

Sanction: Decision by Ofcom

Imposed on The Light Academy Limited in respect of the service: **Believe TV**

For the broadcast of various programmes between 21 December 2010 and 1 February 2011.

Consideration of Sanction against:

The Light Academy Limited (the "Licensee") in respect of its service **Believe TV** (TLCS-966).

For:

Breaches of the December 2010 version of Ofcom's Broadcasting Code (the "Code")¹ in respect of:

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

Rule 4.6: "Religious programmes must not improperly exploit any susceptibilities of the audience".

On:

Paul Lewis Ministries, Believe TV, 21 December 2010, 09:40
Paul Lewis Ministries, Believe TV, 22 December 2010, 09:00
Pastor Alex Omokudu Healing Ministry Testimonies, Believe TV, 21 December 2010, 17:20
Pastor Alex Omokudu Healing Ministry Testimonies, Believe TV, 22 December 2010, 10:00
Pastor Alex Omokudu Healing Ministry Testimonies, Believe TV, 1 February 2011, 01:10, 01:34 and 06:48
Bishop Climate Irungu Ministries, Believe TV, 4 January 2011, 15:00 and 15:21

Decision:

To impose a financial penalty (payable to HM Paymaster General) of **£25,000**; and
 To direct the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom.

¹The version of the Code which was in force at the time of the broadcasts took effect on 20 December 2010. All references to the Code in this Decision are therefore references to that version of the Code which can be found at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code-december-2010/>

Case Summary

1. For the reasons set out in paragraphs 34 to 88, Ofcom has decided to impose a statutory sanction on the Licensee.
2. The service Believe TV is a service which broadcasts Christian programming and is located in the religious section of the Sky Electronic Programme Guide.
3. The channel broadcasts programmes which include “testimony”, where members of the churches featured proclaim how health problems, financial issues or other personal matters have been alleviated through healing from a pastor or other religious leader and their faith in God. Believe TV also features other Christian programming including preaching and healing from churches in the UK and around the world. The licence for Believe TV is held by The Light Academy Limited (“the Licensee”).
4. In Ofcom’s finding (“the Finding”) published on 22 August 2011 in Broadcast Bulletin 188², the Executive found that a number of programmes and pieces of content broadcast by the Licensee breached Rules 2.1, 4.6, 10.2 and 10.3.
5. The content covered by the Finding comprised: programmes featuring the televangelist, Paul Lewis; and content featuring Pastor Alex Omokudu and Bishop Climate Irungu.
6. In the Finding, Ofcom stated that although the contraventions of Rules 10.2 and 10.3 caused concern, it considered only the breaches of Rules 2.1 and 4.6 (“the Code Breaches”) to be so serious as to warrant consideration of a statutory sanction³. In addition, Ofcom considered the Code Breaches to be repeated because they happened repeatedly over a period of several months.
7. The Finding highlighted a number of examples of broadcast material which had the potential for harm in breach of Rule 2.1, because some viewers with serious illnesses – especially more vulnerable ones – may not seek, or abandon existing, conventional medical treatment on the basis of what they have seen on Believe TV. For example, Ofcom noted:
 - examples of: Paul Lewis, in the programmes *Paul Lewis Ministries* broadcast on 21 December 2010 and 22 December 2010, preaching directly to camera and providing “healing” direct to individuals through the use of his ‘Miracle Olive Oil Soap’; and Bishop Climate Irungu, in the programmes *Bishop Climate Irungu Ministries*, broadcast on 4 January 2011, providing testimony of “healing” direct to camera; and
 - “testimonies” of congregation members (supported by statements by Pastor Alex Omokudu), which clearly encouraged viewers to believe that the healing or treatment of very serious illnesses, including cancer, diabetes, and heart problems could be achieved exclusively through healing provided by being anointed with a product such as olive oil soap, Ribena or oil.

² See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb188/obb188.pdf> (published 22 August 2011).

³ Ofcom considered that the breaches of Rules 2.1 and 4.6 in relation to the edition of *Bishop Climate Irungu Ministries*, broadcast on 1 February 2011 at 03:19 were not so serious as to warrant consideration of a statutory sanction. This is because although Bishop Climate Irungu was soliciting viewers, with a variety of medical conditions, to contact a prayer line, he was not giving specific testimony that he could necessarily provide a cure for viewers’ conditions.

8. Given that the content was also soliciting a response from viewers and such individuals experiencing serious illnesses may be vulnerable to the healing claims being made, Ofcom found there was a material risk that susceptible members of the audience may be exploited by the material broadcast on Believe TV, in breach of Rule 4.6.
9. The Finding also referred to previous decisions by both the Advertising Standards Authority (the "ASA") and Ofcom concerning content containing similar claims by Paul Lewis which had been broadcast on other channels. When Ofcom had previously recorded breaches against Paul Lewis content broadcast on other channels in 2007 and 2008, Ofcom stated that the breaches of Rule 4.6 were very serious because the promotions of the Paul Lewis products improperly exploited the susceptibilities of vulnerable viewers of these religious channels. Ofcom considered the Licensee's failure to keep itself informed about and act on the previous ASA and Ofcom precedent cases which had found similar Paul Lewis content in breach, and to ensure it was fully aware of the requirements of the Code and its responsibilities as a broadcaster, as evidence of the Licensee's overall very poor compliance. Ofcom considered this poor compliance placed vulnerable viewers directly at risk of harm and exploitation.

