

**Sanction: Decision by Ofcom**

**Sanction: to be imposed on Lord Production Inc Limited**

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**For material broadcast on Peace TV on 11 March 2018 at 11:30<sup>1</sup>**

<b>Ofcom's Sanction Decision against:</b>	Lord Production Inc Limited ("Lord Production" or the "Licensee") in respect of its service <b>Peace TV</b> (TLCS001022BA/1).
<b>For:</b>	Breaches of the Ofcom Broadcasting Code (the "Code") <sup>2</sup> in respect of:  Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context ... Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence";  Rule 3.2: "Material which contains hate speech must not be included in television or radio programmes except where it is justified by the context"; and  Rule 3.3: "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context".
<b>Decision:</b>	To impose a financial penalty (payable to HM Paymaster General) of £100,000.

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<sup>1</sup> See [Broadcast and On Demand Bulletin 383](#) for the material broadcast on Peace TV and found in breach of Ofcom's Broadcasting Code ("the Code").

<sup>2</sup> The version of the [Code](#) which was in force at the time of the broadcast took effect on 3 April 2017.

## Background and context

1. On 18 November 2019, the Licensee surrendered its licence. The Licensee is no longer broadcasting.<sup>3</sup>
2. Ofcom has the power to impose a penalty relating to breaches of the Code during the period in which a Licensee held a broadcasting licence notwithstanding the fact that the Licensee has surrendered its licence and is no longer broadcasting.<sup>4</sup> Ofcom considers that it is important to use its powers to issue penalties in response to serious breaches of the Code where it is appropriate to do so and has therefore come to a view on a sanction to be imposed in respect of the material broadcast on Peace TV on 11 March 2018.

## Executive Summary

3. Peace TV was an international satellite and online television channel, which broadcast religious programmes from an Islamic perspective. The licence for the channel was held by Lord Production Inc Limited (“Lord Production”), but was surrendered on 18 November 2019 and the service is no longer broadcast by this company. The Licensee did not hold any other broadcasting licence.
4. Lord Production is 100% owned by Universal Broadcasting Corporation Limited (“UBCL”) a company limited by guarantee. UBCL also 100% owns Club TV Limited (“Club TV”) which formerly held one TLCS licence, for the service Peace TV Urdu (TLCS001259BA/1). That licence, too, was surrendered on 18 November 2019. Lord Production and Club TV share the same postal address and compliance contact. Funding for the broadcasts of Peace TV and Peace TV Urdu is provided by the Islamic Research Foundation International, which is a registered charity.
5. Under section 346 of the Communications Act 2003, liability for a sanction in relation to content broadcast under a licence is not affected by the subsequent surrender of the licence. On 11 March 2018, Lord Production broadcast one episode of *Strengthening your Family* on Peace TV. This episode, which was titled *Valley of the Homosexuals*, focussed on the issue of homosexuality and Islam.
6. The presenter, named on screen as Imam Qasim Khan, was sitting on a chair and spoke directly to the camera. He made a series of statements about homosexuality including: comparing homosexual people to animals, specifically a pig which the speaker referred to as an animal which was “*nasty and corrupted*”; asserting that homosexual people contract disease (by implication HIV and AIDS) “*because they are homosexual*”; and, describing the practice of homosexuality as insane, corrupt and a manifestation of satanic influence.

## The Breach Decisions

7. In Ofcom’s decision (the “Breach Decision”) published on 22 July 2019 in issue 383 of the Broadcast and On Demand Bulletin<sup>5</sup>, Ofcom’s Executive found the programme contained uncontextualised hate speech<sup>6</sup> and amounted to abusive and derogatory treatment of homosexual people, in breach of Rules 2.3, 3.2 and 3.3 of the Code.

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<sup>3</sup> See Ofcom’s [breach decision](#) of 28 November 2019.

<sup>4</sup> Section 346(3) of the Communications Act 2003.

<sup>5</sup> See [Broadcast and On Demand Bulletin 383](#), 22 July 2019.

<sup>6</sup> Section three of the Code defines “hate speech” as: “all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion or sexual orientation”.

8. The Breach Decision set out specifically the broadcast material that was in breach, along with reasoning as to why the material had breached each rule.
9. 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**

10. In accordance with Ofcom's procedures for the consideration of statutory sanctions in breaches of broadcast licences (the "Sanctions Procedures")<sup>7</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.
11. Having considered the representations made to us, Ofcom has decided to impose a final financial penalty of £100,000. This paper sets out the basis for Ofcom's Decision, taking into account all the relevant material in this case and the Penalty Guidelines.

### **Legal Framework**

#### **Communications Act 2003**

12. Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 ("the Act"), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure a number of other matters. These include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
13. Ofcom has a specific duty under section 319(1) of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)). This requirement is reflected in Section Two and Section Three of the Code.
14. In performing these duties, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and, where relevant, to have regard to a number of other considerations including the need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)).

#### **Human Rights Act 1998**

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

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<sup>7</sup> See Ofcom's [Sanctions Procedures](#).

17. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster's freedom to impart and the audience's freedom to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1)). The exercise of these freedoms may be subject only to conditions and restrictions which are "prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary" (Article 10(2)).
18. Ofcom must exercise its duties in light of this right and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

### **Equality Act 2010**

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

### **Ofcom Broadcasting Code**

20. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code<sup>8</sup>.
21. Accompanying Guidance Notes to each section of the Code are published and from time to time updated on the Ofcom website.<sup>9</sup> The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
22. The relevant Code rules in this case are set out in full at the beginning of this Decision.

### **Remedial action and penalties**

23. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 are observed by the licensee. In the case of a television licensable content service ("TLCS") licence, Condition 6 of the licence requires the Licensee to ensure that provisions of any Code made under section 319 are complied with. The Licensee held a TLCS licence.
24. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the Act insofar as relevant to the case.
25. 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. As the licence has been surrendered, these sanctions are not appropriate.
26. 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.
27. Section 238 of the Act gives Ofcom a duty to revoke a TLCS licence if the licensee is in contravention of a condition of the licence or is failing to comply with a direction and Ofcom is

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<sup>8</sup> See [The Ofcom Broadcasting Code](#) ("the Code").

