

**Sanction: Decision by Ofcom**

**Sanction: to be imposed on Mohiuddin Digital Television Limited**

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**For material broadcast on Noor TV on 17 November 2015 at 21:00<sup>1</sup>**

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

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

**For:**

Breaches of the Ofcom Broadcasting Code (the "Code")<sup>2</sup> in respect of:

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

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."

**Decision:**

To impose a financial penalty (payable to HM Paymaster General) of **£75,000**; 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.

**Executive Summary**

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<sup>1</sup> The material broadcast on Noor TV and found in breach of Ofcom's Broadcasting Code (the "Code") is detailed in Broadcast and On Demand Bulletin 304, dated 9 May 2016 (the "Breach Decision"). See [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb304/Issue\\_304.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb304/Issue_304.pdf).

<sup>2</sup> The version of the Code which was in force at the time of the broadcast took effect on 1 July 2015.

## Sanction 104 (16) Mohiuddin Digital Television Limited

1. Noor TV is a digital satellite television channel broadcasting religious and other programming in Urdu from an Islamic perspective to audiences in the UK and internationally. The Ofcom licence for Noor TV is held by Mohiuddin Digital Television Limited (“MDT” or “the Licensee”). The Licensee currently holds no other broadcasting licences.
2. Previously the licence for Noor TV was held by Al Ehya Digital Television Limited (“Al Ehya”). The licence was transferred from Al Ehya to MDT in January 2015. However, there continued to be a number of common linkages between MDT and Al Ehya following the transfer of the licence in terms of both ownership and key personnel. In particular, Mr Alauddin Siddiqui and Mr Mohammed Iqbal were both directors of Al Ehya. Mr Siddiqui also held a 25% shareholding in Al Ehya, and Mr Iqbal was previously the compliance contact for the company. Mr Siddiqui is now the largest shareholder in MDT, and both Mr Siddiqui and Mr Iqbal were directors of MDT at the time at which the material to which this Decision relates was broadcast.<sup>3</sup>
3. On 17 November 2015, the Licensee broadcast the second instalment of a series of four programmes which had been recorded at the Urs Nehrian festival<sup>4</sup> in Pakistan that had taken place in June 2015. The programme consisted of 15 religious scholars and preachers addressing an assembled congregation with short sermons, homilies and poetic verses.
4. Ofcom noted that one of the religious scholars recounted a parable in which he stated that the Prophet Muhammed had commanded his followers that “*whoever amongst you comes across a Jew, they should slay him immediately*”. The speaker then recounted how one individual immediately killed a Jewish trader with whom he had long standing business relations. The speaker held this out as the highest form of religious obedience.

### The Breach Decision

5. In Ofcom’s decision (the “Breach Decision”) published on 9 May 2016 in issue 304 of the Broadcast and On Demand Bulletin<sup>5</sup>, Ofcom’s Executive found that material in the *Urs Nehrian* programme (the “Programme”) breached Rules 2.1 and 2.3 of the Code.
6. The Breach Decision set out specific examples of broadcast material that were in breach, along with reasoning as to why, in relation to each breach, 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”)<sup>6</sup>, 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 the Decision that a sanction was merited in this case since the breach was serious for the reasons set out in paragraphs 43 to 47.

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<sup>3</sup> Mr Siddiqui and Mr Iqbal both resigned as directors of MDT in 2016.

<sup>4</sup> The Urs Nehrian festival is an annual event which commemorates the death anniversary of the Sufi saints Khawaja Ghulam Mohiuddin Ghaznavi and Khawaja Pir Saani Sahib at the shrine of Nehrian located in Azad Kashmir, Pakistan.

<sup>5</sup> See: [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb304/Issue\\_304.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb304/Issue_304.pdf).

<sup>6</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/statutory-sanctions.pdf>.

9. Ofcom's Decision is that the appropriate sanction should be a financial penalty of £75,000. 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.

### **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 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...health...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) of the Convention). The exercise of these freedoms may be subject only to conditions and restrictions which are "prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary" (Article 10(2) of the Convention).

16. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

### **Ofcom Broadcasting Code**

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

### **Remedial action and penalties**

20. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 are observed by the licensee. In the case of a 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.
21. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 238 of the Act insofar as relevant to the case.
22. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme which was in contravention of a licence condition.
23. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and 5 per cent of the qualifying revenue from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force.
24. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence where a licensee is in contravention of a condition of a TLCS licence or direction thereunder.

