in breach of Ofcom's Broadcasting Code (the "Code")<sup>2</sup> in respect of:

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

Rule 4.1: "Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes."

**On:**

3 May 2012 at 11:00.

**Decision:**

To impose a financial penalty (payable to HM Paymaster General) of **£85,000**;

To issue a direction to the Licensee directing it to broadcast a statement of Ofcom's findings in this sanctions case, on a date and in a form to be determined by Ofcom; and

To direct the Licensee not to repeat the Programme.

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<sup>1</sup> The material broadcast on Noor TV and found in breach of the Code is detailed in Broadcast Bulletin 220, dated 17 December 2012 ("the Finding"). See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb220/obb220.pdf>.

<sup>2</sup> The version of the Code which was in force at the time of the broadcast took effect on 28 February 2011.

## **Executive Summary**

1. Noor TV is a digital satellite television channel that broadcasts programmes about Islam in a number of languages, including English, Urdu and Punjabi. It can be received in the United Kingdom, Europe, Africa, the Middle East and Asia. The channel appears in the international section of the Sky electronic programme guide. Its aim, as stated on its website, is to “present a balanced, moderate and true face of Islam to both Muslims and non-Muslim communities across the globe”.
2. In Ofcom’s Finding (“the Finding”) published on 17 December 2012 in Broadcast Bulletin 220<sup>3</sup>, Ofcom found that material broadcast by the Licensee breached Rules 3.1 and 4.1.
3. The Finding related to the programme *Paigham-e-Mustafa*, broadcast on 3 May 2012 at 11:00 (“the Programme”), which was broadcast predominantly in Urdu.
4. The programme was approximately one hour and 30 minutes in duration and featured a presenter, Allama Muhammad Farooq Nizami (“Mr Nizami” or “the presenter”)<sup>4</sup>. Mr Nizami answered questions about a wide range of issues and personal conduct relating to Islam and Islamic teachings. The questions were provided by people who called in live, or sent in queries, from various countries, including the United Kingdom, countries in Western Europe such as Holland and Germany, and Pakistan. The presenter sat alone in the studio and spoke directly to camera.
5. The Finding set out various statements that were in breach of Rule 3.1. In particular, statements were broadcast 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. Ofcom considered that the broadcast of various statements made by Mr Nizami was likely to encourage or incite the commission of crime.
6. In addition, the Finding found the Programme in breach of Rule 4.1 of the Code. Being a programme which dealt with “matters of religion as the central subject, or as a significant part” of the broadcast, it was clearly a “religious programme” as defined in Section Four of the Code (Religion). Ofcom considered that the Licensee did not exercise the proper degree of responsibility with respect to the content of this religious programme.

## **Summary of Ofcom’s Sanctions Decision**

7. Ofcom considered that these Code breaches were sufficiently serious to warrant the imposition of a sanction on the Licensee in this case.
8. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (“the Sanctions Procedures”)<sup>5</sup> and having considered all the evidence and all the representations made to it by the Licensee, Ofcom has decided for the reasons set out in paragraphs 84 to 87 below that it would be appropriate to impose a financial penalty.

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<sup>3</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb220/obb220.pdf>.

<sup>4</sup> In Ofcom’s Finding (see footnote 1), Mr Nizami’s name was spelt “Nazimi”. Ofcom now understands that the correct spelling is “Nizami”.

9. Having regard to the serious nature of the Code breaches, the Licensee's representations and the Ofcom Penalty Guidelines ("the Penalty Guidelines")<sup>6</sup>, Ofcom decided it was appropriate and proportionate in the circumstances of this case to impose a financial penalty of **£85,000** on the Licensee in respect of the breaches of Rules 3.1 and 4.1.
10. In addition, Ofcom decided it should issue a direction to the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom together with a direction not to repeat the programme. For the reasons set out in paragraphs 70 to 79 below, Ofcom considered that it would not be appropriate to revoke Al Ehya's licence.
11. Ofcom is concerned by the very weak compliance record of the Licensee and expects the Licensee to take immediate and effective steps now to redress this position. In addition to the statutory sanctions imposed, Ofcom puts Al Ehya on notice as follows. Ofcom will visit the Licensee at its premises to agree how to improve its understanding of, and compliance with, all applicable legal and regulatory requirements. Ofcom will review the Licensee's compliance arrangements periodically as appropriate and necessary to ensure they are fit for purpose and the Licensee's content will also be monitored for a period of time to ensure it remains compliant with the Code.

## Legal Framework

### **Communications Act 2003**

12. 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)).
13. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These include the objective that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television or radio services (section 319(2)(b)).
14. In performing its duties, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and where relevant, to have regard to a number of other considerations including:
  - the need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)); and
  - the desirability of preventing crime and disorder (Section 3(4)(j)).

## Human Rights Act 1998

15. Under section 6 of the Human Rights Act 1998, Ofcom (as a public authority) has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (“the Convention”). In particular, in the context of this case, Ofcom has taken account of the related rights under Article 9 and Article 10 of the Convention.
16. Article 9 of the Convention provides for the right to freedom of thought, conscience and religion. Article 9 primarily protects the sphere of personal beliefs and religious creeds and acts which are intimately linked to such beliefs or creeds, including acts of worship or devotion, rather than aims of an idealistic nature. 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 interests of public safety, for the protection of...health...or for the protection of the rights and freedoms of others.” Consequently, Article 9 rights are limited to manifestations of beliefs or convictions. However, idealistic aims are not protected.
17. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster’s freedom to impart and the audience’s freedom to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1) of the Convention). The exercise of these freedoms may be subject only to conditions and restrictions which are “prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary” (Article 10(2) of the Convention). Article 10 protects not only the substance of ideas or information expressed, but also the form in which they are conveyed. In some circumstances, this may include a polemical or aggressive tone. On the other hand, some types of expression, such as racist literature and expressions of political support for terrorism, have been regarded as deserving of lesser (or no) protection against restrictions.
18. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

## Ofcom Broadcasting Code

19. Standards set by Ofcom in accordance with section 319 of the Act (as amended) are set out in the Code, which has been drafted in the light of the Human Rights Act 1998 and the Convention.
20. 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.
21. The relevant Code rules in this case are set out in full on the first page of this Decision.

## Remedial action and penalties

22. Under section 325 of the Act, every programme service licensed under the Broadcasting Act 1990 or 1996 (“a Broadcasting Act Licence”) includes conditions for securing that the standards set by Ofcom under section 319 are observed by the

licensee. In the case of a Television Licensable Content Service (“TLCS”) licence, Condition 6 of the licence requires the licensee to ensure that the provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.

23. Ofcom’s powers to take action for the contravention of TLCS licence conditions are set out in sections 236 to 239 of the Act, insofar as relevant to the case.
24. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or statement of findings (or both) or not to repeat a programme on contravention of a licence condition.
25. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence of a maximum of whichever is the greater of £250,000 and 5 per cent of its qualifying revenue on each occasion that a breach of the Licence has occurred (whether as a result of a breach of the Code or another licence condition).
26. 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. Section 238 sets out a general power that applies to all non-incitement cases and is targeted at serious ongoing breaches of the Code by a Licensee. Ofcom is required under section 238 to serve a notice to start revocation proceedings if we are satisfied that there has been a breach of the licence and that the breach, if not remedied, would justify revocation. As the breaches in this case relate to incitement, section 238 does not apply.
27. Section 239 of the Act sets out a separate and more stringent revocation process in relation specifically to the inclusion in a service of programming that is likely to encourage or incite the commission of crime or lead to disorder (as in this case). Ofcom is required to serve a notice under section 239(2) if we are satisfied that:
  - (a) the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime or to lead to disorder (i.e. in breach of Rule 3.1);
  - (b) that in doing so, the licensee has contravened conditions contained by virtue of Chapter 4 of Part 3 of the Act in the licence to provide that service; and
  - (c) that the contravention is such as to justify the revocation of the licence.

Under section 239 there is no requirement that the breach must be ongoing for Ofcom to revoke the licence; it can be a one-off breach of Rule 3.1 as it was in this case.

