

Sanction: Decision by Ofcom

Sanction: to be imposed on The Pakistan Muslim Centre (Sheffield) Limited

For material broadcast on Link FM 96.7 on 16 December 2020 at 08:37 and 22 December 2020 at 08:31¹

Ofcom’s Sanction Decision against: The Pakistan Muslim Centre (Sheffield) Limited (“PMC” or the “Licensee”) in respect of its service **Link FM 96.7** (Link FM) (Ofcom Community Radio licence CR100157BA/2)

For: Breaches of the [Ofcom Broadcasting Code](#) (the “Code”) in respect of:

Rule 3.1: “Material likely to encourage or to incite the commission of crime or to lead to disorder must not be included in television or radio services”.

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), and treatment of people who appear to be put at risk of significant harm as a result of their taking part in programme. Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

Decision: To impose a financial penalty (payable to HM paymaster General) of £2,000; and

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

¹ See [Issue 432 of Ofcom’s Broadcast and On Demand Bulletin for the material broadcast on Link FM 96.7 and found in breach of the Code](#).

Executive Summary

1. Link FM is a community radio station broadcasting to the Muslim community in Sheffield and the surrounding areas, primarily in Urdu, English, and Punjabi. The Ofcom licence for Link FM is held by The Pakistan Muslim Centre (Sheffield) Limited (“PMC” or “the Licensee”). The Licensee does not currently hold any other broadcasting licences.
2. On 16 December 2020 at 08:37 the Licensee broadcast a Nasheed² during an episode of its *Breakfast Show*. The same Nasheed was broadcast again on the same programme on 22 December 2020 at 08:31.
3. The Nasheed was in Arabic and was titled “*Jundallah*” which means “Soldiers of Allah”. The central message of its lyrics focused on war and battlefield imagery. It talked about followers of Islam as “*soldiers of Allah*” who would “*go forth as soldiers crushing our enemies*”. It repeatedly referred to and glorified the act of martyrdom and sacrifice on the battlefield and suggested that if “*the call*” to battle is answered, the “*Aqsa*³ will return” to the hands of Muslims by means of such sacrifice/martyrdom.

The Breach Decision

4. In Ofcom’s decision published on 9 August 2021 in [Issue 432 of the Broadcast and On Demand Bulletin](#) (the “Breach Decision”), Ofcom found that the Nasheed contained material likely to encourage or incite the commission of crime or lead to disorder, and was also potentially offensive and not sufficiently justified by the context.
5. We therefore found the programmes had breached Rules 3.1 and 2.3 of the Code.
6. 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.
7. Ofcom put the Licensee on notice in the Breach Decision that it considered these breaches to be potentially serious, and that it would consider them for the imposition of a statutory sanction.

The Sanction Decision

8. In accordance with Ofcom’s procedures for the consideration of statutory sanctions in breaches of broadcast licences (the “[Sanctions Procedures](#)”), Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on PMC.
9. Ofcom issued a Preliminary View on sanction (the “Sanction Preliminary View”) that Ofcom was minded to impose on PMC a statutory sanction. Our Sanction Preliminary View took into account representations that PMC had previously made in advance of our breach finding and in response to our formal request to it for financial information on 3 and 9 December 2021. Ofcom

² A Nasheed is a piece of devotional vocal music that is sung either a cappella or accompanied by percussion instruments. In general, such Nasheeds have a benign religious message, without violent overtones. However, Ofcom understands Jihadi Nasheeds which contain messages like those in *Jundallah* are used by terrorist groups to attract potential recruits.

³ A reference to the Al Aqsa mosque located in Jerusalem and the third holiest site in Islam.

sent a copy of the Sanction Preliminary View to PMC on 24 January 2022 and gave it the opportunity to provide further written and oral representations on it.

10. The Licensee chose not to make any further written representations in response to our Sanction Preliminary View and declined the opportunity to make oral representations at a hearing, saying that its previous representations had provided a “thorough response to the issues that were highlighted” by Ofcom. However, it asked Ofcom to have regard the fact that PMC is a charity and said that it would “endeavour to continue working with [Ofcom] to ensure that Link FM remains in compliance of Ofcom’s rules and regulations”.
11. Having taken into account these comments and PMC’s prior representations, Ofcom has reached a Decision that a sanction is warranted for the reasons set out in paragraphs 32 to 39 below.
12. Ofcom’s Decision is that the appropriate sanction is to:
 - a) impose a financial penalty of £2,000; and
 - b) direct the Licensee to broadcast a statement of Ofcom’s findings, on a date and in a form to be determined by Ofcom.
13. This paper sets out the basis for Ofcom’s Decision, taking into account all the relevant material in this case and Ofcom’s Penalty Guidelines (the “Penalty Guidelines”).

