

**Sanction: Decision by Ofcom**

**Sanction: to be imposed on Rinse FM**

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**For material broadcast on Rinse FM on 12 July 2020 at 10:50<sup>1</sup>.**

**Ofcom's Sanction Decision  
against:**

Rinse FM ("Rinse FM" or "the Licensee") in respect of its service **Rinse FM** (Ofcom Community Radio licence CR000225BA/3 and local Digital Sound Programme licence DP101096BA/1).

**For:**

Breaches of the [Ofcom Broadcasting Code](#) (the "Code")<sup>2</sup> in respect of:

Rule 3.2: "Material which contains hate speech must not be included in...radio programmes...except where it is justified by the context".

Rule 3.3: "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in...radio services...except where it is justified by the context".

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 ...discriminatory treatment or language (for example on the grounds of...race, religion or belief...)".

**Decision:**

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

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<sup>1</sup> As detailed in [Issue 431 of Ofcom's Broadcast and On Demand Bulletin](#), 19 July 2021.

<sup>2</sup> The [version of the Code](#) which was in force at the time of the broadcast took effect on 1 January 2019.

### Executive Summary

1. Rinse FM is an urban music community radio station serving the Inner London area. The Licence for this station is held by Rinse FM (“Rinse FM” or “the Licensee”).
2. On 12 July 2020, Rinse FM broadcast a morning music programme between 10:00 and 11:00 presented by a regular presenter on the station, who was also newly serving as its General Manager.
3. During the programme, the track “*Better in Tune with the Infinite*” by hip hop artist Jay Electronica was played. Within a 20 second segment of the 3-and-a-half-minute track, were the following lyrics:

*“The synagogues of Satan might accuse or jail me.*

*Strip, crown, nail me, brimstone hail me.*

...

*To the lawyers, to the sheriffs, to the judges.*

*To the debt holders and the law makers.*

*[Bleeped] you, sue me, bill me”.*

### **The Breach Decision**

4. In Ofcom’s Decision published on 19 July 2021 in [Issue 431 of the Broadcast and On Demand Bulletin](#) (“the Breach Decision”), Ofcom found that this programme contained uncontextualised hate speech<sup>3</sup> and derogatory and abusive treatment towards Jewish people, and was therefore also potentially offensive and not sufficiently justified by the context. Ofcom considered that these lyrics would have been understood by some listeners as suggesting that Jewish people are evil or worship the Devil, and characterised Jewish people and Judaism in a negative and stereotypical light.
5. We therefore found the programme had breached Rules 3.2, 3.3 and 2.3 of the Code.
6. The Breach Decision set out the broadcast material that was in breach, along with reasoning as to why the material had breached each rule.
7. The Breach Decision also put the Licensee on notice that Ofcom considered these breaches to be serious, and that it would consider them for the imposition of a statutory sanction.
8. In a letter dated 5 October 2021<sup>4</sup>, the Licensee informed Ofcom that it felt it had not been able to represent its position that the content was not in breach of the Code. It stated that the investigation process that had resulted in the Breach Decision had not had sufficient regard for the size and scale of Rinse FM’s operations and the resources available to it to defend its position, which it said were not comparable to those of larger licensees, particularly in light of the impact of the Coronavirus pandemic.
9. We consider that Rinse FM was treated fairly during the investigation process and in line with Ofcom’s Procedures for investigating breaches of content standards for television and radio (the “[Investigation Procedures](#)”). During the investigation process, the Licensee made representations in response to Ofcom’s request for formal comments. It was given the opportunity to respond to Ofcom’s Preliminary View on the breaches. In its response, the

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<sup>3</sup> Section Three of the Code defines “hate speech” as: “all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation”.

<sup>4</sup> This letter was sent together with financial information that Ofcom had requested to inform its considerations of whether and what type of sanction to impose on the Licensee. In this letter, the Licensee also stated it felt Ofcom’s process for obtaining financial information was unfair. However, the Licensee did not take issue with this request when it was sent and responded with the information requested.

Licensee said it did not have the time or resources to challenge what it described as Ofcom’s “misconceptions and misinterpretations of this show and track”. Ofcom then contacted the Licensee, offering to consider extending the time for it to make written representations. Ofcom received no further response from the Licensee.

