

**Sanction: Decision by Ofcom**

**Sanction: to be imposed on Worldview Media Network Limited**

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**For material broadcast on Republic Bharat on 6 September 2019 at 14:26<sup>1</sup>.**

**Ofcom’s Sanction Decision against:** Worldview Media Network Limited (“Worldview” or “the Licensee”) in respect of its service **Republic Bharat** (TLCS102985BA/1).

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

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to [...] offensive language, [...] discriminatory treatment or language (for example on the grounds of [...] religion or belief [...]).”

Rule 3.2: “Material which contains hate speech must not be included in television [...] 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 television [...] services [...] except where it is justified by the context...”.

**Decision:** To impose a financial penalty payable to HM Paymaster General) of £20,000;

To direct the Licensee not to repeat the programme; and

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

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<sup>1</sup> See material broadcast on Republic Bharat and found in breach of the Code as detailed in Ofcom’s [Decision](https://www.ofcom.org.uk/_data/assets/pdf_file/0035/191888/Poochta-Hai-Bharat,-Republic-Bharat,-6-Sep-19.pdf) (https://www.ofcom.org.uk/\_data/assets/pdf\_file/0035/191888/Poochta-Hai-Bharat,-Republic-Bharat,-6-Sep-19.pdf) published on 24 February 2020 in Issue 397 of the Ofcom Broadcast and On Demand Bulletin.

### **Executive Summary**

1. Republic Bharat is a satellite television channel broadcasting rolling news and current affairs to the Hindi speaking community in the UK, predominantly in the Hindi language. The relevant licence for this station is held by Worldview Media Network Limited.
2. On 6 September 2019 at 14:26 Republic Bharat broadcast *Poochta Hai Bharat*, a daily current affairs discussion programme in Hindi presented by the journalist Arnab Goswami. The debate featured in this episode focused on India's attempt to send the Chandrayaan 2<sup>2</sup> spacecraft to the Moon on 22 July 2019. The debate between Mr Goswami and guest contributors focused on Indo-Pakistani relations. This included discussion of India's record of space exploration and other technological advancements in comparison to Pakistan's, the on-going dispute between Pakistan and India over Kashmir, and Pakistan's alleged involvement in terrorist activities against Indian targets.

### **The Breach Decision**

3. In Ofcom's Decision published on 24 February 2020 in Issue 397 of the Ofcom Broadcast and On Demand Bulletin<sup>3</sup> (the "Breach Decision"), Ofcom's Executive found that this programme contained uncontextualised hate speech and that this content was potentially highly offensive, breaching Rules 2.3, 3.2 and 3.3 of the Code.
4. The Breach Decision set out the broadcast material that was in breach, along with reasoning as to why the material had breached each rule.
5. Ofcom put the Licensee on notice that it considered these breaches to be extremely serious, and that it would consider them for the imposition of a statutory sanction.

### **The Sanction Decision**

6. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences (the "Sanctions Procedures")<sup>4</sup>, Ofcom considered whether the Code breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee, Worldview Media Network Limited. It considered that a sanction is merited in this case since the breaches are serious for the reasons set out in paragraphs 44 to 51 below.
7. This paper outlines Ofcom's final Decision on the type and level of sanction to be imposed on the Licensee, taking into account all the relevant material in this case and Ofcom's Penalty Guidelines (the "Penalty Guidelines")<sup>5</sup>.
8. Ofcom provided the Licensee with the opportunity to make written representations in response to Ofcom's Preliminary View, which the Licensee provided. The Licensee declined the opportunity to make oral representations at a hearing.
9. Having considered the written representations made to us, Ofcom's Decision is that the appropriate sanction is to:

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<sup>2</sup> Mission Chandrayaan-2 (Hindi for "mooncraft") is the second lunar exploration mission of the Indian Space Research Organisation. The spacecraft was launched on its mission to the Moon on 22 July 2019 and was still travelling to the Moon at the time of broadcast.

<sup>3</sup> See footnote 1.

<sup>4</sup> See Ofcom Sanctions Procedures

([https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/71967/Procedures\\_for\\_consideration.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf))

<sup>5</sup> See Ofcom Penalty Guidelines ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/106267/Penalty-Guidelines-September-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf))

- i. impose a financial penalty of **£20,000**;
- ii. direct the Licensee to broadcast a statement of Ofcom's findings on a date and in a form to be determined by Ofcom; and
- iii. direct the Licensee not to repeat the programme.

## **Legal Framework**

### **Communications Act 2003**

10. 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, among 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)).
11. 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 of offensive and harmful material in such services (section 319(2)(f)). This requirement is reflected in Section Two and Section Three of the Code.<sup>6</sup>
12. 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**

13. Under section 6 of the Human Rights Act 1998, Ofcom (as a public authority) has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (the "Convention"). In particular, in the context of this case, Ofcom has taken account of Article 10 of the Convention.
14. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster's freedom to impart and the audience's freedom to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1)). The exercise of these freedoms may be subject only to conditions and restrictions which are "prescribed 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)).

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<sup>6</sup> See also [Guidance Notes for Section Two](https://www.ofcom.org.uk/data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/104657/Section-2-Guidance-Notes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf)) and [Guidance Notes for Section Three](https://www.ofcom.org.uk/data/assets/pdf_file/0021/24258/section_3_2016.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/24258/section\\_3\\_2016.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/24258/section_3_2016.pdf)) of the Code.

15. 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**

16. 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**

17. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code.
18. Accompanying Guidance Notes to each section of the Code are published, and from time to time updated, on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code<sup>7</sup>.
19. The relevant Code rules in this case are set out in full at the beginning of this Sanction Decision.