Legal Framework

Communications Act 2003

14. 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)).
15. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appear 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 (section 319(2)(b)); 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)). These requirements are reflected in Section Two and Section Three of the Code.
16. In performing its duties, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3) of the Act); 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

17. As a public authority, Ofcom must also act in accordance with its public law duties to act lawfully, rationally and fairly, and it 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”).⁴ 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.
18. 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”.
19. 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)).⁵ It applies not only to the content of information but also the means of transmission or reception.⁶ While subject to exceptions, the need for any restriction must be established convincingly.⁷ The exercise of these freedoms may be subject only to conditions and restrictions which are “prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary” (Article 10(2)).
20. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Equality Act 2010

21. 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 race or religion, and persons who do not share it.

Ofcom Broadcasting Code

22. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code.
23. Accompanying Guidance Notes to each section of the Code are published, and from time to time updated, on the [Ofcom website](https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programme-guidance).⁸ The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.

⁴ See section 6 of the Human Rights Act 1998.

⁵ *Lingens v Austria* (1986) 8 EHRR 407.

⁶ *Autronic v Switzerland* (1990) 12 EHRR 485.

⁷ *Steel & Morris v UK* (2005) EMLR 15.

⁸ See Guidance Notes to the Ofcom Broadcasting Code (<https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programme-guidance>).

24. The relevant Code rules in this case are set out at the beginning of this Decision.

Remedial action and penalties

25. 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 of the Act are observed by the licensee. The Licensee holds a community radio licence. Condition 5 of the licence requires the Licensee to ensure that provisions of any Code made under section 319 are complied with. Condition 15(2) requires the licensee to adopt procedures and ensure that such procedures are observed by those involved in providing the service for the purposes of ensuring that programmes included in the service comply with the provisions of the Licence and applicable statutory requirements.
26. Where Ofcom has identified that a condition of a community radio licence has been and/or is being contravened, its powers to take action are set out in sections 109 to 111B of the Broadcasting Act 1990 (the "1990 Act") insofar as relevant to the case.
27. Section 109 of the 1990 Act provides Ofcom with the power to direct the holder of a community radio licence to broadcast a correction or a statement of Ofcom's findings (or both).
28. Section 110 of the 1990 Act provides Ofcom with the power to impose a financial penalty on the holder of a community radio licence. Section 110(3) provides that the maximum penalty which may be imposed in respect of each contravention is £250,000.
29. Section 110 of the 1990 Act also provides Ofcom with the power to shorten a community radio licence by a specified period not exceeding two years, or suspend a licence for a specified period not exceeding six months, where a licensee has failed to comply with a condition of a community radio licence or direction thereunder.
30. Section 111 of the 1990 Act provides Ofcom with the power to revoke a licence where a licensee is failing to comply with a condition of a community radio licence or direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.
31. Section 111B of the 1990 Act places a duty on Ofcom to serve a notice on the holder of a community radio licence to suspend that licence, where Ofcom is satisfied that: a) the licensee has included in its licensed service one or more programmes containing material likely to encourage or incite the commission of crime or lead to disorder; b) in doing so, the licensee has failed to comply with a condition included in the licence in compliance with section 263 of the Act; and c) the failure would justify the revocation of the licence. Any such notice shall state that Ofcom may, after a period of 21 days within which the licensee is invited to make representations, decide to revoke the licence.

Background – The Breach Decision

32. In the Breach Decision, Ofcom found that material broadcast on Link FM breached Rules 3.1 and 2.3 of the Code.
33. Ofcom found that the Nasheed titled "*Jundallah*" contained an indirect call to action, as the cumulative effect of its lyrics and imagery was to condone, promote and actively encourage others to participate in violent acts as a form of devout religious expression.

