

**Sanction: Decision by Ofcom**  
**To be imposed on Club TV Limited**

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**For material broadcast on Peace TV Urdu on 12 and 13 September 2015 at 14:00<sup>1</sup>**

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

Club TV Limited ("Club TV" or the "Licensee") in respect of its service **Peace TV Urdu** (TLCS-1259).

**For:**

Breach of the Ofcom Broadcasting Code (the "Code") in respect of:

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

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

**Decision:**

To impose a financial penalty (payable to HM Paymaster General) of **£65,000**; and

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

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<sup>1</sup> The material broadcast on Peace TV Urdu was found in breach of Ofcom's Broadcasting Code (the "Code") as detailed in Broadcast and On Demand Bulletin 299, 22 February 2016 ("the Breach Decision"). See [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb299/Issue\\_299.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb299/Issue_299.pdf)

### **Executive Summary**

1. Peace TV Urdu is a television channel broadcasting religious and other programming in Urdu from an Islamic perspective to audiences in the UK and internationally. The Ofcom licence for Peace TV Urdu is held by Club TV Limited (“Club TV” or “the Licensee”). The Licensee currently holds no other broadcasting licences.
2. Club TV is 100% owned by Universal Broadcasting Corporation Limited (“UBCL”), a company limited by guarantee. UBCL also 100% owns Lord Production Inc. (“Lord Production”) which holds one TLCS licence, which is for the service Peace TV (TLCS-1022). Club TV and Lord Production share the same postal address and compliance contact. Funding for the broadcasts of Peace TV Urdu and Peace TV is provided by the Islamic Research Foundation International, which is a registered charity.
3. On 12 and 13 September 2015, the Licensee broadcast two editions of *Azmat-e-Islam* on Peace TV Urdu. They were recordings of public lectures given by the Islamic scholar Dr Israr Ahmad, who died in April 2010. Both these lectures lasted approximately 45 minutes and discussed the role and actions of Jewish people through history from c.1500 BC to the present day.

### **The Breach Decision**

4. In Ofcom’s decision (“the Breach Decision”) published on 22 February 2016 in issue 299 of the Broadcast and On Demand Bulletin<sup>2</sup>, Ofcom’s Executive found that material in the two editions of *Azmat-e-Islam* (“the Programmes”) breached Rules 2.1 and 2.3 of the Code.
5. The Breach Decision set out specific examples of broadcast material that were in breach, along with reasoning as to why, in relation to each breach, the material had breached each rule.
6. Ofcom put the Licensee on notice in the Breach Decision that it considered these breaches to be serious, and that it would consider them for the imposition of a statutory sanction.

### **The Sanction Decision**

7. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (“the Sanctions Procedures”)<sup>3</sup>, Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case. It has reached the Decision that a sanction was merited in this case since the breaches were serious for the reasons set out in paragraphs 42 to 44.
8. Ofcom’s Decision is that the appropriate sanction should be a financial penalty of **£65,000**. Ofcom also considers that the Licensee should be directed to broadcast a statement of Ofcom’s findings, on a date and in a form to be determined by Ofcom.

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<sup>2</sup> See: [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb299/Issue\\_299.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb299/Issue_299.pdf)

<sup>3</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/statutory-sanctions.pdf>

## **Legal Framework**

### **Communications Act 2003**

9. 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)).
10. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)). This requirement is reflected in Section Two of the Code.
11. 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**

12. 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").
13. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster's freedom to impart and the audience's freedom to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1) of the Convention). The exercise of these freedoms may be subject only to conditions and restrictions which are "prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary" (Article 10(2) of the Convention).
14. 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.

### **Ofcom Broadcasting Code**

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

### Remedial action and penalties

18. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 are observed by the licensee. In the case of a television licensable content service (“TLCS”) licence, Condition 6 of the licence requires the licensee to ensure that the provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.
19. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 238 of the Act insofar as relevant to the case.
20. 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.
21. 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.
22. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence where a licensee is in contravention of a condition of a TLCS licence or direction thereunder.

