

Sanction: Decision by Ofcom

Sanction: to be imposed on Club TV Limited

For material broadcast on Peace TV Urdu on 22 November 2017 at 09:00¹

Ofcom's Sanction Decision against: Club TV Ltd (the "Licensee") in respect of its service **Peace TV Urdu** (TLCS001259BA/1).

For: Breaches of the Ofcom Broadcasting Code (the "Code")² 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 reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence";

Rule 3.1: "Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services or BBC ODPS";

Rule 3.2: "Material which contains hate speech³ must not be included in television and 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".

Decision: To impose a financial penalty (payable to HM Paymaster General) of £200,000.

¹ See [Broadcast and On Demand Bulletin 383](#), 22 July 2019 ("the Breach Decision").

² The version of the Code which was in force at the time of the broadcast took effect on 3 April 2017.

³ 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".

Background and context

1. The material which was found in breach was originally broadcast on Peace TV Urdu on 22 November 2017 at 09:00. Ofcom was seriously concerned when it discovered that the same material was re-broadcast on three occasions in November 2019.⁴
2. Ofcom has a specific duty to suspend a broadcast licence⁵ if it is satisfied that the licensee has broadcast a programme likely to encourage or to incite the commission of crime, that it has therefore contravened its licence conditions; and that the contravention justifies the revocation of the licence.⁶
3. In exercise of this duty, Ofcom wrote to the Licensee on 12 and 13 November 2019 about these broadcasts. Ofcom's letter of 13 November 2019 enclosed a draft notice of suspension of the broadcast licence under Section 239 of the Communications Act 2003 and asked the Licensee for representations.
4. On 18 November 2019, having received Ofcom's draft suspension notice, the Licensee surrendered its licence. The Licensee is no longer broadcasting.⁷
5. 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.⁸ 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 come to a view on a sanction to be imposed in respect of the broadcast on Peace TV Urdu on 22 November 2017 at 09:00 i.e. the broadcast of material in one particular programme on one particular occasion. Ofcom took action in respect of the re-broadcast of the same material in a separate process.

Executive Summary

6. Peace TV Urdu was an international satellite television channel, which broadcast religious programmes in Urdu from an Islamic perspective. The licence for Peace TV Urdu was held by Club TV Limited, but was surrendered on 18 November 2019 and the service no longer broadcasts. The Licensee did not hold any other broadcasting licence.
7. Club TV Limited is 100% owned by Universal Broadcasting Corporation Limited ("UBCL"), a company limited by guarantee. UBCL also 100% owns Lord Productions Limited ("Lord Productions") which formerly held one TLCS licence, for the service Peace TV (TLCS001022BA/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.
8. 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.
9. On 22 November 2017 at 09:00, the Licensee broadcast an episode of the series *Kitaab-ut-*

⁴ On 11 November 2019 at 18:28, on 12 November 2019 at 01:52 and on 12 November 2019 at 10:27. On 28 November 2019, Ofcom published a [breach decision](#) in which it found that the re-broadcast of this material constituted a breach of Rules 3.1, 3.2, 3.3 and 2.3 of the Code.

⁵ Pending a decision on revocation of the licence, subject to representations.

⁶ Section 239 of the Communications Act 2003.

⁷ See Ofcom's [breach decision](#) of 28 November 2019.

⁸ Section 346(3) of the Communications Act 2003.

Tawheed on Peace TV Urdu. This episode focused on the Islamic punishment of magicians (and those who practise magic).