34. Ofcom considered that the Nasheed contained lyrics that glorified war with references to soldiers, sacrifice, martyrdom, and a call to action to participate in a physical battle. In particular:
- a) The central message of the Nasheed focused on war and battlefield imagery, including references to followers of Islam being *“soldiers of Allah”* who would *“go forth as soldiers crushing our enemies”* and *“When the call comes to mobilise for the battle, We return as soldiers answering the call”*. Ofcom understands that the Arabic term *“al-Nafeer”*, which we translated in these lyrics as *“a call to mobilise for the battle”*, has been adopted and extensively used by extremist groups when calling for recruits to join violent Jihad.⁹ In the context of the lyrics, we considered the term to be synonymous with violent Jihad.
 - b) The Nasheed used symbolism of the lion, which is an important symbol in Islamic and Arab culture: *“Promise, oh lions of battlefield. We will march forward, never will we yield”*. We understand the lion is also used specifically in the context of jihadist propaganda to represent honour and may suggest martyrdom,¹⁰ and that it is quite common for adult and child soldiers to be termed as *“lions”* or *“lion cubs”* within Jihadi Nasheeds.
 - c) The Nasheed repeatedly referred to and glorified the act of martyrdom, which Ofcom understands to be a central tenet of violent Jihad: *“So, the sacrifice will forever remain, To the gardens of my Lord the martyr went”* and *“And it sends in us a new certainty that the day of martyrdom is a glorious victory”*. The Arabic term *“Al Fida”* used in these lyrics is understood by Ofcom to be a specific term meaning the act of sacrificing oneself for a noble cause. Ofcom also understands that the term *“shaheed”*, also included in these lyrics, is an Arabic term meaning an Islamic martyr who has died fulfilling a religious commandment such as Jihad, and is guaranteed a place in *“Jannah”* (the Arabic word for paradise).
 - d) The Nasheed referred to the Al Aqsa mosque located in Jerusalem, which is the third holiest site in Islam and features heavily in jihadist propaganda given the on-going dispute over its control between Palestine and Israel.¹¹ The reference to the Al Aqsa mosque in this Nasheed was immediately followed by references to sacrifice and martyrdom, encouraged listeners to view the dispute over control of the Al Aqsa compound as a holy war (i.e. Jihad) and suggested that if *“the call”* is answered, the *“Aqsa will return”* to the hands of Muslims by means of such sacrifice/martyrdom (i.e. violently):

⁹ See: Joshua Landis: [Six jihadist words you need to know to be a successful Jihadi and establish your own caliphate](#); and Shima D. Keene: [Threat Finance: Disconnecting the Lifeline of Organised Crime and Terrorism](#), Routledge (2012) p.23. *“Al-Nafeer”* is also the title of an online bulletin published by the proscribed terrorist organisation al-Qaeda.

¹⁰ See: Magnus Ranstorp, [A Practical Introduction to Islamist Extremism](#), The RAN Centre of Excellence. In ISIL’s official monthly magazine, reference is made to *“Cubs of the Caliphate”* who will become *“Lions of Tomorrow”*, which refers to an expectation that they will grow into jihadis: Sara Mahmood, [‘Cubs of the Caliphate’: The Islamic State’s Focus on Children](#), Counter Terrorist Trends and Analyses Vol. 8, No. 10 (October 2016), pp. 9-12.

¹¹ See Counter Extremism Project article on [Palestinian Islamic Jihad](#) and The Fletcher Forum of World Affairs article: [Is Al-Qaeda Trying to Renew its Image by Focusing on the Israeli-Palestinian Conflict?](#)

*“We return as soldiers answering the call...
... And undoubtedly one day, the Aqsa will return
So, the sacrifice will forever remain
To the gardens of my Lord the martyr went”.*

35. Given the use of terms and symbols that would have been understood as having a clear association with violent Jihad, Ofcom was concerned that the Nasheed would have been understood by Arabic speaking listeners as being an implicit call for people to join a form of violent Jihad, in breach of Rule 3.1. Ofcom considered that the references outlined at paragraph 34 above contributed to a cumulative narrative which glorified violence as a legitimate expression of Islamic faith and therefore the Nasheed carried an overarching message that violent Jihadi action was a religious duty which was to be encouraged and condoned.
36. Ofcom considered the contextual factors in the programme which could affect the likelihood of these statements encouraging or inciting the commission of crime or leading to disorder. The Licensee argued that, since the presenter could not understand Arabic, she would not have been able to provide sufficient challenge and context. It also indicated that the Nasheed was not on the station’s approved playlist and the presenter had “naively” selected the music track to broadcast after hearing it on a music streaming service, against the station’s policy. However, Ofcom considered that it was the Licensee’s responsibility to ensure that it understands the content which it broadcasts.
37. Ofcom also disagreed with the Licensee’s argument that the majority of its audience would not have understood the Arabic lyrics. We stated that since we had received complaints from four listeners, it was clear there was some awareness of the nature of the content broadcast among the station’s audience. In considering the evidence again during this sanction process, Ofcom found that three of the complainants who contacted Ofcom about the broadcast on 16 December 2020 appeared to be linked. Ofcom therefore now considers it appropriate to count them as one, leaving two complaints. However, we remain of the view that the two unrelated complaints demonstrate a level of understanding of the lyrics among some of the audience. This is further supported by our understanding that Link FM 96.7 does broadcast weekly Arabic language programmes.¹²
38. It was therefore our decision that this content breached Rule 3.1 of the Code.
39. In Ofcom’s view, the Nasheed sought to condone, encourage, and promote violent acts as an expression of religious faith and as such, had clear potential to cause significant offence. We did not consider that there was sufficient context to justify the broadcast of such content in the programmes. It was our decision that this content also breached Rule 2.3 of the Code.