<sup>9</sup> See [Guidance notes](#) to the Ofcom Broadcasting Code.

satisfied that the contravention or failure, if not remedied, would justify the revocation of the licence. It is not relevant in this case, as the breach is not an ongoing breach which is susceptible to being remedied.

28. Section 239 of the Act gives Ofcom a duty to suspend a TLCS licence, pending a decision on whether that licence should be revoked, if satisfied that that 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; that, in doing so, it has contravened licence conditions; and that the contravention is such as to justify the revocation of the licence. It is not relevant in this case, as the programme did not contain material likely to encourage or to incite the commission of crime and the licence has, in any event, been surrendered.

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

29. In the Breach Decision, Ofcom found that material broadcast by the Licensee on Peace TV breached Rules 2.3, 3.2 and 3.3 of the Code. The Breach Decision set out the reasons for each of these breach findings.
30. The Breach Decision noted that this episode, *The Valley of the Homosexuals*, of the series *Strengthening Your Family Values* discussed Islamic family values and homosexuality.
31. During the programme, the presenter, Imam Qasim Khan:
- made comparisons between homosexual people and “*an animal that is defiled by Islam, the pig*” and further added, “*as nasty and corrupted and contaminated as a pig is, you never see two male pigs that are trying to have sex together*”;
  - referred to homosexuality as a “*corrupted*” and “*an insane*” relationship;
  - described homosexual people as “*worse than animals. Human beings worse than animals*”;
  - referred to some homosexual people dying “*from a disease they contracted because they are homosexual*”; and,
  - described homosexuality as, “*a very unnatural type of love that is energised by the influence of Shaitaan<sup>10</sup>*” and in the context of societal attitudes to homosexuality said it was “*Shaitaan... having a good time – inviting people to join him in hell fire*”.
32. In relation to Rule 3.2, Ofcom first considered whether the content constituted “hate speech” as defined in the Code<sup>11</sup>. It was our view that the statements made by the Imam justified and promoted hatred based on intolerance of homosexual people because he:
- compared homosexual people to animals, specifically a pig which the speaker referred to as an animal which was “*nasty and corrupted*”;
  - asserting that homosexual people contract disease (by implication HIV and AIDS) “*because they are homosexual*”; and,
  - described the practice of homosexuality as insane, corrupt and a manifestation of satanic influence.
33. We acknowledged that the Licensee had the right to broadcast a religious programme putting forward the view that homosexuality is considered a sin in Islam. We also considered that the presenter had the right to put forward his view that he strongly disagreed with homosexuality. However, in our view the presenter’s statements went beyond merely expressing a religious

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<sup>10</sup> Satan in Arabic.

<sup>11</sup> The Code defines “hate speech” as: “all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation”.

opinion because he:

- used derogatory and abusive language and propagated a particularly intolerant view of homosexual people; and
  - used this programme to broadcast a sustained attack on homosexuality that was not presented with any reference to religious scripture and was expressed in a way which was gratuitously and repeatedly abusive.
34. We did not consider that unchallenged hate speech against homosexuality on a regulated broadcasting service would be within the expectations of a UK audience, given that sexual orientation is a protected characteristic in the UK. We also took into account the Licensee's description of Imam Qasim Khan ("the presenter") as an experienced and renowned religious figure and that his significant public profile would have given his statements greater weight and authority with the viewer. We found there was insufficient context to justify the inclusion of hate speech in this broadcast and Rule 3.2 was breached.
35. In relation to Rule 3.3, we considered that the content of the programme constituted abusive and derogatory treatment of homosexual people. Further to the hate speech against homosexual people included in the programme, the presenter also referred to homosexuality as being a "*corruption*", an "*insane practice*", tolerance of it being "*a terrible horrible crime*" and the Imam referred to its practice as "*insane*" multiple times. As with Rule 3.2, there was insufficient context to justify this abusive and derogatory treatment and Rule 3.3 was breached.
36. In relation to Rule 2.3, we considered, for the reasons highlighted above, that the programme contained material which we identified as hate speech and as derogatory and abusive towards homosexual people. By its nature, it discriminated against a group of people on the ground of their sexual orientation. In addition, the Imam further objected to religious funeral services to deceased Muslim people on the ground of their sexual orientation without any challenge. We considered that the denial of the right to an Islamic burial for Muslim people on the ground of their sexuality would have been capable of causing significant offense to Muslim people in the UK who do not share Imam Qasim Khan's view on homosexuality and particularly offensive to those who may be facing a struggle to be open about their sexual orientation and identity. We did not find that this considerable level of offence was justified by the context, and therefore the content was in breach of Rule 2.3 of the Code.
37. Ofcom stated in the Breach Decision that the contraventions of Rules 2.3, 3.2 and 3.3 of the Code were serious and were therefore being considered for statutory sanction.

#### **Ofcom's Preliminary View to impose a statutory sanction**

38. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
39. In this case, Ofcom issued a Preliminary View that it was minded to impose a statutory sanction in the form of a financial penalty. Ofcom sent a copy of the Preliminary View to the Licensee on 20 December 2019 at the same time giving the Licensee the opportunity to provide written and oral representations ("the Representations") on the Preliminary View. The Licensee provided its written representations to Ofcom on 29 January 2020 and declined the opportunity to give oral representations. The Representations are summarised in paragraphs 41 to 48, below.
40. 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 representations made by the Licensee, including those on the Preliminary View, and has had regard to the Sanctions Procedures and Ofcom's Penalty Guidelines in reaching its Decision.

## Licensee's Representations

41. The Licensee made written representations on Ofcom's Preliminary View, as set out below.

### *Seriousness of the Breach*

42. Lord Production stated, with reference to the original investigation of the programme, that there was a "quite extraordinary" and "unconscionable delay" between Ofcom initially raising a concern with the programme, reaching a Preliminary View and recording a Breach Decision. In its view, this delay undermined Ofcom's position that this was a serious breach.

### *The Breach Decision*

43. The Licensee expressed its sorrow that what it broadcast "in good faith" had been held to be "both unacceptable and worthy of financial punishment". It accepted that "with hindsight tighter controls should have been applied" to the programme to convey its message without the "more contentious language". It added that the programme did not advocate violence or criminal activity towards the homosexual community and was "very obviously scripturally based".