10. In the programme the presenter, an Islamic scholar, sat behind a desk on a raised dais. He spoke in a studio, which was made to appear like a classroom, with a group of young men seated behind desks. The scholar spoke uninterrupted throughout the programme, and at the end of the lecture he answered a few questions from those in the audience. He made a series of statements about killing Muslim people who practise “*Sihir*” or magic, including that: “*the magician’s art or the practice of magic cannot be forgiven by way of repentance*”; it was clear that magicians practicing magic commit “*kufir*”; under Shariah law, it is correct to “*go ahead and kill the magician*”; and, that magicians should be “*killed forthwith*”.
11. On the basis set out in Ofcom’s Decision (“the Breach Decision”) published on 22 July 2019 in issue 383 of the Broadcast and On Demand Bulletin, Ofcom considered that a significant proportion of the UK audience of the programme would understand “*Sihir*”, as used in the programme, to encompass the use of Taweez⁹, and those practising this form of magic to be “magicians” as referred to in the programme. A significant proportion of the audience would also understand the term to encompass Ruqya. Ofcom understands that within the UK many South Asian and Sunni Muslim people consider such practices as part of a rich long standing historical Islamic tradition which they believe in, and in some cases practice. In the Breach Decision, Ofcom noted the recent case of *R v Syeedy*¹⁰ in which a Muslim cleric was murdered for his involvement in such practices.

The Breach Decision

12. In the Breach Decision published on 22 July 2019 in issue 383 of the Broadcast and On Demand Bulletin, Ofcom found that this programme contained material which amounted to an indirect call to action for members of the audience to kill those who practice magic; that it contained uncontextualised hate speech; and that it breached Rules 2.3, 3.1, 3.2 and 3.3 of the Code.
13. Ofcom put the Licensee on notice in the Breach Decision that it considered these breaches were serious and would be considered for the imposition of a statutory sanction.

The Sanction Decision

14. In accordance with Ofcom’s Procedures for the consideration of a statutory sanctions in breaches of broadcast licences (the “Sanctions Procedures”¹¹), 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.
15. Having considered the representations made to us, Ofcom has decided to impose a final financial penalty of £200,000. 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

⁹ This term was explained in the case of *R v Syeedy* (2016) Manchester Crown Court Case No: T20167130 (unreported) as follows: “amulets, that is small objects which can be carried by the people who wish to be healed. The Arabic word for the amulets of this kind is “taweez” and a taweez commonly takes the form of writing on a small piece of paper which is then folded up or rolled up and is either wrapped in some other paper or is put into a small receptacle of some kind.”

¹⁰ *R v Syeedy* (2016) Manchester Crown Court Case No: T20167130 (unreported)

¹¹ See Ofcom’s [Sanctions Procedures](#).

16. 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)).
17. 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 material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services; and 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.
18. 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

19. 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.
20. 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".
21. 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)).
22. 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

23. Under Section 149 of the Equality Act 2010, in the exercise of its functions, Ofcom must also have due regard to the need to eliminate unlawful discrimination, to advance

equality of opportunity and to foster good relations between persons who share a relevant protected characteristic, such as (but not limited to) race or religion, and persons who do not share it.

Ofcom Broadcasting Code

24. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code¹².
25. Accompanying Guidance Notes to each section of the Code are published and from time to time updated on the Ofcom website¹³. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
26. The relevant Code rules in this case are set out in full at the beginning of this Decision.

Remedial action and penalties

27. 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.
28. 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.
29. 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.
30. 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.
31. 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 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.
32. 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 the Licensee 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. As the licence has been surrendered, this sanction is not appropriate.

Background – The Breach Decision

33. In the Breach Decision, the Executive found that material broadcast by the Licensee on Peace TV Urdu breached Rules 2.3, 3.1, 3.2 and 3.3 of the Code. The Breach Decision set out the reasons for each of these breach findings.

¹² See [The Ofcom Broadcasting Code](#) (“the Code”).

¹³ See [Guidance notes](#) to the Code.