Ofcom’s Decision to impose a Statutory Sanction

40. 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.

¹² <https://linkfm.org/radio-shows/>

Serious nature of the breaches

41. As set out in paragraphs 32 to 39, we considered that the Licensee had broadcast a Jihadi Nasheed that was likely to encourage or incite crime or lead to disorder, and therefore had the potential to cause serious harm and offence to members of the public. We considered whether Ofcom's revised understanding that we received only two complaints regarding the broadcast impacts our Decision on the seriousness of the breaches. In Ofcom's view, for the reasons outlined in paragraph 34 above some listeners to Link FM 96 would have understood the Arabic lyrics and meaning of the Nasheed. We therefore consider that the broadcast of this content nonetheless presented a risk of harm and offence to members of the audience and was very serious.
42. Ofcom was particularly concerned that the lyrics condoned, promoted, and actively encouraged listeners to participate in violent jihad as a form of devout religious expression. Ofcom was also concerned that this content was broadcast twice during a breakfast programme on a community radio station without any challenge or context, which in our view compounded the seriousness of this case. Ofcom took into account that the Nasheed was broadcast despite the presenter not understanding Arabic and therefore the lyrics.
43. However, we noted that the Nasheed contained no explicit or direct calls to carry out a specific criminal action. We noted that the content of concern was standalone, and that the programme's purpose was not to call for Jihad.
44. In view of the factors set out above, Ofcom considered that the breaches were very serious and therefore warranted the imposition of a statutory sanction.

Imposition of Sanction

45. 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.

Imposition of sanctions other than a financial penalty

Consideration of the revocation of the licence

46. Section 111 of the 1990 Act provides Ofcom with the power to revoke a community radio licence where a licensee is failing to comply with a condition of a community radio licence or direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence. It is not relevant in this case, as the breaches are not ongoing.
47. Section 111B of the 1990 Act places a duty on Ofcom to serve a notice on the holder of a community radio licence, suspending that licence pending consideration of revocation, where Ofcom is satisfied that: a) the licensee has included in its licensed service one or more programmes containing material likely to encourage or incite the commission of crime or lead to disorder; b) in doing so, the licensee has failed to comply with a condition included in the licence in compliance with section 263 of the Act; and c) the failure would justify the revocation of the licence.
48. In our consideration of whether it would be appropriate to suspend PMC's licence and consider revocation, we took into account the nature of the content that was broadcast. As outlined in

paragraphs 32 to 39 above, we considered the breaches in this case to be very serious on the basis that the Licensee broadcast, in two separate programmes, a Nasheed containing an indirect call to action which was likely to encourage or incite crime or lead to disorder, and therefore had the potential to cause serious harm.

49. We were also concerned that the Nasheed was broadcast without the Licensee's knowledge in circumstances where the presenter did not understand the Arabic lyrics, and that PMC only became aware of the broadcasts after Ofcom had drawn the content to its attention. Ofcom considered the breaches to be a serious compliance failure.
50. Ofcom also considered, for the reasons set out in paragraph 72 to 73 below, that the second breach was reckless. However, there was not any evidence that the breaches were deliberate. As set out above, we also had regard to the fact that this Nasheed appeared to be a self-contained, standalone piece and its central message was not reflected elsewhere in the programmes.
51. Despite the repeated nature of the breaches, we took into account that these breaches are the first Code breaches recorded against the Licensee and the Licensee has subsequently taken steps to improve its compliance procedures and prevent similar breaches occurring in the future.
52. In considering whether to suspend the licence pending a decision on revocation, Ofcom must have regard to the potential interference with the right to freedom of expression of the broadcaster and its audience under Article 10 of the Convention. In this case, Ofcom noted that the Link FM service provides programming to the South Asian Muslim community in Sheffield and, if this licence were revoked, the right of this audience to receive this service would be adversely affected.
53. As a result of the factors outlined above and taking account of the right to freedom of expression, it is our Decision that it would not be proportionate to serve a notice under section 111B of the 1990 Act suspending the licence pending a decision on revocation. We consider a sanction short of revocation of the licence could protect audiences from harm and ensure that the Licensee would, in future, comply with the Code.

Consideration of the shortening or suspension of the licence

54. Section 110 of the 1990 Act provides Ofcom with the power to shorten a community radio licence by a specified period not exceeding two years, or suspend a licence for a specified period not exceeding six months, where a licensee has failed to comply with a condition of a community radio licence or direction thereunder. Although we considered the breaches in this case to be very serious, we considered it would not be proportionate to shorten or suspend PMC's licence for the reasons outlined in paragraphs 46-53 above.

