

Decision by Ofcom

Sanction: to be imposed on Karimia Limited

For material broadcast on Radio Dawn on 26 December 2016 at 16:00¹

Ofcom's Decision

of Sanction against:

Karimia Limited ("Karimia Ltd" or the "Licensee") in respect of its service **Radio Dawn** (CR000015BA/2).

For:

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

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

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

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

Rule 3.3: "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context".

Decision:

To impose a financial penalty (payable to HM paymaster General) of £2,000; 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.

¹ See https://www.ofcom.org.uk/_data/assets/pdf_file/0014/105611/Issue-334-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf for the material broadcast on Radio Dawn and found in breach of Ofcom's Broadcasting Code ("the Code") as detailed in Broadcast Bulletin 334.

² The version of the Code which was in force at the time of the broadcast took effect on 9 May 2016. See Annex 4 for relevant extracts of Section Two and Section Three of the Code and Ofcom's Guidance Notes on the Code.

Executive Summary

1. Radio Dawn is a community radio station broadcasting to the Muslim community in Nottingham and the surrounding areas. The Ofcom licence for Radio Dawn is held by Karimia Ltd. The Licensee does not currently hold any other broadcasting licences.
2. On 26 December 2016 at 16:00, the Licensee broadcast a series of three Nasheeds³. Two of these Nasheeds raised no issues under the Code.
3. The third Nasheed was in Urdu and recited by a young boy. It was approximately 17 minutes in duration. It began by glorifying the victories on the battlefield of figures from Islamic history. It then went on to suggest that similar violent acts committed against non-Muslim people would bring honour to Islam.
4. Further, the Nasheed included a number of pejorative references to non-Muslim people. In particular, non-Muslim people were repeatedly referred to as “*Kufaar*” (the Arabic word for disbeliever) and on one occasion, “*Kaafir I Murdaar*” (meaning filthy disbeliever in Urdu).

The Breach Decision

5. In Ofcom’s decision (the “Breach Decision”) published on 7 August 2017 in issue 334 of the Broadcast and On Demand Bulletin⁴, Ofcom’s Executive found that the Nasheed constituted hate speech⁵ and breached Rules 2.3, 3.1, 3.2 and 3.3 of the Code.
6. The Breach Decision set out specifically the broadcast material that was in breach, along with reasoning as to why the material had breached each rule.
7. Ofcom put the Licensee on notice in the Breach Decision that it considered these breaches to be serious, and that it would consider them for the imposition of a statutory sanction.

The Sanction Decision

8. In accordance with Ofcom’s procedures for the consideration of statutory sanctions in breaches of broadcast licences (the “Sanctions Procedures”)⁶, Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case. It reached a decision that a sanction was merited in this case since the breach was serious for the reasons set out in paragraphs 47 to 49 below.
9. Ofcom’s Decision is that the appropriate sanction should be a financial penalty of £2,000. Ofcom also considers 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.

³ A Nasheed is a piece of devotional vocal music that is sung either acapella or accompanied by percussion instruments

⁴ See Annex 1: https://www.ofcom.org.uk/_data/assets/pdf_file/0014/105611/Issue-334-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf.

⁵ Section three of the Code defines “hate speech” as: “all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation”.

⁶ See Annex 5:

https://www.ofcom.org.uk/_data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf.

These procedures took effect on 3 April 2017.

Legal Framework

Communications Act 2003

10. Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 (the "Act"), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure a number of other matters. These include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
11. 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 and Section Three of the Code.
12. In performing these duties, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and, where relevant, to have regard to a number of other considerations including the need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)).

Human Rights Act 1998

13. Under section 6 of the Human Rights Act 1998, Ofcom (as a public authority) has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (the "Convention"). In particular, in the context of this case, Ofcom has taken account of the related rights under Article 9 and Article 10 of the Convention.
14. Article 9 of the Convention provides for the right to freedom of thought, conscience and religion. This Article makes clear that freedom to "manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of rights and freedoms of others".
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)). 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)).
16. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Equality Act 2010

17. Under Section 149 of the Equality Act 2010, in the exercise of its functions, Ofcom must also have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic, such as (but not limited to) race or religion, and persons who do not share it.

Ofcom Broadcasting Code

18. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code.
19. Accompanying Guidance Notes to each section of the Code are published, and from time to time updated, on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code⁷.
20. The relevant Code rules in this case are set out in full at the beginning of this Decision.