34. The Breach Decision noted that this episode of the series *Kitaab ut Tawheed*, broadcast in Urdu, discussed the Islamic punishment for magicians (and those who practise magic).
35. During the programme an Islamic scholar addressed a group of young men in a studio made to appear like a classroom and made various statements about killing Muslim people who practice “*Sihir*” or magic, including that: “*the magician’s art or the practice of magic cannot be forgiven by way of repentance*”; it was clear that magicians practicing magic commit “*kufir*”; under Shariah law, it is correct to “*go ahead and kill the magician*”; and, that magicians should be “*killed forthwith*”. On the basis set out in the Breach Decision, Ofcom considered that a significant proportion of the UK audience of the programme would understand “*Sihir*”, as used in the programme, to encompass to the use of Taweez, and those practising this form of magic to be “*magicians*” as referred to in the programme. A significant proportion of the audience would also understand the term to encompass Ruqya. Ofcom understands that within the UK many South Asian and Sunni Muslim people consider such practices as part of a rich long standing historical Islamic tradition which they believe in, and in some cases practice.
36. During the programme, the scholar cited chapters and reasoning from the *Kitaab-ut-Tawheed*, written by Muhammad ibn Abd al-Wahhab, the founder of Wahhabism¹⁴ to justify the application of the death penalty against those accused of practising magic.
37. In relation to Rule 3.1, Ofcom considered that the various statements made by the scholar, that those who practice magic should be killed amounted to an indirect call to action to kill those who practise magic. The multiple references and the scholar’s statements of the word “*should*” were compounded by the unqualified statement that under Shariah law it is correct to “*go ahead and kill the magician*” and that magicians should be “*killed forthwith*”. Ofcom considered that there was no challenge to the scholar’s unequivocal view that the suitable punishment for the practice of magic (*Sihir*) was death. The indirect calls to action in the programme were given added weight by the religious authority of the scholar, which gave religious justification and endorsement for violence and was likely to encourage some more susceptible viewers to regard taking action as sanctioned by religious authority. Ofcom considered that the case of *R v Syeedy*, in which Mr Syeedy was convicted of murdering an Imam, Mr Uddin, because he believed Mr Uddin was a magician, demonstrated that a call to kill practitioners of *Sihir* was likely to incite murder in the UK. Taking all the contextual factors included in the programme, we considered that this content broadcast was likely to encourage or incite the commission of crime or lead to disorder and Rule 3.1 was breached.
38. In relation to Rule 3.2, we considered that the content of the programme constituted “*hate speech*” as defined in the Code¹⁵. It was our view that the statements made by the scholar justified and promoted hatred and violence towards Muslim people who practice magic as part of their faith. On balance, Ofcom found that was insufficient context to justify the inclusion of unchallenged hate speech in this broadcast and Rule 3.2 was breached.
39. In relation to Rule 3.3, we considered that the endorsement of the punishment of death for those accused of practicing magic, the ruling out and undermining any alternative viewpoint would have been considered both abusive and derogatory treatment by many within the Muslim world who practice and believe in a particular form of benign magic. As with Rule 3.2, there was insufficient context to justify the inclusion of this material and Rule 3.3 was breached.
40. In relation to Rule 2.3 we considered, for the reasons highlighted above, that the programme contained material which was likely to incite crime, and which amounted to hate speech and

¹⁴ Wahhabism: A 16th century Islamic religious movement founded by Muhammad ibn Abd al-Wahhab.

¹⁵ 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*”.

derogatory and abusive treatment towards a group of people based on their religious beliefs. There was insufficient context to justify the inclusion of this material in the programme. The material was therefore highly likely to be offensive, in particular to viewers from the South Asian Muslim Community, who form the majority of Muslims in the UK, some of whom practise magic as part of their faith. Ofcom considered many in this community were likely to have felt offended, threatened and alarmed by the views expressed by the scholar.

41. Ofcom stated in the Breach Decision that the contraventions of Rule 2.3, 3.1, 3.2 and 3.3 of the Code were serious and were being considered for statutory sanction.

Ofcom's Decision to impose a Statutory Sanction

42. 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 that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
43. In this case, Ofcom issued a Preliminary View that Ofcom was minded to impose a statutory sanction in the form of a financial penalty. Ofcom sent a copy 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 45 to 51 below.
44. In reaching its Decision on whether to impose a statutory sanction and, if so, what type and level of sanction, Ofcom took account of all the evidence and representations made by the Licensee. In addition, we had regard to the Sanctions Procedures and Ofcom's Penalty Guidelines.

