

**Sanction: Decision by Ofcom**  
**To be imposed on Asia TV Limited**

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**For material broadcast on Lamhe TV on 17 June 2014 at 09:30<sup>1</sup>**

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

Asia TV Limited ("Asia TVL" or the "Licensee") in respect of its service **Lamhe TV** (TLCS-1439)<sup>2</sup>.

**For:**

Breach of the March 2013 version of the Ofcom Broadcasting Code (the "Code")<sup>3</sup> in respect of:

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

**Decision:**

To impose a financial penalty (payable to HM Paymaster General) of **£25,000**.

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<sup>1</sup> The material broadcast on Lamhe TV and found in breach of Ofcom's Broadcasting Code (the "Code") as detailed in Broadcast Bulletin 265, dated 3 November 2014 ("the Breach Decision"). See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2641/obb265.pdf>

<sup>2</sup> Asia TVL currently holds seven Television Licensable Content Service ("TLCS") licences. At the time of broadcast one of the Licensee's TLCS licences was for the Lamhe TV service. However, Asia TVL surrendered its licence for this service on 30 March 2015.

<sup>3</sup> The version of the Code which was in force at the time of the broadcasts took effect on 21 March 2013. All references to the Code in this Decision are therefore references to that version of the Code (except when referring to Ofcom decisions recorded at an earlier date) which can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

Guidance accompanying this version of the Code can be found at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

## **Executive Summary**

1. At the time of broadcast Lamhe TV was a UK digital satellite television channel that broadcast general entertainment programmes for the South Asian community, broadcasting in English and Hindi. The licence was held by Asia TV Limited (“the Licensee” or “Asia TVL”)<sup>4</sup>. The Licensee currently holds nine broadcasting licences in total.
2. *Yoga for You* was a programme, broadcast in Hindi with English subtitles, which mainly consisted of an ayurvedic<sup>5</sup> practitioner, Dr Naram, giving medical advice to cure potentially serious medical conditions by using recommended ayurvedic products and herbal remedies.
3. In Ofcom’s Decision (“the Breach Decision”) published on 3 November 2014 in Broadcast Bulletin 265<sup>6</sup>, Ofcom’s Executive found that material in a programme broadcast by the Licensee on Lamhe TV on 17 June 2014 breached Rules 2.1, 9.4 and 9.5 of the Code.

## **The Breach Decision**

4. In the Breach Decision, Ofcom stated that although the contraventions of Rules 9.4 and 9.5 of the Code caused concern, it considered that the breach of Rule 2.1 of the Code was serious and was being considered for statutory sanction.
5. The Breach Decision set out specific examples of the medical advice included in the broadcast material to treat two serious medical conditions, cancer and hernias, which had the potential for serious harm. The broadcast included claims by Dr Naram that the recommended ayurvedic products and alternative remedies could cure cancer and suggested that these treatments alone might treat the conditions successfully. Ofcom found that the claims made in the programme amounted to medical advice and as a result some viewers with serious medical conditions might not seek, forego, or delay conventional medical treatment on the basis of what they had seen. Therefore, as a result, there was an appreciable risk of harm to viewers who actively followed the alternative treatments promoted in the programme.
6. Ofcom found that the Licensee permitted Dr Naram to give unsubstantiated and unqualified medical advice with significant potential for harm to viewers and concluded that the broadcast was in breach of Rule 2.1.
7. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (“the Sanctions Procedures”)<sup>7</sup>, Ofcom considered whether the Code breach was serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case. It has reached the Decision that a sanction was merited in this case since the breach was serious for the following reasons (in summary).

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<sup>4</sup> Asia TVL surrendered its licence for the Lamhe TV service on 30 March 2015 and has been granted a licence for a new service &TV.

<sup>5</sup> Ayurvedic products are usually made up of minerals and/or plant extracts. Ayurvedic medicine is a Hindu system of traditional medicine native to India and is a form of alternative medicine.

<sup>6</sup> See footnote 1.

<sup>7</sup> Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences came into effect on 1 June 2011 and can be found at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/statutory-sanctions.pdf>

## The Sanction Decision

8. Ofcom found that the medical advice to treat two serious medical conditions, cancer and hernias, had the potential to cause serious harm. As a result of the claims made by Dr Naram, that the recommended ayurvedic products and treatments alone might treat the conditions, some viewers with serious medical conditions might not seek, forego, or delay conventional medical treatment on the basis of what they had seen.
9. In arriving at its Decision of the appropriate type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee, including those on the Preliminary View, and has had regard to the Sanctions Procedures<sup>8</sup> and to Ofcom's Penalty Guidelines<sup>9</sup> in reaching its Decision.
10. Ofcom's Decision is that the appropriate sanction should be a financial penalty of **£25,000**.