Considerations in relation to directing the Licensee to broadcast a statement of Ofcom's findings

55. Section 109 of the 1990 Act provides Ofcom with the power to direct the holder of a community radio licence to broadcast a correction or a statement of Ofcom's findings (or both). The purpose of directing a licensee to broadcast a statement of Ofcom's findings in relation to harmful breaches is to inform audiences of Ofcom's findings and ensure they are aware of the specific way in which the programme breached the Code.

56. Ofcom considered that directing the Licensee to broadcast a statement of Ofcom's findings is necessary to bring the breaches, and Ofcom's action in response to those breaches, to the attention of PMC's listeners.
57. Ofcom also considered that, on its own, a direction to broadcast a statement of Ofcom's findings would not adequately reflect the level of seriousness of the breach in this case or provide sufficient deterrence to the Licensee, or other broadcasters, from repeating similar breaches of the Code in the future. As such, Ofcom's Decision is that a further sanction should be imposed to act as an effective deterrent and to incentivise compliance.

Imposition of a financial penalty

58. Ofcom next considered whether it would be appropriate to determine that a financial penalty should be applied in this case. Section 110 of the 1990 Act provides Ofcom with the power to impose a financial penalty on the holder of a community radio licence, where it is satisfied the licensee has contravened a condition of its licence. Section 110(3) of the 1990 Act provides that the maximum level of a financial penalty that can be imposed on the holder of a community radio licence in respect of each contravention of the licence condition is £250,000.
59. Ofcom's Penalty Guidelines state (at paragraph 1.11) 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".

Factors taken into account in determining the amount of a penalty

60. In considering the appropriate amount of a financial penalty, Ofcom took account of the specific relevant factors set out at paragraph 1.12 of the Penalty Guidelines as set out below:

The seriousness and duration of the contravention

61. Ofcom regarded the breaches to be very serious for the reasons set out in paragraphs 41 to 44. We considered that the Licensee had broadcast a Jihadi Nasheed that was likely to encourage or incite crime or lead to disorder, and therefore had the potential to cause serious harm and offence to members of the public.
62. The Nasheed broadcast was approximately four and a half minutes long. The Breach Decision related to material broadcast twice by the Licensee during two different episodes of the Breakfast Show on 16 December 2020 at 08:37 and 22 December 2020 at 08:31.

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

63. 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. Ofcom is aware that Nasheeds containing messages like those in *Jundallah* have been used by some proscribed terrorist groups

in the UK, such as ISIL and Al-Qaeda, as a recruitment tool and to encourage violent activities.¹³ As made clear in the Breach Decision, Ofcom considered that the cumulative effect of the lyrics and imagery of the Nasheed were likely to condone, promote and actively encourage others to participate in violent Jihadi acts as a form of devout religious expression and therefore amounted to an indirect call to action.

64. In its representations during Ofcom’s investigation, and as set out in the Breach Decision, the Licensee said it understood the potential harm arising from this case but in mitigation, argued that it would have been “minimal” given that the language of the Link FM audience is predominantly Urdu and English and very few listeners were likely to understand the Arabic lyrics of the Nasheed. It said that the four¹⁴ complaints Ofcom had received about the content did not reflect a large proportion of Link FM’s listeners, which it estimated to be about 2,500 people.
65. We recognised Link FM’s audience is estimated to be about 2,500 people, and that it is unknown how many of them would have understood the lyrics to the Nasheed. However, we disagreed with the Licensee’s argument that the majority of its audience would not have understood the Arabic lyrics, as it was clear from the fact that we had received complaints that there was some awareness of the nature of the content among the audience, and we noted that there was Arabic programming within the service. We considered, in any event, that it is in the nature of incitement to violent Jihad that the degree of harm caused is potentially significant.

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

66. 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.

67. In its representations during Ofcom’s investigation, the Licensee explained that although it vets the appropriateness of all songs before uploading them to a library database (which involves a translation of “foreign language songs and nasheeds”), the presenter was able to bypass this procedure because the “old” broadcast software system they use had been causing issues. The Licensee said that the presenter of the *Breakfast Show* had chosen the Nasheed based on its melody and as a non-Arabic speaker, did not understand the lyrics. It added that the presenter started her job in October 2020 (two months prior to the broadcasts) at a time in which “the extensive training and support that would have normally been in place [was] limited due to COVID-19”.
68. In response to Ofcom’s Preliminary View on the breaches, PMC added that the fact the Nasheed was broadcast “without challenge or context” illustrated and reinforced that the Nasheed was broadcast because of the “naivety of the presenter”. It added that only a presenter with a good working knowledge of Arabic would have been able to effectively contextualise this Nasheed

¹³ See: The Journal of European, Middle Eastern and African Affairs, [Musical Criminology: A Comparative Analysis of Jihadist Nasheeds and Narco Corridos](#), published June 2020. This document states the following: “jihadists have used nasheeds strategically in a concerted effort to spread their propaganda, legitimize their ideologies in the façade of religion, and popularize their genre to gain recruits and loyal followers”.