Licensee's representations

45. The Licensee made written representations as set out below.

Seriousness of the Breaches

46. The Licensee disputed Ofcom's argument that the breaches were serious. It considered that the amount of time it had taken Ofcom to reach a breach Decision in this case was evidence that the breach was not serious.

The Breach Decision

47. 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."
48. The Licensee acknowledged that it had not challenged the Breach Decision by way of Judicial Review, but it did not agree that it had breached the Code. It said that in the consideration of a sanction, "the merits of the Breach Decision" should be considered "in the context of any penalty". It made the following points:
- That the case of R v Syeedy did not provide evidence of the way "magic" would be understood by viewers of Kitaab-ut-Taweed;
 - There was no correlation between the discussion of religious belief in the programme, the expectations of viewers that Islamic punishment is a matter for Shariah law in countries that live by that law, and the actions of Mr Syeedy;

- It said that “nothing was said” in the Breach Decision about the “wider law” in relation to Rules 3.2 and 3.3; and,
- A Breach of Rule 3.2 was “tantamount to a finding of criminal liability”. It referenced the Public Order Act 1986 Section 29J and said that this provided “very wide protection for those who wish to comment critically, even very harshly, on religions, sects, and religious practice”. The Licensee said that Ofcom had not given “due consideration of the defences available” to it in reaching the Breach Decision, and must do so as part of the sanction consideration.

Repetition

49. The Licensee said that the repeated broadcast of *Kitaab-ut-Taweed* after the publication of the Breach Decision was unintentional and due to “much regretted technical reasons”. It said that there could be “no grounds for penalising” it for repeating the content.

Deterrence

50. 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 Club TV Ltd;
 - in the precedent cases as provided in Ofcom Sanction Preliminary View, “all but one attracted much lower penalties”, including penalties of £4,000 and £2,000. “Many” precedent cases referenced were “several years old”;
 - It noted the £200,000 sanction to Ariana Television and Radio Network (summarised in paragraph 89) but highlighted that this Licensee had “significant revenue”;
 - It argued that overall the precedent cases, spanning eight years, were not evidence of persistent problems requiring “wider deterrence” so as to justify the proposed fine statute against Club TV Ltd;
 - 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 “on a pre-emptive basis” by imposing “enormous financial penalties”. Treating incitement to crime as distinct from the other breaches would be “artificial, unspecific as to the boundaries of unacceptable speech and would not in any event address the problem that it was religious doctrine that was discussed and whose inclusion in programming would therefore be discouraged”;
 - imposing the proposed 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, then the intent of the proposed penalty must be that of “financially destroying” the Licensee, which it said would be an unlawful act of punishment.
51. For the reasons set out above, Club TV 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

52. Ofcom's reasons for finding the breaches were set out in full in our Breach Decision.
53. Ofcom regards any breach of Rules 3.1, 3.2 and 3.3 of the Code as a potentially serious matter because of the risk that such content may cause significant harm as well as offence. In this case, our Decision was that the breaches were particularly serious.
54. Firstly, and principally, as set out in paragraph 37, we considered the programme included statements made by a scholar that amounted to an indirect call to action for the audience to kill Muslim people who practise magic as part of their faith. Ofcom regards incitement to murder as, by definition, a very serious matter.
55. Ofcom is given a specific statutory duty to ensure broadcasters do not transmit material that is likely to encourage or incite crime or lead to disorder. Where such material is broadcast in contravention of this requirement, the Act recognises the potential for serious harm to be caused to society and that, where justified by the breach, the regulator may be required to act to be able to remove a broadcaster's entitlement to hold a licence. In this case, the potential for very serious harm if this material incited others was clear. Ofcom was concerned that the statements made by the scholar had the clear potential to influence impressionable viewers by encouraging serious crime, up to and including murder, and/or leading to disorder in relation to members of the public, in particular to Muslim people practicing magic as part of their faith. We also found that the scholar's religious standing gave his statements greater weight and authority with the viewer, which compounded the seriousness of the breach. These statements were broadcast without challenge or contextualisation.
56. Secondly, we considered that the scholar's repeated statements that the punishment for magicians should be death was promoting and justifying hatred and violence towards Muslim people who practise magic as part of their faith. The content therefore constituted hate speech. Ofcom considers the potential harm arising from such hate speech to be very serious.
57. Thirdly, we considered that the incitement to crime and hate speech was targeted at members of the Muslim community using certain practices as part of their faith and therefore constituted abusive or derogatory treatment of a community. We considered that the endorsement of the punishment of death for those who considered their practice of magic to be part of their religious faith to be serious and potentially harmful to the UK South Asian Muslim community, who form the majority of Muslims in the UK and who regard the practice of magic such as Ruqya and the use of Taweez¹⁶ as benign practices which form part of their religious faith.
58. Ofcom acknowledged that Club TV Ltd surrendered the licence for the Peace TV Urdu 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.
59. Ofcom did not accept that the time taken to process the case was relevant in determining the seriousness of the breach.
60. In view of the factors set out above, Ofcom considered that the breaches were very 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 sanction