### **The Sanction Decision**

10. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (the “[Sanctions Procedures](#)”)<sup>5</sup>, Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on Rinse FM.
11. Ofcom issued a Preliminary View on sanction (the “Sanction Preliminary View”) that Ofcom was minded to impose on Rinse FM a statutory sanction. Ofcom sent a copy of the Sanction Preliminary View to Rinse FM on 28 October 2021 and gave it the opportunity to provide written and oral representations on it. Rinse FM chose not to make any written representations on the Sanction Preliminary View. Rinse FM provided its oral representations at an oral hearing held on 8 December 2021, which are summarised in paragraphs 41 to 47 below.
12. Having considered the representations made to us, Ofcom has decided to direct the Licensee to broadcast a statement of Ofcom’s findings on a date and in a form to be determined by Ofcom. 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**

13. 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, amongst other things, the application to 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)).
14. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)). This requirement is reflected in Section Two and Section Three of the Code.
15. 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)); 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**

16. 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

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<sup>5</sup> These procedures took effect on 3 April 2017.

incompatible with the European Convention on Human Rights (the “Convention”)<sup>6</sup>. 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.

17. 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”.
18. 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))<sup>7</sup>. It applies not only to the content of information but also the means of transmission or reception<sup>8</sup>. While subject to exceptions, the need for any restriction must be established convincingly<sup>9</sup>. 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 maintaining the authority and impartiality of the judiciary” (Article 10(2)).
19. 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**

20. 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.

#### **The Ofcom Broadcasting Code**

21. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code.
22. Accompanying Guidance Notes<sup>10</sup> to each section of the Code are published, and from time to time updated, on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
23. The relevant Code rules in this case are set out at the beginning of this Decision.

#### **Remedial action and penalties**

24. 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, as reflected in the Code, are observed by the licensee. The licensee in this case, Rinse FM, holds a community radio licence and a digital sound programme (“DSP”) licence.
25. In the case of both the community radio licence and the DSP licence, Condition 5 of the licence requires the Licensee to ensure that the provisions of the Code are observed in the provision of

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<sup>6</sup> See section 6 of the Human Rights Act 1998.

<sup>7</sup> *Lingens v Austria* (1986) 8 EHRR 407.

<sup>8</sup> *Autronic v Switzerland* (1990) 12 EHRR 485.

<sup>9</sup> *Steel & Morris v UK* (2005) EMLR 15.

<sup>10</sup> See: [Guidance Notes on Section 2: Harm and Offence](#); and [Guidance Notes on Section 3: Crime, Disorder, Hatred and Abuse](#).

the licensed service. 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 and/or DSP licence has been and/or is being contravened, its powers to act are respectively set out in sections 109 to 111B of the Broadcasting Act 1990 (the “1990 Act”) and section 62 of the Broadcasting Act 1996 (the “1996 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). This power also applies to the holder of a DSP licence by virtue of section 62(10) of the 1996 Act.
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 62(1)(a) of the 1996 Act provides Ofcom with a power to impose a financial penalty on the holder of a DSP licence. In both cases, the maximum penalty which may be imposed in respect of each contravention is £250,000<sup>11</sup>.
29. In respect of a community radio licence, section 110 of the 1990 Act also provides Ofcom with the power to shorten the licence by a specified period not exceeding two years, or to 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. In respect of a DSP licence, section 62(1) of the 1996 Act provides Ofcom with the power to specify an early expiration of the licence at least one year from the date of notice being served, or to suspend a licence for a specified period not exceeding six months.
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. This power also applies to the holder of a DSP licence by virtue of section 62(10) of the 1996 Act. We did not consider this remedy to be relevant in this case, as the breaches are not on-going.

