Sanction: Decision by Ofcom

Imposed on Dama (Liverpool) Limited in respect of its service: Aden Live

For material broadcast between 27 October and 29 October 2010; and 15 November and 16 November 2010¹.

Consideration of Sanction against: Dama (Liverpool) Limited (the “Licensee”) in respect of its service Aden Live (TLCS-1498).

For: Breaches of the September 2010 version of Ofcom’s Broadcasting Code (the “Code”)² in respect of:

Rule 2.4: “Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.”

Rule 5.4: “Programmes in the services (listed above)³ must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.”

Rule 5.11: “In addition to the rules above [Rules 5.1 to 5.10 of the Code inclusive], due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above)⁴ in each programme or in clearly linked and timely programmes.”


² The version of the Code which was in force at the time of the broadcasts took effect on 1 September 2010. All references to the Code in this Decision are therefore references to that version of the Code which can be found at http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code-september-2010/.

³ Rule 5.4 applies to television and radio services except restricted services.

⁴ Rules 5.5 to 5.12 inclusive apply to television programme services, teletext services, national radio and national digital sound programme services.
Rule 5.12: “In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.”

On: 27 October 2010 at 18:20 (16:20 GMT) to 29 October at 19:00 (17:00 GMT); and 15 November 2010 at 10:00 (08:00 GMT) to 16 November 2010 at 10:00 (08:00 GMT)

Decision: To impose a financial penalty (payable to HM Paymaster General) of £10,000; and To direct the Licensee to:

broadcast a statement of Ofcom’s findings in this sanctions case in such form, and to be included in programmes at such times, as Ofcom determine.
Case Summary

1. Aden Live is a general entertainment service broadcast in Arabic. It can be received in the Middle East and some parts of Europe by satellite, but it is not on the Sky Electronic Programme Guide and cannot be received in the UK on normal satellite equipment. At the time of the Broadcasts (see below), it was also streamed on the internet.

2. The service is aimed at the people of South Yemen and includes programmes based on news, political views, South Yemeni culture and entertainment.

3. In Ofcom’s Finding (“the Finding”) published on 10 October 2011 in Broadcast Bulletin 191⁵, the Executive found that material broadcast by the Licensee breached Rules 2.4, 5.4, 5.11 and 5.12 of the Code⁶.

4. The material broadcast that was found in breach of Rules 2.4, 5.4, 5.11 and 5.12 of the Code comprised: songs and poems; information scrolls containing text messages in support of the secession of South Yemen from the Republic of Yemen and/or in support of the Southern Movement in Yemen; images expressing opposition to the Yemeni government; news and current affairs programmes; phone-in programmes; and interviews of a political nature.

5. The material found in breach of the Code was broadcast between 27 October 2010 at 18:20 (16:20 GMT) and 29 October 2010 at 19:00 (17:00 GMT) (“the October 2010 broadcast”); and 15 November 2010 at 10:00 (08:00 GMT) and 16 November 2010 at 10:00 (08:00 GMT) (“the November 2010 broadcast”) (together “the Broadcasts”).

6. In the Finding, Ofcom stated that the contraventions of Rules 2.4, 5.4, 5.11 and 5.12 were serious and that they were therefore to be considered for statutory sanction.

7. The Finding set out six specific examples of broadcast material that were in breach of Rule 2.4⁷. Ofcom found that the material in these examples, taken together, condoned or glamorised: people dying in support of the southern cause⁸; revolt against the Yemeni government; and the carrying of weapons.

8. Ofcom concluded that, given that the Aden Live service directs its broadcasts predominantly to a South Yemeni audience, many of whose members are likely to support the Southern Movement and oppose the Government of Yemen, the material in the six examples could reasonably be considered as material likely to encourage others to copy violent or dangerous behaviour.

9. Highlighting five further examples of broadcast material, Ofcom found that the Broadcasts as a whole were in breach of Rules 5.11 and 5.12⁹.

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⁶ The Finding considered whether the material raised issues with reference to Rule 3.1 which states that “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services”. As set out in the Finding, Ofcom concluded that the material did not contain a call to action which would be likely to incite the commission of crime or lead to disorder and therefore it did not breach Rule 3.1.