### Background – The Breach Decision

23. In the Breach Decision, the Executive found that material broadcast by the Licensee on Peace TV Urdu breached Rules 2.1 and 2.3 of the Code. The Breach Decision set out the reasons for each of these breach findings.
24. The Breach Decision noted that the Programmes, broadcast in Urdu, were recordings of public lectures given by the Islamic scholar Dr Israr Ahmad, who died in April 2010. Both these lectures lasted approximately 45 minutes and discussed the role and actions of Jewish people through history from c.1500 BC to the present day. In summary, the Programmes included numerous highly critical references to Jewish people.
25. In relation to Rule 2.1, Ofcom first considered whether the Programmes contained potentially harmful and/or offensive material. We noted that Israr Ahmad delivered an analysis of Jewish people through history and made a number of discriminatory remarks focused on them as an ethnic group. In particular, Israr Ahmad variously referred to Jewish people as: being *“this cursed people...this cursed race”*; having hatched an *“evil plan”*; possessing *“evil genius”*; causing the First World War; and filling Europe during history *“with their poison”*. Israr Ahmad also made a series of allegations ascribing perfidious intent to Jewish people throughout history. Among other things, he accused Jewish people of: *“hatching conspiracies”*; considering *“non-Jews”* to be *“not human”*; and judging it acceptable to *“cheat non-Jews, to rob them and to deceive them”*. He also asserted as fact highly negative stereotypes about the allegedly pernicious behaviour of Jewish people in history. Israr Ahmed made allegations about the role of *“Jewish bankers”* during the First World War (*“lay[ing] down their roots like a cancer... [to take] the whole of Europe in their grip”*) and in the present day (*“they want to bring the world to heel through the global banking network”*). He also referred to the inflammatory *“Protocols of the Elders of Zion”* – now accepted as an anti-Semitic forgery written to demonstrate a Jewish conspiracy to achieve financial and political power world-wide – as a factual document containing *“in great detail”* the plans of *“some very powerful Jews”*.

26. We considered Israr Ahmad repeatedly portrayed Jewish people as a homogenous group and in overwhelmingly negative and stereotypical terms. In Ofcom's view, Israr Ahmad's comments had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be a form of hate speech. In this context we were mindful of the Council of Europe's definition of 'hate speech', as follows: "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin"<sup>4</sup>. Ofcom considered that the content taken as a whole had the potential to cause offence to viewers. In our view the content also had the potential to cause harm by portraying Jewish people in highly negative terms.
27. We went on to consider whether the Licensee had taken sufficient steps to provide adequate protection to members of the public from the inclusion of the potentially harmful material. We noted that Israr Ahmad spoke uninterrupted and at no point in either of the two Programmes were Israr Ahmad's comments balanced or countered by other content which softened or otherwise challenged the pejorative, discriminatory and inflammatory stereotypes he was putting forward. We considered the Licensee had not taken sufficient steps to provide adequate protection to members of the public from the inclusion of the potentially harmful material. In response to Ofcom's investigation the Licensee decided immediately to remove the Programmes from its schedule. Nonetheless, for all the reasons set out in the Breach Decision, the broadcast of the Programmes was in breach of Rule 2.1 of the Code.
28. In relation to Rule 2.3, as noted above, Ofcom considered that Israr Ahmad's comments had the potential to be interpreted as a form of anti-Semitic hate speech and as such clearly had potential to cause considerable offence.
29. Ofcom then considered whether the offence was justified by the context. In this case, a Muslim scholar was delivering two lectures in which he gave his analysis of the role and actions of Jewish people through history until the present day. Ofcom acknowledged the Licensee could broadcast programmes that contained personal interpretations of the role of different groups and communities through history. However, Ofcom considered that there would need to be very strong, if not exceptional, contextual factors to justify the inclusion of such highly offensive and discriminatory anti-Semitic material which had the potential to cause offence. We concluded that there was insufficient contextual justification for the broadcast of this content. The broadcast of the Programmes was therefore also in breach of Rule 2.3 of the Code.
30. Ofcom stated in the Breach Decision that the contraventions of Rules 2.1 and 2.3 of the Code were serious and were being considered for statutory sanction.