44. Lord Production accepted that it had not challenged the Breach Decision but said that the merits of that decision must be taken into account in considering penalty. It referred to a judgement in Northern Ireland which found unlawful the Advertising Standards Authority's decision that a print advertisement describing homosexuality as an "abomination" and "perverted" was likely to cause offence<sup>12</sup>. Lord Production said that Ofcom's decision in relation to this programme made no reference to "wider law".

45. The Licensee disagreed with Ofcom's Decision to find a breach of Rule 3.2, which it stated was the equivalent of a finding of "criminal liability" under Section 29F of the Public Order Act 1986. Lord Production listed references to freedom of expression in respect of sexual orientation from the Public Order Act<sup>13</sup>, and stated these provide "wide protections" in relation to criticising sexual conduct, to which Ofcom must have regard in relation to broadcast content regulation.

46. Lord Production stated that Peace TV has a "small audience" who are likely to appreciate the nature and religious viewpoints of the channel which limited the potential for offence.

### *Deterrence*

47. The Licensee considered that the level of the proposed fine was unjustifiable on the grounds of deterrence, as:

- it had surrendered its Licence so there was no need for deterrence in relation to Lord Production;
- no precedent cases cited by Ofcom in the Preliminary View which concerned breaches of the Code relating to homosexuality involved a material financial penalty, and the Licensee considered that the commentary Ofcom had provided on precedent cases sought to "minimise" previous decisions to justify an "excessive" penalty in this case;
- Ofcom had not provided evidence of a "widespread" problem regarding the persistence

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<sup>12</sup> [Kirk Session of Sandown Free Presbyterian Church's Application](#), [2011] NIQB 26 (22 March 2011)

<sup>13</sup> Section 29JA of the Public Order Act:

"(1) In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct as practices shall not be taken of itself to be threatening or intended to stir up hatred.

(2) In this Part, for the avoidance of doubt, any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred."

or recurrence of breaches of this nature;

- the concept of deterrence of others in the field of speech rights is “doubtful altogether. To deter in this way is to dissuade and discourage the exercise of speech rights”;
- the discussion of “religious and social matters” is protected by law, including under Article 10 of the Convention, and it was “not open” to Ofcom to suppress such speech “by way of massive financial penalty”. Ofcom had not made clear the boundaries of speech under the Code; licensees would be placed in a position of considerable jeopardy and would be likely to retreat from speech rights they properly hold;
- imposing a massive financial penalty was illogical where the Licensee had made no financial gain because of the breach. It would have the “unlawful” effect of forcing the Licensee, which has zero qualifying venue, into administration; and
- if not to deter others, the intent of the proposed penalty must be that of “financially destroying” the Licensee, which it said would be an unlawful act of punishment.

48. For the reasons set out above, Lord Production considered that the level of penalty proposed by Ofcom in the Preliminary View could not be justified on any ground. Considering the track record of Ofcom in imposing minimal penalties for similar breaches in the past, in addition to there being no evidence cited in the Preliminary View of Ofcom ever having previously imposed a penalty on a broadcaster which had already surrendered its licence, it considered any financial penalty would not be justifiable or lawful.

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

49. Ofcom’s reasons for finding the breaches were set out in full in our Breach Decision.

50. As stated in the Breach Decision, Ofcom took account of the audience’s and broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights, (“ECHR”). We also had regard to Article 9 of the ECHR, which states that everyone “has the right to freedom of thought, conscience and religion”. In applying the Code, Ofcom must seek to balance broadcasters’ rights, including freedom of expression, against our duties as regards the protection of audiences.

51. Ofcom also had due regard in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as religion or belief and sexual orientation, and those who do not<sup>14</sup>.

52. Broadcasters may transmit programmes taking a critical view of any subject and may broadcast opinions about these subjects that some viewers may find offensive, and the Code does not seek to prevent followers of one religion from being able to express views rejecting or criticising the practices of people of differing religious beliefs, including in relation to sexual orientations. To do so would, in our view, be a disproportionate restriction of the broadcaster’s right to freedom of expression and the audience’s right to receive information. However, when broadcasting material of this nature, broadcasters must comply with all relevant rules of the Code.

53. The right to freedom of religion is one of the foundations of a democratic society and includes the right to manifest one’s religion. However, Article 9 does not protect every act motivated or inspired by a religion or conviction<sup>15</sup>, and in a democratic society a state can legitimately consider it necessary “to place restrictions on [the freedom of religion] in order to reconcile the

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<sup>14</sup> Section 149 of the Equality Act 2010.

<sup>15</sup> *Metropolitan Church of Bessarabia v Moldova* no.45701/99 (13 December 2001).



interests of the various groups and ensure that everyone's beliefs are respected".<sup>16</sup> In our Breach Decision, we took into account, in this regard, that broadcasting is an intrusive medium in that it is broadcast directly into people's homes, and that reasoned debate is generally afforded a higher degree of protection than slogans and abusive messages<sup>17</sup>.

54. The Licensee's submission that Ofcom must apply the criminal law in interpreting and enforcing the Broadcasting Code is incorrect. Hate speech which amounts to a criminal offence is subject to a maximum penalty of seven years' imprisonment and an unlimited fine and Ofcom has no role in its enforcement. However, as set out in our Breach Decision, we considered the programme to have gone beyond discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices. The speaker:
- compared homosexual people to animals, specifically a pig which the speaker referred to as an animal which was "nasty and corrupted";
  - asserted that homosexual people contract disease (by implication HIV and AIDS) "because they are homosexual"; and,
  - described the practice of homosexuality as insane, corrupt and a manifestation of satanic influence.
55. We acknowledged that Imam Qasim Khan made an early reference to Allah "putting love in the hearts between men and women" as well as an acknowledgment of the story of the Prophet Lot and the people of Sodom and Gomorrah. We also took into account that the principal objection to homosexuality being expressed was disobedience to the will of God. However, there was no reference to, or interpretation of, specific religious scriptures by the speaker to support the views we identified as hate speech.
56. Ofcom regards any breach of Rules 3.2 and 3.3 of the Code as a potentially serious matter because of the potential for such content to cause significant harm and offence. In this case, we remained of the view that the breaches were serious.
57. Firstly and principally, we found that the presenter's statements included in the programme amounted to a sustained attack on homosexual people that he expressed in a way that was gratuitously and repeatedly abusive of homosexual people and went beyond expressing his religious views. It promoted and justified hatred based on intolerance of homosexual people and it was broadcast unchallenged and without context. Ofcom considers the potential harm arising from such uncontextualised hate speech to be particularly serious and with a greater potential to cause significant harm.
58. Secondly, we found that the hate speech had been directed at the homosexual community. The Imam had characterised homosexuality as being a "corruption", an "insane practice" and, tolerance of it being "a terrible horrible crime". This content had been broadcast against a background of rising hate crime against LGBT<sup>18</sup> people in the UK<sup>19</sup>. In this context, we considered that the broadcast was likely to have been particularly offensive to homosexual people, and especially those who may be facing a struggle to be open about their sexual orientation and identity within their community.