⁷ The six examples found to be in breach of Rule 2.4 are set out in the Finding.

⁸ The southern cause being greater rights for South Yemenis and the secession of South Yemen from the Republic of Yemen, see further the Finding.

⁹ The five examples are set out in the Finding.
10. This was because the content and views expressed in the five examples, and in the Broadcasts as a whole (as translated and transcribed for Ofcom), were almost entirely in support of the Southern Movement and the independence of South Yemen, and critical of the Government of Yemen, its policies and its actions.

11. In addition, the views of the Government of Yemen, its supporters and supporters of a unified Yemen were not presented or referred to with due weight in the five examples or in the Broadcasts as a whole (as translated and transcribed for Ofcom).

12. Ofcom also concluded that the Licensee’s views and opinions on the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen (that is on a matter of major political controversy and a major matter relating to current public policy), were expressed in a number of ways and to varying degrees in the output of the channel. This was contrary to the requirements of Rule 5.4.

13. Ofcom is of the view that, despite the Licensee’s assurances prior to licensing that it has “no political agenda, or associations with any political parties, or pressure groups”, the breaches of Rules 5.11 and 5.12 occurred because the Licensee and its senior management sought to use the channel from the start of broadcasting as a platform to support the Southern Movement and the independence of South Yemen without taking steps to ensure the preservation of due impartiality. In Ofcom’s view, the Licensee demonstrated a clear disregard for the requirements of Rules 5.4, 5.11 and 5.12 in its broadcasts.

14. Ofcom also considered that the material included content that, taking into account the context, condoned and glamorised seriously violent or dangerous behaviour and was likely to encourage others to copy such behaviour. Given the context, this was a serious breach of Rule 2.4 of the Code.

Summary of Ofcom’s Sanction Decision

15. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (“the Sanctions Procedures”)10, Ofcom has considered whether these Code breaches are sufficiently serious to warrant the imposition of a statutory sanction on the Licensee. It has decided, for the reasons set out below, that they are.

16. This paper sets out Ofcom’s Decision on the type and level of sanction to be imposed on the Licensee, having taken into account all the evidence and the submissions provided to it by the Licensee and with reference to Ofcom’s Penalty Guidelines (“the Penalty Guidelines”)11.

17. Ofcom has decided, for the reasons set out below, that it would be appropriate and proportionate to impose a financial penalty on the Licensee in the sum of £10,000 (payable to HM Paymaster General) and to direct the licensee to broadcast a statement of Ofcom’s findings in such form, and to be included in programmes at such times, as Ofcom determine.

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Legal Framework

Communications Act 2003

18. In discharging its functions, Ofcom’s principal duty, set out in section 3(1) of the Communications Act 2003 (“the Act”), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure a number of other matters. These include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).

19. 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)); and that the impartiality requirements of section 320 are complied with (section 319(2)(c)).

20. Under section 320 of the Act, Ofcom has a duty to require licensees to observe special impartiality requirements in relation to matters of political or industrial controversy and matters relating to current public policy. These requirements include: the exclusion from programmes of all expressions of the views or opinions of the person providing a service on such matters (section 320(1)(a)); and the preservation of impartiality, in particular in relation to matters of major political or industrial controversy and major matters relating to current public policy (section 320(6)).

21. In performing these duties, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and where relevant, to have regard to a number of other considerations including:

- the need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)).

Human Rights Act 1998

22. In addition to section 3(4)(g) of the Act, under section 6 of the Human Rights Act 1998 there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (“the Convention”).

23. 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) of the Convention). The exercise of these freedoms may be subject only to conditions and restrictions which are “prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for
preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary” (Article 10(2) of the Convention).

24. Ofcom must exercise its duties in light of this right and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

**Ofcom Broadcasting Code**

25. Standards set by Ofcom in accordance with sections 319 and 320 of the Act are set out in the Ofcom Broadcasting Code (“the Code”)\(^\text{12}\).

26. 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\(^\text{13}\).

27. The relevant Code rules in this case are set out in full on the first page of this Decision.

**Remedial action and penalties**

28. 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 the provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.

29. 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 238 of the Act insofar as relevant to the case.