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

20. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 are observed by the licensee. In the case of a television licensable content service ("TLCS") licence, Condition 6 of the licence requires the Licensee to ensure that provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.
21. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the Act insofar as relevant to the case.
22. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme which was in contravention of a licence condition.
23. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and 5 per cent of the qualifying revenue from the licenced service for the licensee's last complete accounting period falling within the period for which its licence has been in force.
24. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence where a licensee is in contravention of a condition of a TLCS licence or direction thereunder. It is not relevant in this case, as the breach is not ongoing.
25. Section 239 of the Act gives Ofcom a duty to suspend a TLCS licence, pending a decision on whether that licence should be revoked, if satisfied that that the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder; that, in doing so, it has contravened licence conditions; and that the contravention is such as to justify the revocation of the licence. It is not relevant in this case, as the programme did not contain material likely to encourage or to incite the commission of crime.

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<sup>7</sup> See footnote 6.

### Background – The Breach Decision

26. In the Breach Decision, Ofcom found that the material broadcast by the Licensee on Republic Bharat breached Rules 2.3, 3.2 and 3.3 of the Code. The Breach Decision sets out the reasons for each of these findings.
27. In summary, Ofcom’s Breach Decision found that an episode of the programme *Poochta Hai Bharat* contained comments made by the host and some of his guests that amounted to hate speech against Pakistani people, and derogatory and abusive treatment of Pakistani people. The content was also potentially offensive and was not sufficiently justified by the context.
28. This broadcast of *Poochta Hai Bharat* featured a debate between the host, Mr Goswami, and his guests (three Indian and three Pakistani) relating to India’s attempt to send the spacecraft Chandrayaan 2 on its mission to the moon. The debate involved a comparison of India’s space exploration and technological advancements compared to Pakistan, and Pakistan’s alleged terrorist activities against Indian targets. This debate was set against the backdrop of increased tension in the on-going dispute between India and Pakistan over the region of Kashmir which is claimed by both countries.
29. In the programme, the presenter and some of his guests conveyed the view that all Pakistani people are terrorists, including that: *“their scientists, doctors, their leaders, politicians all are terrorists. Even their sports people”; “every child is a terrorist over there. Every child is a terrorist. You are dealing with a terrorist entity”*. One guest also described Pakistani scientists as *“thieves”*, while another described Pakistani people as *“beggars”*. In the context of these criticisms, the presenter, addressing Pakistan and/or Pakistani people, said: *“We make scientists, you make terrorists”*.
30. We considered these statements to be expressions of hatred based on intolerance of Pakistani people based on their nationality alone, and that the broadcast of these statements spread, incited, promoted and justified such intolerance towards Pakistani people among viewers.
31. A third guest, General Sinha said, *“Oh you useless people. Beggars. Oh beggars, oh beggars. We will douse you with 1.25kg, .75kg-, with two inches. PoK<sup>8</sup>, PoK, we are coming to the PoK. We are coming to the Gilgit, Baltistan, in Khyber Pakhtunkhwa... We are going to come, be ready. People in your country are shivering with fear that the Indian army may come. We will barge inside your home in Baluchistan, in Khyber Pakhtunkhwa, in Karachi, in your area, in Multan, in Rawalpindi and kill you. From Lahore, from Karachi to Gilgit-Balistan when we will have control”<sup>9</sup>*.
32. The Licensee suggested that these statements were “figures of speech not intended to be taken literally, which Asian viewers would have understood clearly”. We considered however that these statements, made by a retired Major General from the Indian Army, which clearly threatened that the Indian military would attack Pakistani civilians in their homes, were an expression of hatred and desire to kill by a figure of authority. In our view the broadcast of these statements also promoted hatred and intolerance towards Pakistani people.
33. The Licensee argued that these statements were justified by reference to the political context of heightened tension between India and Pakistan at the time of broadcast, that the programme as a whole was “calling for peace and unity and uplift of the entire region regardless of nationality”, and that the discussion was balanced by the inclusion of some more

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<sup>8</sup> “PoK” is a reference to Pakistan-Occupied Kashmir.

<sup>9</sup> In its written representations on Ofcom’s Breach Preliminary View, the Licensee disassociated itself from these comments on the basis that they were made by the guest General KK Sinha in exchanges with two other guests, and that the presenter was not involved in this discussion.

conciliatory statements in the programme and the participation of guests from both India and Pakistan.

34. Ofcom acknowledged that the programme included one Pakistani guest who expressed the view three times that the success of India's space programme was "*a victory for humanity*" and "*a matter of happiness*". The same guest welcomed any advances by India in technology, in education, in health and in protection of minorities and indicated that Pakistan wished to learn from Indian surgeons and cooperate in sectors such as education and technology. The programme presenter indicated that India's advance in space technology was "*the advancement of the whole world*". We took into account that the Pakistani guests made some strong criticisms of Indian policy and its leaders.
35. However, we considered the inclusion of limited "conciliatory" statements and brief comments which were highly critical of India by Pakistani guests failed to provide sufficient context and challenge. We considered that the overall tone of the discussion was provocative, comparing Pakistanis to donkeys and monkeys. We also noted that Pakistani contributors were repeatedly interrupted and afforded little time to make points which may potentially have provided challenge or context.
36. In Ofcom's view, the statements made in the programme, examples of which are mentioned above, were expressions of hatred based on intolerance of Pakistani people on the basis of their nationality alone, and promoted hatred and intolerance towards Pakistani people. Whilst Ofcom agreed that it was legitimate to discuss Indo-Pakistani relations, we did not accept the Licensee's characterisation of the programme as a whole. We considered it included repeated instances of hate speech and abusive or derogatory treatment. It was therefore our Decision that this content met Ofcom's definition of "hate speech"<sup>10</sup> and that Rule 3.2 was breached.
37. The programme also referred to Pakistani people as "*terrorists*" (even children), "*beggars*", "*thieves*", "*backward*", likened them to donkeys and referred to them as "*Paki*", a racist term that is highly offensive and unacceptable to a UK audience<sup>11</sup>. The Licensee argued that the use of the term "*Paki*" was not intended to be offensive, nor would be interpreted as such particularly when used in the sub-continent. In Ofcom's view, these negative descriptions constituted uncontextualised abuse and derogatory treatment of Pakistani people on the ground of their nationality in breach of Rule 3.3.
38. Our Decision also set out Ofcom's reasons for finding that the programme had the clear potential to be highly offensive to most people. Although discussion of the contentious issue of Kashmir and India-Pakistan relations were legitimate issues for exploration by Republic Bharat, we considered that the audience was unlikely to have expected to view hate speech or abusive or derogatory content relating to Pakistani people broadcast on this channel without sufficient contextual justification. Ofcom's Decision was therefore that Rule 2.3 was also breached.
39. Ofcom stated in the Breach Decision that the contraventions of Rules 2.3, 3.2 and 3.3 of the Code were serious and were therefore being considered for statutory sanction.

