

Sanction: Decision by Ofcom Imposed on Regis 1 Limited

For material broadcast on 1 October 2012¹.

Ofcom's Decision of a sanction against:	Regis 1 Limited ("the Licensee") in respect of its service Sangat TV (TLCS-390).
For:	A programme about the attack on Lieutenant-General Brar, found to be in breach of Ofcom's Broadcasting Code ("the Code") ² in respect of: Rule 3.1: "Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services".
On:	1 October 2012 at 19:40.
Decision:	To impose a financial penalty (payable to HM Paymaster General) of £30,000 ; and To issue a direction to the Licensee directing it to broadcast a statement of Ofcom's findings in this sanctions case, on a date and in a form to be determined by Ofcom.

¹ The material broadcast on Sangat TV and found in breach of the Code is detailed in Broadcast Bulletin 222, dated 21 January 2013 ("the Finding"), at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb222/obb222.pdf>.

² The version of the Code that was in force at the time the broadcast took effect on 28 February 2011. All references to the Code in this Decision are therefore references to that version of the Code, which can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Executive Summary

1. Sangat TV is a general entertainment satellite broadcaster that broadcasts in English and Punjabi. It is based in Birmingham and broadcasts via the Eutelsat 28A - Sky UK satellite to the Sikh community. A live stream is also available on Sangat TV's website. The licence for Sangat TV is held by Regis 1 Limited³ ("the Licensee").
2. Ofcom's finding ("the Finding") published on 21 January 2013 in Broadcast Bulletin 222⁴, found that material broadcast by the Licensee breached Rule 3.1 of the Code.
3. The Finding related to a programme about the attack on Lieutenant-General Brar⁵, which was broadcast on 1 October 2012 ("the Programme"). This was broadcast almost entirely in Punjabi, was approximately half an hour in duration and comprised eight panellists, including a presenter, who discussed issues surrounding the attack.
4. In the Finding, Ofcom stated that the breach of Rule 3.1 was so serious as to warrant the consideration of a statutory sanction.
5. It had been reported that on a date shortly before the broadcast, while on a visit to London, Lieutenant-General Brar and his wife had been attacked in a central London street by four men. Despite suffering knife injuries, Lieutenant-General Brar survived the attack. In the Finding, Ofcom noted that, in relation to the attack, two men of Sikh origin⁶ had been charged with wounding with intent to cause grievous bodily harm.
6. The Finding set out the various broadcast statements that were in breach of Rule 3.1. Ofcom found that this material was likely to encourage or incite the commission of crime. We considered that, cumulatively, these statements were an indirect call to action to members of the Sikh community to take violent action against Lieutenant-General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar (the Indian Army's controversial military operation against the Golden Temple at Amritsar in June 1984)⁷ or those who supported this military operation.

³ Licence TLCS-390, which was originally issued on 13 October 2000, was transferred to Regis 1 Limited on 24 March 2010. The name of the channel broadcast under the licence became Sangat TV on 3 August 2010. Previously, a series of teleshopping channels had operated under it – namely: Home Order, Shop Now Plus, Shop Now TV and JML Lifestyle.

⁴ See footnote 1.

⁵ Lieutenant-General Brar had been the commander of the Indian armed forces who led Operation Bluestar, the Indian Army's controversial military operation against the Golden Temple at Amritsar in June 1984. The Golden Temple is highly revered as a sacred site by the Sikh community, and Operation Bluestar was aimed at removing a number of Sikhs, who were arguing for an independent Sikh homeland, and who were occupying the Golden Temple at that time. It is reported that, according to the Indian Government, 400 people died in the operation, including 87 Indian soldiers. However these figures are disputed as being too low by some members of the Sikh community.

⁶ Barjinder Singh Sangha, a resident of Wolverhampton, and Mandeep Singh Sandhu, a resident of Birmingham; subsequently, Dilbag Singh, of no fixed abode, was also charged.

⁷ See footnote 5.

Summary of Ofcom's Sanction decision

7. Ofcom considered that this breach was sufficiently serious to warrant the imposition of a sanction on the Licensee in this case.
8. In accordance with Ofcom's 'Procedures for the consideration of statutory sanctions in breaches of broadcast licences' ("the Sanctions Procedures")⁸, and having considered all the evidence and all the representations made to it by the Licensee, Ofcom has decided for the reasons set out in paragraphs 73 to 93, below, that it would be appropriate to impose a financial penalty.
9. Having regard to the serious nature of the Code breach, the Licensee's representations and the Ofcom Penalty Guidelines ("the Penalty Guidelines")⁹, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£30,000** on the Licensee in respect of the breach of Rule 3.1.
10. In addition, Ofcom decided it should issue 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. For the reasons set out in paragraphs 61 to 68, below, Ofcom considered that it would not be appropriate to revoke Regis 1 Limited's licence.

Legal Framework

Communications Act 2003

11. Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 ("the Act"), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure a number of other matters. These include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
12. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These include the objective that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services (section 319(2)(b)).
13. In performing its 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, any other principles representing best regulatory practice (section 3(3)) and, where relevant, to have regard to a number of other considerations including:

⁸ Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences came into effect on 1 June 2011 and can be found at:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/statutory-sanctions.pdf>.

⁹The Penalty Guidelines were published on 13 June 2011 and can be found at:
<http://www.ofcom.org.uk/files/2010/06/penguid.pdf>.

- the need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)); and
- the desirability of preventing crime and disorder (section 3(4)(j)).