30. 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.

31. 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 for the licensee’s last complete accounting period falling within the period for which its licence has been in force.

32. 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.

**Background – The Finding**

33. In the Finding, the Executive found that material broadcast by the Licensee breached Rules 2.4, 5.4, 5.11 and 5.12 of the Code. The Finding set out:

- six examples of broadcast material that were in breach of Rule 2.4. Ofcom found that the material in these examples, taken together, condoned and in some cases glorified: people dying in support of the southern cause; revolt against the

\(^{12}\) See [http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/](http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/)

\(^{13}\) See [http://stakeholders.ofcom.org.uk/broadcasting/guidance/](http://stakeholders.ofcom.org.uk/broadcasting/guidance/)
government; and the carrying of weapons. In Ofcom’s view, given the context in this case, such content can reasonably be considered material which condones or glamorises violent or dangerous behaviour. Given that the Licensee directs its broadcasts predominantly to a South Yemeni audience, many of whose members are likely to support the Southern Movement and oppose the Government of Yemen, Ofcom concluded that the material in the six examples could reasonably be considered as material likely to encourage others to copy violent or dangerous behaviour.

- that the Broadcasts were in breach of Rules 5.11 and 5.12. Ofcom noted that the content and views expressed in five examples highlighted in the Finding, and in the Broadcasts as a whole (as translated and transcribed for Ofcom), were almost entirely in support of the Southern Movement and the independence of South Yemen, and critical of the Government of Yemen, its policies and its actions. Ofcom also found that the views of the Government of Yemen, its supporters and supporters of a unified Yemen, as providers of alternative significant views, were not presented or referred to with due weight in the five examples or in the Broadcasts as a whole (as translated and transcribed for Ofcom);

- that the views and opinions of the Licensee on the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen (that is on a matter of major political controversy and a major matter relating to current public policy) were expressed in the output of the channel, contrary to the requirements of Rule 5.4.

34. In the Finding Ofcom stated that the contraventions of Rules 2.4, 5.4, 5.11 and 5.12 in this case were serious and that they warranted consideration of a statutory sanction.

**Ofcom’s Decision to Impose a Statutory Sanction**

35. As set out in paragraph 1.10 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.

36. In accordance with its Sanctions Procedures, Ofcom issued a preliminary view (“the Preliminary View”) that the Licensee had seriously breached the Code and that Ofcom was minded to impose a statutory sanction in the form of a financial penalty of £10,000. In addition, Ofcom proposed that the Licensee should be directed to broadcast a statement of Ofcom’s findings, on a date and in a form to be determined by Ofcom. Ofcom sent a copy of the Preliminary View to the Licensee on 6 February 2012, giving the Licensee the opportunity to provide written and oral representations on the Preliminary View. The Licensee acknowledged receipt of the Preliminary View but chose not to provide written representations to Ofcom by the deadline of 27 February 2012 or to accept an invitation from Ofcom to attend a hearing on 6 March 2012 to provide oral representations. The Licensee did not, therefore, provide representations on the Preliminary View to Ofcom. Ofcom did however receive written confirmation on 5 March 2012 that the “service Aden Live is still operational and actively broadcasting on its license”, and confirmation of its monthly and annual income and expenses for the period 1 January 2011 to 31 November 2011.

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14 See the Finding
37. In reaching its final Decision on whether to impose a statutory sanction and, if so, what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the evidence, including the representations made by the Licensee in the course of the investigation leading to the Finding and subsequent correspondence with the Licensee, and had regard to the Sanction Procedures and to Ofcom’s Penalty Guidelines, in reaching its Decision (see further below).

**Seriousness of the breaches**

38. Ofcom considered that the breaches of the Section Five rules (Rules 5.4, 5.11 and 5.12) and Rule 2.4, taken together, were sufficiently serious to warrant the imposition of a statutory sanction for the reasons set out below.

**Rule 5.4**

39. Ofcom is of the view that, despite the Licensee’s assurances prior to licensing that it has “no political agenda, or associations with any political parties, or pressure groups”, the breaches of Rules 5.11 and 5.12 occurred because the Licensee and its senior management sought to use the channel from the start of broadcasting as a platform to present their own views in support of the Southern Movement and the independence of South Yemen.