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

31. In the Breach Decision, Ofcom found that material broadcast on Rinse FM breached Rules 3.2, 3.3, and 2.3 of the Code. The Breach Decision set out the reasons for each of these findings.
32. In summary, Ofcom found that the track “*Better in Tune with the Infinite*” by Jay Electronica contained antisemitic hate speech which amounted to abusive or derogatory treatment of Jewish people, and these lyrics were not justified by the context of the programme. In reaching our Breach Decision, we had regard to the International Holocaust Remembrance Alliance’s (“IHRA”) working definition<sup>12</sup> of antisemitism which states:

*“Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities”.*

33. Ofcom found that lyrics of the track contained expressions of antisemitism and evoked antisemitic tropes which ascribed negative and stereotypical characteristics to Jewish people. In particular, Ofcom considered that:

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<sup>11</sup> Section 110(3) of the 1990 Act and section 62(6) of the 1996 Act.

<sup>12</sup> In December 2016, the UK Government agreed to adopt the [International Holocaust Remembrance Alliance’s working definition of antisemitism](#).

- a) the phrase “*synagogues of Satan*”, which was used in the track as detailed in paragraph 3, made an explicit association between Jewish places of worship and Satan, and therefore was likely to have been understood by UK listeners as suggesting that Jewish people are evil or worship the Devil;
  - b) the lyrics which followed, “*Strip, crown, nail me, brimstone hail me*” when juxtaposed with the reference to “*Synagogues of Satan*”, may have evoked for UK listeners the antisemitic allegation that Jewish people are collectively responsible for the crucifixion of Jesus Christ; and
  - c) in the context of the above lyrics, the lyrics “*To the lawyers, to the sheriffs, to the judges. To the debt holders and the law makers*”, whom the artist addresses with “[Bleep] *you, sue me, bill me*”, may have been interpreted by some UK listeners as evoking a common derogatory stereotype about Jewish people being disproportionately in control of businesses, economic systems and other influential institutions.
34. Rinse FM and the presenter argued that the lyrics “*synagogues of Satan*” were drawn from the Bible and therefore they contained no “negative connotations towards Jewish people or any particular religion”. However, Ofcom considered that it was unlikely that UK listeners would be familiar with this context and that the programme did not explain it. We also considered that the phrase “synagogue of Satan” has often been taken out of its original Biblical context and used as a form of abuse of Jewish people and Judaism<sup>13</sup>. We therefore did not accept that the Biblical origins of the phrase would mitigate the antisemitic content included in the lyrics.
35. Rinse FM also argued that the lyrics were a metaphor for the artist expressing his “struggles” and personal challenges in his life and career in the music industry. While Ofcom accepted that the lyrics supported this possible interpretation and that a personal account of struggle is a legitimate subject for the artist’s creative expression, we did not consider that it would have mitigated the antisemitic content in the lyrics.
36. In considering the overall context of the lyrics, Ofcom also took into account that the track opened with a sample from an interview with the former leader of the Nation of Islam (“NOI”), Elijah Muhammad. The NOI is a Black nationalist group in the United States which has been criticised for using antisemitic rhetoric in its preaching, and such rhetoric has been attributed to Elijah Muhammad<sup>14</sup>. While Ofcom recognised that the content sampled does not itself contain any antisemitic rhetoric, we were concerned that the inclusion of the words of an authoritative figure within the NOI would further signal, to any listeners aware of this context, an antisemitic intention and meaning of the lyrics.
37. It was our decision that this content met Ofcom’s definition of hate speech and it breached Rule 3.2.
38. Ofcom further considered that the lyrics in the track cited in paragraph 33(a) and (b) above contained abusive and derogatory treatment of Jewish people. In the context of those lyrics, we also considered that the subsequent lyrics cited in paragraph 33(c) cumulatively contributed to a narrative that may also have been understood by the audience to be derogatory and abusive towards Jewish people. It was our decision that this content was in breach of Rule 3.3.

<sup>13</sup> For example, see: Antisemitism Policy Trust, [Antisemitic Imagery and Caricatures](#) (page 12); CBS News, “[Jews are the children of Satan” and the danger of taking biblical passages out of context](#); Gilman, S & Katz, S, [Anti-Semitism in Times of Crisis](#) (page 45); and Community Security Trust’s [2017 Antisemitic Incidents Report](#) (page 37).

<sup>14</sup> See The Southern Poverty Law Center, ‘[Nation of Islam](#)’.