Human Rights Act 1998

14. In addition to section 3(4)(g) of the Act, under section 6 of the Human Rights Act 1998, Ofcom has a duty (as a public authority) to ensure that it does not act in a way that 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 10 of the convention.
15. Article 10 provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster’s right “to impart information and ideas” and also the audience’s right “to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1) of the Convention). The exercise of these rights may be subject only to conditions and restrictions that 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). Article 10 protects not only the substance of ideas or information expressed, but also the form in which they are conveyed. In some circumstances, this may include a polemical or aggressive tone. On the other hand, some types of expression, such as racist literature and expressions of political support for terrorism, have been regarded as deserving of lesser (or no) protection against restrictions.
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, which has been drafted in the light of the Human Rights Act 1998 and the Convention.
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 intended to assist broadcasters to interpret and apply the Code¹⁰.
19. The relevant Code rule in this case is set out in full on the first page 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

¹⁰ Relevant extracts of the Broadcasting Code and Ofcom’s Guidance Notes on the Code can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

licensee to ensure that the provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.

21. Ofcom's powers to take action for the contravention of TLCS licence conditions are set out in sections 236 to 239 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 that 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 that may be imposed under section 237 is whichever is the greater of £250,000 and 5% of the qualifying revenue on each occasion that a breach of the licence has occurred (whether as a result of a breach of the Code or another Licence Condition).
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. Section 238 sets out a general power that applies to all non-incitement cases and is targeted at serious ongoing breaches of the Code by a licensee. Ofcom is required under section 238 to serve a notice to start revocation proceedings if we are satisfied that there has been a breach of the licence and that the breach, if not remedied, would justify revocation. As the breach in this case relates to incitement, section 238 does not apply.
25. Section 239 of the Act sets out a separate and more stringent revocation process in relation specifically to the inclusion in a service of programming that is likely to encourage or incite the commission of crime or lead to disorder (as in this case). Ofcom is required to serve a notice under section 239(2) if we are satisfied that:
 - a) the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime or to lead to disorder (in breach of Rule 3.1);
 - b) in doing so, the licensee has contravened conditions contained by virtue of Chapter 4 of Part 3 of the Act, in the licence to provide that service; and
 - c) the contravention is such as to justify the revocation of the licence.

Under section 239 there is no requirement that the breach must be ongoing for Ofcom to revoke the licence; it can be a one-off breach of Rule 3.1, as it was in this case.

26. The effect of a notice under section 239(2) is to suspend the licence from the time the notice is served – i.e. the licensee must stop broadcasting immediately. A notice under section 239(2) must give the licensee an opportunity to make representations and state that Ofcom may revoke the licence after 21 days. If the licensee makes representations to Ofcom and, having considered those representations, Ofcom is satisfied that it is necessary in the public interest to revoke the licence, Ofcom is required under s239(4) to serve a further notice to revoke the licence, stating the date from which the licence is revoked. This must be no less than 28 days after that notice has been served.

Background – The Finding

27. In the Finding¹¹, the Executive found that material broadcast by the Licensee breached Rule 3.1 of the Code. Further, Ofcom stated that the breach of Rule 3.1 in this case was serious and warranted consideration of a statutory sanction.
28. The Finding related to a discussion programme of approximately half an hour and broadcast almost entirely in Punjabi. Broadcast on 1 October 2012, it concerned the attack on Lieutenant-General Brar¹², which had occurred the previous day, when it was reported that, while on a visit to London, he and his wife had been attacked in a central London street by four men. Despite suffering knife injuries, Lieutenant-General Brar survived the attack. In the Finding, Ofcom noted that, in relation to the attack, two men of Sikh origin¹³ had been charged with wounding with intent to cause grievous bodily harm.
29. The programme featured eight panellists, including a presenter, who discussed issues surrounding the attack. In the Finding, Ofcom noted that, during the programme:
- some of the panellists' statements specifically saw the attackers as carrying out a positive act on behalf of the Sikh community;
 - some panellists stated their view that Lieutenant-General Brar, by virtue of his past actions, deserved to be attacked and congratulated his attackers;
 - some of the panellists' statements appeared to legitimise young members of the Sikh community empathising with, and potentially replicating, the actions of Lieutenant-General Brar's attackers; and
 - while one panellist urged members of the Sikh community to remain "*calm and peaceful*", at no point did any of the panellists condemn the attackers for taking the law into their own hands.
30. The Finding set out examples of the above types of statement that were in breach of Rule 3.1. Ofcom found that the material in these statements was likely to encourage or incite the commission of crime or to lead to disorder. We considered that, cumulatively, these statements were an indirect call to action to members of the Sikh community to take violent action against Lieutenant-General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar (the Indian Army's controversial military operation against the Golden Temple at Amritsar in June 1984) or those who supported this military operation.

Ofcom's Decision to Impose a Statutory Sanction

31. 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, repeatedly¹⁴ or recklessly breached a relevant requirement.

¹¹ See footnote 1.

¹² See footnote 5.

¹³ See footnote 6.

¹⁴ A repeated breach of a relevant requirement, would include for example: a repeat of the breach of the same requirement as had already been recorded; repetition of the same or similar conduct as that which earlier contravened a requirement; or multiple breaches of other requirements.

