

## Decision by Ofcom

### Sanction: to be imposed on Greener Technology Ltd

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For material broadcast on BEN TV on 28 January 2018<sup>1</sup>.

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

Greener Technology Ltd ("GTL" or the "Licensee") in respect of its service **BEN TV** (TLCS001094BA/1).

#### 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 contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material";

Rule 4.6: "Religious programmes must not improperly exploit the susceptibilities of the audience"; and

Rule 9.4: "Products, services and trade marks must not be promoted in programming".

#### Ofcom's Decision:

To direct the Licensee not to repeat the programme;

To direct the Licensee to broadcast a statement of Ofcom's findings on a date and in a form to be determined by Ofcom; and

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

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<sup>1</sup> See Broadcast and On Demand Bulletin 367 for the material broadcast on Ben TV and found in breach of Ofcom's Broadcasting Code ("the Code"). Available at [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/129050/Issue-367-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/129050/Issue-367-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf)

<sup>2</sup> Ofcom's Guidance Notes on the Code available at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programme-guidance>

## **Executive Summary**

1. BEN TV is a general entertainment channel which is available on satellite subscription services and online. The Ofcom licence for this service is held by Greener Technology Limited. The Licensee does not currently hold any other broadcasting licence.
2. Condition 6 of the Licence requires the Licensee to ensure compliance with Ofcom's Broadcasting Code.
3. On 28 January 2018 at 22:00, BEN TV broadcast an episode of the *Peter Popoff Ministries*. Peter Popoff is a televangelist who presents the *Peter Popoff Ministries* series of programmes with his wife Elizabeth Popoff. This particular episode included footage from Mr Popoff's religious services, held at various locations in the United States.
4. The programme included a series of invitations to viewers to order the ministry's "*FREE MIRACLE SPRING WATER*". These were broadcast alongside testimonies from attendees of Mr Popoff's services about the effect of the water. The attendees claimed, or strongly implied, that the water had cured them of serious illnesses, such as cancer and kidney failure.

## **The Breach Decision**

5. In Ofcom's Decision published on 3 December 2018 in issue 367 of the Broadcast and On Demand Bulletin ("the Breach Decision")<sup>3</sup>, Ofcom found that material in this programme ("the Programme") breached Rules 2.1, 4.6 and 9.4 of the Code.
6. The Breach Decision set out the reasons why the material had breached each rule.
7. The Breach Decision put the Licensee on notice that Ofcom considered the breaches were serious and would be considered 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>4</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.
9. Ofcom has decided that the imposition of a sanction is warranted in this case and that the appropriate sanction should be a financial penalty of £25,000; a direction not to repeat the programme; and a direction to broadcast a statement of Ofcom's findings in a form and on date to be determined by Ofcom. This paper sets out the basis for Ofcom's Decision, taking into account all the relevant material in this case and Ofcom's Penalty Guidelines<sup>6</sup> (the "Penalty Guidelines").

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<sup>3</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/129050/Issue-367-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/129050/Issue-367-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf)

<sup>4</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/71967/Procedures\\_for\\_consideration.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf)

## Legal Framework

### **Communications Act 2003**

10. We set out in the Breach Decision the relevant legal framework and the duties which Ofcom took into account in making the Breach Decision.
11. Ofcom must also act in accordance with these statutory duties in considering whether it is appropriate to impose a statutory sanction and, if so, the type and level of sanction which it would be proportionate to impose.
12. Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 ("the Act"), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure a number of other matters. These include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
13. Ofcom has a specific duty under section 319(1) 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)); and
  - the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with (section 319(2)(i)).

These requirements are reflected in Sections Two, Four and Nine of the Code. The relevant rules of the Code are set out in full at the beginning of this Decision.

14. 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**

15. Under section 6 of the Human Rights Act 1998, Ofcom (as a public authority) has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights ("the Convention"). In particular, in the context of this case, Ofcom has taken account of the related rights under Article 9 and Article 10 of the Convention.
16. Article 9 of the Convention provides for the right to freedom of thought, conscience and religion. 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".
17. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster's freedom to impart and the audience's freedom to receive information and ideas without interference by a 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 by 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 or 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)).