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

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, repeatedly or recklessly breached a relevant requirement.
32. In this case, Ofcom issued a preliminary view ("Preliminary View") that Ofcom was minded to impose a statutory sanction in the form of a financial penalty and to direct the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom. Ofcom sent a copy of the Preliminary View to the Licensee on 20 July 2016 and at the same time gave the Licensee the opportunity to provide written and oral representations on the Preliminary View. The Licensee responded in letters dated

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<sup>4</sup> Council of Europe Committee of Ministers Recommendation, 30 October 1997 ([http://www.coe.int/t/dghl/standardsetting/hrpolicy/other\\_committees/dh-lgbt\\_docs/CM\\_Rec\(97\)20\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec(97)20_en.pdf)).

10 and 31 August 2016 in which it provided written representations (summarised in paragraphs 34 to 40) (“the Representations”). The Licensee declined the opportunity to provide oral representations

33. In reaching its Decision on whether to impose a statutory sanction and if so, what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the evidence and representations made by the Licensee including the Representations on the Preliminary View, and has had regard to the Sanctions Procedures and to Ofcom’s Penalty Guidelines in reaching its Decision (see further below).

### **Licensee’s Representations**

34. Club TV reiterated its “sincere regret” that the content had been broadcast. It acknowledged that: the breaches in this case had been “serious” and “should not have been broadcast”.
35. However, Club TV argued that Ofcom should have regard to the size of the actual or likely audience when assessing harm for the purpose of imposing a sanction. The Licensee argued that the audience to the two programmes in this case “would be measured in the hundreds rather than thousands”. It cited the following factors to support this argument:
- audience data that Club TV had obtained from BARB<sup>5</sup> in 2015<sup>6</sup>. The Licensee also asserted that, in its view, actual audience figures would have been different (from those obtained from BARB) for Saturday and Sunday, when the programmes in this case had been broadcast because they would have been “significantly lower than during the rest of the week”;
  - although Peace TV Urdu’s broadcast footprint also covers Europe, there is not “any very significant viewing of Peace TV Urdu in continental Europe”; and
  - a programme on an historical subject by a “scholar who died 10 years ago” would be unlikely to attract “high viewing figures”.
36. Club TV also argued that the potential for harm was further reduced because the viewer profile for Peace TV Urdu viewers is over 25 years old - i.e. not the youngest and most impressionable.
37. Club TV believed that the reason the programmes had been broadcast in this case was because “less attention was paid to it because it was older material”. However, it added that the “deficiency in compliance has been and is being addressed”. The Licensee acknowledged that “improvements in compliance” were necessary for Peace TV Urdu, but the level of penalty proposed by Ofcom in its Preliminary View “for a first breach does appear to be unprecedented and is not necessary to procure future compliance”.
38. Club TV differentiated the fines of £85,000 imposed both in the case of DM Digital Television Limited (“DM Digital”), in October 2011, and in the case of Al Ehya Digital Television Limited, (“El Ehya”), in May 2012, from the present case”:
- firstly, the Licensee said that “Whilst there is no justification for the words spoken by Dr Ahmad, he did not, in contrast to the above speakers, make a call to physically harm anyone, and Ofcom accepts that what Dr Ahmad said was unlikely to encourage or incite the commission of a crime”; and

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<sup>5</sup> Broadcasters’ Audience Research Board Limited.

<sup>6</sup> The Licensee said that it had obtained this data (which related to the period 15 June 2015 to 12 July 2015) from BARB as part of a trial agreement but that it had decided not to “subscribe to BARB long term”.

- second, Club TV pointed to the poor compliance record of DM Digital and El Ehya, and the fact that Ofcom had previously imposed statutory sanctions on both these licensees.

39. Club TV also provided detailed financial information in relation to the funding of Peace TV Urdu.
40. Other relevant representations made by Club TV have been set out below.