32. In this case, Ofcom issued a preliminary view (“Preliminary View”) that Regis 1 Limited had seriously breached the Code and that Ofcom was minded to impose a statutory sanction in the form of a substantial financial penalty and direct the Licensee to broadcast a statement of Ofcom’s findings in this sanctions case, 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 June 2013. At the same time, it gave the Licensee the opportunity to provide written and oral representations (“the Representations”) on the Preliminary View. Regis 1 Limited provided its written representations (“Written Representations”) to Ofcom on 23 June 2013 and attended a Sanctions Hearing at Ofcom’s Riverside House offices on 16 July 2013, at which it provided oral representations (“Oral Representations”). The Representations are summarised in paragraphs 34 to 45, below.
33. In reaching its final Decision on whether to impose a statutory sanction and if so, what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the evidence and representations on behalf of Regis 1 Limited, including the Representations on the Preliminary View, and has had regard to the Sanctions Procedures and to the Penalty Guidelines in reaching its Decision in this sanctions case (see further below).

Licensee’s representations

34. The Licensee accepted that the material broadcast breached Rule 3.1 of the Code but argued that either no financial penalty should be imposed at all or, if any financial penalty was to be imposed on Regis 1 Limited, it should be “a token fine”, for the following reasons:
- the licensee is mostly run by volunteers and is owned by a charitable trust which contributes funding for the channel;
 - the ethos of the channel is “to promote universal brotherhood, community cohesion [and] peaceful coexistence”;
 - the breach was a “one-off instance”;
 - improvements had been made, and continue to be made, to the Licensee’s compliance processes; and
 - no complaints were received by Sangat TV from its viewers concerning the programme found in breach of the Code;
 - anything other than a token financial sanction would be crippling for a charitable setup, would send the wrong message to the community it serves and would deter the channel from carrying out the necessary reforms to its compliance processes.

The following paragraphs set out further detail on each of these factors, in turn:

Charitable organisation in financial deficit

35. The Representations stated that Sangat Trust is a limited company and registered charity that owns Sangat TV Limited, which purchased Regis 1 Limited (the holder of an Ofcom Licence) for the purpose of broadcasting its service, Sangat TV. They also said that the channel is financed by advertising revenue and donations, through Sangat Trust, from trustees and the Sikh community.

36. In the Written Representations, the Licensee provided unaudited accounts for Sangat TV Limited, showing that the company was in deficit for the year ending 31 August 2012. It therefore considered “the imposition of any financial penalties would be an unwarranted punishment for [a] very esteemed charitable organisation.” In the Oral Representations, the Licensee noted that the channel, Sangat TV, was a “young channel” and “in early development”. The Licensee confirmed the level at which it remained in deficit and questioned whether it was appropriate for Ofcom to “fine a charity”.

Ethos of Sangat TV

37. The Written Representations stated that “the culture of the channel is to promote social values such as patience, tolerance [and] forgiveness...” and noted that Sangat TV “was praised in ... parliament by the Prime Minister David Cameron for playing an instrumental role in containing the impact of recent riots in the UK by showing an exemplary demonstration of its social responsibility role”.

38. In the Oral Representations, and to set the context of the programme found in breach of the Code, the Licensee provided a brief background of the Sikh religion, explained the significance of Operation Blue Star to the Sikh community – which it said now seeks justice for all minority groups in India – and noted cultural differences between that community and Western communities.

Code breach as a “one-off instance”

39. In the Representations, the Licensee stated that the breach of rule 3.1 was not deliberate and the programme found in breach of Rule 3.1 of the Code was unrepresentative of Sangat TV’s general broadcast content. It asked Ofcom to take account of the historical background to and circumstances surrounding Operation Bluestar and its effect on Sikhs both in India and elsewhere. Given these factors, according to the Licensee, General Brar’s role in Operation Bluestar and the attack on him in London led to “an emotional outburst from the [Sikh] community.”

40. In the Oral Representations, the Licensee said it considered Ofcom’s English translation of the live Punjabi broadcast to be “on the whole ... very, very good”, but noted that “the Punjabi language has a lot of militant words which, when translated into the English language, actually do not mean...militancy”, adding that “sarcasm is sometimes used, and the meaning is a little bit distorted, even in the translation which Ofcom have obtained.” While accepting the breach of Rule 3.1 of the Code, the Licensee considered the effect of the programme was unlikely either to have encouraged or incited its viewers to commit crime or to have led to disorder. It considered that the “ultimate message” was that the Sikh community “should keep calm and ... stay peaceful” and pointed out that the kirpan¹⁵ is carried by all Sikhs (approximately 100,000 in the UK) but there has not been a single record of its misuse because the Sikh religion does not intend it to be used as a weapon.

Compliance processes

41. In the Oral Representations, the Licensee clarified that, as in the case of all live programmes on Sangat TV, the board of trustees had authorised the broadcast. It also said that a permanent member of the channel’s staff normally briefed presenters and

¹⁵ The **Kirpan** is a ceremonial sword or dagger worn by baptised Sikhs, as one of five Articles of Faith (known as the Five Ks), the other four being: the Kesh (uncut hair); the Kangha (a small wooden comb); the Kara (a steel or iron bracelet); and the Kacchera (a short, loose undergarment).¹

panellists with “an outline of the the programme”. However, it did not believe this had occurred in this instance, as the broadcast had concerned “hot news”, that was “totally unexpected”. The Licensee added that a trustee had overseen the broadcast (again, as in the case of all live programmes) and noted an instance (separate from the current case) where a trustee had removed a live programme from air when it appeared not to have been “executed in line with what was discussed.”