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

25. In the Breach Decision, the Executive found that material broadcast by the Licensee on Noor TV breached Rules 2.1 and 2.3 of the Code. The Breach Decision set out the reasons for each of these breach findings.
26. The Breach Decision noted that the Programme, broadcast in Urdu, included recordings of a religious festival commemorating the death anniversary of two Sufi saints. During this celebration a succession of speakers gave a series of sermons, homilies and poetic verses.
27. One of the speakers, Allama Mufti Muhammad Saeed Sialvi Sahib ("Allama Sialvi"), recounted a parable in which he stated that the Prophet Muhammed had given a general command to kill all Jewish people. He stated that upon hearing this command one Muslim follower had immediately killed a Jewish trader with whom he had long standing business relations. Allama Sialvi held this to be an example of the devotion and obedience of a disciple to the Prophet Muhammed and on several occasions appeared to condone the killing of a Jewish trader.
28. In relation to Rule 2.1, Ofcom first considered whether the Programme contained potentially harmful and/or offensive material. We noted that Allama Sialvi held the titles

- “Mufti”<sup>7</sup> and “Allama”<sup>8</sup>, denoting that he was a figure of religious authority within the Muslim community, and therefore someone whose views would carry some weight within the Muslim community.
29. We considered that Allama Sialvi’s clear statement that religious obedience within the Islamic faith could be demonstrated through murder of Jewish people had the potential to be interpreted as spreading anti-Semitism, i.e. his comments could amount to a form of ‘hate speech’. In this context we were mindful of the Council of Europe’s definition of ‘hate speech’, as follows: “all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”<sup>9</sup>.
  30. We considered that Allama Sialvi’s speech, particularly due to his standing and authority within the Muslim community, involved clear potential to cause significant offence as it held up in unequivocal terms the killing of a Jewish person as an example of devotion and obedience within the context of the Islamic faith. We also considered that 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.
  31. We went on to consider whether the Licensee had taken sufficient steps to provide adequate protection to members of the public from the inclusion of the potentially harmful material. We noted that Allama Sialvi spoke uninterrupted and at no point during or after the Programme were Allama Sialvi’s comments balanced or countered by other content which softened or otherwise challenged their pejorative, discriminatory and inflammatory tone and nature. We considered the Licensee had not taken sufficient steps to provide adequate protection to members of the public from the inclusion of the potentially harmful material. In response to Ofcom’s investigation the Licensee decided to broadcast an apology three times a day in both Urdu and English from 22 to 29 December 2015. Nonetheless, for all the reasons set out in the Breach Decision, the broadcast of the Programme was in breach of Rule 2.1 of the Code.
  32. In relation to Rule 2.3, as noted above, Ofcom considered that Allama Sialvi’s comments had the potential to be interpreted as a form of anti-Semitic hate speech and as such clearly had considerable potential to be offensive.
  33. Ofcom then considered whether the offence was justified by the context. In this case, a Muslim scholar delivered a lecture in which he narrated a parable in which the murder of a Jewish person was presented as the highest form of perfect religious obedience for a Muslim. Ofcom acknowledged that there may be cases where some relevant context can be provided by the fact that potentially offensive content is derived from a sacred text such as, in the case of Islam, the Qur’an or the Hadith. We noted that in its initial response, the Licensee provided no scriptural or textual references to seek to justify by context the inclusion of the parable cited by Allama Sialvi. In its later representations Noor TV sought to rely on three scriptural references from the Hadith as providing contextual justification for the inclusion of such material. We noted however that at no point during Allama Sialvi’s sermon, nor in the Programme overall, was any reference made to any of these three Islamic texts. The Licensee in its submissions to Ofcom could not point to any contextual factors at the time of the broadcast to help justify the broadcast of Allama Sialvi’s potentially offensive remarks. By simply stating that to kill Jews was a command of the Prophet Muhammad, in Ofcom’s opinion, he gave weight to the parable without any appropriate textual justification being cited during his sermon, or within the Programme in general. In Ofcom’s opinion there would need to be very

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<sup>7</sup> Mufti: A person who could hand down religious edicts known as Fatwas.