61. 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

¹⁶ See footnote 15.

accounting period for which its licence has been in force, whichever is greater.

62. In light of the Licensee's qualifying revenue for this period for the Peace TV Urdu licensed service, the maximum penalty that Ofcom could impose in this case is £250,000.
63. Ofcom's Penalty Guidelines 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 Club TV Limited may sell or license its content in future and entities set up or funded by persons previously associated with Club TV Limited. Ofcom has also taken account of the specific factors set out in the Penalty Guidelines.
64. 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.

Appropriate Sanction

65. 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

66. Ofcom regarded the breaches to be very serious for the reasons set out in paragraphs 52 to 60. We were particularly concerned that the Licensee had broadcast content amounting to an indirect incitement to murder, uncontextualised hate speech and abusive or derogatory treatment of a group based on their beliefs.
67. While the Licensee did offer to make it clear in future broadcasts that the punishment for magicians was only applicable in states where Shariah law is applicable, and then only after due process, it did not confirm that it had taken any steps to ensure that such incidents would not happen again.

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

68. Ofcom is mindful of its duties: under section 3(4)(j) of the Act to have regard to the desirability of preventing crime and disorder; and under section 3(2)(e) of the Act to secure, in the carrying out of its functions, 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. Under Rule 3.1, Ofcom is not required to identify any causal link between the content included in the programme and any specific actions of criminal behaviour.
69. For the reasons set out in paragraphs 38 to 40, the actual and potential harm in this case was substantial because of its impact on Muslim people who practise magic as part of their faith. As set out in the Breach Decision, advertisements for those who practice Ruqya are

widely found online and in popular UK based Urdu language newspapers. Often referred to as Ruqya centres, these centres can be found across the UK. Ofcom is aware that programmes about white magic, faith healing and astrology, including coverage of Taweez and Ruqya, are regularly broadcast on South Asian Muslim channels¹⁷. In the case of *R v Syeedy*, an Imam was murdered because his murderers disapproved of his practice of magic (Sihir). Ofcom concluded that it was likely that the broadcast material would encourage or incite the commission of crime or lead to disorder and that, as a result there was a risk of serious harm to members of the public.

70. Noting that religion or belief is a protected characteristic in the UK, we also considered more generally that the broadcast of uncontextualised hate speech is very harmful because it undermines the rights and protections due to citizens in a democratic society.

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 Licensee to prevent the contraventions

72. The programme was pre-recorded and the Licensee would therefore have been in a position to take pre-emptive action to prevent the contraventions. However, 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.

73. 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 it complies with them. We note that the Licensee has accepted that "with hindsight tighter controls should have been applied." However, we consider 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

74. We have no evidence to suggest that the contravention 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

75. The breach under consideration arose from the broadcast of material in one particular programme on one particular occasion. In its representations during the investigation, as set out in the Breach Decision, the Licensee said that it had not repeated the programme. However, subsequent to the Licensee making representations, Ofcom identified that the programme appeared to have been broadcast on three further occasions in November 2019. Ofcom took action immediately in relation to those broadcasts in a separate process. We made further breach findings in relation to them. We were in the process of considering whether the rebroadcasts triggered Ofcom's duty under section 239 of the Communications Act 2003 to suspend the licences with a view to revoking them when the Licensee surrendered its licence and rendered that process unnecessary. We have not commenced a separate sanction process in relation to the rebroadcasts.