## Legal Framework

### Communications Act 2003

11. 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)).
12. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)). This requirement is reflected in Section Two of the Code.
13. 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)); and
  - the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3 (4) (h)).

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<sup>8</sup> See footnote 7

<sup>9</sup> Ofcom's Penalty Guidelines can be found at: <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

### Human Rights Act 1998

14. Under section 6 of the Human Rights Act 1998 there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (“the Convention”).
15. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster’s freedom to impart and the audience’s freedom to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1) 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).
16. Ofcom must exercise its duties in light of this right and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

### Ofcom Broadcasting Code

17. Standards set by Ofcom in accordance with sections 319 of the Act are set out in the Code<sup>10</sup>.
18. Accompanying Guidance Notes to each section of the Code are published and from time to time updated on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
19. The relevant Code rule in this case is set out in full at the beginning of this Decision.

### Remedial action and penalties

20. 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 the provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.
21. 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 238 of the Act insofar as relevant to the case.
22. 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.
23. 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.

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<sup>10</sup> See footnote 3

24. 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.
25. Under Section 346(3) of the Act, the liability of the person to have a penalty imposed on him is not affected by that persons licence having ceased (for any reason) before the imposition of the penalty.

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

26. In the Breach Decision, the Executive found that material broadcast by the Licensee on Lamhe TV breached Rules 2.1, 9.4 and 9.5 of the Code. In the Breach Decision, Ofcom stated that although the contravention of Rules 9.4 and 9.5 were of concern, it considered that the breach of Rule 2.1 was so serious as to warrant consideration of a statutory sanction.
27. The Breach Decision noted that the programme, broadcast in Hindi and English with English subtitles of the Hindi speech, consisted of two segments. The first segment lasted 11 minutes in duration and was presented in a lecture style by Dr Naram, an ayurvedic practitioner. The second segment of the programme featured demonstrations of yoga exercises and meditations. Ofcom was concerned with the first segment of the programme only.
28. Ofcom first considered whether the material in the programme was potentially harmful. Ofcom considered this to be especially important when considering cancer healing claims because section 4 of the Cancer Act 1939 makes it a criminal offence for anyone to publish an “advertisement” offering to treat anyone with cancer or give any advice in connection or treatment of cancer. While the programme may not be interpreted as an “advertisement”, the existence of such a crime highlights that Parliament considered the public provision of any advice on how to treat cancer to be in a special category, and therefore it should be tightly regulated in the public interest and only provided by those appropriately qualified or authorised to do so.
29. In the Breach Decision Ofcom identified a number of claims, made by Dr Naram in the programme, that certain alternative remedies could cure, successfully treat or prevent two serious medical conditions, cancer and hernias. Ofcom found that this had amounted to unqualified medical advice. In summary, the recommended remedies that Ofcom considered to be potentially harmful and described in the programme as the “best treatment”, a “powerful remedy” (in the translation from Hindi to English), and a “sure shot cure” (as referred to by the simultaneous English subtitles) in the context of providing advice to “prevent cancer” were:
  - 11 holy basil leaves and three black peppers to prevent cancer;
  - tablets of “Life Yog Formula”<sup>11</sup> to kill cancerous cells;
  - tablets of “Vibrant Detox Formula”, “Aam Mukti Formula”, “Anti-Acidity Formula” and “Vayu-Mukti Formula” to treat hernias; and
  - half a tablespoon of cumin powder, half a tablespoon of coriander powder and 11 black raisins to treat hernias.
30. Ofcom was particularly concerned that the unsubstantiated claims could have led viewers to understand that specific serious medical conditions could be treated successfully by following and using the recommended treatments without the need for conventional medicine or treatments. Ofcom was concerned that the impact of the advice was increased by Dr Naram’s claim made in the programme to having had over

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<sup>11</sup> Ayurvedic products sold and promoted by Dr Naram.