¹⁴ As set out in paragraph 37, three of the four complaints appear to be connected.

and challenge the potentially harmful messages within it. However, Ofcom was particularly concerned that the Licensee broadcast a Nasheed without understanding of the content of the lyrics.

69. The Licensee also said that the pandemic has stretched capacity at the station to the maximum and staff and volunteers have been working under a high degree of stress. It explained “this factor undoubtedly contributed to the lapse in judgment of the presenter and the capacity of Link FM to effectively deal with the situation as it arose”.
70. We acknowledge the practical and logistical challenges faced by community radio licensees, as well as their limited resources in relation to larger commercial broadcasters. We also acknowledge that the Coronavirus pandemic has created particular pressures for small broadcasters such as the Licensee. However, it is a fundamental requirement of holding an Ofcom licence that all licensees have adequate processes in place to ensure compliance with the Code, no matter their size. It is also the responsibility of the Licensee to ensure that it understands the content which is broadcast in order to comply with the Code.
71. We took into account that, in its representations during Ofcom’s investigation, the Licensee stated it would take various actions to improve its compliance procedures, as detailed in paragraphs 75 and 76 below, and its assurance in response to the Sanction Preliminary View that it would “endeavour to continue working with [Ofcom] to ensure that Link FM remains in compliance”. However, given the above, we considered there was evidence of a compliance failure in identifying potentially harmful material and ensuring that, once identified, such material was not 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

72. The Licensee only became aware of the potentially serious issue associated with the Nasheed after being alerted to the material by Ofcom on 17 December 2020. On that date, Ofcom sent a formal request for a recording of the *Breakfast Show* broadcast on 16 December 2020 which set out the nature of the complaint which objected to “offensive and extremist lyrics” and required a response within 7 working days. During this time, Ofcom received a second complaint on 22 December that the Nasheed was played again on the *Breakfast Show* of that date. It is of particular concern to Ofcom that the second broadcast of the Nasheed on 22 December 2020 occurred after Ofcom had made the Licensee aware that a complaint had been made about the first broadcast.
73. We acknowledged the Licensee’s representations that the broadcasts were due to an “innocent mistake on the part of the presenter who was not aware of the content of the offending Nasheed” and did not consider there was evidence to suggest that the breach was deliberate. However, we did consider the second breach was reckless and that senior management ought to have been aware of the potential issue, given the content was broadcast for a second time after Ofcom had alerted the Licensee to a complaint about the first broadcast and the nature of that complaint.

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

74. As set out above, the Licensee failed to prevent a second broadcast of the content after it had been alerted to a complaint by Ofcom.
75. The Licensee has provided Ofcom with information about the steps it has taken to improve its compliance processes following being made aware of the incident by Ofcom. The Licensee said that it “wholeheartedly [apologised to Ofcom] for the error” and said that it was “taking the situation seriously” and had “taken extensive steps to minimise the risk of such a breach occurring again”. It said that it had immediately implemented the following “remedial actions”:
- Shared legal and compliance information from the Community Media Association with its presenters.
 - Got an external media consultant to review and update its “Volunteer Presenter Agreement”, with a view to giving it to presenters individually through face-to-face meetings to also explain their responsibilities and what is expected of them.
 - Asked all presenters to attend a “Legal Essentials and Compliance Essentials” Workshop with a compliance expert.
 - Reinforced its instruction to presenters not to upload songs to the library database and enacted “a new protocol”: any presenter that plays music has to provide a list of their songs prior to their show, which are then saved in a separate library folder, from which they play the songs. No additional songs are allowed to be broadcast.
 - Secured funding to upgrade its IT System and broadcast software by March 2021.
76. It added that the new software company will train presenters in the new IT system, which it said would give it greater control over what is played out live. In particular, it said playlists will be scheduled in advance and this would stop a recurrence, as presenters would not be able to upload any songs without due process being followed.
77. PMC said that during its internal investigation it had considered but decided not to report the incident to the police or Prevent,¹⁵ as it had taken in good faith the presenter’s explanation that she had not known what she was playing and she was “extremely sorry and horrified” after reading Ofcom’s translation of the Nasheed”.
78. Ofcom welcomed the steps taken by the Licensee’s compliance process, and its assurance that it would “continue working with [Ofcom] to ensure that Link FM remains in compliance”.