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

### **Equality Act 2010**

18. 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<sup>5</sup>.
19. Accompanying Guidance Notes<sup>6</sup> 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.
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 television licensable content service (“TLCS”) licence, Condition 6 of the licence requires the Licensee to ensure that provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.
22. 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 239 of the Act insofar as relevant to the case.
23. 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.
24. 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.
25. 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.

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<sup>5</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0005/100103/broadcast-code-april-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0005/100103/broadcast-code-april-2017.pdf)

<sup>6</sup> Ofcom’s Guidance Notes on the Code available at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programme-guidance>

## **Background – The Breach Decision**

26. In the Breach Decision, Ofcom found that the material broadcast by the Licensee on BEN TV breached Rules 2.1, 4.6 and 9.4 of the Code. The Breach Decision set out the reasons for each of these breach findings.
27. The Breach Decision noted that the programme included testimonies which comprised people explaining how, by drinking the “miracle spring water” provided to them by Peter Popoff Ministries, they had been cured of various medical conditions.
28. The Breach Decision identified three such testimonies:
  - despite being told her cervical cancer would prevent her from having further children, a woman testified to having given birth to a daughter after drinking the miracle spring water. The banner “*CANCER FREE BABY*” was included in this sequence;
  - another member of Peter Popoff’s congregation said that having drunk the “miracle water”, her 9.5 centimetre tumour disappeared, and this had been confirmed by a surgeon nine days later;
  - a third woman explained how, after “*rubb[ing] it [the miracle spring water] all over my body*”, her kidney blockage and stomach cancer had disappeared, and this had been confirmed in the subsequent tests that were carried out on her at the hospital.
29. The Decision noted that Mr Popoff repeated and/or clarified the claims made by these participants (e.g. “*Did you hear that? She had a tumour...after she used the miracle spring water, it was gone*”).
30. Throughout these testimonies, a banner appeared which read: “Call now for your packet of miracle spring water”, followed by a freephone number and the website address of the ministry.
31. Ofcom’s Guidance Notes<sup>7</sup> on Section Two of the Code highlight the following as primary factors that would influence the level of harm that could arise from health or wealth claims: the severity of the situation (e.g. a life-threatening illness), the level of targeted exploitation (i.e. the vulnerability of the audience) and the authority of the speaker. This guidance also highlights how the inclusion of an alternative perspective or a warning (e.g. one that advises audience members to consult a qualified doctor before making decisions based on a programme) can be used by broadcasters to protect viewers from potential harm. As detailed below, Ofcom considered that all of these factors were relevant in this case.
32. In relation to Rule 2.1, Ofcom first assessed the potential for harm. The programme included testimonies which comprised people explaining how, by drinking the “miracle spring water” provided to them by Peter Popoff Ministries, they had been cured of a large tumour, kidney blockage and two forms of cancer (cervical and stomach). In Ofcom’s view, viewers were likely to have understood from the testimonies broadcast in the programme that serious medical conditions could be cured by drinking the “miracle spring water” and that conventional treatment may not be necessary. Ofcom considered that the audience might be led to believe that it was unnecessary to rely on, or continue receiving, conventional medical treatment in favour of the “miracle spring water, where this could have a damaging effect on the health of viewers. Taking these factors into account, Ofcom considered there was potential for harm (particularly to those viewers who may be suffering from health issues and may have been more vulnerable) and the risk of harm to viewers was high.