“75,000 cancer patients”, some of whom had been told by hospitals that “*they won’t live for three months...[but] after 15 years [are] leading normal lives*”. As a result of these claims there was a clear risk that some viewers with serious medical conditions might have not sought conventional medical advice or treatment, or ceased following it.

31. Ofcom also considered the risk of potential harm caused directly to any viewers who by following Dr Naram’s advice, chose to use his recommended ayurvedic remedies. Ofcom noted that concerns had been raised about the potential toxicity of certain ayurvedic products and that to date, there is no evidence that ayurvedic herbal remedies can prevent, treat or cure cancer<sup>12</sup>. Ofcom found that in the absence of such evidence there was an appreciable risk of harm to viewers who actively followed the alternative treatments promoted in the programme.
32. Ofcom went on to consider whether the Licensee took steps to provide adequate protection to viewers from the potentially harmful material and found it had not. The Licensee did not broadcast any warning or information about Dr Naram’s advice before, during, or at the end of the programme. Ofcom was particularly concerned that Dr Naram did not, at any point in the programme, make any reference to the need to seek conventional and qualified medical advice. Nor did he give any information or warning about the effectiveness of the recommended remedies. Further, while the Breach Decision acknowledged that Dr Naram made references to conventional methods to treat cancer, the effectiveness of chemotherapy and radiotherapy was immediately disparaged. Ofcom considered that rather than mitigating the risk of harm to viewers the programme’s failure to take these sort of measures in some respects increased the risk to viewers.
33. Accordingly, the Breach Decision recorded that the broadcast was clearly in breach of Rule 2.1 and stated that the contravention of this rule was being considered for a statutory sanction.

### **Ofcom’s Decision to Impose a Statutory Sanction**

34. 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 or recklessly breached a relevant requirement.
35. Ofcom considered that for the reasons set out below the breach of Rule 2.1 was serious and so warranted the imposition of a statutory sanction.
36. In this case, Ofcom issued a Preliminary View (“Preliminary View”) that Ofcom was minded to impose a statutory sanction in the form of a financial penalty. Ofcom sent a copy of the Preliminary View to the Licensee on 17 April 2015 at the same time giving the Licensee the opportunity to provide written and oral representations (“the Representations”) on the Preliminary View. The Licensee provided its written representations to Ofcom on 1 May 2015 and gave its oral representations at a sanctions hearing at Ofcom on 23 June 2015. The Representations are summarised in paragraphs 38 to 42, below.
37. In reaching its final Decision on whether to impose a statutory sanction and, if so, of what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee, including those on the

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<sup>12</sup> <http://www.cancerresearchuk.org/cancer-help/about-cancer/treatment/complementary-alternative/therapies/ayurvedic-medicine>

Preliminary View, and has had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines in reaching its Decision.

### Licensee's Representations

38. In its Representations, the Licensee accepted that it had breached the Code and apologised unreservedly for the "human error". It added that it was "aware that such content is unacceptable".
39. Asia TVL stated that it was not the Licensee's intention to run the programme in the UK. It explained that the programme had been broadcast due to "an unfortunate incident when the wrong tape number was inserted into [the Licensee's] playout server" by a fairly new member of staff. This was due to an unexpected absence of a senior colleague.
40. Asia TVL also stated that it had not broadcast a caveat or warning to seek conventional medical advice to protect the audience because the programme was broadcast in error. However, it had suspended the series once it had become aware of the problem and, in its view "arguably, protected viewers from harmful content as soon as possible".
41. The Licensee said that since the breach and in order to prevent a reoccurrence of this incident, it had:
  - suspended the episode and removed Dr Naram's series from its programming [on any of its Ofcom-licensed services];
  - conducted "a full inspection of all content" before it is broadcast in the UK;
  - digitised and changed the tape numbering system for its UK channels to a "UK prefix which is immediately recognisable";
  - held training sessions on "compliance and regulatory matters" for its teams based in Mumbai and Noida, India, on 18 and 19 December 2014; and
  - introduced team leaders roles into the teams in India to ensure there are senior staff members on site at all times in its Mumbai offices.
42. Asia TVL said that it understood the serious nature of breach of the Code. However, it considered that the proposed fine was disproportionately high and highlighted to Ofcom that:
  - *Yoga for you* was broadcast at a time "when the channel had a relatively low audience"<sup>13</sup>;
  - the problematic material was "only 11 minutes" in duration;
  - no financial gain occurred as a result of the broadcast;
  - prior to the consideration of the breach in this case, Asia TVL did not have a history of non-compliance. The broadcast was "a single isolated incident" and "occurred as a result of a tape mix up which could not have been foreseen"; and
  - although "not entirely related" Asia TVL had surrendered the Licence for the Lamhe TV service and had therefore, taken the "self-impos[ed] penalty on its existing portfolio" of channels.