#### **Ofcom's 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

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<sup>10</sup> The Code defines "hate speech" as all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation.

<sup>11</sup> See Ofcom's [research](https://www.ofcom.org.uk/data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf) on offensive language ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)). The Licensee argued in written representations on Ofcom's request for comments that the term "*Paki*" is simply a "casual reference" to the nationality of people from Pakistan and was therefore not offensive.

considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.

41. During the investigation of the breaches arising from this episode of *Poochta Hai Bharat*, Republic Bharat wrote to Ofcom highlighting points relevant to whether the breach warranted the imposition of a statutory sanction and, if so, the nature of such sanction. In particular, Republic Bharat said that it had:
  - stopped the broadcast of live debates and discussions around India-Pakistan relations “with immediate effect” to allow all content to be reviewed before broadcast;
  - developed curation processes for content shown to UK viewers to ensure compliance of editorial content; and
  - strengthened briefings for guests appearing on the channel “to ensure they refrain from using derogatory language”.
42. The Licensee said that this is its first breach of Section Three of the Code, apologised to Ofcom for any offence caused to viewers, and said that the breach was unintentional.
43. The Licensee also informed Ofcom that it broadcast an apology to “redress the breaches” and “convey our regret to all our viewers”. It said that the apology was broadcast a total of 280<sup>12</sup> times between 26 February 2020 and 9 April 2020, at all hours of the day. The apology, broadcast in Hindi and English, said:

*“APOLOGY*

*The communications regulator, the Office of Communications, post-viewing the September 6, 2019 episode of Poochta Hai Bharat, found out some offensive words were used in that program which may have disturbed the viewers. Republic Media Network apologizes if those words hurt any religion or particular person.”*

**Serious nature of the breaches**

44. Ofcom’s reasons for finding the breaches were set out in full in our Breach Decision.
45. As stated in the Breach Decision, Ofcom took account of the audience’s and broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights, (“ECHR”). In applying the Code, Ofcom must seek to balance broadcasters’ rights, including freedom of expression, against our duties as regards the protection of audiences.
46. Ofcom also had due regard in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as religion or belief and sexual orientation, and those who do not.
47. Broadcasters may transmit programmes taking a critical view of any subject and may broadcast opinions about these subjects that some viewers may find offensive. However, when broadcasting material of this nature, broadcasters must comply with all relevant rules of the Code.
48. Ofcom regards any breach of Rules 3.2 and 3.3 of the Code as a potentially serious matter because of the potential for such content to cause significant harm and offence.
49. In this case, we were of the view that the breaches were serious given the strength of the statements, which were a sustained and repeated attack on Pakistani people throughout the

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<sup>12</sup> Although the Licensee suggests that the apology was broadcast 280 times, the log of broadcast apologies it provided only listed 279. We therefore considered it more likely that the apology was broadcast 279 times, but did not consider the difference material.

programme. As summarised above and set out in the Breach Decision, we considered this programme to have promoted and justified hatred based on intolerance towards Pakistani people. It contained abusive and derogatory descriptions of Pakistani people without sufficient context or challenge. It was our view therefore that it had the potential to cause serious and widespread offence.

50. In view of the factors set out above, Ofcom went on to consider the case for a statutory sanction and reached the Preliminary View that the breach was serious and warranted the imposition of a statutory sanction. The Licensee was provided a copy of the Preliminary View and provided its written representations to Ofcom on 22 October 2020 and 28 October 2020. These representations are summarised in paragraphs 52 to 69 below.
51. In reaching its final Decision on whether to impose a statutory sanction and if so, the appropriate type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee, including those on the Preliminary View, and has had regard to the Sanctions Procedures and Ofcom's Penalty Guidelines in reaching its Decision.

### **The Licensee's Representations**

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

#### *Compliance failure*

53. Republic Bharat said that it was "deeply concerned" that the programme may have been viewed as containing expressions of hatred based on intolerance of Pakistani people. It said that it had considered the topic of Kashmir and its history would be a topic within audience expectations especially in view of rising tensions between India and Pakistan. Accordingly, the Licensee recognised that it may have "failed in differentiating what content/speech may constitute hate speech" in accordance with the Code.
54. The Licensee emphasised that it broadcast a public apology 280<sup>13</sup> times "to substantiate how apologetic we are". It said that the "particularly heavy rotation of apologies... demonstrates our efforts to convey a deep apology" and that it regretted that the apology was not sufficiently specific and detailed to convey Ofcom's concerns.
55. It therefore said that it "fully accepted" Ofcom's preliminary view to direct the Licensee to broadcast a statement of Ofcom's findings.