<sup>8</sup> Allama: Religious scholar.

<sup>9</sup> Council of Europe Committee of Ministers Recommendation, 30 October 1997 ([http://www.coe.int/t/dghl/standardsetting/hrpolicy/other\\_committees/dh-lgbt\\_docs/CM\\_Rec\(97\)20\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec(97)20_en.pdf)).

strong, if not exceptional, contextual factors to justify the inclusion of such highly offensive and discriminatory anti-Semitic material. In this case, we concluded that there was insufficient contextual justification for the broadcast of this content. The broadcast of the Programme was therefore also in breach of Rule 2.3 of the Code.

34. Ofcom stated in the Breach Decision that the contraventions of Rules 2.1 and 2.3 of the Code were serious and were being considered for statutory sanction.

### **Ofcom's Decision to impose a Statutory Sanction**

35. As set out in paragraph 1.10 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
36. In this case, Ofcom issued a preliminary view ("Preliminary View") that Ofcom was minded to impose a statutory sanction in the form of a financial penalty 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 of the Preliminary View to the Licensee on 3 October 2016 and at the same time gave the Licensee the opportunity to provide written and oral representations on the Preliminary View. On 11 November 2016, Ofcom informed the Licensee of an additional precedent, relating to Peace TV Urdu<sup>10</sup>, which had been published after the Preliminary View was sent to the Licensee and which Ofcom considered relevant in this case.
37. The Licensee responded to the Preliminary View in letters dated 20 October and 2 November 2016, and subsequently in an email dated 14 November 2016, in which it provided written representations (summarised in paragraphs 39 to 42) ("the Representations"). The Licensee declined the opportunity to provide oral representations.
38. 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, including the Representations on the Preliminary View, and has had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines in reaching its Decision (see further below).

### **Licensee's Representations**

39. In its Representations, the Licensee reiterated that it had "fully acknowledged the breach for which we voluntarily apologised on air" and stated that it understood Ofcom's reasoning for proposing a financial penalty.
40. However, the Licensee provided information about the potential impact of the fine proposed by Ofcom in the Preliminary View on the Noor TV channel, including details of its latest financial accounts, and asked that "a lower financial penalty be considered".
41. In its Representations regarding the Peace TV Urdu precedent, the Licensee repeated that it had "apologised for its error in not processing the Urs Nehrian Festival programme correctly but would stress this was human error in not completing our compliance procedure". It sought to distinguish its programme material found in breach of the Code from that of Peace TV. It said its programme "contained one parable that was unacceptable for broadcast without strong contextual justification, for which we apologised voluntarily on-air". MDT contrasted this with the Peace TV Urdu case, which it said concerned two 45 minute programmes of a Muslim scholar's lectures on the "role and actions of Jewish people through history" which included repeated negative stereotypes and discriminatory remarks regarding the Jewish people. The Licensee said

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<sup>10</sup> Further details of Ofcom's sanction decision in relation to Peace TV Urdu are provided at paragraph 80 below.

that in its view the programme content in the Peace TV Urdu case was not “comparable to the [MDT/Noor TV] Urs Nehrian incident in terms of harm and trust” and any sanction should “be applied proportionately to the potential harm and offence caused.”

42. The Licensee also pointed out that Rule 3.1 (incitement of crime) was not breached in its case and that Ofcom had imposed higher sanctions in cases which “involved breaches of 3.1 and 2.4 where incitement and violence were judged to have been potentially be encouraged or copied”. Finally, the Licensee said “it is important in our case to recognise the remedial action taken as a result of the incident, specifically the apologies we broadcast on a widespread and voluntary basis as well as the strengthening of our compliance resource and procedures over the last 12 months”.