28. The effect of a notice under section 239(2) is to suspend the licence from the time the notice is served i.e. the licensee must stop broadcasting immediately. A notice under section 239(2) must give the licensee an opportunity to make representations and state that Ofcom may revoke the licence after 21 days. If the licensee makes representations to Ofcom and, having considered those representations, Ofcom is satisfied that it is necessary in the public interest to revoke the licence, Ofcom is required under s239(4) to serve a further notice to revoke the licence, stating the date from which the licence is revoked. This must be no less than 28 days after that notice has been served.

**Background – The Finding**

29. In Ofcom’s Finding (“the Finding”) published on 17 December 2012 in Broadcast Bulletin 220<sup>6</sup>, Ofcom found that material broadcast by the Licensee breached Rules 3.1 and 4.1.
30. The Finding related to the programme *Paigham-e-Mustafa*, broadcast on 3 May 2012 (“the Programme”), which was broadcast predominantly in Urdu.
31. The programme was approximately one hour and 30 minutes in duration and featured a presenter, Allama Muhammad Farooq Nizami (“Mr Nizami” or “the presenter”). Mr Nizami answered questions about a wide range of issues and personal conduct relating to Islam and Islamic teachings. The questions were provided by people who called in live, or sent in queries, from various countries, including the United Kingdom, countries in Western Europe such as Holland and Germany, and Pakistan. The presenter sat alone in the studio and spoke directly to camera.
32. At approximately one hour and 18 minutes into the programme Mr Nizami answered a question from a caller, who was identified as “brother Yasir Hanif” (“Mr Hanif”)<sup>7</sup>, who asked:

*“What is the punishment for the individual who shows disrespect for Prophet Muhammad?”*<sup>8</sup>

33. In response to the question from Mr Hanif, we noted in the Finding the following remarks were made by Mr Nizami:

*“There is no disagreement about this [the punishment]; there is absolutely no doubt about it that the punishment for the person who shows disrespect for the Prophet is death. No one [among the Islamic scholars] disagrees about this. No one disagrees about this. The Koran, hadeeth<sup>9</sup> [orally transmitted quotes of Prophet Muhammad], the actions of the companions of Prophet Muhammad, all testify to this [punishment] and there is no room for doubt in it. Whoever shows disrespect for Prophet Muhammad will be given death penalty. The procedure for carrying out the death penalty is that if there is an Islamic government operating in a country, then the Islamic government will carry out the implementation of this punishment to the one who shows disrespect for the Prophet. However, if there are no Islamic laws [implemented], if Islamic Law is not being abided by, if the Islamic Law is being shredded and is in tatters – and this environment prevails in Pakistan, then [drops the sentence]. You saw a few months ago, a man specifically said that the Islamic law which was especially designed to protect the sanctity of Prophet*

<sup>6</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb220/obb220.pdf>.

<sup>7</sup> In Ofcom’s Finding (see footnote 1), the caller was referred to as Mr Nahif. Ofcom now understands that the caller’s name was Mr Hanif.

<sup>8</sup> This is the spelling of the name of Prophet used in the transcript of the programme. In this Finding Ofcom quotes directly from the transcript, including clarifications inserted and shown by the use of square brackets, and the spelling of the Prophet’s name and others in the transcript, as well as references to the Qur’an may vary from that in common usage.

<sup>9</sup> “Hadith” or “hadeeth” is a the body of traditions in Islam i.e. the sayings of the Prophet Mohammad, his Companions and other prominent early Muslims... being regarded as a source of law only second to that of the Qur’an. *Dictionary of Religions*, John R Hinnells, 1984.

*Muhammad, whom Allah praises and protects, was a black law. By saying so, he slighted the law and committed insolence against Prophet Muhammad. Then what happened? You saw what happened. The man who did it [killed the Governor] is Mumtaz Hussein<sup>10</sup>. He is a Ghazi<sup>11</sup> and we can absolutely not say that his act was a wrong act [because] the Koran and hadeeth [orally transmitted traditions], testify that the punishment of the one who shows disrespect for the Prophet is death.”*

34. Ofcom also noted in the Finding the following statements made by Mr Nizami:

*“However, I will state again that it was the duty of the government [to execute the Governor] but the government was not carrying out this duty. The government was supporting him [the Governor]. The government was providing support to him. Obviously, the consequence had to be that which happened. If this will happen [i.e. if the Prophet will be allegedly slighted] then the slaves of Mustafa [Muhammad] cannot tolerate<sup>12</sup>. A true slave, a true lover [of Prophet Muhammad], if he finds one disrespecting and slighting his Lord [Muhammad] in front of him, and he remains quiet and tolerates it, then surely he loses his faith. We are not saying that this should be done. We say one should obey the law. However, if one is not abiding by the law [of Muhammad’s sanctity], if the one [the Governor] supposed to protect the law [of Muhammad’s sanctity] is tearing it apart, then the same consequences [i.e. murder] will follow. I salute Mumtaz Hussein Ghazi [the assassin of Governor Taseer] in the whole world, and I salute others such as Ghazi Ilm Deen<sup>13</sup>, and other lovers of Mustafa [Muhammad] who sacrificed their lives to protect the sanctity of Prophet Muhammad, and who sacrificed all they had to protect the sanctity of their Lord. We consider it a matter of pride to line our eyes with the dust lying at their [the assassins’] feet and we salute those who protect the sanctity of our Lord [Muhammad] and we pray for ourselves too, O Allah, accept us among those who protect the sanctity of our beloved [Muhammad]. There is no privilege in the world greater than this that the Exalted Allah should select and accept one to [kill to] protect the sanctity of our beloved Lord [Muhammad].”*

35. The presenter concluded his answer to Mr Hanif’s question as follows:

*“No one can be more fortunate than the one who loses his life, wealth and children for the sake of glorifying our beloved Lord whom Allah praises and protects. I say the aim of establishing Noor TV, and the slogan of the founder of Noor TV, is the protection of the sanctity of Prophet Muhammad. When we say it, and it is the particular slogan of the honourable Pir Sahib<sup>14</sup>: Elevate the lowly to heights through the power of love illuminate the world through the love of Muhammad. Who does it mean? It means in the whole world, there should be slaves of Mustafa [Muhammad] everywhere, and disrespectful people should be eliminated. One has to choose one’s own method. Our way is the peaceful way but when someone crosses the limits, faith-based emotions are*

<sup>10</sup> Here Mr Nizami referred to the case of Pakistani bodyguard Mumtaz Hussein (more commonly referred to in the media as Malik Mumtaz Hussain Qadri) who shot dead the Punjab Governor Salmaan Taseer in early 2011. Salmaan Taseer had been a vocal critic of Pakistan’s blasphemy law. This law punishes derogatory remarks against notable figures in Islam and carries a potential death sentence for anyone who insults or is judged to blaspheme against the Prophet .

<sup>11</sup> Ghazi is an honorific title for someone who has killed in the name of Islam.

<sup>12</sup> Ofcom understood the foregoing passage to mean that a true believer of Islam would not be able to tolerate hearing the Prophet being insulted.

<sup>13</sup> This is a reference to an earlier assassin who, it is reported, killed in the name of Islam.

<sup>14</sup> Ofcom understands this to be a reference to the Noor TV’s founder, Shaykh Allau-ud-din Siddiqui.

*instigated... The mission of our life is to protect the sanctity of our beloved Lord. May Allah accept us wherever there is a need [to kill a blasphemer]. We are ready and should be ready at all times [to kill a blasphemer].*

36. In the Finding, Ofcom stated that in its opinion a number of the remarks amounted to direct calls to action. In particular, we interpreted some of Mr Nizami's comments to be a generic call to all Muslims (and not just members of the Muslim community within Pakistan)<sup>15</sup> encouraging or inciting them to criminal action or disorder by unambiguously stating that the appropriate penalty for showing disrespect to the Prophet Mohammed was the death penalty. He stated that they (all Muslims) had a duty to kill anyone who criticises or insults the Prophet Mohammed where the government had failed to take action, and praised Mumtaz Hussein for taking the law into his own hands and murdering Salmaan Taseer. We noted that such actions were couched as being justified, and even required, as a duty on all Muslims, according to the tenets of Islamic law and theology. We believe 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. In light of these and Ofcom's other considerations as set out in the Finding, Ofcom found that the material broadcast was in breach of Rule 3.1 of the Code.
37. Being a programme which dealt with "matters of religion as the central subject, or as a significant part" of the broadcasts, it was clearly a "religious programme" as defined in Section Four of the Code (Religion). Ofcom considered that the Licensee did not exercise the proper degree of responsibility with respect to the content of this religious programme and therefore also found the Licensee in breach of Rule 4.1 of the Code.