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<sup>7</sup> Ofcom’s Guidance Notes on the Code available at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programme-guidance>

33. The programme contained no information that highlighted the importance of seeking conventional medical advice nor did it feature any challenge to healing claims made in the programme. Therefore, Ofcom did not consider Greener Technology Limited had provided adequate protection for viewers and Rule 2.1 was breached.
34. In relation Rule 4.6, the programme contained repeated statements that healing had occurred, or would take place, directly as a result of ordering and using the miracle spring water. No objectively verifiable evidence was referred to. Given the religious nature of the programme and the authoritative status of the presenters, Ofcom considered that viewers were less likely to question the content and, as such, were susceptible to claims made in the programme. Consequently, Ofcom concluded that there was a material risk that susceptible members of the audience may have been improperly exploited by the programme.
35. As stated, the programme contained frequent invitations to order “free miracle spring water” in the context of promoting Peter Popoff Ministries. Rule 9.4 prohibits the promotion of products and services irrespective of whether they are offered in return for payment. On that basis, Ofcom considered that Rule 9.4 was breached.
36. Ofcom stated in the Breach Decision that the contraventions of Rules 2.1, 4.6 and 9.4 of the Code were serious and were therefore being considered for statutory sanction.

#### **Ofcom’s Preliminary View to impose a Statutory Sanction**

37. As set out in paragraph 1.13 of the Sanctions Procedures<sup>8</sup>, 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.
38. In this case, Ofcom provided the Licensee with its Preliminary View that it was minded to impose a statutory sanction in the form of a financial penalty and a direction to the Licensee not to repeat the programme and to broadcast a statement of Ofcom’s findings, on a date and in a form to be determined by Ofcom.
39. In reaching its decision on whether to impose a statutory sanction and, if so, what type and level of sanction, 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 our Decision.

#### **Licensee’s representations on the imposition of a sanction**

40. GLA provided oral representations on Ofcom’s Preliminary View. GLA did not provide any written representations.
41. It set out the channel’s background, saying that it believed BEN TV to be the first Ofcom licensed “black-oriented TV [channel]” and thought that BEN TV’s presence in the UK television space had encouraged others to set up channels aimed at particular communities. It also stated that it had been approached by other “black-oriented TV stations” seeking advice in relation to licencing and other practical matters.
42. The Licensee said that it was experiencing significant financial pressures and was struggling to keep the station going financially.
43. The Licensee said it was aware of reported controversies surrounding the *Peter Popoff Ministries* programming and initially there had been some reluctance to broadcast programmes from this Ministry. The reason for the reluctance was that Mr Soyode, the founder of BEN TV, believed he did not have the time or resources to monitor the *Peter Popoff Ministries* programming. However, other staff felt that, given its financial situation, the Licensee should

consider broadcasting these programmes and, ultimately, two members of staff agreed to take responsibility for the *Peter Popoff Ministries* programming.

44. The Licensee stated that “ministries” programming broadcast in the US is presented from a US perspective which is “totally different” to the UK perspective. The Licensee entered into an agreement with an agency in the US who supplied the *Peter Popoff Ministries* programming. The Licensee stated that it would explain the relevant regulatory requirements and the agency would make sure the programmes were edited to comply with those requirements. The Licensee said the process involved “going back and forth” to the production company “four to five times” to ensure, for example, the content complied with advertising scheduling restrictions specific to a UK audience. The Licensee also explained that it asked for specific parts of certain programmes to be removed.
45. The Licensee stated that it did not know how the programme in question had passed through its compliance processes. When questioned, the Licensee stated it did not know whether any of its staff had viewed the content in question before it was broadcast.
46. GTL said on the day after it received Ofcom’s initial request for its representations, it ceased broadcasting *the Peter Popoff Ministries* programming. The Licensee added that that despite the fact that programmes from religious ministries accounted for a large proportion of its revenue, it had also reduced the amount of this type of programme broadcast.
47. The Licensee explained that within the Christian faith there are groups who “actually believe that you can say something and it happens”. GTL also said that as a Christian organisation, it believes that prayer does work and that miracles do happen, but it acknowledged the broadcast of this material was an error of judgment.
48. The Licensee emphasised that it was in a difficult position financially. It highlighted, among other things, that it no longer had access to a studio and that it had not, therefore, been able to record any live shows privately. The Licensee also noted that it did not receive any of the revenue generated via the TV licence fee. GTL also added that the UK is a culturally diverse nation and that this should be reflected in its broadcast media.
49. In response to questioning, the Licensee stated that, in order to make sure programmes are compliant with the relevant rules, the BEN TV staff review the content of programmes to be broadcast to check they are compliant. The Licensee stated that it tended not to change programme format but rather to stick to formats it was confident complied with the relevant regulations and that it only really became concerned when it was considering broadcasting a ministry or political programme. GTL stated that in that case, the BEN TV staff would go to the Ofcom website to review the relevant regulations.
50. In its representations during the investigation that led to the Breach Decision, the Licensee submitted that BEN TV had established a dedicated compliance team for religious programmes. When questioned about the specific makeup and function of this team, the Licensee stated that the people involved in compliance were “more or less all of us, the core people around in BEN” but that “it tend[ed] go into the safer mode” when dealing with ministry programmes insofar as it checked whether the ministry had appeared on other Ofcom licensed services. GTL stated that, where that was the case, it had the confidence that the programme was compliant with the relevant rules.
51. In conclusion, the Licensee asked Ofcom to take into account how far it had come, the fact that it was “learning on a daily basis” and the fact that it was willing to learn more. The Licensee also stated that it had not deliberately breached the rules and that it was in financial difficulty. Lastly, GTL added that it hoped that Ofcom would take into account BEN TV’s contribution to the diversity of the UK broadcasting industry when reaching its decision.