Remedial action and penalties

21. 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 Community Radio licence, Condition 5 of the licence requires the Licensee to ensure that provisions of any Code made under section 319 are complied with. The Licensee holds a Community Radio licence.
22. Where Ofcom has identified that a condition of a Community Radio licence has been contravened, its powers to take action are set out in sections 109 to 111B of the Broadcasting Act 1990 (the "1990 Act") insofar as relevant to the case.
23. Section 109 of the 1990 Act provides Ofcom with the power to direct the holder of a Community Radio licence to broadcast a correction or a statement of Ofcom's findings (or both).
24. Section 110 of the 1990 Act provides Ofcom with the power to impose a financial penalty on the holder of a Community Radio licence. The maximum penalty which may be imposed in respect of each contravention is £250,000.
25. Section 110 of the 1990 Act also provides Ofcom with the power to shorten a Community Radio licence by a specified period not exceeding two years, or suspend a licence for a specified period not exceeding six months, where a licensee is in contravention of a condition of a Community Radio licence or direction thereunder.
26. Section 111 of the 1990 Act provides Ofcom with the power to revoke a licence where a licensee fails to comply with a condition of a Community Radio licence or direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.
27. Section 111B of the 1990 Act places a duty on Ofcom to serve a notice on the holder of a Community Radio Licence, suspending that licence, where Ofcom is satisfied that: a) the licensee has included in its licensed service one or more programmes containing material likely to encourage or incite the commission of crime or lead to disorder; b) in doing so, the licensee has failed to comply with a condition included in the licence in compliance with section 263 of the Act; and c) the failure would justify the revocation of the licence. Any such notice shall state that Ofcom may, after a period of 21 days within which the licensee is invited to make representations, decide to revoke the licence.

⁷ See Annex 4 for relevant extracts of Section Two and Section Three of the Code and Ofcom's Guidance Notes on the Code.

Background – The Breach Decision

28. In the Breach Decision, the Executive found that material broadcast by the Licensee on Radio Dawn breached Rules 2.3, 3.1, 3.2 and 3.3 of the Code. The Breach Decision set out the reasons for each of these breach findings.
29. The Breach Decision noted that a Nasheed, broadcast in Urdu, which lasted approximately 17 minutes, was broadcast on Radio Dawn. The Nasheed, which was performed by a young boy, contained lyrics that glorified a number of revered figures in Muslim history who had been victorious on the battlefield – *“Had it not been for the warlike attitude of the companions of the prophet, would the world still remember the sword of Muhammad?”*. In particular, the Nasheed referenced the early Caliphs of Islam such as Caliphs Umar and Usman in the seventh century, as well as figures such as Tipu Sultan who fought against the British military forces in India in the 18th century.
30. Ofcom was particularly concerned by the suggestion in this Nasheed that modern Muslim people might bring honour and glory to Islam by taking inspiration from these historical figures, in potentially carrying out violent acts against non-Muslim people:
- “Even today if we could only reignite that passion that existed among them [figures in Islamic history who had been successful on the battlefield], we too could bury the Kaffir I Murdaar [filthy disbelievers] today”.*
- “If only we could reawaken the love for Jihad we could [once again] behead lowlifes like Abu Jahal”.*
- “The whole world on one side and the Taliban on the other. We are required to salute and honour their display of bravery and steadfastness...It must be understood that justice will only be handed out at the point of the sword”.*
31. In relation to Rule 3.1, Ofcom considered that although the Nasheed did not contain any direct calls to action, its cumulative effect was to condone, promote and encourage violent behaviour towards non-Muslim people. It glorified past violent acts towards non-Muslim people and suggested that similar acts committed now would bring honour to a Muslim person. We therefore considered the content amounted to an indirect call to action likely to encourage or incite the commission of crime or to lead to disorder.
32. In relation to Rule 3.2, Ofcom first considered whether the content constituted “hate speech”⁸ as defined by the Code. This Nasheed encouraged listeners to use incidents of past violent actions of Muslim people towards non-Muslim people as examples of how to engage with non-Muslim people today. Further, the Nasheed included repeated references to non-Muslim people with the Arabic term “kuffaar” (disbelievers). Non-Muslim people were also referred to with the Urdu phrase “Kaafir I Murdaar” (filthy disbelievers). Taking into account the overall tone of the Nasheed and the contemporary usage of these words in Arabic and Urdu, we considered the use of these terms was highly pejorative towards non-Muslim people. There was no surrounding content that placed this example of hate speech in sufficient context to justify its broadcast. Therefore, Rule 3.2 was breached.
33. In relation to Rule 3.3, we considered the lyrics of the Nasheed constituted abusive and derogatory treatment of non-Muslim people. This included encouraging Muslims to take violent action against non-Muslim people and the repeated use of pejorative terms to refer to non-Muslim people. As with Rule 3.2, there was insufficient context to justify this derogatory treatment.