42. The Licensee admitted that, at the time of broadcast, it had had “a sort of loose [compliance] policy... like a common-sense approach; none of these people were really trained properly”. Further, in this instance it had relied to a considerable extent on the presenter being experienced and not having caused any difficulties in the past. However, the Licensee added that it had learned lessons from this case and had subsequently developed and informed staff about its editorial policy and implemented the training of presenters. It had also reduced the number of live broadcasts on Sangat TV, and pre-recorded programmes where it considered there was “scope for controversy”.
43. In the Oral Representations the Licensee referred to Sangat TV’s possible introduction of a transmission delay system, but noted that it was unable to do this at present due to budget constraints. Further, it noted that, due its current deficit, any financial penalty would be “counter-productive in terms if [the Licensee’s] initiatives to improve things.”
44. The Licensee accepted there was “room for change” but concluded that, given the emotional response by the Sikh community to the issue in this particular case, in the event of a similar programme being broadcast in the future, it could not guarantee that there would be a “marked difference in what comes out” because of the complexity of the issues involved. It considered that it may need to involve people from outside the Sikh community to monitor such broadcasts.

Absence of complaints

45. The Representations stated that no viewers had complained directly to Sangat TV concerning the live broadcast debate about the attack on Lieutenant-General Brar. In the Oral Representations the Licensee noted the history of channels serving the Sikh community in the UK and suspected that a number of complaints registered with Ofcom concerning Sangat TV may have been “politically motivated”.

Seriousness of the breach

46. Ofcom considered that the breach of Rule 3.1 was sufficiently serious to warrant the imposition of a statutory sanction for the reasons set out below.
47. Section 319(2)(b) of the Act requires that material likely to encourage or incite the commission of crime or to lead to disorder is not included in television and radio services (section 319(2)(b)). This requirement is reflected in Rule 3.1 of the Code. Any breach of this rule must be regarded as potentially serious because it necessarily involves the broadcast of material judged by Ofcom to be likely to encourage or incite the commission of crime or lead to disorder, and so potentially cause serious harm.
48. Ofcom may impose one or more of a range of sanctions for a breach of Rule 3.1 of the Code. Ofcom’s enforcement powers include, as set out above, revocation of the licence under section 239, if we are satisfied that the breach of Rule 3.1 is such as to justify revocation. In considering the seriousness of the breach and whether it was such as to justify revocation of the licence, Ofcom has taken into account the following considerations.

49. Looking at the context within which the statements that were likely to encourage or incite the commission of crime or lead to disorder were broadcast, Ofcom considered the breach in this case was particularly serious. In particular, the various panellists praised, in unequivocal terms, a serious knife attack on a retired member of the Indian armed forces and the individuals who had carried out this attack did so in a London street. Ofcom considered that these statements amounted to an indirect call to action.
50. Sangat TV is especially aimed at members of the Sikh community in the UK. Notwithstanding the cultural background, factors and differences referred to by the Licensee in its Oral Representations, we considered there was a likelihood that some members of the audience may have seen the panellists' endorsements of the serious act of violence against Lieutenant-General Brar the previous day as implicit encouragement to repeat such an attack, or to carry out similar attacks against other individuals, such as members of the Indian armed forces connected with Operation Bluestar or supporters of the operation. We considered that the potential for the panellists' remarks to encourage criminal acts was increased by various panellists stating that:
- Lieutenant-General Brar was a legitimate target for violence due to his past actions, and
 - the attackers were performing a positive act on behalf of the Sikh community.
51. In considering whether the likely effect of these statements overall was to encourage or incite the commission of crime, or lead to disorder, we also carefully considered the context within which they were broadcast. Again, Ofcom took careful note of the cultural background, factors and differences referred to by the Licensee in its Oral Representations. Nonetheless, because the programme was targeted at the Sikh community in the UK, our view was the Licensee should have been aware of the potential effect of these statements on a Sikh audience in the UK, particularly as the attack on Lieutenant-General Brah had been carried out by Sikhs living in the UK.
52. The Licensee should have been particularly aware of the sensitivities involved in any discussion about the attack on Lieutenant-General Brar, given that the programme was broadcast on the day after the attack. The attack had clearly demonstrated that individuals taking violent and potentially criminal action against Lieutenant-General Brar, or others involved in Operation Bluestar in the UK (or elsewhere), was not a remote possibility. On the day after the attack, emotions in the Sikh community were clearly running very high. In our view, therefore, the potential for some members of the audience to interpret the programme content that praised the attack as some form of indirect call to action was correspondingly higher.
53. We considered that the likelihood for the statements to encourage crime was increased by:
- the attack on Lieutenant-General Brar having taken place within the UK;
 - the attack having been carried out by members of the Sikh community living in the UK; and
 - Sangat TV broadcasting to members of the UK Sikh community.
54. The possibility of individuals therefore both taking similar violent action in revenge for Operation Bluestar and believing it was justified was, in our view, materially stronger.

55. Further, some of the panellists' statements appeared to legitimise young members of the Sikh community having empathy with, and potentially copying, the actions of Lieutenant-General Brar's attackers. We considered it likely that young and impressionable Sikhs could have been encouraged by such statements to commit criminal acts.
56. We did note that, within the programme, one panellist urged members of the Sikh community to remain "*calm and peaceful*" and, in the last few minutes of the broadcast, others made comments that could be interpreted as advocating calm and restraint among members of the Sikh community. Nevertheless, we did not consider these statements provided sufficient balance to counter the fact that the overwhelming majority of the programme contained unequivocal comments that:
- praised the violent attack on Lieutenant-General Brar by individuals using knives;
 - stated that the attackers had carried out a service to the Sikh community; and
 - implied that it would be understandable if young members of the Sikh community should seek to replicate the attack.
57. Further, at no point in the programme did the presenter or any of the other panellists condemn the attack against Lieutenant-General Brar, or the attackers, or make comments pointing that it is unacceptable for Sikhs – however provoked they may feel – to take the law into their own hands by attacking someone with knives on the street with the intention of causing them serious harm or death.
58. However we did note that the remarks being considered for sanction were contained in one programme (not repeated in several programmes and/or over a period of time). Further, the Licensee admitted that the statements of concern to Ofcom were in breach of the Code and stated it would not repeat the programme.