Summary of Ofcom's Sanction Decision

10. Ofcom decided that this case was sufficiently serious to be considered for a statutory sanction.
11. The Code Breaches were serious and were repeated over a period of months. Having considered all the evidence and all the representations made to it by the Licensee, Ofcom decided that for the reasons set out in paragraphs 38 to 41 below, that it would be appropriate to impose a financial penalty in accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences ("the Sanctions Procedures")⁴. Ofcom then considered the level of the fine to be imposed, in accordance with Ofcom's Penalty Guidelines ("the Penalty Guidelines")⁵.
12. Having regard to the serious and repeated nature of the Code Breaches and having regard to the Licensee's representations and the Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£25,000** on the Licensee in respect of the Code Breaches (payable to HM Paymaster General).
13. In addition, Ofcom decided to direct the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom. For the reasons set out in paragraphs 62 and 63 below, Ofcom considered that it would not be appropriate to: issue a direction not to repeat the programmes; or for the licence for Believe TV to be revoked.

Legal Framework

General

14. In discharging its functions, Ofcom's principal duties set out in section 3(1) of the Communications Act 2003 ("the Act") are to further the interests of citizens in relation to

⁴These procedures came into effect on 1 June 2011.

(<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/854750/breaches-content-standards.pdf>).

⁵Ofcom's Penalty Guidelines were published 13 June 2011 (<http://www.ofcom.org.uk/files/2010/06/penguid.pdf>).

communications matters and the interests of consumers and 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)).

15. Ofcom has a specific duty under section 319 of the Act to set 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). They 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)); and the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes (section 319(2)(e)).
16. In performing these duties, Ofcom is also 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)).

The Human Rights Act 1998

17. 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”).
18. Article 9 of the Convention provides for the right to freedom of thought, conscience and religion. This Article makes clear that freedom to “manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of...health...or for the protection of the rights and freedoms of others.”
19. Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to “impart information and ideas” and also the audience’s “right to receive information and ideas without interference by public authority” (Article 10(1) of the Convention). Such rights may only be restricted if the restrictions are: “prescribed in law and 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).
20. Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights 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

21. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code.
22. Accompanying Guidance Notes⁶ to each section of the Code are published and, from time to time updated, on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
23. The relevant Code rules in this case are set out in full on the first page of this Decision.

Remedial action and penalties

24. Under section 325 of the Act, every programme service holding a licence 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 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. 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 present case.
25. 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.
26. 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 five per cent (5%) of its Qualifying Revenue on each occasion that a contravention of a condition of the licence has occurred.
27. 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.

Background – The Finding

28. In Ofcom’s Finding published on 22 August 2011 in Broadcast Bulletin 188⁷, the Executive found that a number of programmes and pieces of content broadcast by the Licensee had breached Rules 2.1, 4.6, 10.2 and 10.3 of the Code. The content covered by the Finding comprised: programmes featuring the televangelist, Paul Lewis; and content featuring Pastor Alex Omokudu and Bishop Climate Irungu. In the Finding, Ofcom stated that although the contraventions of Rules 10.2 and 10.3 caused concern, Ofcom considered that the Code Breaches of Rules 2.1 and 4.6 to be so serious as to warrant consideration of a statutory sanction.

Rule 2.1

29. With regard to Rule 2.1, Ofcom considered whether the Licensee had taken any appropriate steps to provide the audience with adequate protection from harm, as

⁶ See <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>

⁷ See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb188/obb188.pdf> (published 22 August 2011).

required by Rule 2.1, when broadcasting content on its service. Ofcom considered this was 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 the connection or treatment of cancer. Whilst the editorial content on Believe TV may not be interpreted strictly as an “advertisement”, the existence of such a crime on the statute book highlights that Parliament considered the public provision of any advice on how to treat cancer to be in a special category, and therefore that it should be tightly regulated in the public interest and only made by those specially authorised to do so.

30. Having reviewed the content extensively, Ofcom could not identify any steps taken that the Licensee had taken to place a caveat around the claims for faith healing, or provide information to put the claims into any form of context and therefore provide adequate protection to viewers. Ofcom noted that how such adequate protection might be achieved is an editorial matter for the individual broadcaster. However, Ofcom noted for example that there were: no references for the need for people with any potentially serious illness to consult a doctor; nor any advisory text on-screen suggesting to viewers that they should seek medical advice before abandoning prescribed medicines; nor any examples of cases where it was made clear that individuals making “testimonies” of healing had continued or were continuing to receive conventional medical treatment for serious illnesses.
31. Therefore, Ofcom concluded that some viewers may have reasonably understood that serious medical conditions could be healed through faith healing or healing with special products *alone* and that conventional medical treatment could be abandoned or not even sought in favour of faith healing or using special products *alone*. Given that some viewers who may have watched this material may also have been suffering from serious medical conditions, and who were therefore likely to be in a vulnerable state, Ofcom concluded that this material clearly had the potential to cause very serious harm, and in view of the fact that the Licensee did not take steps to provide viewers with adequate protection from this potential harm by providing any context to the claims made, Ofcom concluded that the Licensee did not apply generally accepted standards. Rule 2.1 was therefore breached.