⁸ The Code defines “hate speech” as: “all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation”.

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34. In relation to Rule 2.3, we considered, for the reasons highlighted above, that the Nasheed contained material which we identified as hate speech and as derogatory towards non-Muslim people. As such, we considered that the content had the potential to be extremely offensive. As already discussed, we did not consider this high level of offence was justified by the context, and therefore the content was in breach of Rule 2.3 of the Code.
35. Ofcom stated in the Breach Decision that the contraventions of Rules 2.3, 3.1, 3.2 and 3.3 of the Code were serious and were therefore being considered for statutory sanction.

Ofcom's Decision to impose a Statutory Sanction

36. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
37. 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 and to direct the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom. Ofcom sent a copy to the Licensee on 10 November 2017 and, at the same time, gave the Licensee the opportunity to provide written and oral representations on the Preliminary View.
38. The Licensee provided written representations on 8 January 2018 and oral representations on 23 January 2018. The oral and written representations of the Licensee ("the Representations") are summarised in paragraphs 40 to 46 below.
39. In reaching its decision on whether to impose a statutory sanction and if so, what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the evidence and Representations made by the Licensee. In addition, we had regard to the Sanctions Procedures and Ofcom's Penalty Guidelines in reaching its Decision (see further below).

Licensee's Representations

40. In its Representations, the Licensee accepted the seriousness of the breaches, and said it was "extremely regrettable" that it had occurred and explained the broadcast of the Nasheed as an "unfortunate incident in a day full of otherwise virtuous programmes".
41. The Licensee explained the circumstances that had led to the Nasheed being broadcast. It said its usual procedure is for "the Station Manager to screen all [Nasheeds] before they are added to the approved library". However, the Licensee said that in this case, the Nasheed "appears to have been downloaded by a volunteer without the screening procedure being undertaken". The Licensee said that although it had not been able to identify who had downloaded the track it understood that "the individual no longer works with [its] organisation".
42. The Licensee also stated its belief that the Nasheed was not "chosen for its content but rather, it was for the melodious and harmonic nature of the track". It described the Nasheed as "deceptively sung softly by a child and so on the face of it, it may have been reasonable to assume it would not have questionable content". The Licensee also considered it "unlikely the volunteer...would have understood the [Nasheed]" because, in its view, it was written in "'Classical Shakespearian Urdu' which is very challenging to understand and certainly...not commonplace amongst [Radio Dawn's] audience demographic". The Licensee said that most young people, and even some fluent Urdu speakers, could not understand it. With respect to the reference made in the Nasheed to "the Taliban", the Licensee explained that this may not be a modern reference, but could be a reference to the root meaning of this word (i.e. "students"). Karimia Ltd also said

that it had played the Nasheed for 20 Urdu-speaking people, including a local Iman, and not everyone was able to understand the historical context of the battles referred to, nor identify the historical figures named in the Nasheed.