Imposition of sanctions

59. As mentioned in paragraphs 21 to 26 above, Ofcom's powers to take action are set out in sections 236 to 239 of the Act, insofar as relevant to the present case.
60. In view of the factors set out above, Ofcom considers that the breaches are sufficiently serious to warrant further regulatory action. The following paragraphs set out the enforcement action we have considered and the sanctions to be imposed.

Consideration of the imposition of sanctions other than a financial penalty

Revocation of a licence

61. Given the seriousness of this case, Ofcom first considered whether the breach was such as to justify revocation of the licence under section 239 of the Act.
62. This is a matter of judgement for Ofcom. Revocation of a licence is the ultimate enforcement action available to Ofcom. Therefore, in considering whether it is appropriate to serve a notice under section 239(2), which has the effect of suspending the licence (and so depriving a licensee of its right to broadcast until Ofcom reaches a final decision on revocation), Ofcom must take account of all the relevant considerations. These include in this case:

- the words used in the content broadcast and the circumstances in which they were spoken (see paragraphs 28 to 30);
- previous licence breaches by the Licensee, and especially any previous occasions when material likely to incite or encourage crime has been broadcast (see paragraph 86);
- the explanation and response provided by the Licensee to Ofcom in response to this incident¹⁶;
- all the submissions put forward by the Licensee both in correspondence with Ofcom and in the Representations (see paragraphs 34 to 45); and
- the likelihood of further breaches (see paragraph 44).

63. In summary, Ofcom must ensure that any decision that the breach is such as to merit revocation of the licence is proportionate. A relevant factor for Ofcom to consider in this regard is whether any sanction short of revocation could ensure that Regis 1 Limited would comply with the terms of its licence.

64. Ofcom must also have regard to the balance to be given to competing rights under the convention. In particular, the right to freedom of expression under Article 10 (see paragraphs 14 to 16, above), against the competing rights and the protections necessary in a democratic society for the protection of citizens, including Ofcom's statutory duty to ensure material likely to encourage crime or disorder is not included in television services.

65. As pointed out above, under Article 10 the convention, the rights of the broadcaster to impart information and ideas and of the audience to receive them are also subject to restrictions "prescribed in law ... in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime...". Ofcom's statutory obligation is to set standards to secure that material likely to encourage crime is not broadcast. Article 10 protects not only the substance of ideas or information expressed, but also the form in which they are conveyed. In some circumstances, this may include a polemical or aggressive tone. On the other hand, some types of expression, such as expressions of political support for terrorism, have been regarded by the courts as deserving of lesser (or no) protection against restrictions. On the facts of this case, Ofcom must therefore carefully balance the competing rights of the broadcaster and audience to freedom of expression against the duty to protect the public from material likely to encourage crime or disorder.

66. Ofcom notes that in this case the panellists' remarks were not being merely polemical or aggressive; the attackers were seen by some panellists as carrying out a positive act on behalf of the Sikh community, some stated that Lieutenant-General Brar deserved to be attacked and congratulated his attackers, and other statements appeared to legitimise young members of the Sikh community empathising with, and potentially replicating, the actions of the attackers. Further, the closing comments of the panellists that could be interpreted as advocating calm and restraint among members of the Sikh community were minimal in placing the statements that were in breach of Rule 3.1 in a context to make them potentially less harmful, and no attempt was made by the broadcaster to distance itself from these remarks. Equally, no attempt was made by the broadcaster, at the time of broadcast, to stop this material from being played out. In Ofcom's view, their

¹⁶ Reported in the Finding – see footnote 1.

broadcast therefore deserves a lower level of protection under Article 10 than, for example, a panellist discussion concerning a controversial political issue within the context of a debate that presents differing views on that issue.

67. On the other hand, we note first that the panellists' comments were not broadcast deliberately by Regis 1 Limited, insofar as the Licensee says they:

- did not represent its own view; and
- were contrary to its agreement with participants, that "they would all send out a message of peace and community cohesion during the live broadcast."

Second, they were contained in one programme, not several and/or over a period of time. Third, the comments were broadcast on a channel providing a variety of programming, albeit to the Sikh community. Ofcom therefore notes that, if this licence were revoked, a number of viewers (and their right to receive the service) would be adversely affected by them being deprived of this service. Fourth, the broadcaster admitted its error, outlined new and improved procedures to avoid recurrence and said it would not repeat this programme.

68. On balance, after taking into account all the relevant factors, it is Ofcom's Decision that, although the contravention of the Code in this case is serious, it would not be proportionate to decide that the breach of Rule 3.1 by Regis 1 Limited is such as to justify revocation of the Licence under section 239.

Correction and/or statement of Ofcom's findings

69. 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), if Ofcom is satisfied that the contravention can be appropriately remedied by such a direction. This may include a direction not to repeat the programme.

70. Ofcom considers that directing the Licensee to broadcast a statement of Ofcom's findings (as provided by Ofcom and at times stipulated by Ofcom) is an appropriate way to remedy the breaches. The broadcaster has transmitted material likely to encourage or incite crime or lead to disorder, which could have grave consequences. It is therefore appropriate for the broadcaster to transmit a statement of Ofcom's findings in this sanctions case to: address, to some extent, the risk of crime and disorder caused by transmission of the programme; bring the breaches, and Ofcom's concern and robust action in response to the breaches, to the attention of Sangat TV's viewers; and, demonstrate that the complaint to Ofcom (which drew Ofcom's attention to the issue of Regis 1 Limited broadcasting material encouraging crime) has been addressed.