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<sup>16</sup> *Kokkinakis v Greece* [1993] ECHR 20.

<sup>17</sup> See e.g. *Core Issues Trust v Transport for London* [2013] EWHC 651.

<sup>18</sup> Lesbian, Gay, Bisexual and Transgender people.

<sup>19</sup> Sexual orientation hate crime is now the second most commonly recorded hate crime in the vast majority of (police) forces – [Home Office statistics on hate crimes](#).

59. Thirdly, we found that Imam Qasim Khan's significant public profile gave his statements greater weight and authority with the viewer.
60. Ofcom noted Lord Production surrendered the licence for the Peace TV service on 18 November 2019. However, under Section 346(3) of the Act, the liability of the person to have a penalty imposed on them is not affected by that person's licence having ceased (for any reason) before the imposition of the penalty.
61. Ofcom did not accept that the time taken to process the case was relevant in determining the seriousness of the breach.
62. In view of the factors set out above, Ofcom considered that the breach was serious, and so warranted the imposition of a statutory sanction. The only sanction which is relevant where a licence has been surrendered is a financial penalty.

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

63. Under section 237 of the Act, the maximum level of a financial penalty that can be imposed on the holder of a TLCS licence in respect of each contravention of a TLCS licence condition is £250,000 or five per cent of the licensee's qualifying revenue relating to its last complete accounting period for which its licence has been in force, whichever is greater.
64. In light of the Licensee's qualifying revenue for this period for the Peace TV licensed service, the maximum penalty that Ofcom could impose was £250,000.
65. Ofcom's Penalty Guidelines<sup>20</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, including to other broadcasters, which may include both broadcasters to whom Lord Production Inc Limited may sell or license its content and entities set up or funded by persons previously associated with Lord Production Inc Limited. Ofcom has also taken account of the specific factors set out in the Penalty Guidelines.
66. 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, for other licensees. We note that although the Licensee has surrendered its broadcast licence, either it or persons associated with it could apply for a broadcast licence at any time. We also note that it appears to have transferred some or all of its content to another provider authorised in a different jurisdiction.

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

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

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

68. Ofcom regarded the breaches to be serious for the reasons set out in paragraphs 49 to 62. We were particularly concerned by the fact that the Licensee broadcast a programme that included a sustained, abusive attack on homosexual people that amounted to prolonged hate speech. These statements were broadcast without challenge and without sufficient context to justify their broadcast. In Ofcom's view, the material had clear potential to cause harm and serious

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<sup>20</sup> See Ofcom's [Penalty Guidelines](#).

offence, in particular to Muslim people who are openly gay or who may be facing a struggle to be open about their sexual orientation and identity within their community.

69. The Breach Decision related to material broadcast on 11 March 2018. We are unaware of the material having been broadcast again.

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

70. The potential harm in this case was significant because the comments broadcast were highly offensive and pejorative and related to a group with protected characteristics. In particular we considered that the programme would have been likely to harm relations between groups with protected characteristics: within the Muslim community, between Muslim people who are homosexuals or accept homosexuality on the one hand, and those who do not accept homosexuality on the other, and between the Muslim community and non-Muslim homosexual people. We considered it was likely to be deeply offensive and harmful to any person who did not share the sentiment being expressed by Imam Qasim Khan.

As noted in paragraph 46 above, the Licensee argued that the size and nature of Peace TV's audience must be relevant to considering the degree of harm caused by these breaches. However, as explained in paragraph 56 above, Ofcom regards any breach of Rules 3.2 and 3.3 of the Code as a potentially serious matter because of the potential for such content to cause significant harm as well as offence. As set out in the Breach Decision, Ofcom received a complaint that the above programme included statements that were "absolute[ly] vile", "full of degrading slurs towards gay people" and "extremely offensive". The complainant also had concerns that he came across the broadcast because his children "had accidentally put it on".

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

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

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

72. In its representations during Ofcom's investigation, as set out in the Breach Decision, the Licensee stood by its decision to broadcast the material and did not consider it had made any mistake in doing so or that the content amounted to hate speech. It made submissions arguing that its rights to freedom of expression and religion entitled it to broadcast this programme.
73. In its representations on Ofcom's Preliminary View on sanction, the Licensee expressed its sorrow that what it broadcast "in good faith" had been held to be "both unacceptable and worthy of financial punishment". It accepted that "with hindsight tighter controls should have been applied" to the programme to convey its message without the "more contentious language". We welcomed the Licensee's acceptance that tighter controls should have been applied. However, we noted that it remains of the view that there was no breach of the Code.
74. It is open to a Licensee to defend its position robustly in any proceedings brought by Ofcom, and it is not incumbent on a Licensee to agree with Ofcom's breach decisions, so long as they comply with them. However, we considered that the programme was in clear breach of the Code, and in the light of the wording of the Code and the meaning of the programme, an appropriate compliance process ought to have identified it as inappropriate for broadcast.

*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*

75. We have no evidence to suggest that these breaches occurred deliberately or recklessly.

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

76. In its representations during the investigation, as set out in the Breach Decision, the Licensee confirmed it had not repeated the programme, and as far as Ofcom is aware through our monitoring of Peace TV the programme was not repeated.