#### **Ofcom's decision to impose a statutory sanction**

38. As set out in paragraph 1.10 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<sup>16</sup> or recklessly breached a relevant requirement.
39. In this case, Ofcom issued a preliminary view ("Preliminary View") that Al Ehya had seriously breached the Code and that Ofcom was minded to: impose a statutory sanction in the form of a substantial financial penalty; direct Al Ehya to broadcast a statement of Ofcom's findings in this sanctions case, on a date and in a form to be determined by Ofcom, and; to direct the Licensee not to repeat the programme. Ofcom sent a copy of the Preliminary View to Al Ehya on 24 May 2013 at the same time giving Al Ehya the opportunity to provide written and oral representations ("the Representations") on the Preliminary View. Al Ehya provided its written representations to Ofcom in two parts, on 3 June and 17 June 2013 and attended a sanctions hearing at Ofcom's Riverside House offices on 16 July 2013, at which it provided oral representations. The Representations are summarised in paragraphs 41 to 54 below.
40. In reaching its final Decision on whether to impose a statutory sanction and if so, what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took

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<sup>15</sup> For example: "... in the whole world, there should be slaves of Mustafa [Muhammad] everywhere, and disrespectful people should be eliminated. One has to choose one's own method.... We are ready and we should be ready at all times [to kill a blasphemer]."

<sup>16</sup> A repeated breach of a relevant requirement, would include for example: a repeat of the breach of the same requirement as had already been recorded; repetition of the same or similar conduct as that which earlier contravened a requirement; or multiple breaches of other requirements.

account of all the evidence and representations made by Al Ehya, including the Representations on the Preliminary View, and has had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines in reaching its Decision in this sanctions case (see further below).

### Licensee's representations

41. Al Ehya explained that: "Noor TV represents a moderate vision of Islam called Sufism, which is in essence spiritualism within Islam. So by definition our primary aim is to promote the highest level of tolerance, peace, love and harmony"<sup>17</sup>.
42. The Licensee did not accept the breaches of Rules 3.1 and 4.1 of the Code.
43. While Al Ehya considered that the translation of the Programme from Urdu to English that Ofcom had commissioned was "quite satisfactory", it disagreed with the interpretative text which the translator had added in square brackets, saying this was "totally misunderstood and misleading". The Licensee conceded that it ought to have raised this point during Ofcom's investigation of the breaches when Ofcom asked the Licensee to revert to it with specific comments if any parts of the transcript appeared to be incomplete or inaccurate. Instead, the Licensee had confirmed at that stage that it had "no problem with [Ofcom's] transcript". The interpretative text which the Licensee disagreed with was included in the following passages:
  - *"The mission of our life is to protect the sanctity of our beloved Lord. May Allah accept us wherever there is a need [to kill a blasphemer]. We are ready and should be ready at all times [to kill a blasphemer]"*.
  - *"The man who did it [killed the Governor] is Mumtaz Hussein<sup>18</sup>. He is a Ghazi<sup>19</sup> and we can absolutely not say that his act was a wrong act [because] the Koran and hadeeth [orally transmitted traditions], testify that the punishment of the one who shows disrespect for the Prophet is death"*.
  - *"I salute Mumtaz Hussein Ghazi [the assassin of Governor Taseer]"*.
  - *"We consider it a matter of pride to line our eyes with the dust lying at their [the assassins'] feet"*.
  - *"There is no privilege in the world greater than this that the Exalted Allah should select and accept one to [kill to] protect the sanctity of our beloved Lord [Muhammad]."*
44. The Licensee stated that the presenter did not direct viewers to commit crime or to commit murder. The Licensee pointed to the presenter's statement ("*We are not saying that this should be done. We say one should obey the law*") arguing that it was clear

<sup>17</sup> "Sufis are Muslims who seek close direct and personal experience of God, and who are often, therefore described as mystics". *Oxford Concise Dictionary of World Religions*, John Bowker, 2000.

<sup>18</sup> Here Mr Nizami referred to the case of Pakistani bodyguard Mumtaz Hussein (more commonly referred to in the media as Malik Mumtaz Hussain Qadri) who shot dead the Punjab Governor Salmaan Taseer in early 2011. Salmaan Taseer had been a vocal critic of Pakistan's blasphemy law. This law punishes derogatory remarks against notable figures in Islam and carries a potential death sentence for anyone who insults or is judged to blaspheme against the Prophet .

<sup>19</sup> Ghazi is an honorific title for someone who has killed in the name of Islam.

that the presenter was not directing viewers to kill someone who had shown disrespect to the Prophet Mohammed and in fact was stating the opposite, that punishment of such people should be left to the State.

45. The Licensee considered that Ofcom's translator had assumed that the presenter was coming from an Islamic fundamentalist approach rather than looking at it from a Sufi perspective, which was the presenter's perspective of Islam. He had attributed a radical Islamic rhetoric to what the presenter had said which was misleading and pointed towards a direct call for action for Muslims to kill anyone who shows disrespect for the Prophet Mohammed. Al Ehya strongly disputed this saying that there was no indication that this was what was meant.
46. The Licensee also explained that the channel as a whole follows Sufism and aimed to promote peace and understanding. A Sufi audience would naturally understand the comments in that context, not a context that should be misunderstood as encouraging or condoning a violent act like assassination. Rather than inciting viewers to commit murder, the presenter was asking them "to take responsibility to become involved where they see disrespect to the Prophet".
47. The Licensee argued that while the presenter justified the assassination of the Punjab Governor Salmaan Taseer in early 2011 by Mumtaz Hussein, he did not encourage or incite the commission of crime or make statements which would lead to disorder; indeed only viewers who are aware of the political background of Mumtaz Hussein's actions would have been able to understand the presenter's statements. The Licensee explained that the statement "*the punishment for the person who shows disrespect for the Prophet is death*", is a statement of fact, because under Pakistani law, derogatory remarks against the Prophet Muhammed carry a potential death penalty.
48. Al Ehya dismissed the presenter on 18 May 2012 for promoting personal political opinion and supporting a violent act during the programme. The Licensee explained that it had planned to broadcast a clarification in late June/early July 2012, but due to a miscommunication (whereby the email containing instructions about the broadcast of the clarification was not received) it was not transmitted until December 2012.<sup>20</sup>
49. With regards to Rule 4.1, the Licensee said that in the electronic programme guide the programme had been listed as a "Community Chat Programme" which "offers exposition of teaching from the Quran, Hadith and other books and teachings". It argued that it had taken responsibility to ensure that the programme was compliant with the Code, but that the programme was "not seen as a risk" and after five years of presenting on Noor TV the presenter's comments were "totally unforeseen and could not be anticipated". The Licensee explained that during the live broadcast a programme controller and an editor of the live programme (who were both aware of the need to ensure compliance with the Code), were in the studio with the presenter. The editor left the studio "because of a breakdown of equipment in the adjoining room", and he only returned when the presenter was concluding his comments about how Muslims should react to those who show disrespect for the Prophet Mohammed. The programme controller who remained in the studio "felt uneasy" about the length of the presenter's response to the caller's question and noted that he had referred to the death of a person. However, at the time of the broadcast, two people were required to make the decision to cease a broadcast. When the editor returned to the studio he and the programme controller "could not make a call on whether to stop the programme or not", so they allowed the programme

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<sup>20</sup> Ofcom was not provided with a recording of the clarification.

to continue. The Licensee stated that it “could not have done anything to change the situation”.