### **Serious nature of the breaches**

43. As mentioned in paragraph 35 above, the imposition of a sanction against a broadcaster is a serious matter. Ofcom considered that for the reasons set out below the breaches of Rules 2.1 and 2.3 were serious and therefore warrant the imposition of a statutory sanction.
44. First, and principally, the breaches were serious because as set out in paragraph 29, Allama Sialvi’s clear statement that religious obedience within the Islamic faith could be demonstrated through murder of Jewish people had the potential to be interpreted as spreading anti-Semitism, i.e. his comments could amount to a form of ‘hate speech’. Second, these anti-Semitic statements were delivered to a predominantly Muslim audience, by a religious scholar, a person who holds a position of authority and respect within the Muslim community. Third, Allama Sialvi spoke uninterrupted and there were no views or statements in the Programme which challenged or otherwise softened the considerable level of potential offence caused by his remarks.
45. Ofcom considers the potential harm arising from any form of hate speech to be particularly serious. Further, taking the above factors together, Ofcom was concerned that the statements made, uninterrupted, by an individual likely to be held in high regard and status by the viewers of Noor TV which invoked the murder of a Jewish person as a demonstration of perfect obedience to the Islamic faith had the clear potential to cause harm as well as being offensive.
46. Finally, the serious nature of these breaches (the broadcast of anti-Semitic hate speech in pre-recorded content) indicated a failure of compliance oversight by the Licensee, and a lack of sufficiently robust compliance procedures in place at Noor TV.
47. In view of the factors set out above, Ofcom considered that the breaches were serious and so warrant the imposition of a statutory sanction. The following paragraphs set out Ofcom’s Decision on the appropriate sanction to be imposed.

## **Sanction**

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

48. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom’s findings (or both), or not to repeat a programme which was in contravention of a licence condition.
49. It is Ofcom’s view that a direction not to repeat the programme found in breach would not be an appropriate sanction in all the circumstances. This is because, as set out in the Breach Decision, the Licensee accepted that Allama Sialvi’s comments breached generally accepted standards and therefore clearly had no intention of repeating the Programme.
50. Ofcom considers that directing the Licensee to broadcast a statement of Ofcom’s findings is necessary to bring the breaches and Ofcom’s action in response to the breaches, to the attention of Noor TV’s viewers.

51. Ofcom considers that, on its own, a direction to broadcast a statement of Ofcom's findings in this sanctions case is not a sufficient statutory sanction, given the serious nature of the breaches in this case. Ofcom therefore considers that a direction to broadcast a statement of Ofcom's findings in combination with a financial penalty would act as a more effective deterrent to discourage the Licensee (and other licensees) from contravening the Code in a similar manner.
52. Ofcom has taken into account that the Licensee's representations during the investigation, as set out in the Breach Decision, indicated that it had not intended the problematic content to be broadcast and that the material had been transmitted as result of "a human error not a systematic failure of the processes put in place to ensure compliance". We also noted that the Licensee said it had put in place various improvements to its compliance arrangements in response. Ofcom's Decision is that it would not be proportionate to recommend revocation of the Licence as an appropriate statutory sanction in respect of the current breaches under consideration.

### **Imposition of a financial penalty**

53. 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 condition is £250,000 or five per cent of the licensee's qualifying revenue relating to its last complete accounting period falling within the period for which its licence has been in force, whichever is greater.
54. Qualifying revenue is calculated by adding together revenue gained from advertising, sponsorship and subscription.
- 55.
56. Ofcom's Penalty Guidelines<sup>11</sup> state (in paragraph 11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty". In reaching its Decision on the imposition of a sanction in this case, Ofcom has taken full account of the need to ensure that any penalty acts as a deterrent and has also taken account of the specific factors set out at paragraph 12 of the Penalty Guidelines.
57. In this case Ofcom believed that a financial penalty was necessary to reflect the serious nature of the Code breaches recorded against the Licensee, and to act as an effective incentive to comply with the Code, both for the Licensee and other licensees.

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

58. In considering the appropriate amount of a financial penalty for the Code breaches in this case, Ofcom took account of relevant factors set out in the Penalty Guidelines as set out below. In its Representations the Licensee did not comment on these factors other than as specified below. However, it stated that it understood Ofcom's reasoning for imposing a financial penalty.

### ***The seriousness and duration of the contravention***

59. Ofcom regarded the breaches to be serious for the reasons set out in paragraphs 43 to 47 above. We were particularly concerned by the fact that the Licensee had broadcast what, in Ofcom's view, could be interpreted as a form of anti-Semitic hate speech, and the potential harm this might cause.

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<sup>11</sup> See: [http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty\\_guidelines\\_2015.pdf](http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty_guidelines_2015.pdf).



60. The Breach Decision related to material broadcast on 17 November 2015. We are unaware of the material having been broadcast again and the Licensee confirmed that it had broadcast a series of apologies in Urdu and English across eight days between 22 and 29 December 2015.