**Serious nature of the breaches**

41. As mentioned in paragraph 31 above, the imposition of a sanction against a broadcaster is a serious matter. Ofcom considered that for the reasons set out below that the breaches of Rules 2.1 and 2.3 were serious and therefore warrant the imposition of a statutory sanction.
42. First, and principally, the breaches were serious because as set out in paragraph 25, the Programmes included numerous examples of overwhelmingly negative and stereotypical references to Jewish people, which, in Ofcom's view, could be interpreted as spreading anti-Semitism i.e. they were a form of hate speech. Second, these anti-Semitic statements were delivered to a predominantly Muslim audience, by a religious scholar, a person who holds a position of authority and respect within the Muslim community. Third, Israr Ahmad spoke uninterrupted and there were no views or statements in the Programmes which challenged or otherwise softened the considerable level of potential offence caused by Israr Ahmad's statements.
43. Ofcom considers the potential harm arising from any form of hate speech to be particularly serious. Further, taking the above factors together, Ofcom was concerned that the highly critical and negative statements made about Jewish people delivered, uninterrupted, by an individual likely to be held in high status by the viewers of Peace TV Urdu, had the clear potential to cause harm by portraying Jewish people in highly negative terms.
44. Finally, the serious nature of these breaches (the broadcast of anti-Semitic hate speech in pre-recorded content) in two separate programmes broadcast on consecutive days but not identified by the Licensee before transmission, indicated a failure by the Licensee to have sufficiently robust compliance procedures in place at Peace TV Urdu.
45. In view of the factors set out above, Ofcom considered that the breaches were serious. As such the case warranted the imposition of a statutory sanction. The following paragraphs set out Ofcom's Decision of the appropriate sanction to be imposed.

**Sanction**

Imposition of sanctions other than a financial penalty

46. 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.
47. It is Ofcom's view that a direction not to repeat the Programmes found in breach would not be an appropriate sanction in all the circumstances. This is because the Licensee, as set out in the Breach Decision, had already removed the Programmes from its schedule.
48. Ofcom considers that directing the Licensee to broadcast a statement of Ofcom's findings is necessary to bring the breaches, and Ofcom's action in response to the breaches, to the attention of Peace TV Urdu's viewers.
49. Ofcom considers that, on its own, a direction to broadcast a statement of Ofcom's findings in this sanctions case is not a sufficient statutory sanction, given the serious nature of the breaches in this case. Ofcom therefore considers that a direction to

broadcast a statement of Ofcom's findings in combination with a financial penalty would act as a more effective deterrent to discourage the Licensee (and other licensees) from contravening the Code in a similar manner.

50. Ofcom has taken into account that the Licensee's representations during the investigation indicated that it had not intended the problematic content to be broadcast, and it acknowledged that this had been a serious error on its part. Ofcom's Decision is that it would not be proportionate to recommend revocation of the Licence as an appropriate statutory sanction in respect of the current breaches under consideration.

#### Imposition of a financial penalty

51. Under section 237 of the Act, the maximum level of financial penalty that can be imposed on the holder of a TLCS licence in respect of each contravention of a TLCS licence condition is £250,000 or five per cent of the licensee's qualifying revenue relating to its last complete accounting period falling within the period for which its licence has been in force, whichever is greater.
52. Qualifying revenue is calculated by adding together revenue gained from advertising, sponsorship and subscription.
53. Financial data for the year 2015 showed that the Licensee's qualifying revenue for this period for the Peace TV Urdu licensed service was £0. Therefore, in this case the maximum financial penalty that Ofcom could impose is £250,000 in respect of the contravention of its licence conditions committed by the Licensee in this case.
54. Ofcom's Penalty Guidelines<sup>7</sup> state (in paragraph 11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty". In reaching its Decision on the imposition of a sanction in this case, Ofcom has taken full account of the need to ensure that any penalty acts as a deterrent and has also taken account of the specific factors set out at paragraph 12 of the Penalty Guidelines.
55. In this case Ofcom believed that a financial penalty was necessary to reflect the serious nature of the Code breaches recorded against the Licensee, and to act as an effective incentive to comply with the Code, both for the Licensee and other licensees.

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

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

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

57. Ofcom regarded the breaches to be serious for the reasons set out in paragraphs 42 to 44 above. We were particularly concerned that the Licensee had broadcast what, in Ofcom's view, could be interpreted as a form of anti-Semitic hate speech. Ofcom considers the potential harm arising from any form of hate speech to be particularly serious. Ofcom is particularly concerned that the Licensee broadcast material which was extremely harmful.
58. We noted that the Licensee agreed in its Representations that the breaches in this case were serious.