#### *Cooperation and compliance measures*

56. The Licensee said that it believed it had cooperated fully with Ofcom's investigation.
57. The Licensee confirmed that the programme was never repeated and that it also was not edited and aired in another format.
58. It said that it has learnt from the "misjudgements made in this programme" and reiterated the measures it has put in place to avoid a repeat contravention, including:
  - a full briefing to senior management and the production team on hate speech and how to identify pejorative statements;
  - suspending the broadcast of live debates, which it had done in respect of 60 programmes between January and September 2020;

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<sup>13</sup> See footnote 13 above.

- introducing pre-broadcast checks to assess and ensure the suitability of content, by placing a delay of several hours between the original production of the programme and broadcast on Republic Bharat;
- undertaking remote briefings with production teams and guests prior to recording to strengthen understanding of how language can be perceived as pejorative;
- introducing broadcast warnings in English and Hindi to be displayed before any programmes where the Licensee anticipates language or imagery may be upsetting to viewers, as it can be difficult to “maintain the flow of a debate when language becomes heated and it is not feasible to edit”.

*Level of sanction*

59. The Licensee argued that the proposed sanction seriously threatened its ability to sustain the Republic Bharat channel.
60. The Licensee reiterated its qualifying revenue, and outlined its running costs per month to meet its satellite and platform commitments [X]. It explained that it did not even cover one month’s costs between its launch in August 2019 and March 2020. Therefore, the Licensee said the company is running at a loss]and said it has experienced a “substantial drop” in revenue as a result of the Coronavirus pandemic.
61. The Licensee said that it understood the purpose of the sanction as a deterrent to both itself and other broadcasters, it said that the sanction should be proportionate to the relevant broadcaster and should not have the effect of forcing closure of the channel. It therefore requested that no financial penalty be imposed.

*Precedent*

62. The Licensee said that it reviewed the precedent cases that Ofcom cited in its Sanction Preliminary View and provided its comments on those assessed since the introduction of rules 3.2 and 3.3 of the Code, noting that it believed these formed the basis for the level of sanction considered by Ofcom.
63. In relation to the precedent set by Kanshi Radio Limited (“Kanshi”), the Licensee noted that it could identify a number of parallels with its case, but that the breach in Kanshi had the potential to cause more harm and danger given its wider reach within the community and across age groups.
64. In relation to Radio Ikhlas Limited (“Radio Ikhlas”), the Licensee again suggested that the impact of the Radio Ikhlas breach had the potential to be more far reaching and harmful. It said that this was because the breach involved a discussion of the beliefs of Ahmadi people in offensive and pejorative terms, whereas the breach in their case took place during a live current affairs debate in which both Indian people and Pakistani people were represented.
65. In relation to Club TV Ltd (for its programme *Media and Islam*) (“Peace TV”), the Licensee noted that no statutory sanction was considered necessary despite involving the broadcast of Islamic teachings containing “un-contextualized hate speech and abusive or derogatory treatment of a religious group”.
66. It acknowledged that each case was different, but that its breach, whilst serious, was not as serious as the “uncontextualized hate speech” or “hate speech which was intended to spread, incite and promote or justify hatred” in the precedent cases it cited.

*Factors in Penalty Guidelines*

67. The Licensee outlined the factors set out in paragraph 12 of the Penalty Guidelines and said that it hoped Ofcom was reassured that it has understood the seriousness of the contravention. It

said that the breach was limited to one instance, did not produce any financial gain, was not deliberate or reckless, and was a first contravention involving hate speech. The Licensee also acknowledged the gravity of its compliance failings, and that it has clearly communicated this to the company and programme suppliers. In particular, it stated that it would continue to apply vigilance when featuring panel discussions on Indo-Pakistani affairs.

*Oral hearing*

68. The Licensee was offered the opportunity to attend an oral hearing to make oral representations in accordance with paragraph 1.25 of Ofcom's Sanctions Procedures. The Licensee declined to attend and indicated that it was satisfied that its written submissions, which we have summarised in this section, covered the points it would wish to make at an oral hearing.
69. It also noted that Ofcom's Penalty Guidelines refer to a discount for early settlement and, taking into account the resources involved for Ofcom in hosting an oral hearing and the difficulties of managing an oral hearing remotely for all parties involved, offered to "settle the case at the written representation stage".

**Imposition of sanctions other than a financial penalty**

*Direction to licensee to take remedial action*

70. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme which was in contravention of a licence condition.
71. The Licensee has broadcast an apology 279 times to its audience which notes that Ofcom found "words" used in the programme to be offensive.<sup>14</sup> While we welcomed this step taken to mitigate the harm that the broadcast may have caused, and recognised that the number of times it was broadcast was very high, Ofcom did not consider that the wording used would have conveyed to the audience the nature of Ofcom's concerns about the programme. We considered it necessary to direct the Licensee to broadcast a statement of Ofcom's findings in order to bring the breaches, and Ofcom's action in response to the breaches, properly to the attention of Republic Bharat's audience.
72. We took into account the Licensee's assurance that the programme has not been repeated. However, in light of the seriousness of the breach, Ofcom nevertheless considered that it should also direct the Licensee not to repeat the programme.
73. It is Ofcom's decision that, on their own, these directions would not adequately reflect the level of seriousness of the breach in this case, or provide adequate deterrence to the Licensee or other broadcasters from repeating similar breaches of the Code in the future. Therefore, in reaching its final Sanction Decision, Ofcom considered that these directions should be combined with another category of sanction, to act as an effective deterrent and to incentivise compliance.

**Imposition of a financial penalty**

74. Ofcom next considered whether it would be appropriate to determine that a financial penalty should be applied in this case.
75. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. The maximum penalty that can be imposed on the holder of a TLCS licence in respect of each contravention of a TLCS licence condition is the greater of either

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<sup>14</sup> See footnote 13.