### **Ofcom Decision on the imposition of a statutory sanction**

52. As stated above, 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.
53. Ofcom considered whether the breaches in this case were so serious as to warrant the imposition of a statutory sanction.
54. In its representations, the Licensee did not contend that the breaches were not serious or did not warrant the imposition of a statutory sanction. The Licensee stated that the broadcast of the relevant material was not deliberate but acknowledged that it constituted an “error of judgment”.
55. First, we considered the breaches were serious because, as set out in paragraphs 26-36,, the programme featured unambiguous claims that the ministry’s “miracle spring water” was capable of curing serious illnesses. This may have persuaded vulnerable viewers with similar conditions to abandon conventional treatment which, in turn, could cause significant harm to them. Ofcom considers the potential harm arising from statements without challenge or clarification to be particularly serious.
56. Secondly, given the religious nature of the overall programme, we considered there was an increased risk that viewers would be susceptible to these claims about the water’s effectiveness.
57. Thirdly, the likelihood of harm to viewers was increased significantly by the programme’s frequent promotion of the “miracle spring water”.
58. In view of the factors set out above, Ofcom considered that the breaches were sufficiently serious to warrant the imposition of a statutory sanction.

### **Ofcom Decision on the appropriate sanction**

59. The following paragraphs set out the enforcement action we have considered and the sanctions we have decided to impose.
60. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence where a licensee is failing to comply with a condition of such a licence or a direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.
61. In our consideration of whether it was appropriate to revoke GTL’s licence, we noted that the breaches are not ongoing and the Licensee explained that it had taken steps to prevent similar breaches occurring in the future by ceasing broadcasts of *Peter Popoff Ministries*.
62. In considering whether to propose the revocation of a licence, Ofcom must have regard to the broadcaster’s and the audience’s rights under Article 10 of the Convention. We noted the Licensee’s submission that BEN TV aims to serve particular communities and that a number of the channels which aimed to serve the same communities have ceased to broadcast. Revoking GTL’s licence would mean it would no longer be able to broadcast.
63. We also took account of the nature of the content that was broadcast. Article 9 of the ECHR states that everyone “has the right to freedom of thought, conscience and religion”. We took account of the Licensee’s submission that within the Christian faith there are groups who “actually believe that you can say something and it happens” and that, as a Christian organisation, it believes that prayer does work and that miracles do happen. Ofcom recognises that many people find comfort and solace from prayer or a belief in faith healing when ill or encountering personal difficulties. Prayer and faith have also been reported by some to be materially important factors when recovering from illnesses.