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<sup>13</sup> The Licensee said the BARB (Broadcasters' Audience Research) figures indicated that the audience for this programme consisted of 4,167 adults.

### Serious nature of the breach

43. 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 or recklessly breached a relevant requirement.
44. Ofcom considered that for the reasons set out below the breach of Rule 2.1 was serious and so warranted the imposition of a statutory sanction.
45. First, and principally, the breach of Rule 2.1 had the potential to cause harm, and possibly very serious harm, for the reasons outlined in paragraphs 27 to 32 above. In summary these were that: the claims, made by Dr Naram in the programme, that certain alternative remedies could cure, successfully treat or prevent two serious medical conditions, cancer and hernias amounted to unqualified medical advice; the unsubstantiated claims could have led viewers to understand that specific serious medical conditions could be treated successfully by following and using the recommended treatments without the need for conventional medicine or treatments; and that there was an appreciable risk of harm to viewers who actively followed the alternative treatments promoted in the programme. The adequate protection of viewers from harm is a fundamental requirement of the Code. This is particularly the case where - as with this broadcast - viewers suffering from serious medical conditions like cancer and hernias may, as result of their vulnerability, have been more open to the claims made in the programme that the alternative treatments alone could successfully treat these conditions.
46. Second, the Licensee failed to provide adequate protection to viewers from the harmful material for the reasons set out above in paragraph 32. In summary, Asia TVL could and should have taken various measures to protect members of the public from the potentially harmful claims made by Dr Naram in the broadcast, but failed to do. This also contravened an essential obligation in the Code for broadcasters to provide viewers with adequate protection from harmful content.
47. Third, any content broadcast which may lead to a material risk to the health and safety of the audience must always be considered a significant breach of the Code. This is especially the case in relation to any claims made in a programme to cure cancer. Section 4 of the Cancer Act 1939 makes it a criminal offence for anyone to publish an "advertisement" offering to treat anyone with cancer or give any advice in connection or treatment of cancer. While the programme may not be interpreted as an "advertisement", the existence of such a crime highlights that Parliament considered the provision of any advice to the public on how to treat cancer to be in a special category, and therefore it should be tightly regulated in the public interest and only provided by those appropriately qualified to do so. It was clear that Dr Naram was not appropriately qualified.



48. Fourth, Ofcom has previously published sanctions decisions against licensees for similar breaches of the Code<sup>14</sup>. Asia TVL should have been aware of these decisions and therefore been in no doubt of the seriousness with which Ofcom regards cases where people who are not medically qualified make claims on air that alternative treatments can successfully treat serious medical conditions – and especially cancer.
49. Ofcom noted Asia TVL surrendered the licence for the Lamhe TV service on 30 March 2015. However, under Section 346(3) of the Act, the liability of the person to have a penalty imposed on him is not affected by that persons licence having ceased (for any reason) before the imposition of the penalty.
50. In view of the factors set out above, Ofcom considered that the breach was serious. As such it warranted a statutory sanction. The following paragraphs set out the enforcement action we have considered and Ofcom’s Decision of the appropriate sanction to be imposed.

### **Level of Sanction**

#### Imposition of sanctions other than a financial penalty

51. 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.
52. It is Ofcom’s view that a direction not to repeat the programmes found in breach would not be an appropriate or sufficient sanction in all the circumstances. This is because the Licensee, as set out in the Decision, had already removed this programme from its schedule [and from its other Ofcom-licensed services].
53. Ofcom considered that a direction to broadcast a statement of Ofcom’s findings in this sanctions case was not an appropriate statutory sanction, given that the Licensee had surrendered its Licence for the Lamhe TV service on 30 March 2015. Ofcom therefore 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.

#### Imposition of a financial penalty

54. 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 £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 its licence has been in force, whichever is greater.

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<sup>14</sup> 6 February 2012, The Light Academy Limited (Believe TV):  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/light-academy-limited.pdf>

1 November 2007, ARY Digital UK Limited (ARY Digital):  
[http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/ary\\_digital.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/ary_digital.pdf)

28 October 2008, DM Global Television Network Limited (DM Digital):  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/dmdigital.pdf>

See paragraph 71, 73 and 74 below also.