£250,000 or 5 per cent of the qualifying revenue from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force.

76. For the purposes of determining the maximum penalty in this case, Ofcom requested from Worldview financial data setting out its qualifying revenue for the last accounting period. [X]
77. Based on the figure provided by the Licensee, the maximum penalty that Ofcom could impose in this case was £250,000.
78. Ofcom's Penalty Guidelines<sup>15</sup> 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".
79. In this case, Ofcom considered that a financial penalty is necessary to reflect the serious nature of the Code breaches recorded against the Licensee, and to act as an effective incentive to comply with the Code, both for the Licensee and other licensees (see paragraph 1.4 of the Penalty Guidelines).

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

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

*The seriousness and duration of the contravention*

81. Ofcom regarded the breaches as serious. We were particularly concerned by the fact that the programme broadcast material which included hate speech towards Pakistani people based on their nationality. These statements were broadcast without sufficient challenge and without sufficient context to justify their broadcast. Such material is inherently serious and the seriousness is more pronounced in the context of heightened tensions between India and Pakistan at the time of the broadcast, as described at paragraph 33 above. Based on these factors, we also considered this programme had the clear potential to cause significant offence and harm, in particular to Pakistani people.
82. The Licensee confirmed in its representations on the Preliminary View that the the material has not been repeated following its broadcast on 6 September 2019 (either in the same or edited format), and that it had taken steps to ensure that such incidents would not happen again (albeit only after being contacted by Ofcom about the content).

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

83. The programme contained statements which amounted to hate speech against, and was abusive and derogatory about, Pakistani people on the basis of their nationality. Under the Equality Act 2010, race is a protected characteristic, and race includes both nationality and ethnic or national origins.<sup>16</sup> These statements would potentially be harmful and highly offensive to any person who did not share the sentiment being expressed by the presenter and his Indian guests. In Ofcom's view, the potentially harmful and offensive nature of the content was compounded by the political context in which the episode of *Poochta Hai Bharat* was broadcast. As explained in paragraph 33, the on-going conflict between India and Pakistan over the

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<sup>15</sup> See footnote 5.

<sup>16</sup> See Sections 4 and 9 of the Equality Act 2010.

disputed region of Kashmir had become particularly tense in the months leading up to the broadcast.

84. We considered that the hate speech against the Pakistani people broadcast in this programme without sufficient challenge or context would potentially be particularly harmful in this context, as it had the potential to cause further damage to the already strained relationship between people of Indian and Pakistani origin. As a result, we were of the view that the material posed a risk of harm to the Pakistani community in the UK, and to good relations particularly between members of the UK's Indian and Pakistani communities.

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

85. We have no evidence to suggest that the Licensee made any financial or other gain from these breaches of the Code, and this was confirmed by the Licensee in its representations on Ofcom's Preliminary View on Sanction.

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

86. Ofcom took into account that at the time of the broadcast, the Licensee was already aware, having been notified by Ofcom by telephone call and by email on 21 August 2019, that Ofcom was receiving a number of complaints about the service including in relation to "highly pejorative references to members of the Pakistani community (e.g. continually referring to them as "filthy")". Ofcom asked the Licensee's compliance contact to remind the business of its obligations under the Broadcasting Code. It was therefore our view that appropriate steps were not taken by the Licensee to prevent this contravention.
87. We also considered the Licensee's argument in written representations (see paragraphs 33 and 37 above) that the content was contextually justified and, in the case of its use of the term "Paki", that such language was not offensive. It is open to a Licensee to defend its position robustly in any proceedings brought by Ofcom. However, we considered that the programme was in clear breach of the Code. We considered that the Licensee's argument demonstrated a concerning lack of understanding of what constitutes hate speech for the purposes of the Code and provided further evidence of inadequate compliance processes for identifying potentially harmful material and preventing it from being 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*

88. In its representations, the Licensee stressed that the breaches were not intentional. We have no evidence to suggest the breaches occurred deliberately or with the knowledge of Republic Bharat's senior management. However, as noted above, Ofcom had put the Licensee on notice just over two weeks prior to the broadcast that we were receiving complaints about pejorative references to Pakistani people on the service.

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

89. The breaches consisted of a single broadcast which by its nature was not ongoing. The Licensee only became aware of the potentially serious issue raised by the programme on being alerted to the material by Ofcom on 6 November 2019.
90. As set out in paragraph 41, upon being contacted by Ofcom, the Licensee took some steps to prevent future breaches including stopping live broadcasts of debates, introducing pre-broadcast checks, and a curation processes designed to ensure compliance of editorial content, and strengthening compliance briefings with guests. These measures were reiterated in the

Licensee's representations on Ofcom's Sanction Preliminary View, as outlined in paragraph 58 above.

Any steps taken for remedying the consequences of the contravention

91. In addition to the steps taken to prevent further breaches of the Code as outlined in paragraph 41 and 58 above, we noted that as set out above, the Licensee broadcast a public apology 279 times to viewers of Republic Bharat in relation to the material broadcast (see paragraph 43 and 54 above).
92. We welcomed this apology, which acknowledged that the programme contained "offensive words" with the potential to disturb viewers and hurt "any religion or particular person". However, the content of the programme was not expressly disavowed by the Licensee in its apology, and the way in which it was expressed tended to minimise the nature of the breach. Whilst the apology was broadcast with high frequency over an extended period and would have reached a large audience, the potential to mitigate the consequences of the breach was significantly reduced because the apology was broadcast over five months after the broadcast of the programme and two days after Ofcom published the Breach Decision.