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

61. Ofcom regarded the breach of Rule 2.1 to be particularly serious. The potential harm in this case was significant because the Licensee broadcast on Noor TV an Islamic religious scholar relating a parable that depicted the murder of a Jewish person as an act of perfect religious obedience by a Muslim. This could be interpreted as a form of anti-Semitic hate speech. While we did not consider that the material broadcast was so strong as to be likely to encourage or incite the commission of crime or to lead to disorder, in our view, as noted above, the potential harm arising from any form of hate speech is particularly serious. Ofcom notes that this would include the potential to harm community cohesion.

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

62. We have no evidence to suggest that the Licensee made any financial 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.*

63. In its representations during Ofcom's investigation, MDT said that in relation to the checking of this programme by Noor TV production staff "it is apparent insufficient time was allowed for the processing, including full review of the content". It stated that a compliance form had been "filled in... However, the form was not signed off as Compliance Checked, as per normal procedure". Accordingly, playout staff had "believed compliance had been completed" when it had not. In summary, MDT said this incident resulted from "a human error not a systematic failure of the processes put in place to ensure compliance".

64. The Licensee clearly had ample opportunity to review this pre-recorded programme. Ofcom was therefore concerned that the Licensee only became aware of the serious nature of this content on being contacted by Ofcom. We therefore considered this was evidence of inadequate compliance processes for identifying potentially harmful material.

65. Ofcom also took into account that the previous holder of the Noor TV licence, Al Ehya, had been found in breach of the Code on two previous occasions, as set out below. We therefore considered whether the Licensee, in light of the previous breaches of the Code relating to the Noor TV service, had taken any steps to prevent future contraventions.

66. In June 2011, Ofcom found Al Ehya in breach of Rules 2.1, 2.2, 4.6, 10.3 and 10.15 for the broadcast of a programme called *Saturday Night Special*, mainly consisting of a presenter taking calls from viewers who were asked to donate money to the Noor TV channel in return for prayers or the receipt of a "special gift" of earth from the tomb of Prophet Mohammed. In September 2011, Ofcom imposed a penalty of £75,000 and directed the licensee to broadcast a statement of Ofcom's findings.<sup>12</sup>

67. In December 2012, Ofcom found Al Ehya in breach of Rules 3.1 and 4.1 for the broadcast of a live programme called *Paigham-e-Mustafa*, in which a presenter

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<sup>12</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Ehya.pdf>.

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 made 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 August 2013, Ofcom imposed a penalty of £85,000, and directed the Licensee to broadcast a statement of Ofcom's findings and not to repeat the programme.<sup>13</sup> In its sanction decision in that case, Ofcom expressed concerns regarding the very weak compliance record of Al Ehya and stated that it expected the Licensee to take immediate and effective steps to redress this position. Al Ehya explained to Ofcom that following the breaches it had employed a new compliance consultant and had put in place new compliance processes and procedures.

68. Ofcom noted that the two previous Code breaches relating to Noor TV were both of a serious nature and led to the imposition of statutory sanctions consisting of significant levels of financial penalty and an on air apology in both cases. Whilst these breaches occurred under the previous licensee of the Noor TV service, Ofcom considered that they were relevant to the question of whether the Licensee had taken appropriate steps to prevent breaches of the Code. Particularly given that the nature of the content broadcast on Noor TV (i.e. religious programming) remained largely the same following the transfer of the licence and the Licensee had common personnel with Al Ehya (see below), we considered that the Licensee should at least have been aware of the risks of broadcasting material in breach of the Code and the need to maintain effective compliance processes to address these risks.
69. The breaches of the Code under the previous licensee were considered particularly relevant in this case as there are a number of common linkages in terms of both ownership and key personnel between MDT and Al Ehya. As noted above, the largest shareholder in MDT is Mr Alauddin Siddiqui. Mr Siddiqui was also a director of MDT at the time when the Programme was broadcast on Noor TV. Mr Siddiqui was previously a shareholder in Al Ehya and he was a director of Al Ehya at the time that the previous breaches of the Code occurred. In addition, another director of MDT at the time when the Programme was broadcast, Mr Mohammed Iqbal, was previously a director and compliance contact for Al Ehya<sup>14</sup>.
70. Ofcom is concerned that the latest breach demonstrates that, following the regulatory action taken and penalties imposed on the previous licensee for Noor TV, insufficient action had been taken by the Licensee to ensure that its compliance arrangements were sufficiently robust to prevent other serious breaches of the Code occurring. In Ofcom's view the seriousness of the previous breaches, and the previous concerns expressed by Ofcom regarding the compliance function for the Noor TV service under Al Ehya, should have resulted in a more robust compliance function under the current Licensee.