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<sup>7</sup> See: [http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty\\_guidelines\\_2015.pdf](http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty_guidelines_2015.pdf)



59. The Breach Decision related to material broadcast on 12 and 13 September 2015. We are unaware of the material having been broadcast again and indeed the Licensee confirmed that it had removed the Programmes from its schedule.

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

60. Ofcom regarded the breach of Rule 2.1 to be particularly serious. The potential harm in this case was significant because the Licensee broadcast on Peace TV Urdu an Islamic religious scholar making numerous overwhelmingly negative and stereotypical references to Jewish people, which could be interpreted as a form of anti-Semitic hate speech. Although we did not consider the material broadcast was so strong as to be likely to encourage or incite the commission of crime or to lead to disorder, we considered that, as noted above, the potential harm arising from any form of hate speech was particularly serious. Ofcom notes that this would include the potential to harm community cohesion.

61. We noted that in its Representations, Club TV made various arguments, which, in its view, meant that the number of viewers to the two programmes in this case “would be measured in the hundreds rather than thousands”. It therefore argued that in taking its Decision, Ofcom should have regard to the “size of the actual or likely audience when assessing harm”.

62. Ofcom noted that the Licensee presented no actual audience figures for the programmes in this case. Ofcom also noted the Licensee’s representations that while the channel is received in the whole of the UK<sup>8</sup>, the potential audience is limited by the broadcast language, Urdu. The Licensee noted that according to Office for National Statistics figures, the Urdu-speaking population in England and Wales in 2011 was 269,000, although Club TV said it had “no hope of reaching such an audience” and that it would be “inaccurate, quite wrong and unlawful for Ofcom to assess a sanction on the basis of such a figure”.

63. Ofcom accepted that the actual audience was likely to be small. Ofcom also accepted the Licensee’s view that it is unlikely to be able to attract viewing of Peace TV Urdu’s programmes by the entire Urdu-speaking population in England and Wales. Ofcom took account of these facts. Ofcom further took account of the fact that the channel is a Urdu-language channel focussed on delivering programmes about a specific subject (religious and other programming from an Islamic perspective) which can be viewed in the whole of the UK.

64. Our Penalty Guidelines make it clear that it is not just the degree of actual harm (which would logically be measured by the actual audience) that is relevant but also the degree of potential harm. Consistent with those Guidelines and previous sanctions decisions (and consistent with our general standards duty in section 319(4)(b) of the Act<sup>9</sup>), Ofcom considered that in this case, given that the breaches were clearly particularly serious constituting as they did a form of hate speech, the audience reach of the channel (i.e. the potential audience and therefore the degree of potential harm) to be more important than the actual size of the audience. Even if this was just a small proportion of the total Urdu-speaking population in England and Wales it would still be a significant number of people.

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<sup>8</sup> The channel can also be viewed elsewhere in Europe.

<sup>9</sup> Section 319(4)(b) of the Act states that: “In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters—

...

(b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;...”.

65. We were not persuaded by the Licensee's argument that given "the viewer profile for Peace TV Urdu viewers is over 25 years old – i.e. not the youngest and most impressionable of viewers" the potential for harm would have necessarily been reduced in this case. Noting that the Licensee provided no evidence for that statement, Ofcom took the view that the relatively older age of the viewers was unlikely to have had any particular impact on limiting the potential harm arising from the breaches.

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

66. In its Representations, the Licensee confirmed it had made no financial or other gain by the broadcast of these Programmes which breached the Code.

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

67. In its representations during Ofcom's investigation, Club TV said that the Programmes were "initially reviewed by our compliance team" but that the Programmes "slipped through the net when first reviewed" by compliance staff. In its Representations in response to the Preliminary View, the Licensee also stated its belief that the reason the programmes had been broadcast in this case was because "less attention was paid to it because it was older material". Ofcom was therefore concerned at what was clearly an inadequate compliance processes being in place in relation to older pre-recorded material. In our view, the Licensee had ample opportunity to review the Programmes afresh. Ofcom was also concerned that Club TV only became aware of the serious nature of this content on being contacted by Ofcom in this case. We therefore considered this was evidence of inadequate compliance processes for identifying potentially harmful material.