Any steps taken for remedying the consequences of the contravention.

79. The Licensee did not, to Ofcom’s knowledge, take steps to try to remedy the consequences of the breaches, such as broadcasting an apology to listeners.

¹⁵ Prevent is a government-led programme which aims to safeguard vulnerable people from being drawn into terrorism.

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

80. In a letter dated 3 November 2021 in response to Ofcom's request for information about its finances, the Licensee stated that in the last five years of its radio licence it had "shown a harmonious track record" and hoped that "this is taken into consideration in showing leniency towards any outcome".
81. Ofcom noted that this Licensee did not have a history of contraventions of the Code prior to the breaches now being considered for statutory sanction.
82. However, reflecting Ofcom's view that breaches in relation to incitement are usually very serious, Ofcom has previously imposed statutory sanctions on licensees for a first breach in this area, including in cases where the broadcast of the material was the result of a compliance failure. See, for example, our decisions in relation to [Panjab Radio Ltd](#), [Karimia Ltd](#), [Khalsa Television Ltd](#) and [Ariana Television and Radio Network](#).

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

83. In Ofcom's view, the Licensee has generally been cooperative in that it has engaged with the investigation. For example, it admitted that the two broadcasts of this Nasheed amounted to breaches of Rules 3.1 and 2.3 of the Code; provided full representations in response to Ofcom's formal requests for information relating to the material broadcast and the service in general; and has given assurances that it has taken some steps to remedy its failures to comply with the Code.
84. However, we note that the Licensee failed to respond in a timely manner to Ofcom's request for recordings at the beginning of our investigation and to provide a full response to Ofcom's formal request for financial information by the specified deadlines.

Precedent

85. 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 ensure compliance, for both the Licensee in question and licensees generally, having regard to the seriousness of the infringement. In this respect, as noted above, it appears to us that the breach was not deliberate but that the inclusion of the Nasheed in the second broadcast was reckless.
86. We note that we amended our Penalty Guidelines on 3 December 2015 and on 14 September 2017. Both times, this was to secure that penalties had an appropriate 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.
87. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases, particularly those involving incitement to crime or violence. Ofcom's previous recent sanction decisions are published on Ofcom's website.¹⁶ Ofcom took into account that the majority of previous cases involving a breach or Rule 3.1 related to material which was either a direct call to action, extensive, discursive, a sustained

¹⁶ See: [Broadcasting and on demand sanction decisions](#).

cumulative narrative, made by an authoritative figure, or combined two or more of these factors. The penalties we imposed were correspondingly relatively high. Ofcom considered that these precedents were less relevant to the present case, taking into account that the material found in breach of Section Three of the Code was relatively brief and not sustained. We have therefore had particular regard to the precedent cases of Karimia Limited and Khalsa Television Limited described in paragraphs 89 and 91 below, which we considered were more relevant to the facts of the present case. The other cases below are listed for completeness, as they relate to first time breaches.

88. **6 July 2017, Ariana Television and Radio Network**¹⁷ – 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 news item which featured 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 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. Ariana Television and Radio Network did not have a prior history of contraventions of the Code.
89. **27 February 2018, Karimia Limited**¹⁸ – 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 of a 17-minute long Nasheed glorifying the victories on the battlefield of figures from Islamic history which 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” (a derogatory 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. Karimia Limited did not have a prior history of contraventions of the Code. It submitted that the Nasheed was written in “‘Classical Shakespearian Urdu’ which is very challenging to understand and certainly...not commonplace amongst [its] audience demographic”. The Licensee said it was likely that the volunteer who downloaded it, along with “most young people, and even some fluent Urdu speakers”, could not understand it.
90. **17 August 2020, Panjab Radio Limited**¹⁹ – Ofcom imposed a penalty of £30,000 and a direction to broadcast a statement of findings for breaching Rules 3.1 and 2.3. Ofcom found that during an edition of the Shamsheer Singh Rai programme, the presenter advocated, justified, and supported violent retributive action against those he considered to have shown disrespect towards Sikh places of worship. The presenter spoke about an event that had taken place during a festival being celebrated in a Punjabi village when girls had danced and sung folk songs while others looked on. The presenter said that this breached the Sikh code of conduct and blamed the events on “our enemy”, who he said was playing “tricks” on the Sikhs and “testing

¹⁷ See Ofcom’s Decision: [Sanction 106 \(17\) Ariana Television and Radio Network](#)

¹⁸ See Ofcom’s Decision: [Sanction \(109\)17 Karimia Limited](#)

¹⁹ See Ofcom’s Decision: [Sanction 135 \(20\) Panjab Radio Ltd](#)

our patience”. He called for people to carry out violent attacks against people he considered to have acted in a sacrilegious way. The presenter referred to killing or beheading such people and made repeated comments that referred to or justified taking violent action. Ofcom found that the presenter’s comments amounted to a direct call to action to members of the Sikh community to carry out violent action against people he considered to be disrespecting the Sikh faith. He did this without challenge or other sufficient contextual justification.