43. The Licensee noted that the “primary purpose of a penalty fine is to act as a deterrent”. The Licensee therefore considered there was no need for a financial penalty to be imposed in this case as through its “sincere remorse and genuine efforts undertaken since the outset of this matter” it could assure Ofcom that “there would not be a repeat of such a breach”. In particular, the Licensee said that it had rebuilt its library of playlists of Nasheeds and had restricted access to its management staff. It also said that it had improved its compliance procedures by: blocking access to Youtube and the USB drives from the broadcast studio PC; arranging more training for volunteers; beginning work on a yearly “Ofcom rules and Regulations Broadcasting Code awareness workshop” that would be “compulsory for all presenters”; and that it had “started holding regular meetings with its presenters “to discuss any issues”. Karimia Ltd also said that a new station manager has taken responsibility for Radio Dawn since the breach occurred and that she listens to every track before it is added to the Nasheeds playlist. If she has any concerns about the content of a track, the station manager does not permit it to be added.
44. The Licensee remarked that “the incident served to bring a renewed focus on our obligations and a fresh consideration of the dangers and risks that exist that we may not have fully appreciated prior to the complaint”. It was the Licensee’s view that a fine “would not serve any further purpose” and that a “sanction to broadcast a statement of findings alone would be sufficient in the circumstances and would not detract from the seriousness of the breaches”.
45. The Licensee compared this case to the precedents set out in paragraphs 81 to 90. It noted the lowest financial penalty was imposed on Radio Asian Fever⁹ for “a presenter deliberately making repeated questionable comments in two separate, 50 minute broadcasts in conversational Urdu”. As this content was “actually produced by the station itself” the Licensee considered this was “in stark contrast to [its] unfortunate, accidental and regrettable oversight which related to a single, stand-alone piece in classical Urdu produced by an unknown author and played during a window for prayer time”.
46. The Licensee said that it had “very limited resources” and that over the past year it has “used the funds available to put in place all the improvements identified to make its compliance governance more robust”. It also described a number of community projects that it was involved in and said that a significant financial penalty would “cripple the station” and impact on its ability to continue with such projects. It asked Ofcom to take these factors into account when setting the level of any financial penalty, should Ofcom conclude that one was appropriate in this case.

Serious nature of breaches

47. Ofcom considered that for the reasons set out below, the breaches of Rules 2.3, 3.1, 3.2 and 3.3 were serious and therefore warrant the imposition of a statutory sanction.
48. First, and principally, we considered the breaches were serious because, as set out in paragraph 31, we considered that the broadcast of this Nasheed was likely to encourage or incite crime or lead to disorder. Ofcom regards any breach of Rule 3.1 of the Code as a very serious matter. Ofcom has a specific statutory duty to ensure broadcasters do not transmit material that is likely to encourage or incite crime or lead to disorder. Where such material is broadcast in contravention of this requirement, the Act recognises the potential for serious harm to be caused to society and that, where

⁹ See Paragraph 81.

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justified by the breach, the regulator may be required to act to be able to remove a broadcaster's entitlement to hold a licence.

49. Further, the breaches of Rules 3.2, 3.3 and 2.3 of the Code compounded the seriousness of this case, as the Nasheed promoted and justified hatred towards non-Muslim people. The content therefore constituted hate speech. Ofcom considers the potential harm arising from any form of hate speech or content likely to incite crime or lead to disorder to be particularly serious.

Imposition of sanction

50. In view of the factors set out above, Ofcom considered that the breaches were serious and so warranted the imposition of a statutory sanction. The following paragraphs set out the enforcement action we have considered and the sanctions we have decided to impose.

Imposition of sanctions other than a financial penalty

Consideration of the revocation of the licence

51. Given the seriousness of the breaches in this case, Ofcom has considered whether revocation of the licence would be an appropriate sanction. Section 111 of the 1990 Act provides Ofcom with the power to revoke a Community Radio licence where a licensee fails to comply with a condition of a Community Radio licence or direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.
52. In considering the application of section 111, Ofcom noted that the breaches have not been repeated and are not ongoing. We also noted that the Licensee admitted that it breached Rules 2.3, 3.1, 3.2 and 3.3 of the Code and explained the steps it has taken in light of the breaches to improve its compliance procedures and prevent similar breaches occurring in the future.
53. Ofcom also took account of the nature of the content that was broadcast. We noted that the Nasheed (although in breach of Rule 3.1) contained no explicit or direct calls to carry out a specific criminal action. Further, while the fact that the Nasheed was recited by an unidentified young boy, rather than an authority figure, did not mitigate the more potentially harmful messages contained in the Nasheed, we also noted that this Nasheed appeared to be a self-contained 'standalone' piece.
54. We considered as a result of these factors, and taking account the broadcaster's and audience's right to freedom of expression, that although these breaches remained serious, it would not be proportionate to revoke Karimia Ltd's licence under section 111.
55. On the basis that we did not consider the failure by the Licensee to comply with the conditions of its licence would justify the revocation of the licence in this case, we also did not consider that the duty under section 111B, to serve a notice suspending the licence pending a decision as to revocation, was applicable. This is because one of the conditions which triggers the duty under s111B is that Ofcom must consider the breach is serious enough to justify the revocation of the licence.