50. Al Ehya explained that immediately before the programme was broadcast the following disclaimer appeared on screen:

*“The views expressed in this programme do not necessarily reflect the views of Noor TV nor does Noor TV necessarily endorse the views and opinions expressed within. Noor TV does not accept responsibility for any loss or damage, however caused (including through negligence), which one may directly or indirectly suffer arising out of use or reliance on information contained in this programme”.*

51. The Licensee stated that the “disclaimer was there in order to separate themselves from the programme”. However, the Licensee’s new compliance consultant accepted that a broadcaster has a responsibility to ensure that all its programmes comply with the Code and that it cannot disclaim this responsibility or contract it out to a third party.

### Compliance

52. The Licensee explained that at the time the breaches occurred, there was a manual of Ofcom regulations (which was also translated into Urdu), that all staff members were taken through. One of the directors of Al Ehya was responsible for ensuring that presenters and contributors complied with the Code. In the early part of 2012 (i.e. before the broadcast of this programme), Al Ehya had employed a compliance consultant, but found that his knowledge of the television industry was not what Noor TV required and he spoke mainly in English. The Licensee therefore dispensed with his services.

53. The Licensee explained that it had recently, employed a new compliance consultant and the following processes and procedures had been introduced:

- The new compliance team provides compliance training for all employees involved in programming.
- Ofcom’s codes and rules have been translated into three languages.
- The directors of Al Ehya are involved in the planning and conduct of live programming.
- All live programmes are broadcast using a two minute delay (since 8 April 2013).
- Both the programme controller and playout engineer have the authority to cease the broadcast of a programme (since 8 April 2013).
- The creation of a five minute filler which can be transmitted when transmission of a programme which causes concern is ceased or interrupted (since 8 April 2013).
- All programme makers produce a four week schedule that must be signed off before going to air.
- All volunteer community programme makers have been given training on the Code.
- During certain periods, specific training is provided (e.g. election periods).

### The level of penalty

54. The Licensee asked Ofcom to take into account when considering the level of any financial penalty that Noor TV is largely funded by viewer donations.

### Seriousness of the breaches

55. Having taken account of the Licensee's Representations Ofcom remained of the view that the breaches were serious and warranted consideration for the imposition of a statutory sanction.
56. Section 319(2)(b) of the Act requires that material likely to encourage or incite the commission of crime or to lead to disorder is not included in television and radio services (section 319(2)(b)). This requirement is reflected in Rule 3.1 of the Code. Any breach of this rule must be regarded as potentially serious because it necessarily involves the broadcast of material judged by Ofcom to be likely to encourage or incite the commission of crime or lead to disorder, and so potentially cause serious harm. Indeed, Ofcom is given specific powers under section 239 if we are satisfied that a breach of Rule 3.1 is such as to justify revocation.
57. In considering the seriousness of the breaches, and whether the breach of Rule 3.1 was such as to justify revocation of the licence, Ofcom took into account the following considerations.
58. Ofcom noted the Licensee's Representations regarding Ofcom's translation of the programme and accepted that the words in square brackets had been included by the translator to indicate what he considered the presenter's statements had inferred. In consideration of the seriousness of the breaches Ofcom therefore focused on the words actually spoken by the presenter and the context within which the comments found in breach of Rule 3.1 were made. Ofcom compared its own translation with the translation provided by the Licensee before the oral hearing. Other than the wording in square brackets in the Ofcom translation there were no material differences between the two translations.
59. Ofcom noted that the presenter stopped short of using the words that had been inferred in its translation. Ofcom considered, however, that the effect of the presenter's comments was the same. For example Ofcom noted the following comments in particular:
  - the presenter praised Mumtaz Hussein for taking the law into his own hands and murdering Salmaan Taseer: *"The man who did it is Mumtaz Hussein. He is a Ghazi and we can absolutely not say that his act was a wrong act the Koran and hadeeth testify that the punishment of the one who shows disrespect for the Prophet is death"*;
  - *"I salute Mumtaz Hussein Ghazi"*;
  - *"[D]isrespectful people should be eliminated.... We are ready and we should be ready at all times"*.
60. It was evident from these remarks that the presenter expressly condoned the actions of Mumtaz Hussain, *saluting* what he had done and referring to him by the honorific title *Ghazi*. He was also clear that a true devotee cannot remain silent and tolerate disrespect of the Prophet Mohammed if the state itself doesn't take action: *"..if someone is not protecting the law, instead the ones whom suppose to protect the law themselves were to tear the law apart; it would result in consequences as such"*. The overall effect of the various remarks, therefore, was that in such circumstances *Muslims* had a duty to take action against anyone who criticises or insults the Prophet Mohammed.

61. The only attempts Mr Nizami made to lessen the potential impact of his remarks were in the two statements *“We are not saying this should be done. We say one should obey the law”* and *“Our way is the peaceful way”*. However, the possible mitigating effect of this first comment was immediately undermined by a subsequent statement (*“However, if one is not abiding by the law, if the one supposed to protect the law is tearing it apart, then the same consequences will follow”*), which Ofcom considered inferred that it was acceptable for Muslims to take action against people who had insulted the Prophet if national laws did not prescribe death as the appropriate punishment. The possible mitigating effect of the second comment was undermined by being set in the following context:

*“What does it mean? It means that in the whole world, there should be slaves of Mustafa everywhere, and disrespectful people should be eliminated. One has to choose one’s own method. Our way is the peaceful way but when someone crosses the limits, faith-based emotions are instigated. There are examples in the lives of the companions of Prophet Muhammad. When Prophet Muhammad was in this world and he existed in his apparent life, Honourable Omar the Great, may Allah be pleased with him, killed a man who had been disrespectful and insolent to Prophet Muhammed... And what was the verdict of our beloved Lord about Omar the Great, what was Allah’s and the Koran’s verdict? It is all there in the Koran. The mission of our life is to protect the sanctity of our beloved Lord. May Allah accept us wherever there is a need. We are ready and we should be ready at all times”.*

62. Ofcom considered that this statement in its entirety encouraged viewers to take action against those who show disrespect to the Prophet by stating that the Qur’an condones death as a punishment for the person who shows disrespect for the Prophet Mohammed: *“There is no disagreement about this; there is absolutely no doubt about it that the punishment for the person who shows disrespect for the Prophet is death. No one disagrees about this.”*
63. Ofcom noted the Licensee’s argument that Noor TV’s Sufi audience would have understood and interpreted the presenter’s comments in a moderate context and that only viewers who are aware of the political background of Mumtaz Hussein’s actions are able to understand the presenter’s statements. However, Ofcom also noted that the channel has a worldwide audience, being received in Europe, Africa, the Middle East and Asia, as well as the UK, and that the Licensee was unable to vouch for all of its audience being Sufi Muslims. Irrespective of the stated Sufi perspective of the presenter and the channel, there was a clear potential for any non-Sufi Muslim viewers to interpret the presenter’s statements from a non-Sufi perspective as encouraging Muslims to kill those who display disrespect for the Prophet Mohammed. It was also possible that any viewers who were not aware of the political background of Mumtaz Hussein’s actions could have similarly misunderstood the presenter’s comments.
64. Ofcom considered the breach of Rule 3.1 in this case was particularly serious given the wide audience reach of the channel and the fact that the statements were delivered to a Muslim audience, in a religious programme, by a presenter who was held out to be an expert on Islamic teaching; a person who holds a position of authority and respect within the Muslim community, speaking direct to camera. Taken together, these factors would have given the comments extra weight. The seriousness of the breaches was further compounded by the fact that the Programme made no condemnation of any killing or violent action by individuals in response to a perceived insult to, or perceived blasphemy against, the Prophet Mohammed.
65. The potential for these comments to be acted upon is demonstrated by evidence of a number of very serious threats and attacks having been made in Western countries

against individuals or entities perceived as insulting or making pejorative remarks about the Prophet Mohammed. Dutch filmmaker Theo Van Gogh was murdered by Muhammad Bouyeri in 2004 following the condemnation of his film "Submission" by Islamic clerics, and in the same year Danish cartoonists received death threats following the publication of illustrations which included depictions of the Prophet Mohammed. In November 2011, there was a fire bomb attack on a magazine in Paris for publishing a satirical cartoon of the Prophet Mohammed.