39. In Ofcom's view, the lyrics outlined above had the potential to be highly offensive to a UK audience and we did not consider that there was sufficient context to justify the broadcast of such content in the programme. It was our decision that this content 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.

#### **The Licensee's representations**

41. The Licensee made written representations in response to Ofcom's request for financial information, and oral representations on Ofcom's Preliminary View as set out below.
42. In its letter of 5 October 2021 and its oral representations, Rinse FM provided information about its finances and the impact of the Coronavirus pandemic on it. It also explained the work the presenter of the programme had been doing at the time of the breaches to keep the station on air safely in the circumstances of the pandemic.
43. In its oral representations, the Licensee acknowledged that it had made a "mistake" for which it sincerely apologised. Rinse FM said compliance was paramount to it because it wants to stay on air and to continue developing and representing the communities it serves. It stressed that it is a small-scale operation reliant on a very small number of volunteers who are passionate about the service it provides and who took "all of this" very seriously.
44. Rinse FM said that it considered any kind of discrimination unacceptable. It said that it was extremely apologetic to the person who had complained to Ofcom but added that it had never heard of the phrase used in the lyrics (i.e. "*synagogues of Satan*") and therefore had not understood it when it was broadcast. It said that the phrase was now "absolutely on [its] radar". It had played the track in question "in a completely innocent way to just support Black artists".
45. The presenter said that in her role as Rinse FM's General Manager, she had taken steps to ensure a similar breach would not happen again. The presenter said she had decided to remove herself as a presenter on Rinse FM to set an example that Rinse FM would not tolerate the broadcast of this type of content and to show her remorse. She added that she would dedicate her time to ensuring that incidents like this did not recur and in particular would fully train her producers and presenters in Ofcom's standards and how to prevent the broadcast of such content.
46. The presenter also said that in her role as General Manager, she aimed to make the station more aware of the content it produced during "socially political and heated times", and to be across all of its output. All its presenters now have to sign an agreement which contains strict rules about the content they can broadcast with reference to Ofcom's regulations. She added that Rinse FM would pre-record and comply content in advance of broadcast as much as possible, while increasing its awareness of what content to prevent going to air. She explained that Rinse FM has two part-time employees who vet every song on Rinse FM's playlist. She said this meant Rinse FM listened to as much of its content as possible ahead of broadcast and it aimed to do more of that, "reaching more ears around the office". She added that Rinse FM now had an office space with speakers to enable collective listening to the programming so that there were more people with different backgrounds listening to its output "rather than just the radio team".
47. The presenter also said that, although she was a "fan of Jay Electronica musically", she was "not...a massive rap fan" and therefore "wasn't fully aware of the lyrical content and the intent

behind his lyrics”. She said that she was “very aware of Jay Electronica’s position as like a low-key musician in the industry [and a] massive calibre of artist” but added, “he is quite a subdued character and I wasn’t aware of his political stances or beliefs...if he does have any connotations surrounding the complaint that’s in question”. Rinse FM said that, with the music it features, it was accustomed to listening out for potential issues of misogyny, homophobia and transphobia but not antisemitism. It said that one of the lessons it had learned was that if someone was unsure about the meaning of lyrics, they should consult others to get alternative perspectives.

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

48. As set out in paragraphs 32 to 38 above, we considered some of the specific lyrics within this track were antisemitic and characterised Jewish people and Judaism in a negative and stereotypical light. It was our view that these lyrics would have been interpreted by some listeners to be expressions of hatred based on intolerance of Jewish people, and that their broadcast had the potential to promote, encourage and incite such intolerance among listeners. It was therefore Ofcom’s decision that the lyrics set out above amounted to antisemitic hate speech. Ofcom considers that the potential harm arising from breaches relating to hate speech is usually serious, and that in this case it was serious, in particular taking into account the evidence suggesting an increase in antisemitic hate crimes in the UK and concentrated in Greater London in recent years<sup>15</sup>. The content was also derogatory to Jewish people, with the potential to cause widespread offence.
49. As outlined in our Breach Decision, while Ofcom accepted that the lyrics supported the interpretation that they were a metaphor for the artist expressing his “struggles” and personal challenges in his life and career in the music industry, we considered that the lyrics were more likely than not to be interpreted by some listeners to be antisemitic and therefore, the lyrics had the clear potential to promote, encourage and incite intolerance towards Jewish people among listeners.
50. Ofcom took into account that the breaches occurred through the lyrics of a song within the rap genre, and that the content of concern was brief and not repeated. We noted that the programme’s purpose was not to express hatred of Jewish people but to celebrate Black culture. We recognised that the presenter concerned did not understand the implications or nuances of the words used in the lyrics at the time of the broadcast.
51. Ofcom also considered that the scale of the Rinse FM service and the likely size of the audience is relevant to the assessment of the degree of potential harm caused by the breaches, and therefore their seriousness. In this case, Ofcom took into account that Rinse FM is a community radio station serving the Inner London area, and is available via local DAB radio.
52. In view of the factors set out above, Ofcom considered that the breaches were serious and therefore warranted the imposition of a statutory sanction.