Consideration of the shortening or suspension of the licence

56. Ofcom also considered whether to shorten or suspend Radio Dawn's licence. Section 110 of the 1990 Act provides Ofcom with the power to shorten a Community Radio licence by a specified period not exceeding two years, or suspend a licence for a specified period not exceeding six months, where a licensee is in contravention of a condition of a Community Radio licence or direction thereunder.
57. Ofcom therefore carefully considered whether shortening or suspending the Licensee's licence, and if so for what period, would adequately reflect the gravity and seriousness of the breaches in this case, and would be appropriate and proportionate in this case.

58. In Ofcom's view the material broadcast was both highly offensive and potentially harmful as it was likely to encourage or incite crime. We were also concerned that this material had been broadcast without the Licensee's knowledge and that Karimia Ltd only became aware of the broadcasts after Ofcom had drawn the content to its attention. In Ofcom's view, there was a clear lack of adequate compliance procedures.
59. However, against the factors set out above, we also took into account that the Licensee has taken steps to prevent any similar breaches from occurring in the future. We also took account of the negative effect of a suspension of service on Radio Dawn's audience and the potential impact of any suspension on the on-going viability of Radio Dawn.
60. After careful consideration, it is Ofcom's Decision that, although the contravention of the Code in this case is serious, it would not be proportionate to shorten or suspend Karimia Ltd's licence.

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

61. Section 109 of the 1990 Act provides Ofcom with the power to direct the holder of a Community Radio licence to broadcast a correction or a statement of Ofcom's findings (or both). We consider it appropriate to do so for the purposes of deterrence and to signal to listeners that the content was unacceptable.
62. Ofcom considers that on its own, a direction to broadcast a statement of Ofcom's findings in this case would not be a sufficient sanction, given the seriousness of the breaches in this case. Such a statement by itself would not act as an effective disincentive to discourage the Licensee from repeating similar breaches of the Code or other licensees from contravening the Code in a similar manner. Therefore, in reaching its Decision, Ofcom noted that a direction to broadcast a statement of Ofcom's findings could be combined with another category of sanction, so as to act as an effective deterrent to discourage the Licensee from broadcasting the same or similar content in future, or other licensees from contravening the Code in a similar manner.
63. Ofcom next considered whether it would be appropriate to determine that a financial penalty should be applied in this case.

Imposition of a financial penalty

64. Under section 110 of the 1990 Act, the maximum level of financial penalty that can be imposed on the holder of a Community Radio licence in respect of each breach of the licence is £250,000.
65. Ofcom's Penalty Guidelines¹⁰ state (in paragraph 11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty".

Factors taken into account in determining the amount of a penalty

66. In considering the appropriate amount of a financial penalty for the Code breaches in this case, Ofcom took account of the specific relevant factors set out at paragraph 12 of the Penalty Guidelines as set out below:

The seriousness and duration of the contravention

¹⁰ See Annex 6: https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf

67. Ofcom regarded the breaches to be serious for the reasons set out in paragraphs 36 to 38. We were particularly concerned by the fact that the Licensee had broadcast a Nasheed lasting 17 minutes, unchallenged and without context, which in Ofcom's view, constituted incitement or encouragement to commit crime and therefore had the clear potential to cause harm.
68. The Breach Decision related to material broadcast on 26 December 2016. We are unaware of the material having been broadcast again and the Licensee confirmed that it had taken steps to ensure that such incidents would not happen again.

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

69. Under Rule 3.1, Ofcom is not required to identify any causal link between the content included in the Programme and any specific actions of criminal behaviour. However, Ofcom is aware that Nasheeds with a violent tone and tenor akin to the one broadcast in this case have been used by terrorist groups such as ISIL as a recruitment tool and to encourage violent activities. As made clear in the Breach Decision, Ofcom considered that the Nasheed was likely to encourage criminal acts including acts of violence carried out by Muslim people against non-Muslim people.
70. Ofcom is mindful of its duties: under section 3(4)(j) of the Act to have regard to the desirability of preventing crime and disorder; and under section 3(2)(e) of the Act to secure, in the carrying out of its functions, the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services. Ofcom concluded that the risk that the broadcast material was likely to encourage or incite the commission of crime or to lead to disorder was real and that, as a result there was a serious risk of harm to members of the public.