Any steps taken for remedying the consequences of the contravention

77. We have no evidence to suggest that the Licensee took any steps for remedying the consequences of the contravention.

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

78. Ofcom has made the following breach findings in relation to Peace TV:

- In our decision **Islam in Focus** (Peace TV, 31 July 2009, 16:00: Broadcast Bulletin 145<sup>21</sup>), Ofcom found that part of this lecture suggested it would be permissible for husbands to beat their wives. Ofcom considered that this material would be offensive to many in the audience, could not be justified by the context and could be construed as likely to encourage others to copy such behaviour. Consequently, the programme was in breach of Rules 2.3 and 2.4<sup>22</sup>.
- In our decisions **Dare to Ask** and **Dial Dr Zakir** (Peace TV, 8 March 2012, 09:00 and 9 March 2012, 13:30: Broadcast Bulletin 218<sup>23</sup>), Ofcom found that the programmes featured teachings from Dr Zakir Naik who stated that the penalty for those who had left the faith of Islam to practice another faith, or waged war on Islam should be death. Ofcom considered that the content would have exceeded the likely expectations of some Muslim viewers and of members of the public. It concluded that the potential offence was not justified by the context, and that the broadcaster did not apply generally accepted standards. Consequently, both programmes were in breach of Rule 2.3.
- In our decision **Media and Islam, War or Peace?** (Peace TV, 13 November 2017, 07:30: Broadcast Bulletin 383<sup>24</sup>), Ofcom found that the programme featured Islamic teachings from Dr Zakir Naik who put forward the view that the only acceptable Islamic punishment for people leaving Islam for another religion should be death. Dr Naik described the decision to leave Islam for another faith as an act of “treason” which should be punished by death. We considered that these sentiments amounted to uncontextualised hate speech by promoting and justifying hatred against a group of people on the basis of their religious belief. Ofcom found that the content also amounted to abusive or derogatory treatment of a religious

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<sup>21</sup> See [Broadcast Bulletin 145](#).

<sup>22</sup> 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”.

<sup>23</sup> See [Broadcast Bulletin 218](#). The programmes **Dare to Ask** and **Dial Dr Zakir** were broadcast in 2012, before Ofcom introduced Rules 3.2 and 3.3 in May 2016, following [a review of Section Three of the Code](#). These rules are designed to deal with content such as hate speech, and abusive and derogatory treatment which may not in itself amount to material likely to encourage or incite the commission of crime or to lead to disorder and therefore may not be captured by Rule 3.1. Prior to the review, such material would normally have been considered under the harm and offence rules in Section Two of the Code.

<sup>24</sup> See [Broadcast and On Demand Bulletin 383](#), 22 July 2019.

group, i.e. those who had chosen to leave Islam to practice another faith. It was Ofcom's view that this content was likely to have been particularly offensive and distressful to viewers who had chosen or were considering leaving Islam to practice another faith. Consequently, the programme was in breach of Rules 2.3, 3.2, 3.3.

- In our decision **Better Half or Bitter Half** (Peace TV, 13 November 2017, 18:30: Broadcast Bulletin 383<sup>25</sup>), Ofcom found that Dr Zakir Naik, featured in the programme, gave a religious view on child marriage, including: equating the age of puberty with the age of consent for both marriage and sex and suggesting that the marriage of a child of two or three years of age was acceptable. In light of the statutory age of consent in the UK and the potential harm to children, Ofcom considered this had the potential to cause considerable offence to a UK audience. It concluded that the material exceeded generally accepted standards and was not justified by the context. Consequently, the programme was in breach of Rule 2.3.

79. The Licensee shares a central compliance function with the Peace TV Urdu service, for which the licence is held by a different company. However, in light of the fact that we were separately considering a sanction against Peace TV Urdu for other content, we did not take Peace TV Urdu's compliance history into account for the purposes of considering this sanction.

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

80. In Ofcom's view, the Licensee has been generally cooperative. For example, it provided full and timely representations in response to Ofcom's formal requests for information relating to the material broadcast and the service in general.

**Precedents**

81. Rules 3.2 and 3.3 were introduced by Ofcom in May 2016, following a review of Section Three of the Code<sup>26</sup>. These rules are designed to deal with content such as hate speech, and abusive and derogatory treatment which may not in itself amount to material likely to encourage or incite the commission of crime or to lead to disorder and therefore may not be captured by Rule 3.1. Prior to the review, such material would normally have been considered under the harm and offence rules in Section Two of the Code. However, Ofcom believed that there was merit in drawing attention to some of these more serious types of harm in Section Three.
82. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases. Given that Rules 3.2 and 3.3 were introduced in May 2016 we have had regard to precedent which relates to comparable breaches of Section 2 and Section 4 of the Code in determining the level of financial penalty.
83. Ofcom amended its Penalty Guidelines on 3 December 2015 and on 14 September 2017. Both times, this was to secure that penalties had an appropriately deterrent effect. On 14 September 2017 we noted that the update was, in particular, to ensure that we could impose penalties at the appropriate level effectively to deter contraventions of regulatory requirements. Precedents pre-dating these revisions are of less value.
84. Ofcom has previously imposed a number of financial penalties in response to similar breaches of the Code. The fact that, notwithstanding the imposition of these penalties, such breaches continue to occur suggests that the level of the previous penalties has not acted as a sufficiently strong incentive to compliance. Ofcom considered that in order to have a proper deterrent effect, any financial penalty imposed would need to be relatively higher than those imposed in previous similar cases, having regard to all the factors set out in our revised Penalty Guidelines

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<sup>25</sup> See [Sanction Decision by Ofcom on Mohiuddin Digital Television Limited](#), 20 December 2016.

<sup>26</sup> See [Ofcom's Broadcasting Code Review: Section Three](#), 4 May 2016.

of September 2017. However, each case must be considered on its own particular facts. Ofcom has a broad discretion in determining the appropriate penalty in any given case.