66. Further, Ofcom took account of the fact that the Licensee said it broadcast "a statement of the station's clarification [sic]" on 10 and 11 December 2012<sup>21</sup>. Ofcom noted that the Licensee only broadcast its clarification of the presenter's remarks for the first time on 10 December 2012, which was almost six months after the date (12 June 2012) that Ofcom wrote to the Licensee informing it of the investigation under Rule 3.1, and six weeks after the date (24 October 2012) when Ofcom sent Al Ehya its Preliminary View in this case setting out provisional breaches of Rules 3.1 and 4.1. Ofcom noted the Licensee's explanation that the clarification was intended for broadcast in late June/early July 2012, but due to a miscommunication (whereby the email containing instructions about the broadcast of the clarification was not received), the clarification was not transmitted until December 2012. Ofcom took the fact that nobody at the channel noticed that the clarification had not been broadcast for approximately five months as an indication of the Licensee's failure properly to appreciate the gravity of the comments that were broadcast and its failure to understand its compliance responsibilities under the Code. The Licensee has not at any point broadcast any form of apology for, or condemnation of Mr Nizami's remarks, and neither on air nor in correspondence with Ofcom has the Licensee expressed its unequivocal regret that these comments were broadcast. The Licensee regretted only in its submissions that the presenter's comments "may have been misinterpreted" and that he expressed his own political views during the programme. Taking all these factors into account, Ofcom was concerned that the Licensee has still not recognised the gravity of the statements made by Mr Nizami.
67. The breach of Rule 4.1 further compounded the seriousness of this case and demonstrated that at the time of the broadcast the Licensee had failed to exercise the proper degree of responsibility with respect to the content of this religious programme. Ofcom was concerned that prior to the broadcast the programme was "not seen as a risk" and after five years of presenting on Noor TV the presenter's comments were "totally unforeseen and could not be anticipated" and that during the broadcast, the programme controller and editor of the live programme did not deem it necessary to intervene.
68. However, we did note that the remarks being considered for sanction were contained in one segment of one programme (not repeated in several programmes and/or over a period of time). We also noted that the remarks were not broadcast deliberately and that the Licensee has not previously been found in breach of Rules 3.1 or 4.1.

### **Imposition of sanctions**

69. As mentioned in paragraphs 22 to 28 above, Ofcom's powers to take action are set out in sections 236 to 239 of the Act insofar as relevant to the present case.
70. In view of the factors set out above, Ofcom considered that the breaches were sufficiently serious to warrant further regulatory action. The following paragraphs set out the enforcement action we considered and the sanctions imposed.

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<sup>21</sup> The Licensee did not provide to Ofcom a recording of this statement.

## Consideration of the imposition of sanctions other than a financial penalty

### Revocation of the Licence

71. Given the seriousness of this case, Ofcom first considered whether the breach was such as to justify revocation of the licence under section 239 of the Act.
72. This is a matter of judgment for Ofcom. Revocation of a licence is the ultimate enforcement action available to Ofcom. Therefore, in considering whether it is appropriate to serve a notice under section 239(2), which has the effect of suspending the licence (and so depriving a licensee of its right to broadcast until Ofcom reaches a final decision on revocation), Ofcom must take account of all the relevant considerations. These include in this case:
- the words used in the content broadcast and the circumstances in which they were spoken (see paragraphs 58 to 65 above);
  - previous licence breaches by Al Ehya, and especially any previous occasions when material likely to incite or encourage crime has been broadcast (see paragraphs 96 to 99 below);
  - the explanation and response provided by Al Ehya to Ofcom in response to this incident<sup>22</sup>;
  - all the submissions put forward by the Licensee both in correspondence with Ofcom and in the Representations (see paragraphs 41 to 54 above); and
  - the likelihood of further breaches (see paragraph 66 above).
73. In summary, Ofcom must ensure that any decision that the breach is such as to merit revocation of the licence is proportionate. A relevant factor for Ofcom to consider in this regard is whether any sanction short of revocation could ensure that Al Ehya would comply with the terms of its licence.
74. Ofcom must also have regard to the balance to be given to competing rights under the Convention. In particular, the right to freedom of thought, conscience and religion under Article 9 and the right to freedom of expression under Article 10 (see paragraphs 15 to 18 above), against the competing rights and the protections necessary in a democratic society for the protection of citizens, including Ofcom's statutory duty to ensure material likely to encourage crime or disorder is not included in television services.
75. As regards the right to freedom of thought and religion, as noted above, Article 9 primarily protects the sphere of personal beliefs and religious creeds and acts which are intimately linked to such beliefs or creeds. This Article specifically underlines 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 interests of public safety...or for the protection of the rights and freedoms of others." Ofcom notes that the comments of Mr Nizami found in breach of the Code related to religious convictions but also included encouragements for Muslims to take action against anyone who they perceived to have criticised or insulted the Prophet Mohammed, as well as praise for the murder of Salmaan Taseer by Mumtaz Hussein. As noted above, the manifestation of any religious beliefs and convictions under Article 9 is a qualified

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<sup>22</sup> Reported in the Finding – see footnote 1.

right rather than an absolute one. In particular, Ofcom is under an express statutory obligation to ensure that material likely to encourage crime is not broadcast. Accordingly, any such right as may exist in relation to Mr Nizami's remarks is limited by the requirements of Rule 3.1 of the Code.

76. Concerning Article 10 of the Convention, as pointed out above, the rights of the broadcaster to impart information and ideas and of the audience to receive them are also subject to restrictions "prescribed in law...in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime...". Ofcom's statutory obligation is to set standards to secure that material likely to encourage crime is not broadcast. Article 10 protects not only the substance of ideas or information expressed, but also the form in which they are conveyed. In some circumstances, this may include a polemical or aggressive tone. On the other hand, some types of expression, such as expressions of political support for terrorism, have been regarded by the courts as deserving of lesser (or no) protection against restrictions. On the facts of this case, Ofcom must therefore carefully balance the competing rights of the broadcaster and audience to freedom of expression against the duty to protect the public from material that is likely to encourage crime or lead to disorder.
77. Ofcom noted that in his remarks Mr Nizami was not being merely polemical or aggressive; he supported acts of violence and encouraged similar behaviour. The broadcasting of these remarks therefore in Ofcom's view deserves a lower level of protection under Article 10 than for example the inclusion in a programme of comments about a controversial political issue within the context of a debate presenting differing views on that issue.
78. Further, Ofcom considered that the fact that nobody at the channel noticed that "a statement of the station's clarification [sic]" had not been broadcast for approximately five months as an indication of the Licensee's failure to properly appreciate the gravity of the comments that were broadcast and its failure to understand its compliance responsibilities under the Code. The Licensee has not at any point broadcast any form of apology for, or condemnation of Mr Nizami's remarks, and neither on air nor in correspondence with Ofcom has the Licensee expressed its unequivocal regret that these comments were broadcast. The Licensee regretted only in its submissions that the presenter's comments "may have been misinterpreted" and that he expressed his own political views during the programme. Taking all these factors into account, Ofcom was concerned that the Licensee has still not recognised the gravity of the statements made by Mr Nizami.
79. On the other hand, as noted above, Mr Nizami's remarks were contained in one segment of one programme (not repeated in several programmes and/or over a period of time); they were not broadcast deliberately; and the Licensee has not previously been found in breach of Rule 3.1. We also noted that the comments were broadcast on a channel providing a variety of programming to the Islamic community which would be adversely affected by them being deprived of this service.
80. On balance, therefore, and taking account of all the relevant factors, Ofcom considered that the rights of the broadcaster and audience to freedom of expression (i.e. freedom to impart and to receive information) would be disproportionately affected by a decision that the breach of Rule 3.1 justified revocation of the Licence under section 239. Although this contravention of the Code was particularly serious for the reasons discussed above Ofcom concluded that a combination of other sanctions at its disposal would be sufficient on this occasion to act as a deterrent against future breaches. Ofcom's consideration of those other sanctions is set out in paragraphs 81 to 88 below.