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

71. We have no evidence to suggest that the Licensee made any financial or other gain from these breaches of the Code.

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

72. In its representations during Ofcom's investigation, and as set out in the Breach Decision, the Licensee explained the sequence of events that led to the Nasheed being broadcast. In particular, it said that staff were away on holiday on the day of broadcast (26 December 2016) and, as a result, the station was broadcasting pre-recorded programming. It told Ofcom that the content had been downloaded from the internet in 2013, possibly by a volunteer, and had "never been broadcast before".
73. Taking into account the matters above, we considered that the Licensee had ample opportunity to review this pre-recorded content. Ofcom was therefore concerned that it was only when Ofcom contacted the Licensee that the Licensee became aware of the content of the Nasheed and the seriousness of the breach in this case. We therefore considered this was evidence of inadequate compliance processes for identifying potentially harmful material.

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

74. In its representations, the Licensee stressed that the breaches were not intentional, and that this incident was a "true anomaly" that its procedures should have avoided. We have no evidence that suggests the breaches occurred deliberately or recklessly.

However, we are concerned that the Licensee did not appear to have had adequate compliance procedures in place to prevent the broadcast of the Nasheed.

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

75. The Licensee only became aware of the potentially serious issue raised by the programme on being alerted to the material by Ofcom on 3 January 2017. The Licensee has, however, given Ofcom assurances about steps it has taken to improve its compliance processes following being made aware of the incident by Ofcom. In particular, in its representations of 20 January 2017, the Licensee confirmed that it had begun rebuilding its playlists of Nasheeds from scratch.

Any steps taken for remedying the consequences of the contravention

76. We took particular account of the steps that the Licensee has taken, since the breach occurred, to improve its compliance processes and ensure that such an incident does not reoccur.

77. In addition to rebuilding its playlists of Nasheeds and restricting access to this to its management staff, the Licensee outlined the actions it had taken to improve its compliance procedures, including that it had: blocked access to Youtube and the USB drives from the broadcast studio PC; arranged more training for volunteers; begun working on a yearly "Ofcom rules and Regulations Broadcasting Code awareness workshop" that would be "compulsory for all presenters"; and, "started holding regular meetings with its presenters "to discuss any issues". Ofcom also noted that the Licensee acknowledged the "severity of the matter" and said it was "extremely embarrassed by what happened". We also recognised that a new station manager has taken responsibility for the service since the breach occurred and that she listens to every track, refusing to add it to the Nasheeds playlist if she has any concerns about the content. In Ofcom's view, these steps were an encouraging sign that the Licensee was committed to wanting to avoid a similar breach from occurring again.

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

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

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

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

Precedent

80. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases.

81. **23 November 2012, Radio Asian Fever Community Interest Company**¹¹ – Ofcom imposed a penalty of £4,000 on the licensee and directed it to broadcast a statement of Ofcom's findings for breaches of Rules 2.3, 2.4, 3.1 and 4.1. This case concerned two editions of the Sister Ruby Ramadan Special 2011. In the first programme the presenter was highly critical of homosexuality in the context of discussing aspects of

¹¹ See Annex 7

<http://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/?pageNum=2#in-this-section>

the Qur'an. In the second programme the presenter made critical remarks about marriages between Muslims and those of other faiths, in the context of discussing elements of the Qur'an. Ofcom concluded that the material in the first programme was likely to encourage violent behaviour towards homosexual people and was therefore in breach of Rule 3.1. Ofcom also considered the material to breach Rule 2.4 as it could reasonably be considered likely to encourage others to copy such violent behaviour. Ofcom concluded that the material in both programmes had the potential to cause offence, which was not justified by the context, in breach of Rule 2.3. Ofcom held that both programmes failed to exercise the proper degree of responsibility required in religious programmes, in breach of Rule 4.1.