*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*

71. We have no evidence that suggests the breaches occurred deliberately or recklessly. However, as explained above, Ofcom considers that the Licensee's senior management ought to have been aware of the risk of a contravention occurring given the previous and serious breaches of the Code relating to the Noor TV service.

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

<sup>14</sup> According to Companies House records, Mr Siddiqui resigned as a director of MDT on 1 March 2016 and Mr Iqbal resigned as a director of MDT on 27 April 2016.

72. In its Representations the Licensee reiterated that the breaches were in no way deliberate and were the result of human error in not following the Licensee's internal procedures.

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

73. The Licensee only became aware of the potentially serious issue raised by the Programme on being alerted to the material by Ofcom on 19 November 2015. This followed Ofcom being alerted to the content by a viewer. It was only after 19 November 2015 that the Licensee broadcast a series of on air apologies.

74. As set out in paragraph 75-76 below, the Licensee has also given Ofcom assurances about steps it said it has taken to improve its compliance processes.

Any steps taken for remedying the consequences of the contravention

75. As set out in the Breach Decision, MDT gave assurances that it had taken steps to "prevent this [sort of compliance failure] happening again". The Licensee said that:

- it had broadcast a series of apologies in Urdu and English across eight days between 22 and 29 December 2015;
- its Programme Compliance Form has been amended to require that two people have to "sign off programmes as Code compliant" before playout of content is possible;
- it had appointed a new Head of Compliance who was "an experience[d] broadcast professional" to ensure compliance with the Code in future, although we note that the individual appointed to this role had previously been Head of Programmes, Operations and Compliance at the previous holder of the Noor TV licence, Al Ehya, and also participated in the sanctions procedure relating to the broadcast of the programme *Paigham-e-Mustafa* on Noor TV in 2012 (see above);
- it had introduced and completed "Ofcom Code refresher training to keep staff up-to-date with Ofcom Codes and case law"; and
- it issued "regular updates based on Ofcom's Broadcast Bulletins".

76. In its Representations the Licensee stated that it considered it important for Ofcom to recognise the remedial actions it had taken in the 12 months following the broadcast of the Programme, as summarised above.

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

77. 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. However, as explained above, we noted the relevance of the previous contraventions of the Code by the previous holder of the Noor TV licence, Al Ehya. In particular, we noted that both previous breaches were of a serious nature and had led to statutory sanction action being taken by Ofcom, resulting in the imposition of significant financial penalties.

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

78. 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**

79. In accordance with the Penalty Guidelines, Ofcom has also had regard to relevant precedents set by previous cases. In this instance, there is one direct and recent precedent dealing with breaches of Rule 2.1 and Rule 2.3 of the Code in relation to harmful and offensive material.