Rule 4.6

32. With regard to Rule 4.6, in Ofcom’s view, the Licensee broadcast content aimed, in particular, at potentially vulnerable viewers such as those in financial difficulties or experiencing serious illness, and the content had the potential to improperly exploit such viewers’ vulnerability. Ofcom considered the cumulative effect of the repeated “testimony” or faith healing to be significant because of:
- the absence of any additional information provided by the broadcaster to viewers to seek medical advice or to maintain medical care whilst receiving faith healing and the likelihood that the self selecting audience of Believe TV, given that it is a religious service, were less likely to question the content broadcast and be susceptible to the claims presented;
 - the absence of any form of objectively verifiable evidence for the claims made in the broadcast content; and
 - as a result potentially vulnerable viewers were left with the repeated impression that healing of serious medical conditions could, and would, take place by means only of

the acquisition of the promoted products such as soap, oil and Ribena or by attendance at the church.

33. Given that the content was also soliciting a response from viewers and such individuals experiencing serious illnesses may be vulnerable to the healing claims being made, Ofcom therefore concluded that there was a material risk that susceptible members of the audience may be exploited by the material broadcast on Believe TV. This was a breach of Rule 4.6.

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, repeatedly⁸, or recklessly breached a relevant requirement.
35. As set out above, although the contraventions of Rules 10.2 and 10.3, as recorded in the Finding cause concern, Ofcom considered that only the breaches of Rules 2.1 and 4.6 in this case were sufficiently serious and repeated to warrant the imposition of a statutory sanction for the reasons set out below⁹.
36. In this case, Ofcom issued a preliminary view ("Preliminary View"), that the Licensee had seriously and repeatedly breached the Code and that Ofcom was minded to impose a statutory sanction in the form of a financial penalty of £35,000. In addition, Ofcom proposed that the Licensee should be directed to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom. Ofcom sent a copy of the Preliminary View to the Licensee on 23 November 2011, at the same time giving the Licensee the opportunity to provide written and oral representations on the Preliminary View. The Licensee provided its written representations ("Written Representations") to Ofcom on 14 December 2011 and attended a hearing at Ofcom on 20 December 2011 to provide oral representations ("Oral Representations") (together the "Representations"). The Representations are summarised below.
37. 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. However, Ofcom took account of all the evidence and representations from the Licensee including representations on the Preliminary View, and has had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines in reaching its Decision (see further below).

Seriousness and Repeated Nature of the Breaches

38. In its Preliminary View, Ofcom considered that firstly, the Code Breaches of Rules 2.1 and 4.6 had the potential to cause harm, and possibly very serious harm, as outlined in paragraphs 29 to 33 above. The protection of viewers from harm and exploitation is a

⁸ A repeated breach of a relevant requirement, would include, for example: a repeat of the breach of the same requirement as has already been recorded; repetition of the same or similar conduct as that which earlier contravened a requirement; or multiple breaches of other requirements.

⁹ As set out at footnote 3 above, Ofcom considered that the breaches of Rules 2.1 and 4.6 in relation to the edition of *Bishop Climate Irungu Ministries*, broadcast on 1 February 2011 at 03:19 (and recorded as breaches in the Finding), were not so serious as to warrant consideration of a statutory sanction. This is because although Bishop Climate Irungu was soliciting viewers, with a variety of medical conditions, to contact a prayer line, he was not giving specific testimony that he could necessarily provide a cure for viewers' conditions.

fundamental requirement of the Code. This is particularly the case where viewers are vulnerable and therefore likely to be more susceptible to any claims of healing that are made, and where some of those claims were made explicitly and in a manner which was akin to advertising. In Ofcom's opinion, by broadcasting this material, there was a material risk that susceptible members of the audience may be exploited by the material broadcast by the Licensee. In addition, Ofcom considered that the material in this case had the potential to cause harm, and possibly very serious harm.

39. Second, the Licensee appeared to have wholly insufficient compliance arrangements in place, as demonstrated by the Code Breaches in this case. In Ofcom's view, this is evidenced by:

- the fact that at no time were steps taken by the Licensee to provide adequate protection to members of the public from harm or exploitation, taking into account the fact that the self selecting audience of Believe TV, given that it is a religious service, may have been less likely to question the potentially harmful and exploitative content broadcast;
- the Licensee's failure to keep itself informed about and act on the previous published ASA Adjudication and two Ofcom breach decisions for content featuring Paul Lewis¹⁰, and to ensure it was fully aware of the requirements of the Code and its responsibilities as a broadcaster¹¹. By failing to ensure it was aware of previous adjudications relating to similar content featuring Paul Lewis, the Licensee had the potential of improperly exploiting the susceptibilities of vulnerable viewers of Believe TV, a religious channel, by broadcasting further content featuring Paul Lewis. Therefore, this poor compliance placed vulnerable viewers directly at risk of harm and exploitation;
- despite removing the content featuring Paul Lewis from its schedule, after the ASA informed the Licensee, on 22 December 2010, that the broadcasts on 21 and 22 December 2010 featuring Paul Lewis contained similar claims to those made in relation to the previous decisions of the ASA and Ofcom, the Licensee committed further Code Breaches in relation to similar content featuring Pastor Alex Omokudu and Bishop Climate Irungu; and
- although the Licensee, at its meeting with Ofcom on 30 March 2011 ("the 30 March 2011 Meeting"), sought to reassure Ofcom of its compliance arrangements, the internal compliance guidance note¹² provided by the Licensee after the meeting did not reassure Ofcom of the adequacy of the Licensee's compliance procedures going forward.