### **Shortening or suspension of the licence**

53. 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. In respect of a DSP licence, section 62(1) of the 1996 Act provides Ofcom with the power to specify an early expiration of the licence at least one

<sup>15</sup> See, for example, page 80 onwards of [“Antisemitism – Overview antisemitic incidents recorded in the European Union 2009 –2019”](#), published in September 2020 by The European Union Agency for Fundamental Rights. See also the [“Antisemitic Incidents Report 2020”](#) by the Jewish security charity Community Security Trust (“CST”), which states that as of February 2021, it had recorded the third-highest total number of antisemitic incidents in 2020 and the highest ever annual total of incidents in 2019.

year from the date of notice being served, or to suspend a licence for a specified period not exceeding six months.

54. In considering whether to propose the shortening or suspension of a licence, Ofcom must also 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.
55. In our consideration of whether it was appropriate to shorten or suspend Rinse FM's licence, we took account of the seriousness of the breaches of the Code in this case. The Licensee broadcast a programme featuring a music track containing antisemitic hate speech without sufficient context and did not seek to remedy it. Ofcom considered the breaches to be a serious failure of compliance. However, there was not any evidence that the breaches were reckless, deliberate or repeated.
56. Ofcom also took into account that the Code breaches took place in a single programme and that the Licensee has taken various steps to improve its compliance processes during the course of our investigation (paragraphs 45 to 47).
57. Ofcom also took into account that previous Code breaches recorded against this Licensee were not similar in nature to the breaches in this case and were not serious enough to be considered for the imposition of a statutory sanction.
58. Ofcom may only shorten or suspend a licence if it is satisfied that it is a proportionate response to the Licensee's failure to comply with its licence conditions. Any sanction we impose must be proportionate, consistent and targeted only at cases where action is needed. Given the Licensee's compliance record prior to these breaches, and the Licensee's and the audience's Article 10 rights, on balance, Ofcom considered that it would not be proportionate to suspend or shorten Rinse FM's licence in this case. We considered a sanction short of suspension and shortening of the licence could protect audiences from harm and ensure that the Licensee would, in future, comply with the Code.

#### Imposition of a financial penalty

59. Ofcom next considered whether it would be appropriate to impose a financial penalty in this case.
60. 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 62(1)(a) of the 1996 Act provides Ofcom with the power to impose a financial penalty on the holder of a DSP licence. Section 110(3) of the 1990 Act and section 62(6) of the 1996 Act provide that the maximum penalty which may be imposed in respect of each contravention is £250,000.
61. In considering whether to impose a financial penalty in this case, Ofcom had regard to the serious nature of the Code breaches recorded against the Licensee, as well as the need for any sanction to act as an effective deterrent, both for the Licensee and other licensees, from repeating similar breaches of the Code in the future. We also took into account the representations made by the Licensee as detailed in paragraphs 41 to 47.
62. Ofcom regarded the breaches to be serious for the reasons set out in paragraphs 48 to 52 above. Ofcom took into account that the breaches occurred through the lyrics of a rap song. The content of concern, albeit insufficiently contextualised, was very brief and not repeated, and the programme's purpose was not to express hatred of Jewish people but to celebrate Black culture. We recognised that the presenter concerned did not understand the implications or nuances of the words used in the lyrics at the time of the broadcast.
63. Ofcom took into account that Rinse FM is a community radio station serving the Inner London area, and is available via local DAB radio.