40. Section 320(1)(a) of the Act requires the exclusion from programmes of the views or opinions of the person providing a licensed service on matters of political and industrial controversy and matters relating to current public policy. This requirement is reflected in Rule 5.4 of the Code and exists to help maintain the due impartiality of a licensed service. Any breach of this rule (which before the Finding had never previously been recorded by Ofcom) must be regarded as potentially serious. This is because it shows - as in this case - that the due impartiality of a licensed service has been compromised by the views of the licence holder on a matter of political or industrial controversy or a matter of current public policy being included in the service. Ofcom considers that to preserve due impartiality and maintain the editorial independence of the service, it is a fundamental principle that the services it licenses must not be used by licence holders as platforms for their views on matters of political or industrial controversy or current public policy.

41. During the process of applying for its licence, the Licensee sought to reassure Ofcom of its non-political purpose by making the following statement: “we have no political agenda, or association with any political parties, or pressure groups”. Further, in representations to Ofcom during the course of the investigation leading to the Finding, the Licensee advised Ofcom that “the previous or current Directors of the Company have no political association with any body”.

42. However, as noted in the Finding, Ofcom considered that the Licensee’s views and opinions on the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen (that is on a matter of major political controversy and a major matter relating to current public policy), could reasonably be inferred from the contents of its website and its representations and that those views and opinions were, in turn, expressed in a number of ways and to varying degrees in the output of the channel, contrary to the requirements of Rule 5.4.

43. In Ofcom’s view, despite assurances offered during the licence application process, the Licensee, very shortly after being issued with the licence, demonstrated a clear disregard for the requirements of Rule 5.4 in its broadcasts. It did not ensure that the service was editorially independent in terms of its coverage of matters of political controversy and of
current public policy, but instead used the service as a platform for its own views on a
matter of major political controversy and a major matter of current public policy.

44. Rule 5.4 prohibits the broadcast of a licensee’s own views and opinions on any matter of
political and industrial controversy and any matter relating to current public policy. In
considering the seriousness of this case, as well as the factors referred to above, Ofcom
took into account that the breach related to a matter of major political controversy and a
major matter relating to current public policy.

45. In addition, Ofcom considered this breach of Rule 5.4 was serious because it was not
contained in an isolated programme or a particular series of programmes. The Licensee
used the service to broadcast its political views in programmes broadcast at various
times on this channel, over a 48 hour period in the October 2010 broadcast and a 24
hour period in the November 2010 broadcast, as set out in the Finding.

Rules 5.11 and 5.12

46. Breaches of Rules 5.11 and 5.12 are considered to be potentially more serious because
they relate to major matters of political controversy or current public policy. The
obligations on licensees to take measures to preserve due impartiality are
correspondingly more onerous where Rules 5.11 and 5.12 are applicable. In this case
the major matter of political controversy and major matter relating to current public policy
was the contemporaneous political situation in Yemen, including the policies and actions
of the Government of Yemen.

47. The breaches of Rules 5.11 and 5.12 in this case were serious because they were not
contained – as are most contraventions of these rules – in an isolated programme or a
particular series of programmes, but they occurred in programmes broadcast at various
times on this channel, over a 48 hour period in the October 2010 broadcast and a 24
hour period in the November 2010 broadcast. As detailed in the Finding, the content and
views expressed in the Broadcasts were almost entirely in support of the Southern
Movement and the independence of South Yemen, and critical of the Government of
Yemen and its policies and actions.

48. In considering this case, Ofcom has had due regard to the Licensee’s representations,
made during the course of the investigation leading to the Finding, that severe
restrictions are placed on freedom of expression in South Yemen and that Aden Live
acts as an “essential counterpoint” to other Yemeni channels. Ofcom recognises the
importance of freedom of expression and has taken it into account in reaching its
decision in this case. In addition, in considering the requirements for due impartiality and
what is ‘due’, Ofcom has had regard to the context, in particular that the Licensee directs
its service to the people of South Yemen (those living in South Yemen and South
Yemenis elsewhere), and will therefore want to broadcast the views and concerns of the
people of South Yemen, including of those that seek secession from Yemen. However,
as noted in the Finding, when dealing with matters of major political and industrial
controversy and major matters relating to current public policy the Licensee must still
comply with the requirements of due impartiality including the specific requirements of
Rules 5.11 and 5.12. In this case, the Licensee did not preserve due impartiality in the
Broadcasts but instead adopted a partisan approach.