Correction and/or statement of Ofcom's findings

81. 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. This may include a direction not to repeat the programme.
82. Ofcom considered that directing the Licensee to broadcast a statement of Ofcom's findings (as provided by Ofcom and at times stipulated by Ofcom) is an appropriate way to remedy the breaches. The broadcaster has transmitted material likely to encourage or incite crime or lead to disorder, which could have grave consequences. It is therefore appropriate for the broadcaster to transmit a statement of Ofcom's findings in this case in order to address, to some extent, the risk of crime and disorder caused by transmission of the programme; to bring the breaches, and Ofcom's concern and robust action in response to the breaches, to the attention of Noor TV's viewers; and to demonstrate that the complaint to Ofcom (which drew Ofcom's attention to the issue of Al Ehya broadcasting material encouraging crime) has been addressed.
83. Ofcom considered that, on its own, a direction to broadcast a statement of Ofcom's findings in this case was not a sufficient statutory sanction, given the seriousness of the breaches.
84. Ofcom considered that a direction to broadcast a statement of Ofcom's findings in combination with a direction not to repeat the Programme and a financial penalty should, together, provide an appropriate remedy, while also reflecting the seriousness of the breaches and acting as an effective deterrent to discourage the Licensee from repeating the breach and other licensees from contravening the Code in a similar manner.

**Imposition of a financial penalty**

85. Under section 237 of the Act, the maximum level of financial penalty that can be imposed on the holder of a TLCS licence in respect of each breach of a TLCS Licence is the greater of £250,000 or five per cent of the licensee's qualifying revenue relating to its last complete accounting period falling within the period for which this licence has been in force.
86. Qualifying revenue is calculated by adding together revenue gained from advertising, sponsorship and subscription. It does not include revenue gained from interactive services, such as premium rate phone calls.
87. In the calendar year 2012, five per cent of Al Ehya's qualifying revenue for Noor TV equated to less than £250,000. In accordance with section 237 of the Act, Ofcom may therefore impose a financial penalty up to £250,000.
88. The Penalty Guidelines state 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. In reaching its Decision, Ofcom took full account of the need to ensure that any penalty acts as a deterrent and took account of the specific factors set out at paragraph 4 of the Penalty Guidelines<sup>23</sup>."

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<sup>23</sup> Ofcom's Penalty Guidelines published 13 June 2011.  
<http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

**Factors taken into account in determining the amount of a penalty**

89. In considering the appropriate and proportionate amount of a financial penalty for the breach, Ofcom took account of relevant factors in accordance with the Penalty Guidelines, as set out below:

**Deterrence**

90. The Penalty Guidelines make clear that the “central objective of imposing a penalty is deterrence” and that “the amount of penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement”.<sup>24</sup> Ofcom regards any breach of Rule 3.1 as a very serious matter. For the reasons explained in paragraphs 55 to 68, Ofcom considered that the breach of Rule 3.1 as well as the breach of Rule 4.1 in this case were serious. Ofcom therefore considered that any financial penalty had to be sufficient to reflect Ofcom’s concerns and to ensure that the Licensee understood these concerns and the very serious nature of the Code breaches recorded against it. Ofcom also considered that such a penalty was necessary to ensure the Licensee acts with immediate effect to make necessary improvements to its compliance processes to ensure compliance with the Code in future. Such a penalty would also act as a powerful and clear deterrent to other licensees and send a very clear message to them underlining the need to understand and respect the requirement at all times not to broadcast material likely to encourage or incite the commission of crime or lead to disorder.

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

91. As the Finding made clear, in addition to the example of Mumtaz Hussein, who murdered Salmaan Taseer, we are conscious of a number of examples of violence against people in Western countries who have allegedly insulted the Prophet Mohammed or Islam. Dutch filmmaker Theo Van Gogh was murdered by Muhammad Bouyeri in 2004 following the condemnation of his film “Submission” by Islamic clerics, and in the same year Danish cartoonists received death threats following the publication of illustrations which included depictions of the Prophet. In November 2011 there was a fire bomb attack on a magazine in Paris for publishing a satirical cartoon of the Prophet Mohammed. In considering the degree of potential harm caused by the contraventions Ofcom also noted the audience reach of the channel, which can be received in the United Kingdom, Europe, Africa, the Middle East and Asia.
92. Ofcom considered that some of Mr Nizami’s comments encouraged all Muslims (and not just members of the Muslim community within Pakistan)<sup>25</sup> to criminal action or disorder by stating that the appropriate penalty for showing disrespect to the Prophet Mohammed was the death penalty and making remarks which could have interpreted by the audience as suggesting that it was appropriate for Muslims to take such action where the government had failed to do so. He also praised Mumtaz Hussein for taking the law into his own hands and killing Salmaan Taseer. We noted that similar actions were couched as being justified by reference to the Qur’an and other tenets of Islamic law and theology.

<sup>24</sup> Paragraph 3 of the Penalty Guidelines – see footnote 23.

<sup>25</sup> See for example: “... *in the whole world, there should be slaves of Mustafa [Muhammad] everywhere, and disrespectful people should be eliminated. One has to choose one’s own method.... We are ready and we should be ready at all times.*”

93. Ofcom noted the Licensee's argument that Noor TV's Sufi audience would have understood and interpreted the presenter's comments in a moderate context and that only viewers who are aware of the political background of Mumtaz Hussein's actions are able to understand the presenter's statements. However, Ofcom also noted that the channel has a worldwide audience, being received in Europe, Africa, the Middle East and Asia, as well as the UK and that the Licensee was unable to vouch for all of its audience being Sufi Muslims. Irrespective of the stated Sufi perspective of the presenter and the channel, there was a clear potential for any non-Sufi Muslim viewers to interpret the presenter's statements from a non-Sufi perspective as encouraging Muslims to kill those who disrespect the Prophet Mohammed. It was also possible that any viewers who were not aware of the political background of Mumtaz Hussein's actions could have similarly misunderstood the presenter's comments.
94. Ofcom took all of these factors into account in considering the potential for harm to be caused by the contravention and the extent of any potential harm. Ofcom judged that the remarks could potentially lead to considerable harm.

The duration of the contraventions

95. The recorded breaches were in relation to material broadcast on 3 May 2012. Ofcom is unaware of the material having been broadcast again.

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

96. We had no evidence to suggest that the Licensee made any financial gain from this breach of the Code.

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

97. The Licensee has been found in contravention of the Code. This contravention was so serious that it led to Ofcom imposing a statutory sanction. See below.
98. Sanction against Al Ehya Digital Television Limited, Noor TV, 13 November 2010<sup>26</sup>: Sanction of £75,000 and a direction to broadcast a statement of Ofcom's findings for breaches of Rule 2.1, Rule 2.2, Rule 4.6, Rule 10.3, Rule 10.15 of the September 2010 edition of the Code<sup>27</sup>. This programme mainly consisted of a presenter appealing for viewers to donate money to the channel by phone in return for prayers or the receipt of a "special gift" of earth from the tomb of Prophet Mohammed. The appeals for money focused heavily on religious beliefs and were made by a spiritual guide. In Ofcom's view this programme sought to improperly exploit the susceptibilities of the audience.
99. Additionally, the broadcaster failed to separately account for the donations it received and was unable to demonstrate whether the audience had been told how much had been raised. Further, the broadcaster misled viewers by appealing for money to be donated to Noor TV via a third party website for a charity called the Mohiuddin Trust.

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<sup>26</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Ehya.pdf>

<sup>27</sup> See: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code-september-2010/>

These funds were not received by Noor TV. The broadcaster also promoted a DVD during programming.

100. This programme was found in breach of Rules 2.1 (generally accepted standards), 2.2 (portrayal of factual matters must not materially mislead), 4.6 (religious programmes must not improperly exploit the susceptibilities of the audience), 10.3 (products and services must not be promoted in programmes) and 10.15 (broadcasters may appeal for funds, the audience must be told of the purpose and amount of the appeal and the funds must be separately accounted for).