¹⁰ ASA Adjudication re Deal TV Limited http://www.asa.org.uk/ASA-action/Adjudications/2007/5/Deal-TV-Limited/TF_ADJ_42553.aspx (Published 9 May 2007).

Ofcom Broadcast Bulletin finding re Passion TV

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb113/> (Published 7 July 2008).

Ofcom Broadcast Bulletin finding re Ben TV <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb117/> (Published 15 September 2009).

¹¹ In recording the breaches against Paul Lewis content broadcast on other channels in 2007 and 2008, Ofcom stated that the breaches of Rule 4.6 were very serious because the promotions of the Paul Lewis products improperly exploited the susceptibilities of vulnerable viewers of these religious channels.

¹² The Licensee's internal compliance guidance note included the earlier ASA Adjudication and Ofcom breach findings relating to Paul Lewis, referred to in footnotes 10 and 11.

40. Third, it was Ofcom's view that 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 especially is the case in relation to any cancer healing claims in a programme. 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 with the connection or treatment of cancer. Whilst the editorial content on Believe TV may not be interpreted strictly as an "advertisement", the existence of such a crime on the statute book 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 that it should be tightly regulated in the public interest and only made by those appropriately qualified to do so.
41. Fourth, the Code Breaches were repeated. The Code Breaches in this case (each involving the same Code Rules) occurred on repeated occasions on: 21 December 2010, 22 December 2010, 4 January 2011 and 1 February 2011. Given that the fact that the Code Breaches occurred over a period of several months, and the Licensee clearly did not have adequate compliance arrangements in place, the Licensee potentially put its viewers at risk of harm to their health and safety, and of exploitation.

Licensee's representations

42. In the Representations the Licensee did not dispute that it had committed the Code Breaches. Indeed in its Written Representations, the Licensee stated that it genuinely and unreservedly apologised for breaching the Code. Further, the Licensee reiterated its apology in its Oral Representations and fully acknowledged that the breaches in this case were not "acceptable". However, in mitigation, it explained the background to the breaches and the changes it had put in place to improve compliance. In addition, it also provided financial information which, in its view, justified a reduction in the level of financial penalty proposed by Ofcom in its Preliminary View. In the summary of the Licensee's Representations below, Ofcom has set out its view on each of the principal Representations, as appropriate.

Background to the Code Breaches

43. The Licensee pointed out that these were its first breaches of the Code.
44. Although acknowledging that the Code Breaches in this case were the first recorded against the Licensee, Ofcom was concerned that such serious and repeated breaches occurred within such a short time after the Licensee was issued with its licence and demonstrated an inadequate level of compliance on the part of the Licensee from the start.
45. In its Written Representations, the Licensee admitted that it was wrong to "show the video" but said that it "genuinely thought and had led [sic] to believe that they had been cleared for broadcast". This was because, although in its Oral Representations and in response to questions, the Licensee acknowledged that it was responsible for the compliance of the Paul Lewis material, it said that it had allowed it to be broadcast relying, to some extent, on assurances from its third-party programme supplier, that the content was "Clearcast-approved as well as Ofcom-approved".
46. Ofcom was concerned that the Licensee relied on the representations from its third party supplier, for three reasons. Firstly, it should have been aware that the Paul Lewis material was editorial content, not advertising and therefore Clearcast would not have approved the material given Clearcast only checks the compliance of advertisements with the BCAP Code, not the compliance of editorial material with Ofcom's Broadcasting Code. Second, Ofcom could not have approved it prior to broadcast since Ofcom (unlike

Clearcast) does not preclear content before it is broadcast. It is the Licensee's responsibility to ensure, prior to broadcast, that editorial content complies with Ofcom's Broadcasting Code. Third, as confirmed by the Licensee in its Oral Representations, the Licensee had had no knowledge of the compliance issues surrounding the content featuring Paul Lewis, prior to it being drawn to their attention¹³ (see paragraph 39 above). In Ofcom's view, this demonstrated a poor level of compliance on the part of the Licensee, which had resulted in material being broadcast which had the potential to improperly exploit the susceptibilities of vulnerable viewers of Believe TV.