82. **5 July 2013, DM Digital Television Limited**¹² – Ofcom imposed a penalty of £85,000, directed the licensee to broadcast a statement of Ofcom's findings, and not to repeat the programme, for breaching Rule 3.1. In the programme an Islamic scholar delivered a live televised lecture about points of Islamic theology with reference to the fatal shooting in 2011 of the Punjab Governor Salmaan Taseer, who had been a vocal critic of Pakistan's blasphemy law. Ofcom concluded that the material was likely to encourage or incite the commission of crime or to lead to disorder. We did so on the basis that, on a reasonable interpretation of the scholar's remarks, we considered he was personally advocating that all Muslims had a duty to attack or kill apostates or those perceived to have insulted the Prophet Mohammed. Ofcom considered the breach to be particularly serious because the material was delivered to a predominantly Muslim audience by a religious scholar as a part of a religious programme. The breach was compounded by the fact the programme made no condemnation of the acts of killing or violent action referred to.
83. **21 August 2013, Al Ehya Digital Television Limited**¹³ – Ofcom imposed a penalty of £85,000 on the licensee, directed the licensee to broadcast a statement of Ofcom's findings and directed it not to repeat the programme for breaching Rule 3.1. This case concerned the broadcast of a live programme in which a presenter answered questions put to him by telephone by viewers about a wide range of issues and personal conduct relating to Islam and Islamic teachings. The presenter made various statements which appeared to make clear that it was acceptable, or even the duty of a Muslim, to murder any person thought to have shown disrespect to the Prophet Mohammed where the relevant government had failed to take any action. In particular, the presenter made honorific references to individuals who had killed people in the name of Islam, including statements condoning the murder of the Punjab Governor Salmaan Taseer in 2011 by Mumtaz Hussein. Ofcom considered that on a reasonable interpretation of the presenter's remarks, he was personally advocating that all Muslims had a duty to carry out the actions he suggested. Ofcom considered the seriousness of the breaches was further compounded by the fact the statements were delivered to a Muslim audience, in a religious programme, spoken directly to the camera by a person held out to be an expert on Islamic teachings (i.e. a person holding a position of respect and authority in the Muslim community). The seriousness was compounded because the programme made no condemnation of the killings or violent action referred to.
84. **14 August 2014, Regis 1 Limited (Sangat TV)**¹⁴ – Ofcom imposed a penalty of £30,000, and a direction to broadcast a statement of findings for breaching Rule 3.1 of the Code. This case concerned a programme about an attack on the retired Indian

¹² See Annex 8: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Rehmatul-DM-Digital.pdf>.

¹³ See Annex 9: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/noor-tv.pdf>.

¹⁴ See Annex 10: <http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/regis1limited.pdf>

army general Kuldip Singh Brar, who led the controversial military operation against the Golden Temple at Amritsar in 1984. The programme contained statements from various contributors that Ofcom considered likely to encourage members of the Sikh community to take violent action against Lieutenant General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar in June 1984, or those who supported the military operation.

85. **11 November 2016, Club TV Limited**¹⁵ – Ofcom imposed a penalty of £65,000 on the licensee and directed it to broadcast a statement of Ofcom's findings for breaches of Rules 2.1 and 2.3. The case concerned two programmes consisting of public lectures given by the Islamic scholar, Dr Israr Ahmed. Dr Ahmed made a number of discriminatory remarks about Jewish people repeatedly portraying them as a homogenous group and in overwhelmingly negative and stereotypical terms. Ofcom considered that Dr Ahmed's comments had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be seen as a form of hate speech and had the potential to cause harm and offence to viewers. We considered the breaches to be serious so as to warrant the imposition of sanctions. This was because the statements consisted of hate speech and were delivered to a predominantly Muslim audience. Dr Ahmed also spoke uninterrupted and there were no views in the programmes which challenged or otherwise softened the considerable level of offence caused. However, unlike the current case, they were delivered by a religious scholar, a person who holds a position of respect and authority in the Muslim community.
86. **20 December 2016, Mohuiddin Digital Television Limited**¹⁶ – Ofcom imposed a penalty of £75,000 on the licensee and directed it to broadcast a statement of Ofcom's findings for breaches of Rules 2.1 and 2.3. The programme included recordings of a religious festival commemorating the death anniversary of two Sufi saints. It featured a number of religious scholars and preachers addressing an assembled congregation with short sermons, homilies and poetic verses. One of the speakers recounted a parable that lauded the killing of a Jewish trader as an example of the devotion and obedience of a disciple of the Prophet Mohammed. Ofcom considered that the speaker's comments had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be seen as a form of hate speech which had the potential to cause harm and offence to viewers. In particular, we considered the content had the potential to cause harm by portraying the murder of Jewish people in highly positive terms and promoting a highly negative anti-Semitic attitude towards Jewish people. Ofcom considered the breaches to be serious so as to warrant the imposition of sanctions. Again, this was because the material contained hate speech, which was delivered to a predominantly Muslim audience by a religious scholar, who spoke uninterrupted without his views being challenged or otherwise softened.
87. **6 July 2017, Ariana Television and Radio Network**¹⁷ – Ofcom imposed a penalty of £200,000, and a direction to broadcast a statement of findings for breaching Rules 2.3, 3.1 and 3.2 of the Code. The case concerned the broadcast of a two and a quarter minute clip of Muhammad Riyad, before he carried out an attack where he stabbed five people on a train in southern Germany before being killed by security forces. In the video, he brandished a knife; boasted about his forthcoming his attack; and made various statements describing in highly positive terms his and ISIL's intentions to carry out acts of extreme violence against the German population. Ofcom considered that the content had clear potential to influence impressionable viewers by encouraging serious