71. Ofcom notes that the Licensee has already said it will not repeat the Programme. Given also that the content of the broadcast reflected views in response to a contemporary event, Ofcom is satisfied that such a repeat broadcast is therefore highly unlikely to occur. We do not therefore consider a direction not to repeat the programme is necessary in this instance.

72. Ofcom considers that, on its own, a direction to broadcast a statement of Ofcom's findings in this case is not a sufficient statutory sanction, given the seriousness of the breach. However, Ofcom considers that a direction to broadcast a statement of Ofcom's findings in combination with a financial penalty should provide an appropriate remedy, while also reflecting the seriousness of the breach and acting as an effective deterrent to

discourage the Licensee from repeating the breach and other licensees from contravening the Code in a similar manner.

Imposition of a financial penalty

73. Under section 237 of the Act, the maximum level of financial penalty that can be imposed on the holder of a TLCS licence is the greater of £250,000 and 5% 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.
74. Qualifying revenue is calculated by adding together revenue gained from advertising, sponsorship and subscription. It does not include revenue gained from interactive services, such as premium rate phone calls.
75. In the calendar year 2012, 5% of the Licensee's reported qualifying revenue for Sangat TV equated to less than £250,000. In accordance with section 237 of the Act, Ofcom may therefore impose a penalty of up to £250,000.
76. The Penalty Guidelines state that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement." In reaching its Decision, Ofcom has taken full account of the need to ensure that any penalty acts as a deterrent and has also taken account of the specific factors set out at paragraph 4 of the Penalty Guidelines¹⁷.

Factors taken into account in determining the amount of a penalty

77. In considering the appropriate and proportionate amount of a financial penalty for the breach, Ofcom has taken account of relevant factors in accordance with the Penalty Guidelines, as set out below:

Deterrence

78. The Penalty Guidelines make clear that the "central objective of imposing a penalty is deterrence" and that "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".¹⁸ Ofcom regards any breach of Rule 3.1 as a very serious matter. For the reasons explained in paragraphs 46 to 58, Ofcom considered the breach in this case was serious. Ofcom therefore considered that any financial penalty had to be sufficient to reflect Ofcom's concerns and to ensure that the Licensee understands these concerns and the very serious nature of the Code breach recorded against it. Ofcom also considered that such a penalty was necessary to ensure the Licensee acts with immediate effect to make necessary improvements to its compliance processes to ensure compliance with the Code in future. Such a penalty would also act as a powerful and clear deterrent to other broadcasters and send a very clear message to other licensees underlining the need to understand and respect the requirement at all times not to broadcast material likely to encourage or incite the commission of crime or to lead to disorder.

¹⁷ See footnote 9.

¹⁸ Paragraph 3 of the Penalty Guidelines – see footnote 9.

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

79. As the Finding made clear, Ofcom is mindful of the long-standing sensitivities within the Sikh community following Operation Bluestar, which took place in Amritsar in June 1984¹⁹, and the ongoing criticism by some in the Sikh community towards Lieutenant-General Brar, and his role in the Operation. Ofcom has taken these factors into account in considering the potential for harm to be caused by the contravention and the extent of any potential harm. Ofcom also took into account the audience reach of the channel, which is broadcast throughout the UK and live-streamed on the Sangat TV website, and the fact that it is aimed at the Sikh community in the UK, where the attack on Lieutenant-General Brah by members of the Sikh community took place.
80. Ofcom concluded that the material broadcast, which included not only panellists' condemnation of Lieutenant-General Brar but also unambiguous support for his attackers, was likely to encourage or incite the commission of crime. We consider that, as a result of this broadcast, there was a risk of harm to certain individuals linked to Operation Bluestar or who have expressed, or express, support for it. As noted in paragraph 52, the potential for some members of the audience to interpret the programme content that praised the attack as some form of indirect call to action was correspondingly higher as a result of the fact that the programme was broadcast the day after the attack on Lieutenant-General Brah, when emotions in the Sikh community were clearly running very high.

The duration of the contravention

81. Ofcom noted in the Finding that the recorded breach of Rule 3.1 was in relation to material broadcast in a single programme on 1 October 2012. We are unaware of the material having been broadcast again.

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

82. We have no evidence to suggest that the Licensee made any financial gain from this breach of the Code.

Any steps taken for remedying the consequences of the contravention

83. The Finding noted the Licensee's representation that the presenter had agreed with the programme participants, "they would all send out a message of peace and community cohesion during the live broadcast." This was clearly insufficient either to prevent or to remedy the consequences of the contravention that followed, as were the closing comments, to the extent they attempted to advocate calm and restraint among members of the Sikh community. Additionally, no attempt was made by the broadcaster to distance itself from the remarks although, following the Programme's broadcast, the Licensee did tell Ofcom that it would not repeat the Programme.
84. Ofcom noted that, since the broadcast of the Programme, the Licensee had sought to improve compliance by implementing the following measures:

- educating and training all presenters and reporters;

¹⁹ See footnote 5.

- reducing the number of live programmes and terminating them in the event of inappropriate or derogatory comments;
- minimising the broadcast of potentially “controversial” political programmes by pre-recording them where the subject matter was controversial;
- reviewing editorial policy; and
- requiring all presenters and programme contributors to sign formal agreements concerning aspects of compliance.