55. Qualifying revenue is calculated by adding together revenue gained from advertising, sponsorship and subscription.
56. The Penalty Guidelines state (in paragraph 3) 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." In reaching its Decision on 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 at paragraph 4 of the Penalty Guidelines<sup>15</sup>.
57. In this case Ofcom believed that a financial penalty was necessary to reflect the serious nature of the Code breach recorded against the Licensee, and to act as an effective incentive to comply with the Code, both for the Licensee and other licensees.

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

58. In considering the appropriate amount of a financial penalty for the Code breach in this case, Ofcom took account of relevant factors set out in the Penalty Guidelines as set out below:

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

59. Ofcom regarded the breach of Rule 2.1 to be particularly serious. The potential harm in this case was significant because the Licensee broadcast content on Lamhe TV showing a presenter claiming that serious conditions such as cancer and hernias could be cured by using various alternative treatments, and encouraging viewers not to seek, or continue with, conventional medical treatment. As paragraph 47 above makes clear, specific legislation exists to protect consumers from inappropriate claims to cure cancer. As recorded in the Breach Decision the Licensee did not take steps to provide viewers with adequate protection from potential harm by providing a warning about Dr Naram's advice, or make any references to the need to seek conventional and qualified medical advice.

#### *The duration of the contravention*

60. The Breach Decision related to material broadcast on 17 June 2014. In its Representations, the Licensee confirmed that the material had not been broadcast again.

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

61. We have no evidence to show whether or not the Licensee made any financial gain from this breach of the Code.

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

62. Ofcom noted that the Licensee had taken various steps to improve its compliance [in relation to its Ofcom-licensed services]:
- removed this programme from its schedule;

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<sup>15</sup> See footnote 9

- improved its compliance procedure by amending its tape numbering system for its UK channels to a “UK prefix which is immediately recognisable” and instituting a final check of programmes before broadcast conducted by its compliance team;
- arranged compliance training for its staff at its operations and compliance facility in Mumbai, India;
- introduced “a full inspection of all content” before it is broadcast in the UK;
- introduced a new digitised playout system in Mumbai;
- implemented new team leader roles into its broadcast compliance teams in India to ensure that there are senior staff members on site at all times in its Mumbai offices.

63. Ofcom also noted that the Licensee had expressed its deep regret with regard to the Broadcast.

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

64. As pointed out by the Licensee in its Representations, it did not have a history of contraventions of the Code as regards the Lamhe TV service, prior to the breach now being considered for statutory sanction.

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

65. Ofcom has no evidence that the Licensee had taken appropriate steps to prevent the breach of Rule 2.1 as set out in the Decision. However, as set out in Paragraph 62 above, the Licensee has set out the steps it took after broadcast to remove the programme from its schedule, improve its compliance procedures and arrange compliance training for its staff at its operations and compliance facility in Mumbai, India.

The extent to which the contravention 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

66. We have no evidence that suggests the breach occurred intentionally or recklessly.

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

67. Asia TVL only became aware of the potentially serious issue raised by the Broadcast on being alerted to it by Ofcom on 19 June 2014 following a request by Ofcom for the recording. On 1 July 2014 the Licensee removed the programme from its schedule.

68. On 8 October 2014 Ofcom contacted the Licensee again, informing it that the broadcast raised potentially serious issues under the Code that may result in consideration of further regulatory action. On 20 October 2014, the Licensee informed Ofcom that it had suspended all future broadcasts of Dr Naram’s programmes. As set out in paragraph 62 above, the Licensee has also set out the further steps it has taken to improve its compliance processes. In summary the Licensee amended its tape numbering system for its UK channels to a “UK prefix which is immediately recognisable” and instituted a final check of programmes conducted by its compliance team before broadcast, and arranged compliance training for its staff at its operations and compliance facility in Mumbai, India.

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

69. In accordance with section 237(4) of the Act, Ofcom obtained financial data setting out the Licensee's qualifying revenue for the last accounting period (2014) to decide upon a proportionate penalty. Ofcom considered that a penalty of **£25,000** would be proportionate taking into account all the relevant circumstances, including the need to achieve an appropriate level of deterrence and the serious nature of the Code breach in this case, while noting this is the first statutory sanction imposed by Ofcom on Asia TVL.