64. The Breach Decision related to material broadcast on 12 July 2020. We have no evidence to indicate that the material, or similar material, had since been broadcast.
65. Ofcom considered that the compliance procedures the Licensee had in place at the time of the breaches were not sufficient to prevent a serious breach of the Code, in the context of a case where the content of concern was a recorded music track which therefore could have been complied in advance of a live programme. We acknowledged the practical and logistical challenges faced by community radio licensees, as well as their limited resources in relation to larger commercial broadcasters. We also acknowledged that the Coronavirus pandemic had created particular pressures for small broadcasters such as the Licensee and that the pressures on the presenter in this case were particularly acute. 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.
66. We considered that Rinse FM's oral representations on the Sanction Preliminary View showed a much clearer understanding of its compliance responsibilities under the Code and that it had effectively identified the weaknesses in its compliance processes which had enabled the breaches to occur, namely:
- insufficient regard to the meaning of lyrics when complying content; and
  - relying on one person, in this case the presenter, who "wasn't fully aware of the lyrical content and the intent behind his lyrics" to comply this content.
67. We also considered that the changes that Rinse FM had introduced to its compliance processes to prevent a recurrence of a similar breach were appropriate and indicated a strengthened understanding of the Licensee's compliance responsibilities. In particular, the Licensee outlined the following additional compliance measures in its oral representations:
- increasing awareness at Rinse FM of the Code and what content to prevent going on air, including antisemitic content, through training and a new agreement which presenters had to sign;
  - vetting and analysing the lyrics of every song on its playlist;
  - increasing the number and diversity of people complying and listening to its content with a focus on pre-recording programmes, so that two or more people review the content of a programme, including the lyrical content of music tracks, before broadcast; and
  - placing an emphasis within its compliance processes on understanding the meaning of lyrics.
68. For the reasons outlined above, we considered that Rinse FM's management had taken what appeared to be effective steps to change Rinse FM's approach to compliance and, in particular, the potential harm posed by antisemitic content.
69. We took into account the lack of significant contraventions in recent years, that this was Rinse FM's first breach of the Code involving hate speech, and that the breaches related to content which was, as set out above, brief, not repeated and contained within the lyrics of a rap song.
70. In coming to this Decision, Ofcom had regard to the nature of the breaches in precedent cases, particularly those involving hate speech. Ofcom's previous recent sanction decisions are published on Ofcom's website<sup>16</sup>. Ofcom took into account that the majority of previous hate speech cases related to attacks on particular groups which were either detailed, extensive, discursive, devotional, 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 brief and not sustained. We have therefore

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<sup>16</sup> See [Broadcasting and on demand sanction decisions](#). Archived older decisions are linked from that page.

had particular regard to the precedent cases specified in paragraphs 71 and 72 below, which we considered were more relevant to the facts of the present case.