#### Previous cases

85. **23 August 2013, Takbeer TV Limited**<sup>27</sup> – Ofcom imposed a penalty of £25,000 on the licensee and directed it to broadcast a statement of Ofcom’s findings for breaching Rules 4.1 and 4.2. This case related to the broadcast of two programmes that subjected members of the Ahmadiyya community and their beliefs to abusive treatment. In the first programme, which was a two and a quarter hour phone-in programme, members of the Ahmadiyya community were described as having “*monstrous*” intentions and being both “*lying monsters*” and worthy of elimination by Allah, “*by using worms and vermin*”. Two callers also made sustained, repeated and derogatory references to Mirza Ghulam Ahmad Qadiani, founder of the Ahmadiyya religion, stating, for example, that “*the whole world knows...Mirza died in a shit cubicle.*” The second programme showed the proceedings of a religious symposium in Luton, during which the presenter said that: the Ahmadiyya holy books were “*replete with filth*”; “*the word ‘Qadiani’ is...detestable*”; and, the Ahmadiyya religion is “*filth*”.
86. **21 December 2015, Lancaster LLC**<sup>28</sup> – Ofcom recorded a breach of Rule 2.3 but did not consider that the breach warranted the imposition of a statutory sanction. The case related to the broadcast of a religious sermon, recorded in 1985, by evangelical Christian minister Jimmy Swaggart. During one section of the sermon, Mr Swaggart referred: to gay people as “*sex perverts*”; included homosexuality in a list of practices he described as “*filth*” (the list also included “*incest*” and “*paedophilia*”); and, referred to a Gay Pride Event as “*degenerate*” and “*obscene*”. However we recognised that it would have been clear to viewers that the Jimmy Swaggart sermon dated from the 1980s and therefore the audience were more likely to perceive the remarks as reflecting outdated views on homosexuality. The homophobic comments were also brief. We carefully considered the Licensee’s representations in response to our Preliminary View on sanction that no sanction should be imposed on it in the light of this precedent. However, we do not accept that cases of hate speech relating to homosexuality are different from cases of hate speech relating to other groups with protected characteristics, such that this would be more relevant as a precedent than other more recent hate speech cases. Since this case was decided, Ofcom has in the interests of deterrence imposed significant financial penalties in several other cases involving hate speech, including on the Licensee’s sister company.
87. **9 May 2016, Lancaster LLC**<sup>29</sup> – Ofcom recorded breaches of Rules 2.2 and 2.3 and directed the Licensee to broadcast a summary of its findings. The programme in question, *Frances and Friends*, is a daily discussion programme that provides analysis of religious doctrine and world events. During a live discussion about immigration in Europe, one of the presenters said that all rapes in Sweden were being carried out “*not by Swedes, not by Germans, not by Polish people, by Muslims*”. We considered this statement was offensive and materially misleading. The programme also contained a number of other remarks which suggested that: the attitudes and actions of ISIL and its followers were typical of Islam; Islam and all practitioners of the Islamic faith were associated with or sympathetic to terrorism, and by implication, acts of violence; Islam and Muslims hate Christians and Jews; “*moderate*” Muslims sympathise with radical

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<sup>27</sup> See [Sanction Decision by Ofcom on Takbeer TV Limited](#), 23 August 2013.

<sup>28</sup> See [Breach Decision in Broadcast and On Demand Bulletin issue 295](#), 21 December 2015.

<sup>29</sup> See [Breach Decision in Broadcast and On Demand Bulletin issue 304](#), 9 May 2016.

Muslims; “*moderate Islam*” was a “*western American media creation*”; and, true followers of Islam sympathise with terrorists. Some limited context for these negative remarks was provided by comments by one of the presenters who said: “*Look. Not every Muslim is a terrorist not every imam in America is speaking and endorsing terrorism. Not every mosque is fermenting rebellion. There are some that are not. And I’ll be the first one to say it*”. Lancaster LLC took a range of steps to improve its compliance and prevent a recurrence of similar breaches.

88. **11 November 2016, Club TV Limited**<sup>30</sup> – Ofcom imposed a penalty of £65,000 on the licensee and directed it to broadcast a statement of Ofcom’s findings for breaches of Rules 2.1 and 2.3. The case concerned two programmes consisting of public lectures given by the Islamic scholar, Dr Israr Ahmed. Dr Ahmed made a number of discriminatory remarks about Jewish people repeatedly portraying them as a homogenous group and in overwhelmingly negative and stereotypical terms. Ofcom considered that Dr Ahmed’s comments had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be seen as a form of hate speech and had the potential to cause harm and offence to viewers. We considered the breaches to be serious so as to warrant the imposition of sanctions. This was because the statements consisted of hate speech and were delivered to a predominantly Muslim audience by an Islamic religious scholar. Dr Ahmed also spoke uninterrupted and there were no views in the programmes which challenged or otherwise softened the considerable level of offence caused.
89. **20 December 2016, Mohuiddin Digital Television Limited**<sup>31</sup> – Ofcom imposed a penalty of £75,000 on the licensee and directed it to broadcast a statement of Ofcom’s findings for breaches of Rules 2.1 and 2.3. The programme included recordings of a religious festival commemorating the death anniversary of two Sufi saints. It featured a number of religious scholars and preachers addressing an assembled congregation with short sermons, homilies and poetic verses. One of the speakers recounted a parable that lauded the killing of a Jewish trader as an example of the devotion and obedience of a disciple of the Prophet Mohammed. Ofcom considered that the speaker’s comments had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be seen as a form of hate speech which had the potential to cause harm and offence to viewers. In particular, we considered the content had the potential to cause harm by portraying the murder of Jewish people in highly positive terms and promoting a highly negative anti-Semitic attitude towards Jewish people. Ofcom considered the breaches to be serious so as to warrant the imposition of sanctions. Again, this was because the material contained hate speech, which was delivered to a predominantly Muslim audience by a religious scholar, who spoke uninterrupted without his views being challenged or otherwise softened.
90. **25 July 2017, Kanshi Radio Limited**<sup>32</sup> – Ofcom imposed a penalty of £17,500, and a direction to broadcast a statement of findings for breaching rules 2.1, 2.3, 3.2 and 3.3 of the Code. The case concerned two broadcasts of a song *Pinky Pinky* in Punjabi. The lyrics contained a number of aggressively pejorative references to the Muslim community, and Muslim women in particular. The song also included well known sacred Islamic phrases that were interspersed with very offensive terms while the sounds of gunshots were heard. We also considered that the lyrics of the song, such as “*Pakistani* [i.e. a reference to Islam], *you sister fucker!*” and the repeated sounds of gunshots throughout the song, were an expression of an extreme Sikh perspective in opposition to the Muslim community. Ofcom considered the content was a clear example of hate speech and abusive and derogatory towards women. We also considered that the content had the potential to cause harm by increasing tensions between the Sikh and Muslim

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<sup>30</sup> See [Sanction Decision by Ofcom on Club TV Limited](#), 11 November 2016.

<sup>31</sup> See [Sanction Decision by Ofcom on Mohuiddin Digital Television Company](#), 20 December 2016.