47. In its Oral Representations, the Licensee said that at the time that the content featuring Paul Lewis was broadcast (December 2010), the compliance manager was absent from work due to illness and therefore compliance of all of Believe TV's output during that period was "in a sense" the responsibility of a trainee compliance assistant. Due to the third-party programme supplier placing the content featuring Paul Lewis on the incorrect programming server, the content featuring Paul Lewis was broadcast without checking by the trainee compliance assistant. The Licensee said that on being contacted by the ASA (see paragraph 39 above), it had removed the content featuring Paul Lewis from its schedules. As a result of these events, the Licensee said that it no longer obtained programming from the third-party supplier in question, and had ensured that all programming would be placed on a separate compliance programme server prior to checking and being transferred to a transmission server.
48. Ofcom acknowledged that once the Licensee had been made aware by the ASA of the problems surrounding this content, steps had been taken by the Licensee not to repeat the content featuring Paul Lewis. However, Ofcom was concerned that a trainee compliance assistant remained responsible for the compliance of Believe TV from 19 December 2010 until first week of January 2011, while the compliance manager was ill and not at work. Given that the Licensee confirmed in its Representations that it was at that time broadcasting over forty items a day which needed to be checked for compliance purposes, Ofcom considered that the Licensee's standards of compliance during the period of December 2010 (when the most serious of the Code Breaches occurred) was wholly inadequate.
49. In relation to the content featuring Pastor Alex Omokudu broadcast on 1 February 2011, the Licensee said that its compliance checks on this content had not been "comprehensive enough" and the content "in effect went through but it did not get flagged up". The Licensee said this was in part due to the fact that it had been concentrating on its investigation into why the content featuring Paul Lewis had been broadcast. However, in its Oral Representations, the Licensee conceded that the content featuring Pastor Alex Omokudu broadcast on 1 February 2011 "should have set off alarm bells".
50. Ofcom was concerned that, despite being put on notice of compliance issues surrounding Believe TV as early as 22 December 2010¹⁴, subsequent and similar serious and repeated Code Breaches occurred only a few weeks later.

Improvements to Compliance

51. In relation to the changes it had put in place to improve compliance, the Licensee said that, following the Code Breaches in this case, in late February 2010 it had engaged an additional member of compliance staff who helped to restructure the compliance

¹³When the ASA contacted the Licensee concerning the content featuring Paul Lewis on 22 December 2010, it alerted the Licensee to the fact that the content featuring Paul Lewis had been the subject of a previous ASA Adjudication and Ofcom Code breach findings as set out in footnote 10.

¹⁴ Ibid.

processes and draw up the internal compliance guidance note (see paragraph 72 below). However, according to the Licensee, this additional member of compliance staff proved to be inadequate in providing all that the Licensee required in terms of improving compliance. As a result in August 2011, the Licensee engaged a new external compliance consultant to overhaul compliance processes for Believe TV, and ensure compliance with the Code going forward.

52. Ofcom acknowledged the various steps taken by the Licensee to restructure and enhance its compliance resources. The Licensee had produced an internal compliance guidance note (after the Licensee's meeting with Ofcom in March 2011 to discuss its compliance) which included: procedures for scheduling programming; guidance on complying programming in various circumstances, such as the watershed and religious programming; and the previous Ofcom decisions relating to Paul Lewis, as referred to above. However, Ofcom noted that the internal compliance guidance note was only prepared after the Code Breaches had occurred in this case.
53. The Licensee stressed that the majority of its programming does not involve faith healing or miracles. However, in its Oral Representations the Licensee said that when examining compliance of such content, it now ensures that where healing claims are made in programming (for example through the use of particular products and/or prayer), disclaimers are provided on screen to advise viewers to obtain appropriate medical advice concerning any serious medical conditions. With regards to programming that included personal testimony that particular products and/or prayer had particular healing properties, the Licensee said that such content would only be broadcast, if sufficient context is given surrounding the health claims being made for example whether an individual was receiving medical treatment as well as using a particular product.
54. Ofcom recognises the right to freedom of thought, conscience and religion under Article 9 of the Convention and is aware of the sensitivities around faith healing. However, such a right is not absolute and is subject to the legal requirements of the Code that vulnerable people are provided with adequate protection from potentially harmful material. Ofcom noted that the Licensee had taken steps to ensure compliance in the future. For example the Licensee stated that it had changed its compliance processes to ensure that where healing claims are made in programming (for example through the use of particular products and/or prayer) disclaimers are, provided on screen to advise viewers to obtain appropriate medical advice concerning any serious medical conditions. However, it was Ofcom's understanding that the Licensee had not yet revised its internal compliance guidance note to reflect this more detailed compliance process.
55. The Licensee said that with the appointment of a new external consultant to advise on compliance matters it now had in place a "proper compliance structure and personnel". As a result the Licensee stated that it was "confident" that breaches of the kind that occurred in the present case (the Code Breaches) would not happen again.
56. In Ofcom's opinion, it was too early to assess the extent to which any measures taken by the Licensee were timely and effective, so as to ensure on-going compliance with the Code.

The Level of Financial Penalty

57. In relation to the possible level of financial penalty applicable in this case, the Licensee requested a reduction in the proposed level of penalty (£35,000) laid out in Ofcom's Preliminary View because their "operating costs are high and it would make it very hard for us to pay the amount proposed by Ofcom" in its Preliminary View. The level of penalty proposed in Ofcom's Preliminary View had had to be based on an estimate of

the Qualifying Revenue for the Licensee's first complete accounting period falling within the period for which the licence has been in force. This was because the Licensee's first complete accounting period had not ended by the time the penalty was imposed. However, as part of its Oral Representations, the Licensee tabled an accountant's letter certifying that its actual Qualifying Revenue was lower than the estimate of Qualifying Revenue, on which the level of penalty proposed in Ofcom's Preliminary View had had to be based. According to the Licensee, this was because the Licensee's "revenue [has] dipped as our compliance team had to reject a lot of contents as they were not compliant [with the Code]".