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

93. The Licensee has only been broadcasting since August 2019 in the UK<sup>17</sup>. This was its first recorded breach of the Code or any of the other conditions of its licence.
94. Ofcom has since recorded three further breaches of the Code against the Licensee<sup>18</sup>, one of which also involved a breach of Rules 2.3 and 3.3. Ofcom considered that the number and nature of contraventions within the first year of the Licensee's operations in the UK is concerning.

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

95. Ofcom considered that the Licensee has been broadly cooperative with our investigation.
96. In accordance with paragraph 1.19 of the Penalty Guidelines, we also took into account the Licensee's offer of early settlement in lieu of attending an oral hearing.
97. The process of "discount for a settlement in a regulatory case" referred to in the Penalty Guidelines is that set out in our "Enforcement Guidelines for regulatory investigations"<sup>19</sup> (relating to regulatory requirements applicable to electronic communications networks, postal services and consumer protection), and our "Procedures for investigating breaches of competition-related conditions in Broadcasting Act licences"<sup>20</sup> (relating to enforcement of

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<sup>17</sup> See: <https://www.republicworld.com/india-news/general-news/republics-hindi-channel-r-dot-bharat-starts-broadcasting-in-uk.html>

<sup>18</sup> See Ofcom [Decision](#) published in Broadcast and On Demand Bulletin 395, *News, Republic Bharat*, 20 August 2019 08:47 and 09:21. ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0013/190201/News,-Republic-Bharat,-20-August-2019.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0013/190201/News,-Republic-Bharat,-20-August-2019.pdf)). See Ofcom [Decision](#) published in Broadcast and On Demand Bulletin 403, *The Debate with Arnab Goswami*, 22 October 2019 21:30 ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/195780/The-Debate-with-Arnab-Goswami,-Republic-Bharat,-22-October-2019,-2130.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/195780/The-Debate-with-Arnab-Goswami,-Republic-Bharat,-22-October-2019,-2130.pdf)). See Ofcom [Decision](#) published in Broadcast and On Demand Bulletin Issue 408, *Bullet 100*, 19 February 2020 17:03 ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0007/201130/Bullet-100,-Republic-Bharat,-19-February-2020,-1703.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0007/201130/Bullet-100,-Republic-Bharat,-19-February-2020,-1703.pdf))

<sup>19</sup> See: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf)

<sup>20</sup> See: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/102518/Procedures-for-investigating-breaches-of-competition-related-conditions-in-Broadcasting-Act-licences.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/102518/Procedures-for-investigating-breaches-of-competition-related-conditions-in-Broadcasting-Act-licences.pdf)

competition related conditions in broadcasting licences). Therefore they are not directly applicable to the current case. In essence, therefore, the Licensee's submissions amounted to a request for Ofcom to use its discretion in considering the case to apply a discount to any sanction as an aspect of considering how it had cooperated with the process.

98. We acknowledged that the types of enforcement cases for which we have established a formal settlement process are substantially more resource-intensive for Ofcom to investigate and enforce than broadcast standards cases like the present case, which is the rationale behind the discount for early settlement. The settlement procedures in these types of regulatory investigations involve the subject agreeing to various settlement requirements, which includes an agreement that the subject will not appeal the final penalty. The Licensee did not suggest that it was willing to do this in this case. It submitted that no financial penalty should be imposed.
99. We took into account that resources had already been expended in the course of Ofcom's investigation of this Licensee's breach. This included: assessing the programme against the relevant rules of the Code; considering the Licensee's written representations on the preliminary view on the breach of the Code; and, taking a final decision on the breach of the Code. Ofcom had also used resources in following the sanction procedures, including: preparing and convening the Panel to reach the Sanction Preliminary View; considering the Licensee's further written representations; and, convening the Panel to deliberate on the final sanction in the absence of an oral hearing.
100. Given the above, we considered that the resource savings that Ofcom achieved in not conducting an oral hearing were extremely limited in the context of the investigation as a whole, and that in this case it was therefore not appropriate to apply a discount on the level of penalty.

#### **Precedents**

101. 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.
102. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases.
103. 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 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.
104. Rules 3.2 and 3.3 were introduced by Ofcom in May 2016, following a review of Section Three of the Code. These rules are designed to deal with content such as hate speech, and abusive and derogatory treatment which may not in itself amount to material likely to encourage or incite the commission of crime or to lead to disorder and therefore may not be captured by Rule 3.1 prior to the review, such material would normally have been considered under the harm and offence rules in Section Two, or Section Four of the Code.
105. Accordingly, we have also had regard to comparable breaches of Section Two and Section Four of the Code prior to the introduction of Rules 3.2 and 3.3.
106. The 2016 amendment to the Broadcasting Code, and associated new guidance, were to identify hate speech clearly for broadcasters as a specific category of harm and offence breach. As set out in our decision in Peace TV (Valley of the Homosexuals), considered below, Ofcom has

previously imposed a number of financial penalties in response to similar breaches of the Code. The fact that, notwithstanding the imposition of these penalties, such breaches continue to occur suggests that the level of the previous penalties has not acted as a sufficiently strong incentive to compliance.<sup>21</sup> In the case of Peace TV (Valley of the Homosexuals), Ofcom considered that in order to have a proper deterrent effect, any financial penalty imposed would need to be relatively higher than those imposed in previous similar cases, having regard to all the factors set out in our revised Penalty Guidelines. We considered the same to apply in this case. However, each case must be considered on its own particular facts. Ofcom has a broad discretion in determining the appropriate penalty in any given case.