<sup>32</sup> See [Sanction Decision by Ofcom on Kanshi Radio Limited](#), 25 July 2017.

communities and to promote the objectification and abuse of women.

91. **19 December 2018, Radio Ikhlas**<sup>33</sup> – Ofcom imposed a penalty of £10,000 and a direction to broadcast a statement of findings for breaching Rules 3.2, 3.3 and 2.3. These breaches related to the broadcast of a phone-in programme on a community radio station. A 21-minute segment of the programme began with the presenter, a local Imam, referring to the date of broadcast being the anniversary of 7 September 1974, the day on which the Pakistani National Assembly voted on a Bill and Constitutional Amendment declaring Ahmadi people to be non-Muslim. The presenter went on to make a number of derogatory and discriminatory remarks about Ahmadi people including that they are: “*dangerous*”; “*liars*”; “*enemies of Islam, enemies of Pakistan, and enemies of our religion*”; “*hypocrites who frequently engage in propaganda to defame Muslims*”; and, people who have “*inflicted the greatest damage to Islam and to the believers of Islam*”. The presenter referred to the founder of the Ahmadi faith as being “*a liar*” and described the religious beliefs of Ahmadi people as “*very dangerous beliefs*” and “*filthy beliefs which shatter the true faith and promote untruths*”. The case raised particular concerns as the presenter was in a position of religious authority and the Licensee did not appear to have sufficient and appropriate systems in place to ensure that its live output was being monitored.
92. **28 January 2019, Voxafrica TV**<sup>34</sup> - Ofcom recorded a breach of 2.3 but did not consider that the breach warranted the imposition of a statutory sanction. This case related to a feature film in which several characters in the film expressed negative views about homosexuality, including: “*It’s terrible when they [teenagers] are attracted to the same sex*”; “*It’s wrong in the eyes of God*”; “*Psychologically you are very sick and you need help*”; “[homosexuality is] *not healthy. There are many health issues associated with homosexuality. Just to name a few: anal cancer; human immunodeficiency virus; and human papilloma virus and so on*”. These statements were potentially highly offensive, particularly as the characters in the films equated homosexuality with a number of diseases and implied it was a form of mental illness. Ofcom also considered the film’s portrayal of homosexuality as a psychological illness which can be cured through counselling had the potential to cause serious offense to viewers. It was Ofcom’s view that the potentially offensive material was not justified by the context and exceeded generally accepted standards. The programme broadcast on Vox Africa was a fictional drama in which one of the characters was portrayed as a concerned father who acted in good faith to provide what he perceived as help to both his son and his son’s boyfriend. The storyline of the homosexual relationship in the drama, although a prominent storyline, was not the main focus of the film, which also covered other storylines which were unrelated to homosexuality. It was not, as the case under consideration in this Decision, a sustained attack on homosexual people. Although Ofcom considered the content in the film was offensive because it gave a seriously negative representation of homosexual people which was not sufficiently contextualised, we did not consider it amounted to content likely to spread, incite, promote or justify hatred based on intolerance on the grounds of sexual orientation.
93. **15 April 2019, City News Network**<sup>35</sup> - Ofcom imposed a penalty of £75,000 and a direction to broadcast a statement of findings for breaching Rules 2.3, 3.2 and 3.3. These breaches related to two broadcasts of a current affairs discussion programme on a cable and satellite television channel. A guest featured in both programmes made a series of unfounded accusations about alleged acts committed by members of the Ahmadiyya community. These included that Ahmadi people had committed acts of murder, terrorism and treason as well as undertaking political

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<sup>33</sup> See [Sanction Decision by Ofcom on Radio Ikhlas](#), 19 December 2018.

<sup>34</sup> See [Breach Decision in Broadcast and On Demand Bulletin issue 371](#), 28 January 2019.

<sup>35</sup> See [Sanction Decision by Ofcom on City News Network](#), 15 April 2019.



assassinations. The same guest also made remarks that attributed conspiratorial intent to the actions of the Pakistani authorities towards the Ahmadiyya community and stated they were being favoured in Pakistani society at the expense of orthodox Muslims. Ofcom considered the Licensee had been reckless in inviting the same guest who had made statements constituting hate speech and abusive and derogatory treatment of Ahmadi people to appear in a further live edition of the programme in which they made similar remarks in breach of the Code.

94. **27 June 2019, Trace World Uk (Starz)** – Ofcom directed the Licensee to broadcast a statement of Ofcom’s findings for breaches of Rules 1.2, 4.2 and 4.8 the BCAP Code (The UK Code of Broadcast Advertising). At the time of broadcast, the licence for Starz was held by CSC Media Group Limited. These breaches related to an image submitted by a viewer alongside a music video depicting a cartoon caricature of a Jewish person which conformed to racist stereotypes. The image, which could be found on various neo-Nazi websites, was likely to have been interpreted by viewers as being highly offensive and antisemitic. It was repeatedly reshown in rotation with photographs submitted by other viewers. Ofcom took into account that there was no deliberate, reckless or repeated breach of rules relating to hate speech. In addition, we considered that CSC/Columbia Pictures’ response to the breach, which included deleting the image, broadcasting an on-screen apology and improving its compliance. We also took into account that the present breach was CSC’s first breach of either the Broadcasting Code or the BCAP Code involving hate speech, and appeared to have resulted from an isolated lapse of judgement of a single moderator. In this case the content constituting hate speech was submitted by a viewer. Ofcom acknowledged the steps the Licensee took following the breach and we considered the appropriate regulatory remedy was to direct the licensee to broadcast a summary of the breach decision, in recognition of the seriousness of the breaches, rather than to impose a financial penalty.
95. **22 July 2019, Peace TV<sup>36</sup>** - Ofcom recorded a breach of 2.3, 3.2 and 3.3 but did not consider that the breach warranted the imposition of a statutory sanction. The case related to a broadcast of the programme *Media and Islam, War or Peace?* featuring Islamic teachings from Dr Zakir Naik. Dr Naik put forward the view that the only acceptable Islamic punishment for people leaving Islam for another religion should be death, and described the decision to leave Islam for another faith as an act of “treason” which should be punished by death. We considered that these sentiments amounted to uncontextualised hate speech by promoting and justifying hatred against a group of people on the basis of their religious belief. Ofcom found that the content also amounted to abusive or derogatory treatment of a religious group, i.e. those who had chosen to leave Islam to practice another faith. It was Ofcom’s view that this content was likely to have been particularly offensive and distressful to viewers who had chosen or were considering leaving Islam to practice another faith. However, Ofcom acknowledged that the Licensee had taken steps in an attempt to comply with the Code, by reflecting guidance given by Ofcom in relation to the previous decisions<sup>37</sup> regarding the programmes **Dare to Ask** and **Dial Dr Zakir**.
96. The Licensee made representations that in relation to other Rule 3.2 breaches we have imposed lower penalties than in this case. While precedent cases are relevant, they are not determinative. Each case is decided on its own facts. We note, in particular, that the Licensee itself received no statutory sanction for a different instance of hate speech in relation to which the breach was recorded on 22 July 2019. Ofcom imposes penalties having regard to all the circumstances in each case and the need for deterrence. We consider that imposing a higher penalty in this case is proportionate, having regard to the nature and seriousness of the breach.