49. The Licensee was awarded its TLCS licence on 22 September 2010. Ofcom sought
reassurance from the Licensee, before awarding the licence, regarding the requirement
to comply with the due impartiality rules set out in Section Five of the Code. The
Licensee confirmed that it was “fully aware of Section Five of the Broadcasting
Code...We will insure [sic] that we fully comply with this section, specifically with section
5.5-5.12”. Nonetheless, it is Ofcom’s view that the Broadcasts, transmitted from a date about one month after this assurance was given to Ofcom (in October and November 2010), contained content which demonstrated that the Licensee had failed to apply the rules in Section Five.

50. In Ofcom’s view the breaches of Section Five of the Code recorded in the Finding were particularly serious because they not only illustrated poor compliance management by the Licensee but also indicated that the Licensee had a clear disregard for the due impartiality requirements set out in the Code, which it had previously and explicitly confirmed to Ofcom that it was “fully aware” of and would “fully comply” with. Once the service was licensed to broadcast, the Licensee sought to use the Aden Live service from the start of broadcasting as a platform to present the Southern Movement and the independence of South Yemen without taking steps to ensure the preservation of due impartiality.

Rule 2.4

51. In this case, for the reasons summarised above and set out in the Finding, Ofcom found that the Licensee breached Rule 2.4 by transmitting material which, taking into account the context, condoned or glamorised violent or dangerous behaviour and was likely to encourage others to copy such behaviour.

52. In Ofcom’s view, the behaviour condoned or glamorised by the material – death in support of a cause, revolt against a government and the carrying of weapons – is seriously violent or dangerous behaviour.

53. The context in this case is significant. The Licensee directs its broadcasts predominantly to a South Yemeni audience, many of whose members are likely to be sympathetic to the southern cause and opposed to the Government of Yemen. It has been reported that demonstrations in South Yemen have often met a harsh response from the Government of Yemen, and that there has been violence at some demonstrations and in some cases armed clashes.

54. Ofcom does not have evidence of the effect of the material on the audience. However for the reasons given in the Finding, it considers that the broadcast material was likely to encourage members of the audience to copy the seriously violent or dangerous behaviour described above. Taking into account the particular context in which the material was broadcast and its target audience, Ofcom considered that the breach of Rule 2.4 was a serious one because the material was broadcast on a service which failed to maintain an appropriate editorial distance from the events it was reporting, and which was used as a platform for the views and opinions of those providing the service in support of the Southern Movement and the secession of South Yemen, as indicated by the breaches of Rules 5.4, 5.11 and 5.12.

Licensee’s representations

55. The Licensee chose not to provide written or oral representations on the Preliminary View.

Imposition of Sanctions

56. In conclusion, in view of the factors set out above, Ofcom considered that the breaches were sufficiently serious to warrant the imposition of a statutory sanction. As mentioned
in paragraphs 30 and 32 above, Ofcom’s powers to take action are set out in sections 236 to 238 of the Act insofar as relevant to the present case.

Consideration of Remedial Actions and Penalties

57. 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.

58. It is Ofcom’s view that a direction not to repeat the programmes found in breach would not be an appropriate or sufficient sanction in all the circumstances, since this case is not just concerned about particular programmes but more fundamentally with the overall content and editorial stance of the service.

59. Ofcom considers that on its own, a direction to broadcast a statement of Ofcom’s findings in this sanctions case is not a sufficient statutory sanction, given the seriousness of the breaches in this case. Such a statement by itself would not act as an effective disincentive to discourage the Licensee from repeating similar breaches of the Code or other licensees from contravening the Code in a similar manner.

60. Ofcom considered that, for the reasons set out in this paper, the breaches were sufficiently serious that it was appropriate to impose a financial penalty. It was decided that a direction to broadcast a statement of Ofcom’s findings, in combination with a financial penalty, would act as an effective deterrent to discourage the Licensee from repeating the sanctionable conduct or content and other licensees from contravening the Code in a similar manner.