¹⁷ For example, in one instance Ofcom found Venus TV in breach of the Code for a programme which featured such practices in a way that was not compliant with the Code. See [Broadcast Bulletin 269](#), 15 December 2014.

76. Ofcom acknowledged the Licensee's representations that the repeated broadcast of the material was due to a technical error and that it considered, it should not be penalised for this. On 28 November 2019, Ofcom published a further breach Decision in which it found that the re-broadcast of this material constituted a breach of Rules 3.1, 3.2, 3.3 and 2.3 of the Code. This sanction decision relates to the initial broadcast, i.e. the first Breach Decision. The second breach decision in relation to the rebroadcasts is relevant only in that it provides evidence of steps taken to end the contravention. Given that the rebroadcasts took place, we could not take the view that effective steps were taken to end the contravention once the regulated body became aware of it.

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 initial contravention.

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

78. Ofcom sanctioned Club TV in 2016. In our sanction Decision (Peace TV Urdu, 12 and 13 September 2015 at 14:00¹⁸), Ofcom imposed a penalty of £65,000 and directed Club TV to broadcast a statement of Ofcom's findings for the breach of Rules 2.1 and 2.3 of the Code. 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.

79. We took into account that the programme in the previous sanction Decision and the programme in this sanction Decision were broadcast less than three years apart. Ofcom was concerned that contraventions that were particularly serious in their nature took place less than three years apart.

80. In the 2016 sanction Decision, we took into account that Club TV shares a central compliance function with the Peace TV service, for which the licence is held by a different company. In light of the fact that we were separately considering a sanction against the provider of the Peace TV service for other content, we did not take Peace TV'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

81. 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.

Precedent

82. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases. We noted that Ofcom amended our Penalty Guidelines on 3 December 2015 and on 14 September 2017. 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.

83. 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

¹⁸ See [Sanction Decision by Ofcom on Club TV Limited](#), 11 November 2016.

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 the revised Penalty Guidelines 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

84. **23 November 2012, Radio Asian Fever Community Interest Company**¹⁹ – Ofcom imposed a penalty of £4,000 on the licensee 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. In the first programme the presenter was highly critical of homosexuality in the context of discussing aspects of the Qur'an. In the second programme the presenter made critical remarks about marriages between Muslim people and those of other faiths, in the context of discussing elements of the Qur'an. Ofcom concluded that the material in the first programme was likely to encourage violent behaviour towards homosexual people and was therefore in breach of Rule 3.1. Ofcom also considered the material to breach Rule 2.4 as it could reasonably be considered likely to encourage others to copy such violent behaviour. Ofcom concluded that the material in both programmes had the potential to cause offence, which was not justified by the context, in breach of Rule 2.3. Ofcom held that both programmes failed to exercise the proper degree of responsibility required in religious programmes, in breach of Rule 4.1.
85. **5 July 2013, DM Digital Television Limited**²⁰ – Ofcom imposed a penalty of £85,000, directed the licensee to broadcast a statement of Ofcom's findings, and not to repeat the programme, for breaching Rule 3.1. In the programme an Islamic scholar delivered a live televised lecture about points of Islamic theology with reference to the fatal shooting in 2011 of the Punjab Governor Salman Taseer, who had been a vocal critic of Pakistan's blasphemy law. Ofcom concluded that the material was likely to encourage or incite the commission of crime or to lead to disorder. We did so on the basis that, on a reasonable interpretation of the scholar's remarks, we considered he was personally advocating that all Muslims had a duty to attack or kill apostates or those perceived to have insulted the Prophet Muhammad. Ofcom considered the breach to be particularly serious because the material was delivered to a predominantly Muslim audience by a religious scholar as a part of a religious programme. The breach was compounded by the fact the programme made no condemnation of the acts of killing or violent action referred to.
86. **21 August 2013, Al Ehya Digital Television Limited**²¹ – Ofcom imposed a penalty of £85,000 on the licensee, directed the licensee to broadcast a statement of Ofcom's findings and directed it not to repeat the programme for breaching Rule 3.1. This case concerned the broadcast of a live programme 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 appeared to make clear that it was acceptable, or even the duty of a Muslim, to murder any person thought to have shown disrespect to the Prophet Muhammad where the relevant government had failed to take any action. In particular, the presenter made honorific references to individuals who had killed people in the name of Islam, including statements condoning the murder of the Punjab Governor Salman Taseer in 2011 by Mumtaz Hussein. Ofcom considered that on a reasonable interpretation of the presenter's remarks, he was personally advocating that all Muslims had a