85. However, for the reasons noted in the Finding, Ofcom continues to have reservations about some of these measures²⁰. Further, Ofcom is concerned by the Licensee’s comment in its Oral Representations that it could not guarantee the compliance measures it had subsequently put in place would avoid another breach of Rule 3.1 in the event of a similar and highly charged issue being discussed on Sangat TV.

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

86. There is no history of contraventions by the holder of the Licence for Sangat TV. Further, neither Ofcom nor the Advertising Standards Authority has a record of any contravention by any previous licence holder in relation to any of the channels that have operated under licence TLCS-390 since it was first issued in October 2000.²¹

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

87. In Ofcom’s view, the Licensee did not take sufficient steps to prevent the contravention in this instance, especially given the fact that the broadcast was live, and the Licensee did not have appropriate compliance arrangements in place to monitor this live broadcast and take immediate steps to remedy any problems. Ofcom also considered that the Licensee placed significant reliance on a presenter for the purpose of compliance (see also paragraph 42) at the time of the breach, especially as the Oral Representations clarified that a permanent member of the channel’s staff normally briefed presenters and panellists with “an outline of the programme”, which (notwithstanding the circumstances surrounding the broadcast) the Licensee did not believe had occurred in this case.

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

88. Ofcom notes in this case that the breach appears not to have been intentional. However, Ofcom considers that senior management should have been aware of the Code requirements and the need to have adequate compliance procedures in place for securing them. However, the Licensee did not have appropriately robust compliance

²⁰ In relation to minimising the broadcast of potentially controversial political programmes Ofcom stated: “...we consider that it is perfectly possible to broadcast – and indeed Ofcom would encourage the broadcast of – challenging programmes that touch on controversial political issues, that nevertheless comply with the Code, and in particular Rule 3.1”. In relation to contributors signing agreements, Ofcom stated: “...it is a fundamental feature of the Code that individual licensees remain editorially responsible for all content that they broadcast” (see footnote 1 for a link to the full Finding).

²¹ See footnote 3.

measures in place at the time of the breach and certainly had no mechanism, such as any delay for live broadcasts, which might have enabled the Licensee to take timely and effective steps to help ensure compliance during the transmission. By the Licensee's own admission, its compliance procedures were "a sort of loose [compliance] policy... like a common-sense approach; none of these people were really trained properly." It also acknowledged that there was a heavy reliance on the trustees themselves volunteering to take responsibility. In relation to the breach, it further acknowledged that it had failed to brief the presenter and panellists in advance with "an outline of the programme". Ofcom's view is that, with such weak compliance procedures in place and given the highly emotive nature of the events that were being discussed in the live programme, senior management clearly ought to have known that a breach of the Code would occur or was likely to occur.

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

89. No timely steps were taken to end the contravention which, consisted of repeated breaches of Rule 3.1 during the course of the Programme that was allowed to run until the end of its scheduled duration.

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

90. The Licensee explained its current financial situation by reference to its most recent, accounts for the year to 31 August 2012. The Licensee confirmed that advertising revenue and donations from the community had increased over the last year and that it relies less now on funding from Sangat Trust. The Licensee confirmed that the 2012 position is a realistic expectation of what the channel's revenues will be going forward. Nevertheless, the Licensee said that the channel is still in deficit and urged Ofcom not to impose a substantial financial penalty, saying it would hit the channel hard and would deter it from being able to implement necessary changes to its compliance procedures. In relation to the size of the regulated body, the Licensee explained that it was a small charitable setup managed by trustees from Sangat Trust and mostly run by volunteers. Taking account of the Licensee's representations about its size and financial situation Ofcom considered whether the level of penalty was proportionate in all the circumstances.

91. Ofcom recognised that the penalty must be proportionate taking into account the Licensee's rights under Article 10 of the Convention. If any financial penalty was to be so high that its effect would be to close a service down, then it might be a disproportionate interference with the Licensee's and the audience's right to freedom of expression in particular and exceed the purposes of imposing a penalty. Ofcom therefore took this point into account and carefully weighed it in reaching its decision on the proportionality of the financial penalty.

92. As noted above, the "central objective of imposing a penalty is deterrence". Ofcom regards any breach of Rule 3.1, as demonstrated in this case, as a very serious matter. Ofcom is given a specific statutory duty to ensure broadcasters do not transmit material that is likely to encourage or incite crime or lead to disorder. Where such material is broadcast in contravention of this requirement, the Act recognises the potential for serious harm to be caused and that, where justified by the breach, this should require the regulator to take action to be able to remove a broadcaster's entitlement to hold a licence.

93. For the reasons set out above (see paragraphs 61 to 68), Ofcom did not consider that revocation was appropriate in this case. However, Ofcom considered that any penalty had to be sufficient to reflect Ofcom's serious concerns and to ensure that the Licensee understands these concerns and the very serious nature of the Code breach recorded against. The amount of penalty also needed to be sufficiently high to act as a powerful and clear deterrent to other broadcasters. Ofcom carefully assessed all the evidence provided by the Licensee about its size and current financial situation, including the Licensee's accounts, the Licensee's Representations and the Licensee's responses at the hearing to Ofcom's questions about its sources of funding and its current and projected revenues. Having weighed all these factors with the utmost care, Ofcom considered that a penalty of **£30,000** would be proportionate, taking into account all the relevant circumstances as set out and discussed in this Decision.

Relevant precedents set by previous cases

94. In accordance with the Penalty Guidelines, published on 13 June 2011, Ofcom will have regard to any relevant precedents set by previous cases in determining a penalty but may depart from them depending on the facts and context of each case.