61. In light of the above, and taking into account the broadcaster’s right to freedom of expression and the information currently available, Ofcom’s Decision is that it would not be proportionate to recommend revocation of the Licence as an appropriate statutory sanction in respect of the current breaches under consideration.

Imposition of a financial penalty

62. Under section 237 of the Act, the maximum level of financial penalty that can be imposed on the holder of a TLCS licence in respect of each breach of a TLCS licence is £250,000 or five per cent of the licensee’s qualifying revenue relating to its last complete accounting period falling within the period for which its licence has been in force, whichever is greater.

63. Qualifying revenue is calculated by adding together revenue gained from advertising, sponsorship and subscription. It does not include revenue gained from interactive services, such as premium rate phone calls.

64. Under the Penalty Guidelines, in determining the extent to which a level of any penalty is proportionate, Ofcom must take into account the size and turnover of the regulated body.

65. Ofcom contacted the Licensee to request information relating to the Licensee’s revenue and turnover. The Licensee advised Ofcom through its legal representatives that its programmes generate no revenue falling within the definition of qualifying revenue. For the purposes of this sanctions process Ofcom was not able to verify these submissions. Notwithstanding this, it was clear to Ofcom that the maximum financial penalty Ofcom could impose on the Licensee was £250,000.
66. The Licensee did provide a schedule of income and expenditure for the period January 2011 to November 2011. However, the Licensee had represented that if financial data was being requested by Ofcom with a view to imposition of a fine, it considered a fine to be “entirely disproportionate”.

67. Ofcom’s Penalty Guidelines state 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.” In reaching its Decision, Ofcom has taken full account of the need to ensure that any penalty acts as a deterrent and has also taken account of the specific factors set out at paragraph 4 of the Penalty Guidelines.

Factors taken into account in determining the amount of a penalty

68. In considering the appropriate amount of a financial penalty for the Code breaches, Ofcom took account of relevant factors in accordance with the Penalty Guidelines, as set out below. In particular, Ofcom considered the extent to which any penalty would act as a deterrent to future contraventions of the Code by the Licensee.

Deterrence

69. Ofcom considered that a financial penalty was necessary to ensure not only that the Licensee fully understands the serious nature of the Code breaches recorded against it, but implements all necessary improvements to ensure compliance with the Code in future. Ofcom also considered that a financial penalty was necessary to send a message to other licensees underlining the need to understand and respect the Code, and in particular the rules on due impartiality.

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

70. It was not possible to point to any specific actual harm to viewers or consumers caused by the contraventions of Section Five of the Code. However, it is Ofcom’s view that material which is not duly impartial and editorially independent is potentially harmful to viewers, and that this is particularly the case given the Yemeni political context described in the Finding.

71. Ofcom does not have evidence of actual harm caused by the breach of Rule 2.4. However, it considers that the material found in breach condoned or glamorised death in support of a cause, revolt against a government and the carrying of weapons, and that taking into account the particular context, it was likely to encourage others to copy such behaviour, which Ofcom considers seriously harmful behaviour.

72. With regard to the degree of harm caused by the breach of Rule 2.4, the Licensee noted that “Ofcom has found no breach of the (presumably more serious) Rule 3.1”. It has also pointed out, during the course of the investigation leading to the Finding, that Ofcom found that the Broadcasts did not contain a call to action which would be likely to encourage or incite the commission of crime or lead to disorder, yet still found that the material could reasonably be considered as material likely to encourage others to copy violent or dangerous behaviour, and that Ofcom reached this finding notwithstanding the need to have regard to generally accepted standards, which the Licensee said were presumably those of the likely audience for the broadcasts (i.e. South Yemenis). The
reasons why Ofcom found a breach of Rule 2.4 and not Rule 3.1, and Ofcom’s view of how generally accepted standards apply in this case, are set out in the Finding.

The duration of the contravention

73. Ofcom noted in the Finding that the recorded breaches were in relation to material broadcast over a 48 hour period between 27 October 2010 and 29 October 2010; and a 24 hour period between 15 November 2010 and 16 November 2010.