91. **12 February 2021, Khalsa Television Limited**²⁰ – Ofcom imposed a penalty of £20,000 and a direction to broadcast a statement of findings for breaching Rules 2.3, 2.11 and 3.1 of the Code. The case concerned the broadcast of a music video for a secular song called *Bagga and Shera* which included lyrics in Punjabi (with some Gurmukhi and English script), which was broadcast as a standalone piece of content on three separate occasions within a six-day period. Ofcom was concerned that the music video glorified or condoned violence committed by individuals convicted of or charged with murder and/or terrorist acts; and dramatised scenes of two fictional characters who appeared to be preparing to carry out assassinations in the UK, juxtaposed with images of real people who have been convicted or charged with committing murders for political reasons. Ofcom found that the music video was an indirect call to action for Sikhs living in the UK to commit violence, up to and including murder. Ofcom considered that this breach amounted to a serious compliance failure and noted the very significant number of breaches recorded against the licensee in a relatively short period of time.
92. We note that, as set out in the Penalty Guidelines, Ofcom may depart from these cases depending on the facts and context of the current case.

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

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 ensure compliance, having regard to the seriousness of the infringement. Any proposed penalty must be proportionate taking into account the size and turnover of the Licensee, its rights under Article 10 of the Convention and the fact that deterrence is the central objective of imposing a penalty.
94. In reaching its Decision on the imposition and level of a sanction, Ofcom has taken account of the size and turnover of the Licensee. We asked the Licensee for information about its finances for its most recent accounting period (ending 31 March 2021), including its qualifying revenue which focuses on its income from the advertisements and sponsorship connected with the licensed Link FM 96.7 service. The Licensee’s qualifying revenue for the last accounting period was [CONFIDENTIAL ✂].
95. In its response letter to Ofcom’s request for its financial information dated 3 November 2021, the Licensee said that last year “has been particularly hard on the finances of the organisation”, and that it has “lost significant advertising from local businesses and the community organisations which means that we have not been generating income”. The Licensee said that it “had to incorporate greater expenses, with PPE materials and presenters having to self-isolate. Any reserves that the Community Radio Station and PMC have are invested back into the Organisation for community benefit”. It said it hopes that Ofcom’s “sanction would be a small amount otherwise, we will find it very difficult to continue in the current hard-hit times due to

²⁰ See Ofcom’s Decision: [Sanction 119 \(20\) Khalsa Television Limited](#)

COVID pandemic”. The Licensee reiterated this in its further responses to Ofcom’s requests for financial information dated 3 and 9 December 2021 and hoped that the “sanction would be a small amount in line with the financial position of the Link FM”. In response to Ofcom’s Sanction Preliminary View, the Licensee asked that Ofcom take into account when making its final decision that PMC is a “charity organisation”.

96. We have had particular regard to the fact that as a community radio station, Link FM is a not-for-profit organisation which is largely staffed by volunteers. We have also had regard to the potential impact of a financial penalty on the Licensee’s ability to operate the Link FM service, as detailed in paragraph 95 above.

Other matters raised by the Licensee

97. In its letter dated 3 November 2021, the Licensee reiterated its services to the community and said that “as a responsible a community organisation and Community Radio Station, we have always ensured that we are inclusive and careful in our work and delivery”. It said that it has been “involved in many projects around raising awareness of terrorism, grooming and worked in partnership with the Police and the local Prevent Team”.
98. Ofcom also had regard to the representations made by the Licensee in response to its formal request for comments and Preliminary View on the breaches, which emphasised the a “vital role in Sheffield” played by the Link FM service, including by promoting diversity and inclusion of “the unemployed, young people, women, disabled people, older people and people from Muslim communities”, the provision of training and development opportunities, and its work around Covid-19 messaging and education.
99. Ofcom recognises the value that community radio stations provide to the communities they serve. However, it is incumbent on all broadcasters, including community radio stations, to abide by the Broadcasting Code.
100. For all the reasons set out above, Ofcom considers it is proportionate to impose a financial penalty on the Licensee of £2,000.

Decision

101. 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 £2,000. In addition, Ofcom considers that the Licensee should broadcast a statement of Ofcom’s findings in this case, on a date and in a form to be determined by Ofcom.

Ofcom
11 March 2022