64. Revocation of a licence is the ultimate enforcement action available to Ofcom. A decision to revoke a licence may only be taken by Ofcom if it is satisfied that it is a proportionate response to the Licensee's failure to comply with its licence conditions. A relevant factor for Ofcom to consider in this regard is whether any sanction short of revocation could ensure that the Licensee would, in future, comply with the Code. As a result of the factors set out above and taking into account the broadcaster's and audience's right to freedom of expression, we considered that it would not be appropriate to revoke GTL's licence.
65. We went on to consider whether another form of sanction was appropriate in this case. 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). Ofcom can also direct a broadcaster not to repeat a programme which was in contravention of a licence condition.
66. Although the Licensee acknowledged the problematic nature of the content and said that it had ceased broadcasting the *Peter Popoff Ministry* series of programmes altogether, it is Ofcom's view that a direction not to repeat the programme found in breach is appropriate in the circumstances.
67. Similarly, Ofcom considers that directing the Licensee to broadcast a statement of Ofcom's findings on a date and in a form to be determined by Ofcom is appropriate given the degree of harm that the programme may have caused.

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

68. Under section 237 of the Act, the maximum level of a 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 for which its licence has been in force, whichever is greater.
69. In light of the Licensee's qualifying revenue for this period for the BEN TV licensed service, the maximum penalty that Ofcom could impose is £250,000 in respect of the contravention of the Code committed by the Licensee in this case.
70. Ofcom's Penalty Guidelines<sup>8</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 in the Penalty Guidelines.
71. In this case, Ofcom's Decision is that a financial penalty is 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**

72. In considering the appropriate amount of a financial penalty for the Code breaches in this case, Ofcom has taken 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**

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<sup>8</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/106267/Penalty-Guidelines-September-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf)

73. Ofcom regarded the breaches to be serious for the reasons set out in paragraphs 54 to 58.
74. The Breach Decision related to material broadcast on 28 January 2018. Ofcom understands that further episodes of *Peter Popoff Ministries* were aired before the Licensee took the decision to cease broadcasting the series. However, we are unaware of this specific episode having been broadcast again on BEN TV.

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

75. Ofcom regarded the breaches of Rules 2.1 and 4.6 to be particularly serious. The programme either stated or strongly implied that serious medical conditions could be cured solely by using the Ministry's "miracle spring water". The potential harm in this case was significant because vulnerable viewers with similar conditions may have interpreted this to mean that conventional treatment was not necessary. As a result, these viewers may have abandoned such treatment.

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

76. During the investigation, the Licensee provided Ofcom with information that demonstrated that *Peter Popoff Ministries* had paid for the broadcast of this programme. Although we have no evidence to suggest that the Licensee made any financial or other gain directly from these breaches of the Code, we considered that the agreement between the two parties represented an important revenue stream for the Licensee: a point acknowledged by the Licensee in its oral representations.

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

77. As set out in paragraph 44 above, in its representations, the Licensee said it had worked with an agency in the US to edit the *Peter Popoff Ministries* programmes to make them suitable for broadcast in the UK. The Licensee stated that it explained the relevant regulatory requirements and the production company edited the programmes.
78. The Licensee said that it was aware of controversy surrounding the *Peter Popoff Ministries* programmes. Ofcom was concerned that despite this knowledge, GTL could not provide details of the steps taken to ensure the regulatory compliance of this particular programme or confirm whether any of its staff had viewed the content before it was broadcast.
79. The Licensee's responses to questions regarding its compliance procedures more generally suggested that there was no formal structured approach to ensuring that staff responsible for compliance were aware of the relevant rules (and any changes to those rules) and that the Licensee treated the broadcast of particular programmes on other Ofcom regulated services as an important factor in determining whether particular programmes were likely to comply with the Code.
80. As set out in the Breach Decision, the Licensee allowed the broadcast of testimonies about the alleged efficacy of using "miracle spring water" alone without challenge or any reference to the importance of seeking professional medical advice. This was exacerbated by the fact the programme frequently promoted the "miracle spring water" by inviting viewers to order it directly from the Ministry.
81. Given the factors above, Ofcom was concerned that the circumstances of this case demonstrated that the Licensee had an ineffective approach to compliance with the Code.