58. In reaching its Decision in this case, Ofcom took account of the revised Qualifying Revenue figures provided by the Licensee, and the fact that in its Oral Representations, the Licensee stated that it was currently trading at a material deficit each month. In particular, Ofcom noted the Representations made by the Licensee that as a direct result of it tightening its compliance procedures, Believe TV had rejected a number of pieces of programming which it had deemed to be non-compliant with the Code and that this was evidenced by the a significant reduction in revenue from the second quarter of 2011.
59. In conclusion, in view of all the factors set out above, Ofcom considered that the Code Breaches were sufficiently serious and repeated as to warrant the imposition of a statutory sanction; and sufficiently serious and repeated for the reasons set out above that the statutory sanction should be in the form of a financial penalty.

Consideration of Remedial Actions and Penalties

60. As mentioned in paragraphs 24 to 27 above, Ofcom's powers to take action are set out in sections 236 to 238 of the Act insofar as relevant to the present case.
61. Ofcom considered that a direction to broadcast a statement of Ofcom's findings alone is not a sufficient statutory sanction, given the seriousness of the Code Breaches in this case. Such a statement by itself would not act as an effective disincentive to discourage the Licensee from repeating similar breaches of the Code or other licensees from contravening the Code in a similar manner. However, Ofcom considered that a direction to broadcast a statement of findings in combination with a financial penalty would act as an effective disincentive to discourage the Licensee from repeating the sanctionable conduct or other licensees from contravening the Code in a similar manner.
62. It was 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 was because this case was not simply about not repeating particular programmes but raised more fundamental issues about the Licensee's ability to broadcast a service which provides adequate protection to viewers from harm and exploitation. In addition, the Licensee had already removed the content featuring Paul Lewis from its schedule.
63. In all the circumstances of this case, Ofcom considered that for the licence for Believe TV be revoked as a result of the Code Breaches under consideration in this Decision would not be proportionate.

Imposition of a Financial Penalty

64. 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 contravention of a TLCS Licence in this case is up to £250,000 or five per cent (5%) of the Licensee's Qualifying Revenue relating to its last complete accounting period falling within the period for which his licence has been in force ("the relevant period"), whichever is greater. Section 237(4) of

the Act further provides that where the Licensee's first complete accounting period falling within the relevant period has not ended when the penalty is imposed, Ofcom may estimate the amount that will be the Qualifying Revenue for that accounting period.

65. 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 or from the selling of airtime.
66. In reaching its Decision, Ofcom took account of the revised Qualifying Revenue figures provided by the Licensee. In accordance with section 237 of the Act, since five per cent (5%) this amount is less than £250,000, in this case Ofcom could impose a penalty of up to £250,000 in respect of each contravention committed by the Licensee in this case.
67. 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. 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 Preliminary View, 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.

Factors Taken into Account in Determining the Amount of a Penalty

68. In considering the appropriate amount of a financial penalty for the Code Breaches, Ofcom took account of relevant factors in accordance with the Penalty Guidelines, as set out below. In particular, Ofcom has considered the extent to which any penalty would act as a deterrent to future contraventions of the Code by the Licensee.
69. *The degree of harm, whether actual or potential, caused by the contravention, including any increased cost incurred by consumers or other market participants*

As outlined above, Ofcom considered the Code Breaches of Rules 2.1 and 4.6 to be particularly serious.

With regards to Rule 2.1, Ofcom considered that the Licensee did not take steps to provide viewers with adequate protection from potential harm by providing any context to the claims made. The potential harm in this case was very serious because the Licensee broadcast content that offered treatment for serious conditions such as cancer and diabetes, and encouraged viewers not to seek, or continue with, conventional medical treatment. As paragraph 40 above makes clear, specific legislation exists to protect consumers from inappropriate material making claims to cure cancer.

With regards to Rule 4.6, broadcasters must ensure that "religious programmes"¹⁵ must not improperly exploit any susceptibilities of the audience". These Code Breaches were serious due to the likelihood of the effect of such content on vulnerable viewers such as those experiencing serious illnesses such as cancer or diabetes or heart problems. The content had the potential to improperly exploit such viewers' susceptibilities due to, for example: the cumulative effect of the repeated "testimony" or healing; the absence of any additional information provided by the broadcaster to viewers to seek medical advice or to maintain medical care whilst receiving faith healing; the absence of any form of

¹⁵"Religious programmes" are defined in the Code as programming "which deals with matters of religion as the central subject, or as a significant part, of the programme".

objectively verifiable evidence for the claims made in the broadcast content; the likelihood that viewers would be left with the repeated impression that healing of serious medical conditions could, and would, take place by means only of the acquisition of the promoted products such as soap, oil and Ribena, or by attendance at the church; and, the likelihood that the self selecting audience of Believe TV, given that it is a religious service, were less likely to question the content broadcast and be susceptible to the claims presented.

70. *The duration of the contravention*

Ofcom noted the recorded Code Breaches were in relation to various programmes and pieces of broadcast content broadcast on: 21 December 2010, 22 December 2010, 4 January 2011 and 1 February 2011.

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

There was insufficient evidence to show whether or not the Licensee made any financial gain as a result of the contraventions in this case.