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

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<sup>36</sup> See [Breach Decision in Broadcast and On Demand Bulletin issue 383](#), 22 July 2019.

<sup>37</sup> See [Breach Decision in Broadcast and On Demand Bulletin issue 218](#), 12 November 2012.

97. As set out in our penalty guidelines, the central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, for both the Licensee in question and licensees generally, having regard to the seriousness of the infringement. We note that the Licensee in this case has surrendered its licence. We took into account the Licensee's argument that deterrence of it was not a relevant factor as a result. In principle, we considered that a broadcast licensee should not be able, by surrendering its licence, to reduce the amount of penalty imposed on it in relation to a breach committed while broadcasting. The objective of deterring others from committing similar breaches would not be achieved unless the amount of the penalty imposed on the Licensee was a sufficient deterrent had it continued to broadcast, nor would such an outcome be fair to broadcasters that continued to broadcast.<sup>38</sup> In addition, as set out above, the fact that the Licensee has surrendered its licence does not mean that its content has ceased to be available or that either it or those associated with it have necessarily permanently ceased to be involved in the broadcasting sector.
98. Ofcom must impose a penalty which is appropriate and proportionate, and which will act as a deterrent, taking into account the size and turnover of the Licensee. Funding for the broadcast of Peace TV was provided by the registered charity Islamic Research Foundation International ("IRFI") through Universal Broadcasting Corporation Limited, Lord Production's parent company. In considering what financial penalty is proportionate and will have a deterrent effect, we have taken into account the financial data provided by the Licensee on its qualifying revenue for the last accounting period, which was zero.
99. We took account of the Licensee's representations that the proposed penalty would have the effect of forcing the Licensee into administration. However we had regard to the fact that the Licensee had been broadcasting for many years and we are not aware that it had ever had any qualifying revenue. Its sister company, which had zero qualifying revenue, was previously able to pay a financial penalty of £65,000. The statutory regime within which the Licensee chose to become licensed provides for a financial penalty of up to £250,000 to be imposed on it, regardless of its qualifying revenue. Indeed, the Licensee's representations on this point amount to saying that Ofcom can never impose a financial penalty on a Licensee that wholly relies on third party funding. Ofcom noted that the Licensee told us that the charity concerned had ceased to fund the Licensee on 18 November 2019, that the Licensee had already surrendered its licence and ceased to broadcast and we are not aware that it has ever had any other activities besides the broadcast of this service. A service of the same name and offering similar content to Peace TV is now being broadcast by a different company. In all the circumstances, we therefore did not consider that in this case we should place weight on the risk that the penalty may force this Licensee into administration.
100. Ofcom recognised that any proposed penalty must be proportionate taking into account the Licensee's rights under Articles 9 and 10 of the Convention and the fact that deterrence is the central objective of imposing a penalty. We consider that in this case, and in accordance with the central objective of our Penalty Guidelines, any financial penalty imposed must be sufficient to have a proper deterrent effect.
101. We also considered the Licensee's argument that there is no background of problems of a persistent or recurrent nature remotely sufficient to justify the penalty we proposed. We noted that we amended the Broadcasting Code and issued new guidance in 2016 to identify hate speech clearly for broadcasters as a specific category of harm and offence breach.

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<sup>38</sup> We note that the Licensee's assertion that Ofcom has not previously imposed a sanction in relation to a licence that had been surrendered is incorrect. See [Sanction Decision by Ofcom on Asia TV Limited, 29 July 2015](#).

Notwithstanding this, we have recorded seven findings of hate speech not involving incitement to crime since the change, including another one on the Licensee's service. As set out in our breach decision, we also noted that the content had been broadcast against a background of rising hate crime against LGBT<sup>39</sup> people in the UK<sup>40</sup>. We remained of the view that there is a need to issue penalties which represent a deterrent, such that all broadcasters are incentivised to put in place appropriate compliance arrangements.

102. Ofcom also had regard to the Licensee's representations that a large financial penalty would risk having a "chilling effect" on freedom of expression, particularly as regards religious discussions. As set out above, we consider the programme was in clear breach of the Code, and in the light of the wording of the Code, the nature of the medium and the meaning of the programme, an appropriate compliance process ought to have identified it as inappropriate for broadcast. We do not consider that penalising gratuitous and repeated abuse which was not expressed by reference to any religious scripture inappropriately or disproportionately chills religious discussion. We do not accept that where religious doctrine is expressed in the form of hate speech and without reference to, or interpretation of, specific religious scriptures from any religious text, it is inappropriate to impose a substantial financial penalty, particularly in a case such as this where the Licensee concerned has already breached the Broadcasting Code a number of times and was, at the time this broadcast took place, already under investigation for other programmes in relation to which we made breach findings.
103. For all the reasons set out above, Ofcom considers it is proportionate to impose a financial penalty on the Licensee of £100,000.

#### **Decision**

104. Having regard to all the circumstances referred to above, including the need to achieve an appropriate level of deterrence and the particularly serious nature of the Code breaches in this case, and all the representations to date from the Licensee, Ofcom's Decision is that an appropriate and proportionate sanction would be a financial penalty of £100,000.

#### **Ofcom**

5 May 2020

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<sup>39</sup> Lesbian, Gay, Bisexual and Transgender people.

<sup>40</sup> Sexual orientation hate crime is now the second most commonly recorded hate crime in the vast majority of (police) forces – [Home Office statistics on hate crimes](#).