*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*

82. As noted in paragraph 43, the Licensee was aware of controversies surrounding *The Peter Popoff Ministries* programming. Ofcom considered that this demonstrated that the Licensee was aware of the potential risks associated with the content yet allowed it to go to air without robust compliance checks.
83. The Licensee said that it was not aware that the promotion of free items was prohibited by Rule 9.4 and, separately, that it had not deliberately breached the rules. While senior management ought to have known that Rule 9.4 applied to the promotion of free products and services, we do not consider this to be evidence that the breach occurred deliberately or recklessly.

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

84. The breaches occurred within a single programme that was not repeated. When the Licensee was alerted to the issue by Ofcom, it ceased broadcasting the entire series. Further, it confirmed that it had terminated its agreement with the production company and would broadcast no further episodes of *The Peter Popoff Ministries*. We therefore considered the Licensee took timely and effective steps to prevent further breaches occurring.
85. To further reduce the likelihood of a recurrence, the Licensee said, in its representations on the Breach Decision, that it had set up a dedicated compliance team for its remaining religious programmes. However, when taking GTL's oral representations into account (see paragraph 50), it did not appear that such a team existed or that its approach to religious programmes differed significantly to its standard compliance processes.

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

86. Ofcom is not aware of any steps taken by the Licensee to remedy the consequences of the broadcast.

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

87. Ofcom has made the following breach findings in relation to BEN TV. These findings were published in Broadcast Bulletins respectively:
- In our decision **Editorial content relating to the 2015 Nigerian Presidential election** (BEN TV, 7 and 11 February 2015, 20:00: Broadcast Bulletin 300<sup>9</sup>), Ofcom found that the material featured repeated endorsements of one particular candidate. The material also contained short items (produced by the incumbent party) broadcast within advertising breaks; these featured repeated calls to vote for its candidate. Consequently, the material was in breach of Rules 5.1 (news must be reported with due accuracy and presented with due impartiality), 6.1 (coverage of elections and referendums must comply with accuracy and impartiality rules) and 9.2 (editorial content must be distinct from advertising) of the Code.
  - In our decision **Political advertisement relating to the 2015 Nigerian Presidential election** (BEN TV, 17 and 26 March 2015, various times: Broadcast Bulletin 300<sup>10</sup>), Ofcom recorded a

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<sup>9</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0012/51402/issue\\_300.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0012/51402/issue_300.pdf)

<sup>10</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0012/51402/issue\\_300.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0012/51402/issue_300.pdf)

breach of Rule 7.2<sup>11</sup> of the UK Code of Broadcast Advertising (“the BCAP Code”) for broadcasting political advertising.

- In our decision **Africa Vision** (BEN TV, 13 February 2016, 12:00: Broadcast Bulletin 305<sup>12</sup>), Ofcom found the programme promoted and gave undue prominence to a guest’s business. Consequently, the material breached Rules 9.4 (products and services must not be promoted in programmes) and 9.5 (products and services must not be given undue prominence in programmes). The programme also featured views that were highly critical of candidates of the 2015 Congolese Presidential election without any challenge. Therefore, the material also breached Rule 5.5 (due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved) of the Code.
- In our decision **Labour Party EU Referendum Debate** (BEN TV, 10 June 2016, 18:00: Broadcast Bulletin 315<sup>13</sup>), Ofcom found the programme failed to give due weight to views that supported the UK leaving the EU. Consequently, the material breached Rule 6.1 of the Code (and Rules 5.11 and 5.12). The programme was sponsored by “Tropical Sun” and as such, breached Rule 9.15 of the Code (news and current affairs programmes must not be sponsored).
- In our decision **Jesus Sanctuary Ministries** (BEN TV, 4, 10 and 11 January 2018, 19:00: Broadcast Bulletin 354<sup>14</sup>), Ofcom noted that the programmes contained a religious service which was interrupted by an advertising break. The content therefore breached Rule 13 of the Code on the Scheduling of Television Advertising (the broadcast of a religious service must not include advertising breaks).
- In our decision, **BEN Variety Show** (BEN TV, 4 July 2018, 18:31: Broadcast Bulletin 364<sup>15</sup>), Ofcom recorded a breach of Rules 1.14 (the most offensive language must not be broadcast before the watershed) and 1.16 (material that may cause offence is justified by the context) for the broadcast of the most offensive language.