80. **11 November 2016, Peace TV Urdu**<sup>15</sup>- Ofcom imposed a penalty of £65,000 and directed the licensee (Club TV Limited) to broadcast a statement of Ofcom's findings on a date and in a form to be determined by Ofcom for breaches of Rules 2.1 and 2.3. On 12 and 13 September 2015, the Licensee broadcast two editions of *Azmat-e-Islam* on Peace TV Urdu. These were recordings of public lectures given by the Islamic scholar Dr Israr Ahmad, who had died in April 2010. Both lectures lasted approximately 45 minutes and discussed the role and actions of Jewish people through history to the present day. The programmes included numerous examples of overwhelmingly negative and stereotypical references to Jewish people, which Ofcom considered could be interpreted as spreading anti-Semitism i.e. they were a form of hate speech. Ofcom therefore concluded that the programmes contained harmful and offensive material, in breach of Rule 2.1. As there was insufficient contextual justification for the broadcast of the offensive content, Ofcom also recorded a breach of Rule 2.3.
81. In addition, Ofcom considered some other previous sanctions decisions have some relevance in this case. The first decision which we considered to be partially relevant involved, amongst other things, a breach of Rule 2.3.
82. **23 November 2012, Radio Asian Fever Community Interest Company**<sup>16</sup> – Ofcom imposed a penalty of £4,000 on Radio Asian Fever Community Interest Company 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*, broadcast on 17 August 2011 and 18 August 2011. The material was broadcast in Urdu. In the first programme the presenter was highly critical of homosexuality in the context of discussing aspects of the Qur'an. Ofcom concluded that this material was likely to encourage violent behaviour towards homosexual people and was therefore in breach of Rule 3.1. As it could reasonably be considered as material likely to encourage others to copy such violent and dangerous behaviour, Ofcom also recorded a breach of Rule 2.4. Ofcom concluded that this material was offensive and the broadcaster had failed to apply generally accepted standards, which was a breach of Rule 2.3, and that as a religious programme it had failed to exercise the proper degree of responsibility. This was a breach of Rule 4.1. The second programme contained various offensive remarks critical of marriages between Muslims and those of other faiths, which were found in breach of Rules 2.3 and 4.1.
83. Two further relevant precedents concern material broadcast that was found to be likely to encourage or incite the commission of crime or lead to disorder and hence in breach of Rule 3.1. We did not consider that the material broadcast by Noor TV in this case was so strong as to be likely to encourage or incite the commission of crime or to lead to disorder.
84. **5 July 2013, DM Digital Television Limited**<sup>17</sup> – Ofcom imposed a penalty of £85,000, directed the licensee to broadcast a statement of Ofcom's findings for breaching Rule 3.1, and directed it not to repeat the programme. This case concerned the broadcast of a live televised lecture in a programme called *Rehmatul Lil Alameen* broadcast on 9 October 2011. The one hour programme was broadcast in Urdu. In the programme an Islamic Pir (a religious scholar) delivered a live televised lecture about points of Islamic theology with reference to the shooting dead in early 2011 of the Punjab Governor Salmaan Taseer by his bodyguard Malik Mumtaz Qadri. Salmaan Taseer had been a vocal critic of Pakistan's blasphemy law. This law punishes derogatory remarks against notable figures in Islam and carries a potential death sentence for anyone who insults or is judged to blaspheme against the Prophet Mohammed, advocating that Muslims had a

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<sup>15</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf).

<sup>16</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/radio-asian-fever.pdf>.

<sup>17</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Rehmatul-DM-Digital.pdf>.

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

85. **21 August 2013, Al Ehya Digital Television Limited**<sup>18</sup> – As noted above, Ofcom imposed a penalty of £85,000, directed the licensee to broadcast a statement of Ofcom's findings for breaching Rule 3.1, and directed it not to repeat the programme. This case concerned the broadcast of a live programme *Paigham-e-Mustafa*, 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 made it 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. Ofcom believed 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.
86. The final precedent case considered relevant involved the broadcast of abusive treatment of a particular religious community, which amounted to breaches of Rules 4.1 and 4.2 of the Code. These rules require that broadcasters must exercise the proper degree of responsibility with respect of religious programmes, and must not subject the views and beliefs of members of particular religions to abusive treatment. While the current case does not concern Rules 4.1 and 4.2, the nature of the abuse was similar, in that it was directed at a particular community.
87. **23 August 2013, Takbeer TV Limited**<sup>19</sup> – Ofcom imposed a penalty of £25,000 and directed the licensee to broadcast a statement of Ofcom's findings for breaching Rules 4.1 and 4.2. This case involved two programmes, one of which was a live 'phone-in' programme, which included various statements that amounted to abusive treatment of the Ahmadiyya religion and the Ahmadi community more generally, and were derogatory about the Mirza Ghulam Ahmad Qadiani, the founder of the Ahmadiyya religion. Ofcom considered that the breaches were serious because they related to a long standing and inflammatory dispute between two religious groups, the Ahmadi community and the Sunni Muslim community. Given the historical tensions between the two communities, Takbeer TV would have been reasonably expected to take care at broadcasting such derogatory statements, especially given that it is aimed at members of the Sunni Muslim community in the UK and internationally. Further, Ofcom also considered the breaches were serious, in light of previous Code breaches concerning abusive treatment of Ahmadis on Takbeer TV, together with previous assurances given by the Licensee that steps had been taken to avoid recurrence of such breaches.
88. There are various other cases in which Ofcom imposed statutory sanctions for breaches of Rules 2.1 and 2.3 which we do not consider directly relevant in this case. This is because these cases dealt with unrelated matters including sexual material, harmful health claims and the pre-watershed use of offensive language.
89. While Ofcom considers that the nature of the content in the cases listed in paragraphs 80, 82, 84, 85 and 87 are relevant to the current case, we note that, as set out in the Penalty Guidelines, Ofcom may depart from them depending on the facts and the context of the current case. For example, in the Radio Asian Fever case, the relatively low level of financial penalty in that case reflected the fact that Radio Asian Fever was a community radio station with a relatively small footprint and targeted at the Asian community in Leeds, broadcasting in Urdu within a narrow geographical area. As such,