71. **25 July 2017, Kanshi Radio Limited**<sup>17</sup> – Ofcom imposed a penalty of £17,500, and a direction to broadcast a statement of findings for breaching Rules 2.1, 2.3, 3.2 and 3.3 of the Code. The case concerned two broadcasts of a song called *Pinky Pinky*. The Punjabi lyrics contained, throughout the song, which lasted approximately 11 minutes, aggressively pejorative references to the Muslim community, and Muslim women in particular. The song also included well known sacred Islamic phrases that were interspersed with very offensive terms while the sounds of gunshots were heard. We also considered the song was an expression of an extreme Sikh perspective in opposition to the Muslim community, and was a clear example of hate speech and was abusive and derogatory towards women. We also considered that the content had the potential to cause harm by increasing tensions between the Sikh and Muslim communities and to promote the objectification and abuse of women. The song had been uploaded to a database by a staff member without compliance checks, following a burglary which had resulted in the loss of all the station’s broadcasting equipment, and had subsequently been selected for playout by an automatic scheduler. The licensee did not have a prior history of contraventions of the Code.
72. **27 June 2019, Trace UK World (Starz)**<sup>18</sup> – Ofcom directed the Licensee to broadcast a statement of Ofcom’s findings for breaches of Rules 1.2, 4.2 and 4.8 the BCAP Code (The UK Code of Broadcast Advertising). The breaches related to an image submitted by a viewer alongside a music video depicting a still image of a cartoon caricature of a Jewish person based on racist stereotypes. The image was likely to have been interpreted by viewers as being highly offensive and antisemitic. It was repeatedly shown in rotation with photographs submitted by other viewers. Ofcom noted that the breaches occurred as a result of human error in not following a well-established compliance process with defined guidance and procedures for identifying and escalating discriminatory or offensive content. Ofcom took into account that the breaches were not deliberate, reckless or repeated, and that the licensee responded to the breaches in a number of ways, including: deleting the image, broadcasting an on-screen apology, launching an internal investigation, and improving its compliance. We also took into account that the material did not derive from a respected source which would lend it additional credibility and religious or moral weight. We decided to direct the licensee to broadcast a summary of the breach decision rather than to impose a financial penalty. This was the first BCAP Code breach to involve Starz as a service of CSC Media Group Limited (CSC)<sup>19</sup>. It was also CSC’s first serious breach of harm and offence rules.
73. While Ofcom considers that the nature of the content in the cases listed above are relevant to the current case, as set out in the Penalty Guidelines, Ofcom may depart from them depending on the facts and context of the current case. We took into account that, in Kanshi Radio (paragraph 71), the lyrics were explicit, aggressively pejorative, and sustained throughout the entire length of the approximately 11 minute song in circumstances where there had been no compliance checks. By contrast, the caricature in Starz (paragraph 72), although blatantly antisemitic, was displayed as a result of human error for brief periods 22 times over 51 minutes for a total of approximately 7 minutes.
74. In the current case, the antisemitic lyrics were much briefer, being contained within a 20 second segment of a 3-and-a-half-minute track, and the antisemitism was expressed less directly. We

<sup>17</sup> See Ofcom’s Decision: [Sanction 107 \(17\) Kanshi Radio Limited](#).

<sup>18</sup> See Ofcom’s Decision: [Sanction 113 \(19\) Trace UK World Ltd](#).

<sup>19</sup> At the time of broadcast of the material breaching the Code, the licence for Starz was held by CSC, a subsidiary of Columbia Pictures, which held the licence at the time of Ofcom’s breach decision. At the time of Ofcom’s Sanction Decision, the licence was held by Trace.

also took into account that, similarly to Starz, the Licensee has taken various steps to improve its compliance processes and to prevent a recurrence.

75. 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. If a financial penalty was to be so high that its effect would be to close a service down, then it might be disproportionate interference with the Licensee's and the audience's right to freedom of expression in particular.
76. In reaching its Decision on the imposition of a sanction, Ofcom took account of the size and turnover of the Licensee. For its most recent accounting period, the Licensee's unaudited accounts show [REDACTED].
77. We had particular regard to the fact that as a community radio station, Rinse FM is a not-for-profit organisation which is largely staffed by volunteers. We carefully considered the potential impact of a financial penalty on the Licensee's ability to operate the Rinse FM service. In response to Ofcom's request for financial information, the Licensee explained that [REDACTED].
78. Having regard to all the factors above, we considered that it would not be appropriate to impose a financial penalty in this case. We therefore went on to consider whether another form of sanction was appropriate.

*Direction to licensee to take remedial action*

79. 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). This power applies to the holder of a DSP licence by virtue of section 62(10) of the 1996 Act.
80. The purpose of directing a licensee to broadcast a statement of Ofcom's findings in relation to potentially harmful breaches is to remedy the impact on the audience of the material in breach of the Code by informing them of Ofcom's findings and ensuring they are aware of the specific way in which a programme breached the Code.
81. Ofcom considers that directing the Licensee to broadcast a statement of Ofcom's findings is necessary to bring the breaches, and Ofcom's action in response to those breaches, to the attention of Rinse FM's listeners.

**Decision**

82. Ofcom's Decision is that an appropriate and proportionate sanction in the particular circumstances of this case is a direction to broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom.

**Ofcom**

**7 March 2022**