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

101. The presenter was dismissed from the channel on 18 May 2013, eight working days after Ofcom initially contacted the Licensee about the Programme. The Licensee explained that the presenter was dismissed for expressing a political view during the programme.
102. The Licensee also said it broadcast “a statement of the station’s clarification [sic]” on 10 and 11 December 2012. Ofcom noted that the Licensee stated that it had only broadcast its clarification of the presenter’s remarks for the first time on 10 December 2012, which was almost six months after the date (12 June 2012) that Ofcom wrote to the Licensee informing it of the investigation under Rule 3.1, and six weeks after the date (24 October 2012) when Ofcom sent Al Ehya its Preliminary View in this case setting out provisional breaches of Rules 3.1 and 4.1. Ofcom noted the Licensee’s explanation that the clarification was intended for broadcast in late June/early July 2012, but due to a miscommunication (whereby the email containing instructions about the broadcast of the clarification was not received), the clarification was not transmitted until December 2012.
103. Ofcom took the fact that nobody noticed that the clarification had not been broadcast for approximately five months as an indication of the Licensee’s failure to properly appreciate the gravity of the comments that were broadcast and its failure to understand its compliance responsibilities under the Code. The Licensee has not at any point broadcast any form of apology for, or condemnation of Mr Nizami’s remarks, and neither on air or in correspondence with Ofcom expressed unequivocal regret that he made these comments in the way he did (the Licensee regretted only in its submissions that the presenter’s comments to take action against blasphemers against the Prophet “may have been misinterpreted” and that he expressed his own political views during the programme).
104. Ofcom did not consider the Licensee had taken appropriate steps to remedy the consequences of the contravention and was very concerned that Al Ehya still did not appear to recognise the very serious issues raised by the broadcast of Mr Nizami’s comments.

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

105. The Licensee explained that at the time the breaches occurred, there was a manual of Ofcom regulations which was also translated into Urdu that all staff members were taken through. One of the directors of Al Ehya was responsible for ensuring that presenters and contributors complied with the Code. In the early part of 2012 (i.e. before the broadcast of this programme), Al Ehya had employed a compliance consultant but it only became apparent subsequently that he lacked the appropriate

regulatory expertise and did not speak any of the languages that the channel broadcasts in other than English. The Licensee therefore dispensed with his services.

106. In considering the adequacy of the Licensee's compliance arrangements, we noted the Licensee's representations that the programme was broadcast live and that a programme controller and a live editor were present in the studio during the programme's transmission to monitor the programme. However, Ofcom also noted the Licensee's explanation that the live editor had had to leave the studio "because of a breakdown of equipment in the adjoining room", and that he only returned when the presenter was concluding his comments about how Muslims should react to those who show disrespect for the Prophet Mohammed. The programme controller who remained in the studio "felt uneasy" about the length of the presenter's response to the caller's question and noted that he had referred to the death of a person.
107. However, at the time of the broadcast two people were required to make the decision to cease a broadcast. According to the Licensee, the editor of the live programme did not consider the presenter's remarks problematic and in any event "did not think it reasonable that the Broadcaster [i.e. the presenter] himself should constantly have to repeat throughout the programme that his comments related to situations where Islamic Law was not being carried out in Islamic regimes". The programme controller and editor of the live programme "could not make a call on whether to stop the programme or not", so they let the programme continue. Ofcom was concerned that the Licensee stated that it "could not have done anything to change the situation". In particular, the programme controller and the editor of the live programme should have been properly trained in the requirements of the Code.
108. Ofcom was also concerned that immediately before the programme was broadcast the following disclaimer appeared on screen:

*"The views expressed in this programme do not necessarily reflect the views of Noor TV nor does Noor TV necessarily endorse the views and opinions expressed within. Noor TV does not accept responsibility for any loss or damage, however caused (including through negligence), which one may directly or indirectly suffer arising out of use or reliance on information contained in this programme".*

109. The Licensee stated that at the time of the broadcast, the "disclaimer was there in order to separate themselves [i.e. Noor TV] from the programme". This suggested to Ofcom that the Licensee (wrongly) considered that transmitting the disclaimer absolved it of its compliance responsibilities in relation to the content of the programme.
110. Taking all these points into account, Ofcom considered that the Licensee did not take appropriate steps to prevent the contraventions.

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

111. Ofcom acknowledged in this case that the breach was not intentional. However, Ofcom considered that senior management should have been aware of the Code requirements and the need to have adequate compliance procedures and training in place for securing them. Ofcom noted that one of the directors of Al Ehya was responsible for ensuring that presenters and contributors complied with the Code. It was clear, however, that the Licensee's compliance procedures were inadequate and not sufficiently robust to prevent the breach and the Licensee certainly had no mechanism, such as any delay for live broadcasts, which might have enabled the Licensee to take

timely and effective steps to help ensure compliance during the transmission. Ofcom's view is that with such weak compliance procedures in place and a limited understanding of Ofcom's Code by programme staff due to inadequate or a complete lack of training, senior management had been negligent as they ought to have anticipated that the a breach of the Code would be the likely consequence.

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

112. Ofcom considered that the programme controller and live editor had exhibited exceptionally poor editorial judgment and demonstrated a failure on the part of the Licensee to exercise the proper degree of responsibility required under Rule 4.1. The transcript shows that Mr Nizami made some of his most inflammatory remarks at the end of the response in question (e.g. "disrespectful people should be eliminated. One has to choose one's method." and "May Allah accept us wherever there is a need. We are ready and we should be ready at all times. "). The compliance staff failed to recognise the seriousness of the remarks and take appropriate action, instead allowing the Programme to run until the end of its scheduled duration.

The extent to which the level of penalty is proportionate, taking into account the size and turnover of the regulated body

113. The Licensee explained its current financial situation by reference to its most recent audited accounts for the year ending 31 March 2012 and its draft, unaudited financial statements for the year ended 31 March 2013. Ofcom noted that a substantial amount of Al Ehya's income is from viewer donations. The Licensee also explained that it employs four members of staff and that the service is run by these individuals plus 11 volunteers.

114. Ofcom recognised that the penalty must be proportionate taking into account the Licensee's rights under Articles 9 and 10 of the Convention. If any financial penalty was to be so high that its effect would be to close a service down, then it might be a disproportionate interference with the Licensee's and the audience's right to freedom of expression in particular and exceed the purposes of imposing a penalty. Ofcom therefore carefully took this point into account and carefully weighed it in reaching its decision on the proportionality of the financial penalty.

115. As noted above, the "central objective of imposing a penalty is deterrence". Ofcom regards any breach of Rule 3.1, as demonstrated in this case, as a very serious matter. Ofcom is given a specific statutory duty to ensure broadcasters do not transmit material that is likely to encourage or incite crime or lead to disorder. Where such material is broadcast in contravention of this requirement, the Act recognises the potential for serious harm to be caused and that, where justified by the breach, this should require the regulator to take action to be able to remove a broadcaster's entitlement to hold a licence.

116. For the reasons set out above (see paragraphs 71 to 80), Ofcom did not consider that revocation of the Licence was appropriate in this case. However, as explained in paragraph 90, Ofcom considered that any penalty had to be sufficient to reflect Ofcom's serious concerns and to ensure that the Licensee understands these concerns and the very serious nature of the Code breaches recorded against it. The amount of penalty also needed to be sufficiently high to act as a powerful and clear deterrent to other broadcasters. Ofcom carefully assessed all the evidence provided by the Licensee about its size and current financial situation, including the Licensee's accounts and the Licensee's Representations. Having weighed all these factors with the utmost care,

Ofcom considered that a penalty of £85,000 would be proportionate, taking into account all the relevant circumstances as set out and discussed in this Decision.

### **Relevant precedents set by previous cases**

117. In accordance with the Penalty Guidelines, Ofcom has regard to relevant precedents set by previous cases in determining a penalty but may depart from them depending on the facts and context of each case.