107. Ofcom notes, in particular, the relevance of the following decisions:

- **23 August 2013, Takbeer TV Limited<sup>22</sup>** – Ofcom imposed a penalty of £25,000 and directed the licensee to broadcast a statement of Ofcom’s findings for breaching Rules 4.1 and 4.2 which require that broadcasters to exercise the proper degree of responsibility with respect of religious programmes and not to subject the views and beliefs of members of particular religions to abusive treatment. This case related to the broadcast of two religious phone-in programmes that subjected members of the Ahmadi community and their beliefs to abusive treatment. We noted that this case involved repeated breaches following similar contraventions in 2011.<sup>23</sup>
- **21 December 2015, Lancaster LLC<sup>24</sup>** – Ofcom recorded a breach of Rule 2.3 but did not consider that the breach warranted the imposition of a statutory sanction. The case related to the broadcast of a religious sermon, recorded in 1985, by evangelical Christian minister Jimmy Swaggart. During one section of the sermon, Mr Swaggart referred: to gay people as “sex perverts”; included homosexuality in a list of practices he described as “filth” (the list also included “incest” and “paedophilia”); and, referred to a Gay Pride Event as “degenerate” and “obscene”. In deciding the case did not warrant a sanction a sanction, we said that the sermon dated from the 1980s and the audience were more likely to perceive the remarks as reflecting outdated views.
- **9 May 2016, Lancaster LLC<sup>25</sup>** – Ofcom recorded breaches of Rules 2.2 and 2.3 and directed the Licensee to broadcast a summary of its findings. The programme in question, *Frances and Friends*, included a live discussion about immigration in Europe, where a presenter made the offensive and misleading statement that all rapes in Sweden were being carried out “not by Swedes, not by Germans, not by Polish people, by Muslims”. The programme included other offensive remarks suggesting that the attitudes and actions of ISIL and its followers were typical of Islam, and that Islam and all practitioners of the Islamic faith were associated with or sympathetic to terrorism. In deciding not to impose a financial penalty, we noted that the remarks were made in a live rather than pre-recorded programme and some limited, but inadequate, contextualisation was provided by a presenter and that a range of steps to improve compliance and prevent a recurrence had been taken.

<sup>21</sup> We noted that since we amended the Code in 2016, we have recorded seven findings of hate speech not involving incitement to crime.

<sup>22</sup> See [Sanction 91\(13\) Takbeer TV Limited](https://www.ofcom.org.uk/data/assets/pdf_file/0017/53414/takbeer.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/53414/takbeer.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/53414/takbeer.pdf))

<sup>23</sup> See [Ofcom Broadcast and on Demand Bulletin, Issue 184, 20 June 2011](https://www.ofcom.org.uk/data/assets/pdf_file/0017/45161/obb184.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/45161/obb184.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/45161/obb184.pdf)), page 14 onwards.

<sup>24</sup> See [Ofcom Broadcast and on Demand Bulletin, Issue 295, 21 December 2015](https://www.ofcom.org.uk/data/assets/pdf_file/0016/50290/issue_295.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/50290/issue\\_295.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/50290/issue_295.pdf)), page 22 onwards

<sup>25</sup> See [Ofcom Broadcast and on Demand Bulletin, Issue 304, 9 May 2016](https://www.ofcom.org.uk/data/assets/pdf_file/0035/49796/issue_304.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0035/49796/issue\\_304.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0035/49796/issue_304.pdf)), page 18 onwards.

- **11 November 2016, Club TV Limited<sup>26</sup>** – Ofcom imposed a penalty of £65,000 on the broadcaster relating to antisemitic content, which was found in breach of Rules 2.1 and 2.3 of the Code. The breach related to two programmes in which recordings of public lectures given by the Islamic scholar, Dr Israr Ahmad, covering the role and actions of Jewish people through history. The programmes included numerous discriminatory remarks about Jewish people, portraying them as a homogenous group and in overwhelmingly negative and stereotypical terms. Ofcom considered that the broadcast had the potential to spread antisemitism (i.e. was a form of hate speech) and to cause harm and offence.
- **20 December 2016, Mohuiddin Digital Television Limited<sup>27</sup>** – Ofcom imposed a penalty of £75,000 on the licensee and directed it to broadcast a statement of Ofcom’s findings for breaches of Rules 2.1 and 2.3. The programme included recordings of a religious festival and featured religious scholars and preachers. One speaker recounted a parable lauding the killing of a Jewish trader as an example of the devotion and obedience of a disciple of the Prophet Mohammed. Ofcom considered that the speaker's comments had the potential to spread antisemitism. In particular, we considered the content portrayed the murder of Jewish people in positive terms, was delivered to a predominantly Muslim audience by a religious scholar, who spoke without his views being challenged or contextualised.
- **25 July 2017, Kanshi Radio Limited<sup>28</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 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, 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.
- **19 December 2018, Radio Ikhlas Limited<sup>29</sup>** – Ofcom imposed a penalty of £10,000 and directed the licensee to broadcast a statement of Ofcom’s findings for breaching Rules 2.3, 3.2 and 3.3. The presenter of a phone-in programme had discussed the beliefs of the Ahmadiyya community in offensive and pejorative terms. Ofcom found that the licensee had failed to identify that the presenter lacked understanding of the Broadcasting Code. Ofcom found that the material constituted hate speech which was intended to spread, incite, promote or justify hatred against Ahmadi people on religious grounds. We considered that the contraventions were at least reckless, as the licensee did not have adequate systems in place to prevent the breaches occurring or to take swift action to mitigate their adverse effects. It failed to monitor its live output on the day of the contravention, and it did not broadcast an apology for over a month after Ofcom had contacted it about the programme. This was the first breach of our rules for hate speech by the licensee.