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<sup>11</sup> Rule 7.2 of the BCAP Code prohibits political advertising.

<sup>12</sup> Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/50615/issue\\_305.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/50615/issue_305.pdf)

<sup>13</sup> Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/92863/Issue-315.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/92863/Issue-315.pdf)

<sup>14</sup> Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0011/114104/issue-354-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0011/114104/issue-354-broadcast-on-demand-bulletin.pdf)

<sup>15</sup> Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/124116/issue-364-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/124116/issue-364-broadcast-on-demand-bulletin.pdf)

88. Three of the six investigations listed above involved breaches of the rules in Section Nine of the Code (commercial references in television programming). There is one previous case where the Licensee was in breach specifically of Rule 9.4.
89. Ofcom has also found GTL in breach of TLCS Licence Conditions in six separate decisions. The Licence Conditions concerned late payment of licence fees (one breach), provision of recordings (two breaches) and provision of information (three breaches).
90. Ofcom has therefore recorded 18 breaches of standards rules and licence conditions against GTL since February 2015.

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

91. In Ofcom's view, the Licensee has been cooperative. For example, it provided timely 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, steps to reduce the likelihood of similar breaches recurring in future.

**Precedent**

92. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases.
93. **29 July 2015, Asia TV Limited**<sup>16</sup> Ofcom imposed a penalty of £25,000 on the Licensee for a breach of Rule 2.1 of the Code. We identified a number of claims made by ayurvedic practitioner Dr Naram in the programme, that certain alternative remedies (promoted and sold by Dr Naram) could cure, successfully treat or prevent two serious medical conditions, cancer and hernias. Ofcom found that this had amounted to unqualified medical advice and was concerned that the impact of the advice was increased by Dr Naram's claim to having had over "75,000 cancer patients", some of whom had been told by hospitals that "they won't live for three months...[but] after 15 years [are] leading normal lives". As a result of the claims made by Dr Naram, we considered that some viewers with serious medical conditions may forego, delay or not seek conventional medical treatment on the basis of what they had seen.
94. **6 February 2012, The Light Academy Limited (Believe TV)**<sup>17</sup> – Sanction of £25,000 and a direction to broadcast a statement of findings for breaches of Rules 2.1 and 4.6 of the Code. This case concerned a number of programmes which included testimonies from congregation members of churches proclaiming how the healing or treatment of very serious illnesses, including cancer, diabetes and heart problems, could be achieved by being anointed with a product such as olive oil soap or Ribena. Similar to the case above, Ofcom concluded that some viewers may have reasonably understood that serious medical conditions could be healed through faith healing or healing with special products alone and that conventional medical treatment could be abandoned, or not sought, in favour of faith healing or using special products alone. Further, given the religious context of the claims made, Ofcom considered that viewers of the channel would be less likely to question their validity. We therefore concluded that there was a material risk that susceptible members of the audience may be exploited by this content.
95. Because of its religious elements, Ofcom considers the case outlined in paragraph 94 to be the more relevant precedent. However, it should be noted that this case covered a number of programmes broadcast on Believe TV.

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<sup>16</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/67251/asia\\_tv\\_limited.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/67251/asia_tv_limited.pdf)

<sup>17</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/73740/light-academy-limited.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/73740/light-academy-limited.pdf)

96. While Ofcom considers the nature of the content in the cases listed in paragraphs 93 – 94 to be 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**

97. 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 for the last accounting period to assist it in determining a proportionate penalty. This showed that the Licensee’s qualifying revenue for this period was £2. Ofcom took this information fully into account when coming to its Decision as to the appropriate level of financial penalty in this case.

98. Ofcom recognises 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.

**Decision**

99. 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:

- a a financial penalty of £25,000;
- b a direction to the Licensee not to repeat the programme; and
- c a direction to the Licensee to broadcast a statement of Ofcom’s findings, on a date and in a form to be determined by Ofcom.

**Ofcom**

15 October 2019