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

74. We have no evidence to show whether or not the Licensee made any financial gain from these breaches of the Code. However, we note that requests for funds were made during the Broadcasts (see examples seven and ten as set out in the Finding).

Any steps taken for remedying the consequences of the contravention

75. Ofcom noted in the Finding that the Licensee had sought to reassure Ofcom that it was “now well aware of the need for due impartiality in its broadcasts, and is taking steps to address this going forward”. The Licensee did not however provide Ofcom with evidence of any concrete steps it had taken to improve its compliance.

76. In addition, as noted in the Finding, the Licensee accepted in its representations that some of the material in the examples found in breach of Rule 2.4 was “probably not appropriate” and was “unwise”, and assured Ofcom that the material would not be rebroadcast.

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

77. The breaches in this case are the first breaches of the Code recorded against the Licensee.

78. This point was highlighted by the Licensee’s legal representatives in a letter to Ofcom dated 9 December 2011 (before the Licensee was advised of the proposed financial penalty set out in the Preliminary View), which stated that imposition of a fine “would seem to be entirely disproportionate in respect of a first “offence” where our clients accepted that improvements were necessary”.

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

79. The Licensee advised Ofcom before the award of the licence that it was “fully aware” of the requirements of Section Five of the Code and would ensure full compliance with this section. It stated that: “We put great efforts into insuring our programs comply with Ofcom broadcasting code of practise [sic]”. The Licensee confirmed on 21 March 2011, during the course of the investigation leading to the Finding, that it reviewed material prior to broadcast to ensure compliance with the Code.

80. However, as set out above, in Ofcom’s view one of the principal reasons why the Code breaches in the Finding were serious was because they did not only illustrate poor compliance management by the Licensee, but indicated that the Licensee had a clear disregard for the due impartiality requirements set out in the Code and, from the outset, sought to use the Aden Live service as a platform to present the Southern Movement
and the independence of South Yemen without taking steps to ensure the preservation of due impartiality.

The extent to which the contravention occurred intentionally or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur.

81. Ofcom considers that the views and opinions of the Licensee on the contemporaneous political situation in Yemen including the policies and actions of the Government of Yemen (a matter of major political controversy and a major matter relating to current public policy), as indicated by its representations and the content of its website, were clearly supportive of the Southern Movement and opposed to the Government of Yemen. Ofcom recorded a breach of Rule 5.4 because it found that these views and opinions were expressed in a number of ways and to varying degrees in the Broadcasts.

82. Ofcom is of the view that, despite the Licensee’s assurances prior to licensing that it has “no political agenda, or associations with any political parties, or pressure groups”, the breaches of Rules 5.11 and 5.12 occurred because the Licensee and its senior management sought to use the channel from the start of broadcasting as a platform to support the Southern Movement and the independence of South Yemen without taking steps to ensure the preservation of due impartiality. Ofcom notes in this regard, as set out in the Finding, that the Licensee considered the service “an essential counterpoint” to other broadcast services in Yemen, which it described as biased towards the North of the country and the Yemeni government.

83. Ofcom has given due regard to the Licensee’s representations that severe restrictions are placed on freedom of expression in South Yemen. Ofcom has also taken into account that the Licensee directs its service to the people of South Yemen (those living in South Yemen and South Yemenis elsewhere), and will therefore want to broadcast the views and concerns of the people of South Yemen, including of those that seek secession from Yemen. However, as noted in the Finding, the Licensee must nevertheless comply with the requirements of due impartiality, including the specific requirements of Rules 5.4, 5.11 and 5.12. This is a fundamental requirement of all Ofcom licensed services.

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

84. As recorded in the Finding, the Licensee sought to reassure Ofcom that it was now “well aware” of the need for due impartiality in its broadcasts and it was “taking steps to address this going forward”. However, the Licensee has not informed Ofcom of any specific steps it has taken.

The extent to which the level of penalty is proportionate, taking into account the size and turnover of the regulated body.

85. As explained in paragraphs 62 to 66 above, and in accordance with section 237(4) of the Act, Ofcom requested information relating to the Licensee’s Qualifying Revenue for the most recent complete accounting period. The Licensee did not consider that the service generated any Qualifying Revenue.