68. Ofcom also took into account that Club TV, the Licensee for Peace TV Urdu, is 100% owned by the same company, UBC, which also 100% owns Lord Production, which holds the licence for Peace TV Urdu's sister channel, Peace TV. As well as being owned by the same entity, both Club TV and Lord Production have the same compliance contact. We therefore considered whether any steps were taken by this central compliance function, following previous breaches of the Code, to prevent future contraventions. Ofcom found Peace TV in breach of the Code twice previously.

69. In November 2009<sup>10</sup>, Ofcom found Peace TV in breach of Rules 2.3 and 2.4 of the Code for statements indicating it was permissible to beat a wife in certain circumstances. In that case, Lord Production, the Licensee for Peace TV considered that the content complied with the Code.

70. In November 2012<sup>11</sup>, Ofcom found Peace TV in breach of Rule 2.3 of the Code for statements, which suggested that it is acceptable to kill any individual who renounces their Islamic faith and propagates his new faith against Islam; and to execute, chop off limbs or exile anyone who waged "war against Islam". In that case, Lord Production said that a "committed Muslim" would know from the standard teaching that the penalties against apostates can only be imposed after judicial process and by the state. However, it said it was happy in future to make "absolutely clear" to viewers that the teachings of Islam are not for individuals to decide upon and implement themselves.

71. Neither of the previous Peace TV cases was considered serious enough for the imposition of a statutory sanction. Club TV confirmed in its Representations that following the second of these breaches in November 2012, Peace TV had contracted a media consultancy which had "highlight[ed] any possible issues in the programming".

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<sup>10</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb145/Issue145.pdf>

<sup>11</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb218/obb218.pdf>

The Licensee also noted that after the Breach Decision, it had taken steps “to ensure Peace TV Urdu has the same controls over its programming” as Peace TV. Ofcom was concerned that despite the obvious shortcomings in the compliance function for Peace TV prior to additional steps being taken to increase controls, the same additional controls were not put in place for its sister channel, Peace TV Urdu. These latest breaches demonstrated that for Peace TV Urdu, the compliance function continued to fall short.

*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*

72. In its Representations, the Licensee argued that the breaches had not occurred deliberately or recklessly. Ofcom had no evidence to the contrary. However, in light of what is set out in paragraphs 68 to 71 above, we took the view that senior management should have been aware that its compliance processes were inadequate.

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

73. Club TV only became aware of the potentially serious issue raised by the Programmes on being alerted to the material by Ofcom on 15 September 2015. This followed Ofcom viewing the material in question as part of routine monitoring. On 15 September 2015, the Licensee suspended any future broadcasts of all content featuring Israr Ahmad (including the Programmes) until the content had been reviewed.
74. On 1 October 2015 Ofcom wrote to Club TV requesting formal comments as to how the Programmes complied with Rules 2.1 and 2.3 of the Code. On 21 October 2015, the Licensee provided Ofcom with its formal comments. At this time, Club TV also confirmed that it had not repeated the Programmes or broadcast any content featuring this speaker since being alerted to Ofcom’s concerns on 15 September 2015.
75. As set out in paragraph 76 below, the Licensee has also given Ofcom assurances about some further steps it said it has taken to improve its compliance processes.

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

76. In addition to removing the Programmes from its schedule, in its Representations, the Licensee confirmed that it had taken various steps to improve compliance, including: reviewing its compliance procedures; introducing extra training; appointing an additional member of compliance staff with relevant experience and fluency in Urdu to review all content featuring Israr Ahmad to ensure it complied with the Code; introducing an “independent Editorial Board”; and increasing the “resources and training devoted to monitoring and produc[ing] more comprehensive written policies and procedural guidelines for programme clearance”.
77. Ofcom also noted that the Licensee expressed its sincere regret that it broadcast the Programmes. Following the publication of the Breach Decision, the Licensee indicated that it is anxious to rebuild bridges with the Jewish community.