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<sup>26</sup> See [Sanction 103\(16\) Club TV Limited](https://www.ofcom.org.uk/data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf))

<sup>27</sup> See [Sanction 104 \(16\) Mohiuddin Digital Television Limited](https://www.ofcom.org.uk/data/assets/pdf_file/0022/96124/Noor-TV.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/96124/Noor-TV.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/96124/Noor-TV.pdf))

<sup>28</sup> See [Sanction \(107\)17 Kanshi Radio Limited](https://www.ofcom.org.uk/data/assets/pdf_file/0020/105167/kanshi-radio-sanction-decision.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/105167/kanshi-radio-sanction-decision.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/105167/kanshi-radio-sanction-decision.pdf))

<sup>29</sup> See [Sanction 110 \(18\) Radio Ikhlas](https://www.ofcom.org.uk/data/assets/pdf_file/0015/130344/Radio-Ikhlas-Sanction-Decision.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0015/130344/Radio-Ikhlas-Sanction-Decision.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0015/130344/Radio-Ikhlas-Sanction-Decision.pdf))

- **15 April 2019, City News Network (SMC) Pvt Ltd**<sup>30</sup> – Ofcom imposed a penalty of £75,000 and a direction to broadcast a statement of findings for breaching Rules 2.3, 3.2 and 3.3. A guest featured in two current affairs discussion programmes made a series of unfounded accusations about members of the Ahmadiyya community, including that Ahmadi people had committed acts of murder, terrorism and treason as well as undertaking political assassinations. The same guest made remarks that attributed conspiratorial intent to the actions of the Pakistani authorities towards the Ahmadiyya community and stated they were being favoured in Pakistani society at the expense of orthodox Muslims. Ofcom considered the Licensee had been reckless in inviting the same guest who had made statements constituting hate speech and abusive and derogatory treatment of Ahmadi people to appear in a further live edition of the programme in which they made similar remarks in breach of the Code.
- **27 June 2019, Trace World UK (Starz)**<sup>31</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 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 reshown in rotation with photographs submitted by other viewers. Ofcom took into account that the breach was not deliberate, reckless or repeated, and that the Licensee had deleted the image, broadcast an on-screen apology and improved 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.
- **22 July 2019, Peace TV (Media and Islam)**<sup>32</sup> Ofcom recorded a breach of 2.3, 3.2 and 3.3 but did not consider that the breach warranted the imposition of a statutory sanction. The case related to Islamic teachings and put forward the view that the only acceptable Islamic punishment for people leaving Islam for another religion should be death. Ofcom considered that these sentiments amounted to uncontextualised hate speech and abusive or derogatory treatment of a religious group. However, Ofcom acknowledged that the Licensee had taken steps in an attempt to comply with the Code, by reflecting guidance given by Ofcom in two previous decisions relating to programmes discussing apostasy.
- **22 July 2019, Peace TV (Valley of the Homosexuals)**<sup>33</sup> Ofcom imposed a statutory sanction of £100,000 for breaches of Rules 2.3, 3.2 and 3.3 of the Code. The programme discussed Islamic family values and homosexuality. The presenter, an Imam, made a sustained attack on homosexuality that was not presented with any reference to religious scripture and was expressed in a way which was gratuitously and repeatedly abusive. The licensee had breached the Code in relation to harm and offence a number of times in the past and had (as above, Media and Islam) separately recorded another breach of Rules 2.3, 3.2 and 3.3 of the Code.

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<sup>30</sup> See [Sanction \(111\)19 City News Network \(SMC\) Pvt Ltd](https://www.ofcom.org.uk/data/assets/pdf_file/0017/144332/city-news-network-sanction-decision.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/144332/city-news-network-sanction-decision.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/144332/city-news-network-sanction-decision.pdf))

<sup>31</sup> See [Sanction 113 \(19\) Trace UK World Ltd](https://www.ofcom.org.uk/data/assets/pdf_file/0020/155522/sanction-decision-starz.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/155522/sanction-decision-starz.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/155522/sanction-decision-starz.pdf))

<sup>32</sup> See [Ofcom Broadcast and On Demand Bulletin Issue 383, 22 July 2019](https://www.ofcom.org.uk/data/assets/pdf_file/0024/157830/issue-383-of-ofcoms-broadcast-and-on-demand-bulletin.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/157830/issue-383-of-ofcoms-broadcast-and-on-demand-bulletin.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/157830/issue-383-of-ofcoms-broadcast-and-on-demand-bulletin.pdf)) page 45 onwards.

<sup>33</sup> See [Sanction 127\(19\) Lord Productions Inc Limited](https://www.ofcom.org.uk/data/assets/pdf_file/0039/194979/sanction-decision-lord-production-inc.pdf) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0039/194979/sanction-decision-lord-production-inc.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0039/194979/sanction-decision-lord-production-inc.pdf))

108. We were not persuaded by the Licensee's representations that its case was factually analogous to the Peace TV (Media and Islam) case listed above, and we considered that size and turnover is a relevant factor when considering penalty. 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**

109. As set out in our penalty guidelines, the central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, for both the Licensee in question and licensees generally, having regard to the seriousness of the infringement. 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.

110. We have taken into account the financial data provided by the Licensee on its qualifying revenue for the last accounting period [X]. We have also taken into account the decline in the Licensee's revenue as a result of the Coronavirus pandemic. However, the Licensee continues to operate notwithstanding its representations on its financial situation. [X] We therefore did not consider that the evidence supports the Licensee's submission that the sanction would threaten its ability to operate, and we considered that the level of the sanction was appropriate in the circumstances.

**Decision**

111. 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 **£20,000**.

112. As outlined in paragraphs 96-100 above, we did not consider it appropriate to apply a discount to this financial penalty in view of the Licensee's offer of early settlement.

113. In addition, Ofcom considered that the Licensee should be directed to:

- i. broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom; and to
- ii. not repeat the programme.

114. Given that the Licensee has recorded a number of breaches within a short time, Ofcom is requesting that the Licensee attend a meeting to discuss its compliance arrangements.

**Ofcom**

**22 December 2020**