118. In this instance, there are two direct precedents where Ofcom has recorded a breach of Rule 3.1, when it decided that a statutory sanction was warranted:

- **23 November 2012, Radio Asian Fever Community Interest Company**<sup>28</sup> – Sanction of £4,000 and a direction to broadcast a statement of Ofcom’s findings for breaches of Rules 2.3, 2.4, 3.1 and 4.1. This case concerned two editions of the *Sister Ruby Ramadan Special 2011*, broadcast on 17 August 2011 at noon and 18 August 2011 at 11.00. The material was broadcast in Urdu. In the first programme the presenter was highly critical of homosexuality in the context of discussing aspects of the Qur’an. Ofcom concluded that this material was likely to encourage violent behaviour towards homosexual people and was therefore in breach of Rule 3.1. As it could also reasonably be considered as material likely to encourage others to copy such violent and dangerous behaviour, it was also considered a breach of Rule 2.4<sup>29</sup>. Ofcom also concluded that this material was offensive and the broadcaster had failed to apply generally accepted standards which is a breach of Rule 2.3 and that as a religious programme it had failed to exercise the proper degree of responsibility and this was a breach of Rule 4.1. The second programme contained various offensive remarks critical of marriages between Muslims and those of other faiths, which were found in breach of Rules 2.3 and 4.1; and.
- **5 July 2013, DM Digital Television Limited**<sup>30</sup> – Sanction of £85,000 and a direction to broadcast a statement of Ofcom’s findings for breaching Rule 3.1, and a direction not to repeat the programme. This case concerned the broadcast of a live televised lecture in a programme called *Rehmatul Lil Alameen* broadcast on 9 October 2011 at 18:30. The one hour programme was broadcast in Urdu. In the programme an Islamic Pir (a religious scholar) delivered a live televised lecture about points of Islamic theology with reference to the shooting dead in early 2011 of the Punjab Governor Salmaan Taseer by his bodyguard Malik Mumtaz Qadri. Salmaan Taseer had been a vocal critic of Pakistan’s blasphemy law<sup>31</sup>. This law punishes derogatory remarks against notable figures in Islam and carries a potential death sentence for anyone who insults or is judged to blaspheme against the Prophet Mohammed, advocating that Muslims had a duty to attack or kill

<sup>28</sup> The adjudication was published on 23 November 2012 and can be found at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/radio-asian-fever.pdf>.

<sup>29</sup> Rule 2.4 states: “Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour”.

<sup>30</sup> The adjudication was published on 5 July 2013 and can be found at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Rehmatul-DM-Digital.pdf>.

<sup>31</sup> Section 295-C of Pakistan’s Criminal Code.

apostates or those perceived to have insulted the Prophet Mohammed. Ofcom concluded that the material was likely to encourage or incite the commission of crime or to lead to disorder. This was because, on a reasonable interpretation of the scholar's remarks, Ofcom considered he was personally advocating that all Muslims had a duty to attack or kill apostates or those perceived to have insulted the Prophet.

119. Ofcom notes several differences and similarities between these two cases and the present one. For example, Radio Asian Fever was a community radio station broadcasting only to a restricted part of the city of Leeds, had only a very small potential audience and the broadcast comments in that case (although judged by Ofcom to breach Rule 3.1 and to be serious and completely unacceptable) were very brief. DM Digital on the other hand was similar to Noor TV in that it is a channel with a much larger audience reach (throughout the UK and around the world, in particular, in the Middle East and parts of Asia) and had a history of contraventions, including previous Ofcom sanctions (although DM Digital's history of contraventions was somewhat worse).

120. In addition, there was the following fairly recent sanction case relating to breaches of Rule 2.4, which is a rule that also deals with the issue of incitement in programming (see below):

- **8 May 2012, Dama (Liverpool) Limited (Aden Live)**<sup>32</sup> – Sanction of £10,000 and a direction to broadcast a statement of Ofcom's findings, for breaches of Rule 2.4, 5.4, 5.11 and 5.12. This case concerned various programmes broadcast on Aden Live, a service broadcasting predominantly to a South Yemeni audience. Ofcom concluded that, in relation to Rule 2.4, given that many of Aden Live's audience would have been likely to be: in support of the secession of South Yemen from the Republic of Yemen; and/or in support of the Southern Movement and oppose the Government of Yemen, material broadcast by Aden Live could reasonably be considered as material likely to encourage others to copy violent or dangerous behaviour.

121. Ofcom was satisfied that the level of penalty proposed in this case and combination of sanctions was appropriate taking due account of the factors outlined in the Penalty Guidelines and the seriousness of the breaches. As set out in paragraphs 71 to 80 above, Ofcom considered carefully whether the breaches justified revocation of the licence under section 239 of the Act. On balance, and for the reasons given in those paragraphs, Ofcom considered in this case that the breach of Rule 3.1 of the Code was not such as to justify revocation of the licence.

### **Cooperation**

122. In accordance with the Penalty Guidelines, Ofcom may increase the penalty where a licensee has failed to cooperate with Ofcom's investigation.

123. Ofcom noted the following:

- On 13 June 2012, Ofcom wrote to the Licensee asking for its formal comments on the programme in relation to Rules 2.3, 3.1 and 4.1 of the Code. The deadline

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<sup>32</sup> The adjudication was published on 8 May 2012 and can be found at: [http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden\\_Live\\_sanctions\\_decisio1.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden_Live_sanctions_decisio1.pdf).

provided for response was 28 June 2012. The Licensee's response dated 26 June 2012 was received by email on 16 July 2012.

- On 24 October 2012, Ofcom sent to the Licensee its Preliminary View relating to the breaches, offering the Licensee an opportunity to make representations by 9 November 2012. The Licensee responded partially on 25 October 2012, but did not send its full response until 12 November 2012.
- During Ofcom's investigation of the breaches, Ofcom asked the Licensee to revert to it with specific comments if any parts of the transcript appeared to be incomplete or inaccurate. On 22 August 2012, the Licensee confirmed that it had "no problem with [Ofcom's] transcript". However, as detailed above in paragraphs 43 to 47, in its written representations on the Preliminary View dated 17 June 2013, Al Ehya considered that the translation of the Programme from Urdu to English that Ofcom had commissioned was "quite satisfactory", but it disagreed with the interpretative text which the translator had added in square brackets, saying this was "totally misunderstood and misleading". The Licensee conceded that it ought to have raised this point during Ofcom's investigation of the breaches when Ofcom asked the Licensee to revert to it with specific comments if any parts of the transcript appeared to be incomplete or inaccurate.

124. However, apart from these failures to provide timely representations and to comply with deadlines for written submissions, Ofcom considered that the Licensee was generally co-operative during the investigation and did not therefore consider it appropriate to increase the penalty on account of a failure to co-operate in this instance.

#### **Level of financial penalty**

125. Any financial penalty Ofcom imposes on the Licensee must be appropriate and proportionate to the contravention in respect of which it is imposed. Ofcom's central objective in setting a penalty is deterrence both for the Licensee and other broadcasters. An appropriate penalty would be one that secures this objective (doing so in a proportionate way).

126. As regards the weighting of the factors considered above, it was Ofcom's view that the following factors were of particular importance in the circumstances of this case, and in consideration of the level of the penalty:

#### **Factors which served to increase the penalty**

- (a) the degree of potential harm, taking into account, in particular, the audience reach of the channel and the nature of the breach of Rule 3.1, i.e. that the effect of the presenter's statements was to suggest that the appropriate penalty for showing disrespect to the Prophet Mohammed was the death penalty and that all Muslims had a duty to take such action where the government had failed to do so (see paragraphs 91 to 94);
- (b) the negligence of senior management in failing to have in place effective or robust compliance arrangements to prevent the breaches or to ensure programming staff were able to take steps during the live broadcast to end the contraventions (as demonstrated, for example, by the fact that the Licensee appeared to rely on a disclaimer to absolve it of its compliance responsibilities and the failure of compliance staff to recognise immediately the seriousness of the broadcast remarks - see paragraphs 101 to 112);

- (c) the Licensee's apparent failure to recognise the very serious issues raised by the broadcast of Mr Nizami's comments (see paragraphs 102 to 104); and
- (d) the Licensee has already been sanctioned by Ofcom for serious breaches of the Code (see paragraphs 97 and 100).

Factors which serve to reduce the penalty

- (a) the breaches were not deliberate and the Licensee has not previously been found in breach of Rules 3.1 or 4.1;
- (b) the Licensee has recently made some improvements to its compliance processes (see paragraph 53); and
- (c) the Licensee has generally cooperated with Ofcom during the sanctions process (see paragraphs 122 to 124).

127. Having regard to all the factors referred to above and all the representations from the Licensee, Ofcom's Decision was that an appropriate and proportionate sanction would be a financial penalty of **£85,000**. In addition, Ofcom considered that the Licensee should be directed to broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom, and be directed not to repeat the Programme.

**21 August 2013**