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

78. As mentioned in paragraphs 67 to 71 above, we noted that Peace TV Urdu’s sister channel, Peace TV, which shares the same central compliance function as Peace TV Urdu but for which the licence is held by a different company, has twice breached the Code in the past. Ofcom also noted that the Licensee for Peace TV Urdu did not have a history of contraventions of the Code, prior to the breaches now being considered for statutory sanction.

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

79. In Ofcom's view, the Licensee has been cooperative. For example, it admitted immediately the breaches of the Code in this case and took action to prevent a repeat of the Programmes, or any others featuring Israr Ahmad until it had carried out further assessment of the material. Further, TV Club provided full representations in response to Ofcom's formal requests for information relating to the material broadcast and the service in general, and expressed a willingness to take, and has taken, steps to remedy its failures to comply with the Code.

**Precedent**

80. In accordance with the Penalty Guidelines, Ofcom has also had regard to relevant precedents set by previous cases. No previous Ofcom sanctions decisions deal solely with breaches of Rule 2.1 and/or Rule 2.3 in relation to harmful and offensive discriminatory material. However, there is one partially relevant precedent which involved, amongst other things, a breach of Rule 2.3.
81. **23 November 2012, Radio Asian Fever Community Interest Company**<sup>12</sup> – Ofcom imposed a penalty of £4,000 on Radio Asian Fever Community Interest Company and directed it to broadcast a statement of Ofcom's findings for breaches of Rules 2.3, 2.4, 3.1 and 4.1. This case concerned two editions of the *Sister Ruby Ramadan Special 2011*, broadcast on 17 and 18 August 2011. The material was broadcast in Urdu. In the first programme the presenter was highly critical of homosexuality in the context of discussing aspects of the Qur'an. Ofcom concluded that this material was likely to encourage violent behaviour towards homosexual people and was therefore in breach of Rule 3.1. As it could reasonably be considered as material likely to encourage others to copy such violent and dangerous behaviour, Ofcom also recorded a breach of Rule 2.4. Ofcom concluded that this material was offensive and the broadcaster had failed to apply generally accepted standards, which was a breach of Rule 2.3, and that as a religious programme it had failed to exercise the proper degree of responsibility. This was a breach of Rule 4.1. The second programme contained various offensive remarks critical of marriages between Muslims and those of other faiths, which were found in breach of Rules 2.3 and 4.1.
82. In addition, some other previous Ofcom sanctions decisions also have some relevance in this case. The first two cases concern material broadcast that was found to be so harmful as to be likely to encourage or incite the commission of crime or lead to disorder and hence in breach of Rule 3.1. We did not consider that the material broadcast by Peace TV Urdu was so strong as to be likely to encourage or incite the commission of crime or to lead to disorder.
83. **5 July 2013, DM Digital Television Limited ("DM Digital")**<sup>13</sup> – Ofcom imposed a penalty of £85,000, directed the licensee to broadcast a statement of Ofcom's findings for breaching Rule 3.1, and directed it not to repeat the programme. This case concerned the broadcast of a live televised lecture in a programme called *Rehmatul Lil Alameen* broadcast on 9 October 2011 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 law. This law punishes derogatory remarks against notable figures in Islam and carries a potential death sentence for anyone who insults or is judged to blaspheme against the Prophet

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

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

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.