72. *Any steps taken for remedying the consequences of the contravention*

Ofcom noted in the published Finding that, following the 30 March 2011 Meeting with Ofcom, the Licensee had produced an internal compliance guidance note¹⁶. This guidance note included: procedures for scheduling programming; guidance on complying programming in various circumstances, such as the watershed and religious programming; and the previous Ofcom decisions relating to Paul Lewis, as referred to above. In addition, on 30 August 2011 (i.e. after the Finding was published), the Licensee informed Ofcom that it had appointed a specialist external company to deal with the ongoing compliance issues. The external company has been appointed to overview the Licensee's compliance procedures and provide training to the Licensee's compliance staff so as to ensure that going forward that such breaches of the Code would not happen again. In its Oral Representations (see paragraphs 51 to 56 above), the Licensee confirmed that it had undertaken these improvements to its compliance and had clarified its compliance policies regarding material containing healing claims.

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

The Code Breaches in this case were the first breaches of the Code by the Licensee, recorded by Ofcom.

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

Ofcom was not aware of any appropriate steps taken by the Licensee to prevent the contraventions before they occurred. In particular, Ofcom noted that:

- the Licensee failed to keep itself informed about and act on the previous published ASA Adjudication and two Ofcom breach decisions for content featuring Paul Lewis¹⁷,

¹⁶ The Licensee's internal compliance guidance note included the earlier ASA and Ofcom breach findings relating to Paul Lewis, referred to in footnotes 10 and 11.

¹⁷ See footnotes 10 and 11.

and to ensure it was fully aware of the requirements of the Code and its responsibilities as a broadcaster;

- despite removing the content featuring Paul Lewis from its schedule, after the ASA informed the Licensee that the broadcasts on 21 and 22 December 2010 featuring Paul Lewis contained similar claims to those made in relation to the previous decisions of the ASA and Ofcom, there were further Code Breaches during January and February 2011, which also involved potentially harmful material which put susceptible members of the audience at risk; and
- the Licensee only produced an internal compliance guidance note¹⁸ following the 30 March 2011 Meeting, which took place after the Code Breaches in this case had occurred. In addition, in its Oral Representations, the Licensee stated that it had changed its compliance processes to ensure that where healing claims are made in programming (for example, through the use of particular products and/or prayer) disclaimers are provided on screen to advise viewers to obtain appropriate medical advice concerning any serious medical conditions. However, Ofcom is concerned that the internal compliance guidance note does not appear, as yet, to have been updated to reflect this more detailed policy.

75. *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*

As Ofcom noted in its Finding, these Code Breaches occurred because between at least December 2010 and February 2011, the Licensee clearly did not have adequate compliance arrangements in place, and as a consequence, put its viewers at risk of serious harm to their health and safety, and of exploitation, and:

- as already pointed out above (paragraph 39), the Licensee should have been aware of, and applied the principles set out in, the previously published decisions by both the ASA and Ofcom relating to content featuring Paul Lewis, dating back over previous years. Therefore, the Licensee's senior management ought to have known the potential of improperly exploiting the susceptibilities of vulnerable viewers by broadcasting further content featuring Paul Lewis, and therefore placing vulnerable viewers directly at risk of harm and exploitation;
- senior management should have been fully aware of the previously published sanctions decisions by Ofcom, as outlined in paragraphs 80 to 85 inclusive below, which related to advice given in relation to treatment of serious medical conditions, and the likelihood of exploiting vulnerable viewers. In Ofcom's view, this demonstrated a consistently poor level of compliance;
- despite all content featuring Paul Lewis being removed from the schedules of Believe TV from 22 December 2010 onwards (see paragraph 47 above), the fact that the Licensee broadcast similar content in January and February 2011, which also had the potential of improperly exploiting the susceptibilities of vulnerable viewers, was further indicative of a poor level of compliance. Indeed, in its Oral Representations, the Licensee conceded that that the content featuring Pastor Alex Omokudu broadcast on 1 February 2011 "should have set off alarm bells"; and

¹⁸ The Licensee's internal compliance guidance note included the earlier Ofcom breach findings relating to Paul Lewis, referred to in footnotes 10 and 11.

- in its Oral Representations, the Licensee stated that its head of compliance was also its Chief Operations Officer i.e. a member of the Licensee's senior management. This particular member of senior management should therefore have been aware that the compliance procedures for Believe TV were inadequate.

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

In this case, the Licensee made a number of points to explain the actions it had taken, once it became aware of Ofcom's investigation:

- the Licensee confirmed that following the ASA notification to Believe TV¹⁹, all content featuring Paul Lewis was removed from the schedules of Believe TV from 24 December 2010 onwards. The Licensee also informed Ofcom at the 30 March Meeting that it was taking steps to terminate its relationship with the supplier who supplied the content featuring Paul Lewis Ministries. However, despite these actions, the Licensee broadcast similar content featuring Pastor Alex Omokudu Healing Ministry Testimonies and Bishop Climate Irungu Ministries in January and February 2011, which had the potential to cause harm and was in Ofcom's view evidence of an ongoing state of poor compliance. To date, the Licensee has not confirmed whether it has broadcast since 1 February 2011, any of the specific content featuring Pastor Alex Omokudu and Bishop Climate Irungu, covered by the Finding; and
- Ofcom noted that, as set out at paragraph 72 above, following the publication of the Finding, the Licensee appointed an external company to overview its compliance procedures and training.