### **Precedent**

70. In accordance with the Penalty Guidelines, Ofcom has also had regard to relevant precedents set by previous cases. In this instance, there were no directly relevant precedent cases in terms of sanctions that dealt solely with a breach of Rule 2.1. The most relevant precedent case (Believe TV) however did include a sanction imposed on the licensee for a breach of Rule 2.1 for broadcasting claims that alternative treatments could successfully treat serious medical conditions such as cancer.
71. **6 February 2012, The Light Academy Limited (Believe TV)**<sup>16</sup> – Sanction of £25,000 and a direction to broadcast a statement of findings for breaches of Rules 2.1 and 4.6 of the Code. This case concerned a number of programmes which included testimonies from congregation members of churches proclaiming how the healing or treatment of very serious illnesses, including cancer, diabetes and heart problems, could be achieved by being anointed with a product such as olive oil soap or Ribena.
72. Two precedent cases (ARY Digital and DM Digital immediately below) did include sanctions imposed on licensees for breaches of Rule 2.1 for broadcasting claims that alternative treatments could successfully treat serious medical conditions such as cancer. These sanctions were however imposed several years ago before the introduction on 13 June 2011 of the revised version of the Ofcom Penalty Guidelines.
73. **1 November 2007, ARY Digital UK Limited (ARY Digital)**<sup>17</sup> – Sanction of £15,000 and a direction to broadcast a statement of Ofcom's findings, for breaches of Rules 2.1, 10.3 and 10.4 of the Code. This case concerned the broadcast of a programme which promoted the services of Dr. Surjeet Kaur, who claimed to be able to treat serious medical conditions (such as cancer, sterility, sciatica, psoriasis, and leprosy) with herbal medicine and with the use of special medicines sold by her practice. Dr Kaur also promoted her alternative health practices and explained how to order an array of medicines by telephone.
74. **28 October 2008, DM Global Television Network Limited (DM Digital)**<sup>18</sup> – Sanction of £15,000 and a direction to broadcast a statement of findings for breaches of Rules 2.1, 9.4, 9.5, 9.6 and 9.7 of the Code. This case concerned a programme featuring Dr Professor Mohammed Jamil Jilu ("Dr Jamil"), a homeopath, who made potentially dangerous claims regarding the successful use of his homeopathic medicines to treat and cure serious conditions including cancer, diabetes and hepatitis. The programme was also used as a platform for promoting Dr Jamil's homeopathic practice.

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<sup>16</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/light-academy-limited.pdf>

<sup>17</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/ary\\_digital.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/ary_digital.pdf)

<sup>18</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/dmdigital.pdf>

75. In addition, a more recent sanction case also concerned a breach of Rule 2.1 and was also potentially relevant. This contravention of Rule 2.1 however was based on different facts i.e. not on claims about the alleged success of alternative medicine.
76. **26 September 2011, Al Ehya Digital Television Limited (Noor TV)**<sup>19</sup> – Sanction of £75,000 and a direction to broadcast a statement of Ofcom’s findings, for breaches of Rules 2.1, 2.2, 4.6, 10.3 and 10.15. This case concerned a presenter taking calls from viewers who donated money to the channel in return for prayers for themselves or their relatives. In the programme, in return for a donation of £1,000 viewers were offered a “special gift” and the offer of a prayer that would improve the donor’s health, wealth, success and good fortune.
77. Ofcom is satisfied that the level of financial penalty is appropriate and proportionate in this case, taking due account of the factors outlined in the Penalty Guidelines and the seriousness of the breach.

### **Cooperation**

78. In accordance with the Penalty Guidelines, Ofcom may increase the penalty where a licensee has failed to cooperate with Ofcom’s investigation.
79. In Ofcom’s view, the Licensee has been cooperative. For example, it: admitted immediately the breaches of the Code in this case and did not seek to defend them; provided full representations in response to Ofcom’s formal requests for information relating to the material broadcast and the service in general; and expressed a willingness to take, and has taken, some steps to remedy its failures to comply with the Code. Ofcom does not therefore consider it appropriate to increase the penalty on account of a failure to cooperate in this case.

### **Decision**

80. Having regard to all the factors referred to above 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 **£25,000**

**Ofcom**

**29 July 2015**

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<sup>19</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Ehya.pdf>