84. **21 August 2013, Al Ehya Digital Television Limited ("Al Ehya")**<sup>14</sup> – Ofcom imposed a penalty of £85,000, directed the licensee to broadcast a statement of Ofcom's findings for breaching Rule 3.1, and directed it not to repeat the programme. This case concerned the broadcast of a live programme *Paigham-e-Mustafa*, in which a presenter answered questions put to him by telephone by viewers about a wide range of issues and personal conduct relating to Islam and Islamic teachings. The presenter made various statements which made it clear that it was acceptable, or even the duty of a Muslim, to murder any person thought to have shown disrespect to the Prophet Mohammed where the relevant government had failed to take any action. Ofcom believed that on a reasonable interpretation of the presenter's remarks, he was personally advocating that all Muslims had a duty to carry out the actions he suggested.
85. The third case involved the broadcast of abusive treatment of a particular religious community, which amounted to breaches of Rules 4.1 and 4.2 of the Code. These rules require that broadcasters must exercise the proper degree of responsibility with respect of religious programmes, and must not subject the views and beliefs of members of particular religions to abusive treatment. While the current case does not concern religious programming, the nature of the abuse was similar, in that it was directed at a particular community
86. **23 August 2013, Takbeer TV Limited**<sup>15</sup> – Ofcom imposed a penalty of £25,000 and directed the licensee to broadcast a statement of Ofcom's findings for breaching Rules 4.1 and 4.2. This case involved two programmes, one of which was a live 'phone-in' programme, which included various statements that amounted to abusive treatment of the Ahmadiyya religion and the Ahmadi community more generally, and were derogatory about the Mirza Ghulam Ahmad Qadiani, the founder of the Ahmadiyya religion. Ofcom considered that the breaches were serious because they related to a long standing and inflammatory dispute between two religious groups, the Ahmadi community and the Sunni Muslim community. Given the historical tensions between the two communities, Takbeer TV would have been reasonably expected to take care at broadcasting such derogatory statements, especially given that it is aimed at members of the Sunni Muslim community in the UK and internationally. Further, we also considered the breaches were serious, in light of previous Code breaches concerning abusive treatment of Ahmadis on Takbeer TV, together with previous assurances by the Licensee that steps had been taken to avoid recurrence of such breaches.
87. There are various other cases in which Ofcom imposed statutory sanctions for breaches of Rules 2.1 and 2.3 which we do not consider directly relevant in this case. This is because these cases dealt with unrelated matters including, sexual material, harmful health claims and the pre-watershed use of offensive language.
88. While Ofcom considers that the nature of the content in the cases listed in paragraphs 81, 83, 84 and 86 are relevant to the current case, we note that, as set out in the Penalty Guidelines, Ofcom may depart from them depending on the facts and the context of the current case. For example, in the Radio Asian Fever case, the relatively low level of financial penalty in that case reflected the fact that Radio Asian Fever was a

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<sup>14</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/noor-tv.pdf>

<sup>15</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/takbeer.pdf>

community radio station: with a relatively small footprint and targeted at the Asian community in Leeds, broadcasting in Urdu within a narrow geographical area. As such, although the breach was serious, the overall impact of this particular broadcast may therefore have been somewhat tempered by the limited audience reach of the station. We will not regard the amounts of previously imposed penalties as placing upper thresholds on the amount of any penalty.

89. In its Representations, the Licensee made several points, arguing that the present case could be distinguished from the cases which resulted in Ofcom imposing sanctions on DM Digital and Al Ehya. For example, Club TV argued that those cases involved acts of incitement, which were not present in the current case. In addition, the Licensee pointed to the poor compliance records of both DM Digital and Al Ehya, including the imposition of several statutory sanctions. Therefore, it argued that the imposition of the level of penalty proposed by Ofcom in its Preliminary View “for a first breach does appear to be unprecedented and is not necessary to procure future compliance”. We noted these points. However, in our view, the breaches in the present cases were so serious, constituting as they did a form of hate speech, that they merited a significant financial penalty. However, in reaching a decision on the appropriate level of financial penalty, we took account of the different facts of the present case as well as all relevant precedent sanction cases.

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

90. As set out in paragraph 53 above, and in accordance with section 237(4) of the Act, Ofcom obtained financial data setting out the Licensee’s qualifying revenue for the last accounting period to decide upon a proportionate penalty. Financial data for the year 2015 showed that the Licensee’s qualifying revenue for this period from the Peace TV Urdu TV service was £0. Funding for the broadcast of Peace TV Urdu is provided by the Islamic Research Foundation International, a registered charity. In its Representations, Club TV provided detailed financial information on the funding of Peace TV Urdu. Ofcom took that information fully into account when determining an appropriate level of financial penalty in this case.

**Level of financial penalty**

91. Having regard to all the circumstances referred to above, including the need to achieve an appropriate level of deterrence and the serious nature of the Code breaches in this case, and all the representations to date from the Licensee, Ofcom’s Decision is that an appropriate and proportionate sanction would be a financial penalty of £65,000. In addition, Ofcom considers that the Licensee should broadcast a statement of Ofcom’s findings in this case, on a date and in a form to be determined by Ofcom.

**Ofcom**

**11 November 2016**