¹⁹ See [Sanction Decision by Ofcom on Radio Asian Fever Community Interest Company](#), 23 November 2012.

²⁰ See [Sanction Decision by Ofcom on DM Digital Television Limited](#), 5 July 2013.

²¹ See [Sanction Decision by Ofcom on Al Ehya Digital Television Limited](#), 21 August 2013.

duty to carry out the actions he suggested. Ofcom considered the seriousness of the breaches was further compounded by the fact the statements were delivered to a Muslim audience, in a religious programme, spoken directly to the camera by a person held out to be an expert on Islamic teachings (i.e. a person holding a position of respect and authority in the Muslim community). The seriousness was compounded because the programme made no condemnation of the killings or violent action referred to.

87. **14 August 2014, Regis 1 Limited (Sangat TV)**²² – Ofcom imposed a penalty of £30,000, and a direction to broadcast a statement of findings for breaching Rule 3.1 of the Code. This case concerned a programme about an attack on the retired Indian army general Kuldip Singh Brar, who led the controversial military operation against the Golden Temple at Amritsar in 1984. The programme contained statements from various contributors that Ofcom considered likely to encourage members of the Sikh community to take violent action against Lieutenant General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar in June 1984, or those who supported the military operation.
88. **11 November 2016, Club TV Limited**²³ – 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. **6 July 2017, Ariana Television and Radio Network**²⁴ – Ofcom imposed a penalty of £200,000, and a direction to broadcast a statement of findings for breaching Rules 2.3, 3.1 and 3.2 of the Code. The case concerned the broadcast of a two and a quarter minute clip of Muhammad Riyad, before he carried out an attack where he stabbed five people on a train in southern Germany before being killed by security forces. In the video, he brandished a knife; boasted about his forthcoming his attack; and made various statements describing in highly positive terms his and ISIL's intentions to carry out acts of extreme violence against the German population. Ofcom considered that the content had clear potential to influence impressionable viewers by encouraging serious crime. We also considered that the content was a clear example of highly offensive hate speech.
90. **26 July 2017, Iman Media UK Limited**²⁵ – Ofcom exercised its powers under section 111B of the Broadcasting Act 1990 (which is the equivalent for radio services of section 239 of the Communications Act 2003) to suspend and then revoke Iman FM's licence. This followed extremely serious breaches of Rule 3.1 of the Code, after it aired a series of lectures, only half of which had been reviewed in full prior to broadcast, by Anwar al-Awlaki entitled "The Life of

²² See [Sanction Decision by Ofcom on Regis 1 Limited](#), 14 August 2014.

²³ See [Sanction Decision by Ofcom on Club TV Limited](#), 11 November 2016.

²⁴ See [Sanction Decision by Ofcom on Ariana Television and Radio Network](#), 6 July 2017.

²⁵ See [Ofcom Revocation Notice on Iman Media UK Limited](#), 26 July 2017.