¹⁵ See Annex 11: https://www.ofcom.org.uk/_data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf

¹⁶ See Annex 12: https://www.ofcom.org.uk/_data/assets/pdf_file/0022/96124/Noor-TV.pdf

¹⁷ See Annex 13: https://www.ofcom.org.uk/_data/assets/pdf_file/0026/103949/decision-ariana-television-radio-network.pdf

crime. We also considered that the content was a clear example of highly offensive hate speech.

88. **25 July 2017, Kanshi Radio Limited**¹⁸ – Ofcom imposed a penalty of £17,500, and a direction to broadcast a statement of findings for breaching rules 2.1, 2.3, 3.2 and 3.3 of the Code. The case concerned two broadcasts of a song *Pinky Pinky* in Punjabi. The lyrics contained a number of aggressively pejorative references to the Muslim community, and Muslim women in particular. The song also included well known sacred Islamic phrases that were interspersed with very offensive terms while the sounds of gunshots were heard. We also considered that the lyrics of the song, such as “*Pakistani* [i.e. a reference to Islam], *you sister fucker!*” and the repeated sounds of gunshots throughout the song, were an expression of an extreme Sikh perspective in opposition to the Muslim community. Ofcom considered the content was a clear example of hate speech and abusive and derogatory towards women. We also considered that the content had the potential to cause harm by increasing tensions between the Sikh and Muslim communities and to promote the objectification and abuse of women.
89. A further case related to breaches of different rules, but we considered it in relation to this case because it also relates to content condoning violence.
90. **8 May 2012, Dama (Liverpool) Limited**¹⁹ – Ofcom imposed a sanction of £10,000 on the licensee and a direction to broadcast a statement of Ofcom’s findings, for breaches of Rules 2.4, 5.4, 5.11 and 5.12. This case concerned various programmes broadcast on Aden Live, a service broadcasting predominantly to a South Yemeni audience. In relation to the breach of Rule 2.4, Ofcom found that material in these programmes, taken together, condoned or glamorised people dying in support of the ‘southern cause’ revolt against the Yemeni government and the carrying of weapons. Ofcom concluded that, given that many of Aden Live’s audience would have been likely to support of the secession of South Yemen from the Republic of Yemen and/or support of the Southern Movement and oppose the Government of Yemen, the material broadcast could reasonably be considered likely to encourage others to copy violent or dangerous behaviour.

While Ofcom considers the nature of the content in the cases listed in paragraphs 81 to 90 is relevant to the current case, we note that, as set out in the Penalty Guidelines, Ofcom may depart from these cases depending on the facts and context of the current case.

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

91. As set out in our penalty guidelines, the central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom obtained financial data setting out the Licensee’s qualifying revenue and other turnover for the last accounting period to decide upon a proportionate penalty. Ofcom took this information fully into account when coming to its Decision as to the appropriate level of financial penalty in this case.
92. Ofcom recognised that any proposed penalty must be proportionate taking into account the Licensee’s rights under Articles 9 and 10 of the Convention and the fact that deterrence is the central objective of imposing a penalty.

¹⁸ See Annex 14: https://www.ofcom.org.uk/data/assets/pdf_file/0020/105167/kanshi-radio-sanction-decision.pdf

¹⁹ See Annex 15: http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden_Live_sanctions_decisio1.pdf

Decision

93. Having regard to all the circumstances referred to above, including the need to achieve an appropriate level of deterrence and the particularly serious nature of the Code breaches in this case, and all the representations to date from the Licensee, Ofcom's Decision is that an appropriate and proportionate sanction would be a financial penalty of £2,000. In addition, Ofcom considers that the Licensee should broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom.

Ofcom
27 February 2018