86. Ofcom therefore considered the Licensee’s income and expenditure figures for the period January to November 2011, as supplied by the Licensee. Based on these figures, Ofcom considered that a penalty of £10,000 would be proportionate taking into account all the relevant factors and circumstances of this case, including: the need to achieve
the appropriate level of deterrence, the fact that this is the first sanction imposed on Aden Live by Ofcom, and the serious nature of the breaches in this case.

**Precedent**

87. In accordance with the Penalty Guidelines, Ofcom has also had regard to relevant precedents set by previous cases.

88. In this instance, there are no direct precedents in terms of sanction, because this is the first occasion on which Ofcom has considered breaches of Rule 2.4 or Rule 5.4 for a sanction. However some previous sanctions cases have related to breaches of Section Five (in particular Rule 5.12) and Section Six (which cross refers to Section Five) so the following two cases may have some relevance to the present case.

89. **31 July 2007, Islam Channel**\(^{15}\) - This case concerned: breaches of Rule 6.6 in relation to 20 separate programmes when the Respect Party electoral candidate Yvonne Ridley hosted her own programme *The Agenda with Yvonne Ridley*; two breaches of Rule 5.5 and one breach of 5.12 in relation to *The Agenda with Yvonne Ridley*; four breaches of Rule 6.6 and breaches of Rule 6.8 and 6.9 in relation to the programmes *Politics and the Media*; and a breach of Rule 5.12 in relation to *Jerusalem: A Promise of Heaven*. Here Ofcom imposed a fine of £30,000 and a direction to broadcast a statement of Ofcom’s findings for breaches of Rule 6.6, Rule 6.8, Rule 6.9, Rule 5.5, Rule 5.12 and Licence Condition 11 (failure to provide a recording to Ofcom).

90. **8 December 2008, Talksport Limited**\(^{16}\) - This case concerned comments made by the presenter James Whale on *The James Whale Show* regarding candidates for the London Mayoral Elections which encouraged listeners to vote for Boris Johnson. The case related to an election and therefore Section Six of the Code applied. For this serious breach of Rule 6.1 of the Code, which provides that “the rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums”, Ofcom imposed on Talksport a penalty of £20,000 and a direction to broadcast a statement of Ofcom’s findings.

91. Ofcom is satisfied that the level of penalty proposed in this case is not inconsistent with the precedent cases, noting that these are not direct precedents and taking due account of the factors outlined in the Penalty Guidelines and the seriousness of the breaches in this case.

**Cooperation**

92. In accordance with the Penalty Guidelines, Ofcom may increase the penalty where a licensee has failed to cooperate with Ofcom’s investigation.

93. In Ofcom’s view, the Licensee has offered some cooperation. For example, in the course of the investigation leading to the Finding it: provided full representations in response to Ofcom’s formal requests for information relating to the material broadcast and the service in general; and it has expressed a willingness to take steps to remedy its failure

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\(^{15}\) See: Islam Channel Sanction Decision, 31 July 2007  

\(^{16}\) See: Talksport Sanction Decision, 8 December 2008  
[See: http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/talksport.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/talksport.pdf)
to apply Section Five on due impartiality. Ofcom does not therefore consider it appropriate to increase the penalty on account of a failure to cooperate in this case.

94. However, in the absence of representations relating to the Preliminary View, Ofcom is directing the Licensee to provide information to Ofcom (details of which will be determined by Ofcom), including about the Licensee’s compliance procedures and arrangements in order to satisfy Ofcom that they are appropriate, and is asking the Licensee to attend a meeting with Ofcom to explain and discuss the same.

Conclusion

95. Ofcom concluded that the Code breaches by the Licensee were serious for the reasons set out in this Decision.

96. Having regard to all the factors referred to above and all the representations from the Licensee, Ofcom concluded that an appropriate and proportionate sanction would be a financial penalty of £10,000. In addition, Ofcom decided that the Licensee should be directed to broadcast a statement of Ofcom’s findings in such form, and to be included in programmes at such times, as Ofcom determine.

8 May 2012