Muhammad (Seerat-un-Nabi)” throughout the month of Ramadan. The lectures included: a direct call to action to members of the Muslim community to prepare for and carry out violent action against non-Muslim people; statements clearly condoning and encouraging acts of crime, terrorism or violent behaviour; statements sanctifying the belief in and practice of violent Jihad, and inflammatory statements against the West, whose cumulative effect could have served to heighten social tensions or encourage violent action. In the lectures, Anwar al-Awlaki provided theological justification and spiritual sanction for Muslims to carry out acts of crime or disorder. Ofcom considered that the breaches and the Licensee’s representations revealed a fundamental lack of understanding of basic requirements of compliance with the Code and raised serious concerns as to the Licensee’s ability to act as a responsible broadcaster. Ofcom considered revocation was necessary in this case because the contraventions of the Code and failures to comply with the its Licence conditions were so extremely serious, and that the Licensee’s conduct was so extremely reckless, that Ofcom did not have confidence in the Licensee’s ability to prevent similar breaches in the future.

91. **27 February 2018, Karimia Limited**²⁶ – Ofcom imposed a penalty of £2,000 and a direction to broadcast a statement of findings for breaching Rules 2.3, 3.1, 3.2 and 3.3 of the Code. The case concerned the broadcast a series of three Nasheeds in Urdu. Two of these Nasheeds raised no issues under the Code. The third Nasheed lasted approximately 17 minutes and was recited by a young boy. It began by glorifying the victories on the battlefield of figures from Islamic history. It then went on to suggest that similar violent acts committed against non-Muslim people would bring honour to Islam. The Nasheed further included a number of pejorative references to non- Muslim people. In particular, non-Muslim people were repeatedly referred to as “*Kufaar*” (the Arabic word for disbeliever) and on one occasion, “*Kaafir I Murdaar*” (meaning filthy disbeliever in Urdu). Ofcom considered that the content amounted to an indirect call to action which could be likely to encourage or incite the commission of crime or lead to disorder. Ofcom also found that it constituted hate speech and abusive and derogatory treatment of non-Muslim people.
92. The Licensee made representations that in relation to other Rule 3.1 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 only three incitement sanctions have post-dated our revision to the Penalty Guidelines. In one of them we imposed the most serious sanction we have: revocation of the licence. In each of the others, the circumstances of the case were significantly different from this case. 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

93. 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

²⁶ See [Sanction Decision by Ofcom on Karimia Limited](#), 27 February 2018.

such an outcome be fair to broadcasters that continued to broadcast.²⁷ 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.

94. 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.
95. Funding for the broadcast of Peace TV Urdu was provided by the registered charity Islamic Research Foundation International (IRFI) through Universal Broadcasting Corporation Limited (UBCL), Club TV'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's on its qualifying revenue for the last accounting period, which was zero.
96. 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 ever had any qualifying revenue. The Licensee was previously able to pay a 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 Urdu is now being broadcast, we understand 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.
97. 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. Our decision to impose a financial penalty of £200,000 on Ariana was published on 6 July 2017. Since then, including the current case and Club TV's own rebroadcast of material we had already found to be in breach, we have recorded seven breaches of Rule 3.1 involving incitement to murder.²⁸ We consider that there is a need for a clear message to all broadcasters that they must take appropriate steps to secure that such content is not broadcast. 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 do not accept that where religious doctrine is expressed in a way which is likely to incite crime or disorder, it is inappropriate to impose a substantial financial penalty, particularly in a case such as this where the Licensee concerned has already been heavily sanctioned in the past for a serious breach of the Broadcasting Code. 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. For all the reasons set out above, Ofcom considers it is proportionate to impose a financial penalty on the Licensee of £200,000.

²⁷ 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.

²⁸ These are, besides those listed in the precedents section above, the [Breach Decision](#) against Khalsa Television Limited published 25 February 2019, the [Breach Decision](#) against Khalsa Television Limited published 18 November 2019, and the [Breach Decision](#) against Panjab Radio Limited published 10 February 2020, all of which Ofcom is considering for a statutory sanction.

Decision

98. Having regard to all the factors referred to above in the round, including the need to achieve an appropriate level of deterrence and the serious nature of the Code breaches that have resulted from this failure, Ofcom's Decision is that an appropriate and proportionate sanction for the Code breaches would be a financial penalty of £200,000.

Ofcom

5 May 2020