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

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

although the breaches were serious, the overall impact of this particular broadcast may therefore have been somewhat tempered by the limited audience reach of the station. We will not regard the amounts of previously imposed penalties as placing upper thresholds on the amount of any penalty.

90. In its Representations, the Licensee argued that the present case should be distinguished from the Peace TV Urdu sanctions decision. In summary MDT argued that the breaches of Rules 2.1 and 2.3 in this case were less serious than those recorded in relation to the material broadcast on the Peace TV Urdu channel in terms of the potential harm and offence caused. In particular, MDT noted that the harmful material broadcast as part of the *Urs Nehrian* Programme was only contained in one parable, for which it had voluntarily apologised on-air. It contrasted this to the Peace TV Urdu case which related to two programmes each lasting for approximately 45 minutes, which included repeated negative and stereotypical references to Jewish people. MDT considered that the theme of these programmes should have triggered a detailed compliance review by Club TV Limited ahead of broadcast. MDT further noted that in the Peace TV Urdu case Ofcom had regard to previous breaches of Rules 2.3 and 2.4 by Peace TV Urdu's sister channel, Peace TV, in 2009 and 2012. MDT argued that it did not appear that Ofcom had placed the same degree of emphasis on the dual control of compliance for Peace TV Urdu and Peace TV as it had on the common linkages between MDT and the previous holder of the Noor TV licence, Al Ehya, in the present case.
91. The Licensee also noted that the cases in which higher sanctions had been imposed involved breaches of Rules 3.1 and 2.4, where incitement or encouragement of violence had been found, and that Ofcom had acknowledged there was no incitement in the *Urs Nehrian* programme.
92. We noted the points made by the Licensee in its Representations regarding the relevant precedents. However, in our view, the comments of Allama Sialvi in the present case, although relatively brief, had the potential to cause significant harm and offence. Whilst we did not consider that the comments were so strong as to be likely to encourage or incite the commission of crime or to lead to disorder, we noted in particular that on several occasions they referred to, and appeared to condone, the killing of Jewish people as an example of devotion and obedience within the context of the Islamic faith. In our view, therefore, the breaches in the present case were so serious that they merited a significant financial penalty. We also took into account that, in contrast to the two previous breaches recorded against Peace TV which were taken into account in the Peace TV Urdu case, the two previous breaches of the Code recorded in relation to the Noor TV service were both of such a serious nature that they warranted a statutory sanction and led to the imposition of significant financial penalties (see paragraphs 65 to 70 above).
93. We also took into account the fact that the Licensee in this case had voluntarily broadcast on air apologies, although we noted that it did so only once Ofcom had brought the harmful material to its attention.
94. In reaching a decision on the appropriate level of financial penalty, we thus took account of the different facts of the present case as well as all relevant precedent sanction cases.

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

95. As set out in paragraphs 53 to 57 above, and in accordance with section 237(4) of the Act, Ofcom obtained financial data setting out the Licensee's qualifying revenue for the last accounting period to decide upon a proportionate penalty. In its Representations, MDT provided information about the potential impact of the fine proposed by Ofcom in the Preliminary View on the Noor TV channel. Ofcom took that information fully into account when determining an appropriate level of financial penalty in this case.

**Decision**

## **Sanction 104 (16) Mohiuddin Digital Television Limited**

96. Having regard to all the circumstances referred to above, including the need to achieve an appropriate level of deterrence and the 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 £75,000. 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**  
**20 December 2016**