95. In this instance, there are two direct precedents where Ofcom has recorded a breach of Rule 3.1, when it decided that a statutory sanction was warranted:

- **23 November 2012, Radio Asian Fever Community Interest Company²²** – Sanction of £4,000 and a direction 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 at noon and 18 August 2011 at 11.00. 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 also reasonably be considered as material likely to encourage others to copy such violent and dangerous behaviour, it was also considered a breach of Rule 2.4²³. Ofcom also concluded that this material was offensive and the broadcaster had failed to apply generally accepted standards which is a breach of Rule 2.3 and that as a religious programme it had failed to exercise the proper degree of responsibility and 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; and.
- **5 July 2013, DM Digital Television Limited²⁴** – Sanction of £85,000 and a direction to broadcast a statement of Ofcom's findings for breaching Rule 3.1, and a direction not to repeat the programme. This case concerned the broadcast of a live televised lecture in a programme called *Rehmatul Lil Alameen* broadcast on

²² The adjudication was published on 23 November 2012 and can be found at:

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

²³ Rule 2.4 states: "Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour".

²⁴ The adjudication was published on 5 July 2013 and can be found at:

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

9 October 2011 at 18:30. 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 law²⁵. 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 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.

96. Ofcom notes several differences between these two cases and the present one. For example, Radio Asian Fever was a community radio station broadcasting only to a restricted part of the city of Leeds, had only a very small potential audience and the broadcast comments in that case (although judged by Ofcom to breach Rule 3.1 and to be serious and clearly completely unacceptable) were very brief. DM Digital was a channel with a much larger audience reach (throughout the UK and around the world, in particular, in the Middle East and parts of Asia), had a history of contraventions, including previous Ofcom sanctions, and the contravention of Rule 3.1 consisted of repeated comments throughout the length of the programme, which contained unambiguous calls to action.
97. In addition, there was the following fairly recent sanction case relating to breaches of Rule 2.4, which is a rule that also deals with the issue of incitement in programming (see below):
- **8 May 2012, Dama (Liverpool) Limited (Aden Live)**²⁶ – Sanction of £10,000 and a direction to broadcast a statement of Ofcom's findings, for breaches of Rule 2.4, 5.4, 5.11 and 5.12. This case concerned various programmes broadcast on Aden Live, a service broadcasting predominantly to a South Yemeni audience. Ofcom concluded that, in relation to Rule 2.4, given that many of Aden Live's audience would have been likely to be: in support of the secession of South Yemen from the Republic of Yemen; and/or in support of the Southern Movement and oppose the Government of Yemen, material broadcast by Aden Live could reasonably be considered as material likely to encourage others to copy violent or dangerous behaviour.
98. Ofcom is satisfied that the level of penalty proposed in this case and combination of sanctions is appropriate, taking due account of the factors outlined in the Penalty Guidelines and the seriousness of the breach. As set out in paragraphs 61 to 68, above, Ofcom has considered carefully whether the breach justifies revocation of the licence under section 239 of the Act. On balance, and for the reasons given in those

²⁵ Section 295-C of Pakistan's Criminal Code.

²⁶ The adjudication was published on 8 May 2012 and can be found at: http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden_Live_sanctions_decisio1.pdf.

paragraphs, Ofcom considers in this case that the breach is not such as to justify revocation of the licence.

Cooperation

99. In accordance with the Penalty Guidelines, Ofcom may increase the penalty where a licensee has failed to cooperate with Ofcom's investigation.
100. In Ofcom's view, the Licensee has, in general, been cooperative. For example, it has provided full representations in response to Ofcom's formal requests for comments under the Code relating to the programme and it has expressed its intention to take further steps to remedy its failure to comply with Rule 3.1 of the Code. Ofcom does not therefore consider it appropriate to increase the penalty on account of a failure to cooperate in this instance.

Conclusion

101. Any financial penalty Ofcom imposes on the Licensee must be appropriate and proportionate to the contravention in respect of which it is imposed. Ofcom's central objective in setting a penalty is deterrence both for the Licensee and other broadcasters. An appropriate penalty would be one that secures this objective (doing so in a proportionate way).
102. As regards the weighting of the factors considered above, it is Ofcom's view that the following factors are of particular importance in the circumstances of this case, and in consideration of the level of the penalty:

Factors which serve to increase the penalty

- (a) the degree of potential harm, taking into account, in particular, the nature of the breach, which included both panellists' condemnation of Lieutenant-General Brar and unambiguous support for his attackers, which was therefore likely to encourage or incite the commission of crime (see paragraphs 79 and 80);
- (b) the failure of the Licensee to have in place robust compliance arrangements, both prior to broadcast – by, for example, failing to brief the presenter and panellists in advance with “an outline of the the programme” – and during the broadcast, by not having appropriate arrangements in place to monitor it and take immediate steps to remedy any problems (see paragraphs 87 and 89); and
- (c) the Licensee's inability to guarantee that compliance measures it had subsequently put in place would prevent recurrence of a similar Code breach (see paragraph 85).

Factors which serve to reduce the penalty

- (a) the contravention occurred in a single programme that was not repeated (see paragraph 81)
- (b) the Licensee had a good compliance record prior to this serious breach of the Code (see paragraph 86); and
- (c) the Licensee has cooperated with Ofcom during the sanctions process (see paragraph 100).

103. Having regard to all the factors referred to above and all the Representations from the Licensee, Ofcom's decision is that an appropriate and proportionate sanction would be a financial penalty of **£30,000**.
104. 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.

14 August 2013