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

As explained in paragraphs 64 to 66 above, in accordance with section 237(4) of the Act, Ofcom estimated the amount that would be the Licensee's Qualifying Revenue for the first complete accounting period. In deciding a proportionate penalty, Ofcom also took account of the figures produced by the Licensee at the oral hearing, as referred to in paragraph 57 above, which suggested that as a result of tightened compliance the Licensee's revenues had dropped considerably as from the second quarter of 2011. Based on these figures, 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 Breaches in this case; whilst also noting that this is the first sanction imposed on Believe TV.

Precedent

78. In accordance with the Penalty Guidelines, Ofcom also had regard to relevant precedents set by previous cases.
79. In this instance, there are no direct precedent cases because this is the first case involving faith-based treatment for serious medical conditions. However, there is the following precedent case that is closely analogous with the present case, because it involved a religious programme containing content that carried the risk that susceptible

¹⁹ The ASA informed the Licensee that the broadcasts on 21 and 22 December 2010 featuring Paul Lewis contained similar claims to those made in relation to the previous ASA Adjudication and Ofcom findings (see footnotes 10 and 11).

members of the audience may have been persuaded to donate money to the broadcaster when they would not otherwise have done so.

80. **26 September 2011, Al Ehya Digital Television Limited (Noor TV)**²⁰ – 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 and Rule 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.
81. In addition, there are several other analogous cases which involved: ‘alternative’ health advice; or faith-based advice for personal problems, given within programmes, which contained potentially dangerous claims and/or were likely to exploit vulnerable viewers.
82. **1 November 2007, ARY Digital UK Limited (ARY Digital)**²¹ – Sanction of £15,000 and a direction to broadcast a statement of Ofcom’s findings, for breaches of Rule 2.1, Rule 10.3 and Rule 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 her medicines by telephone.
83. **28 October 2008, DM Global Television Network Limited (DM Digital)**²² – Sanction of £15,000 and a direction to broadcast a statement of Ofcom’s findings for breaches of Rule 2.1, Rule 9.4, Rule 9.5, Rule 9.6, Rule 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.
84. **4 December 2008, Venus TV Limited (Venus TV)**²³ – Sanction of £35,000 and a direction to broadcast a statement of Ofcom’s findings for breaches of the CAP (Broadcast) TV Advertising Standards Code (“the BCAP Code”). This case involved the broadcast of five advertisements for various products and services, such as capsules, and astrology service, and a face cream. These advertisements raised issues of harm to viewers. For example, some of the advertisements promoted products which claimed to offer remedies for various medical conditions but no evidence was presented to support the claims made.
85. **20 July 2010, DM Digital Television Limited (DM Digital)**²⁴ – Sanction of £17,500 and a direction to broadcast a statement of Ofcom’s findings for breaches of the BCAP Code.

²⁰ <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Ehya.pdf> (published 26 September 2011) (published 26 September 2011).

²¹ http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/ary_digital.pdf (published 1 November 2007).

²² <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/dmdigital.pdf> (published 28 October 2008).

²³ <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/venustv.pdf> (published 4 December 2008).

²⁴ <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/dmdigitaltd.pdf> (published 20 July 2010).

This case concerned the broadcast of an advertisement offering advice to individuals based on faith-based practices for personal problems which was likely to exploit vulnerable viewers. The advertisement caused financial harm of £1,150 to one viewer and potential harm to viewers in general.

86. Ofcom was satisfied that the level of penalty proposed in this case was consistent with the precedent cases, taking due account of the factors outlined in the Penalty Guidelines, the seriousness and repeated nature of the Code Breaches in this case and the Licensee's representations.

Cooperation

87. In accordance with the Penalty Guidelines, Ofcom may increase the penalty where a licensee has failed to cooperate with Ofcom's investigation.
88. In Ofcom's view, the Licensee had, in general, been cooperative in that, for example, it had: expressed willingness to rectify its compliance processes; ceased broadcasting content featuring Paul Lewis, when contacted by the ASA; and attended a meeting with Ofcom when requested to do so. Ofcom did not therefore consider it appropriate to increase the penalty on account of a failure to cooperate in this case.

Conclusion

89. Ofcom concluded that the Code Breaches by the Licensee were serious and repeated for the reasons set out earlier in this Decision. Ofcom considered that the Licensee seriously and repeatedly breached the Code within months of being issued with its licence and this demonstrated a significantly inadequate level of compliance from the start. Ofcom was particularly concerned that the Licensee broadcast the content featuring Paul Lewis without any adequate prior compliance of the material to identify issues surrounding such content. In addition, the material in this case had the potential to cause harm, and possibly very serious harm, as outlined in paragraphs 38 to 41 above. In Ofcom's opinion, by broadcasting this material, there was a material risk that susceptible members of the audience could be improperly exploited by the material broadcast by the Licensee. However, Ofcom also took into account: the steps that the Licensee said it had taken to improve compliance and its representations that it had sought to ensure, going forward, that it only broadcast content compliant with the Code (as suggested by a significant drop in its revenues). Ofcom also noted the Licensee's representations that it had, in particular, rejected a number of pieces of programming content featuring faith healing and associated claims, due to these not being compliant with the Code.
90. Having regard to all the factors referred to above and all the representations from the Licensee, Ofcom concluded that an appropriate and proportionate sanction would be a financial penalty of **£25,000**. In addition, Ofcom decided that the Licensee should broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom.

6 February 2012