

## Sanction: Decision by Ofcom Imposed on Al Ehya Digital Television Limited

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For the broadcast of the programme *Saturday Night Special* on 13 November 2010.

### Consideration of Sanction against:

Al Ehya Digital Television Limited (“the Licensee”) in respect of its service **Noor TV** (TLCS-1049).

### For:

Breaches of Ofcom’s September 2010<sup>1</sup> Broadcasting Code (“the Code”) in respect of:

Rule 2.1: “Generally accepted standards must be 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 harmful and/or offensive material.”

Rule 2.2: “Factual programmes or items or portrayals of factual matters must not materially mislead the audience.”

Rule 4.6: “Religious programmes must not improperly exploit any susceptibilities of the audience.”

Rule 10.3: “Products and services must not be promoted in programmes. This rule does not apply to programme-related material.”

Rule 10.15: “Broadcasters may broadcast appeals for donations to make programmes or fund their service. The audience must be told of the purpose of the donation and how much has been raised as a result of the appeal. All donations must be separately accounted for and used for the purpose for which they were donated.”

**On:** 13 November 2010

### Decision:

To impose a financial penalty (payable to HM Paymaster General) of **£75,000** in respect of the Code breaches by the Licensee;

To consider issuing a Direction requiring the Licensee to establish a separate account for monies received as a result of the broadcast of appeals for funds to make

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<sup>1</sup> The version of Ofcom’s Broadcasting Code which was in force at the time of the broadcast took effect on 1 September 2010<sup>1</sup>. All references to the Broadcasting Code in this Sanctions Decision are therefore to that version of the Code, which can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code-september-2010/>.

programmes or fund the service in order to facilitate compliance with Rule 10.15, and to provide Ofcom with evidence of this; 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.

## **Summary**

1. For the reasons set out in paragraphs 33 to 105, Ofcom has decided to impose statutory sanctions on the Licensee.
2. Noor TV is a general entertainment and Islamic education channel broadcast on the Sky platform. The channel is aimed at Muslims living in Europe. The channel appears in the International section of the Sky EPG and is currently at channel number 819.
3. *Saturday Night Special* was a programme which mainly consisted of a presenter taking calls from viewers who donated money to the channel in return for prayers for themselves or for their relatives.
4. In Ofcom's Finding published in Broadcast Bulletin 184 on 20 June 2011, the Executive found the programme had breached the following Code rules:
  - 2.1: (generally accepted standards)
  - 2.2: (materially misleading)
  - 4.6: (the exploitation of susceptibilities of the audience by religious programmes)
  - 10.3: (promotion of products and services)
  - 10.15: (appeals for funds)
5. In Ofcom's view, the inducements which were made in this programme, i.e. the receipt of a "special gift" for a donation of £1,000, and the offer of a prayer that would improve the donor's health, wealth, success or good fortune carried the risk that susceptible members of the audience may have been persuaded to donate money to Noor TV when they would not otherwise have done so. In particular, the appeal focused heavily on religious beliefs, which Ofcom considered had created an additional risk that susceptible viewers would have been more likely to make donations than they otherwise would have done, in breach of Rules 2.1 and 4.6.
6. Ofcom found that Noor TV had not separately accounted for the donations viewers had made as a result of the appeal for funds, as required by Rule 10.15.
7. Ofcom was also extremely concerned that although viewers were told that their donations were for the purpose of funding Noor TV's programming, the funds donated via the Mohiuddin Trust website, were not in fact received by Noor TV and therefore were not used for their stated purpose, in breach of Rules 2.2 and 10.15.
8. Ofcom also found the programme in breach of Rule 10.3 of the Code for promoting a DVD during the programme.

## **Summary of Ofcom's Sanctions Decision**

9. Ofcom decided that this case was sufficiently serious to be considered for a statutory sanction.

10. After considering all the evidence and all the representations made to it by the Licensee, Ofcom decided that the Code breaches were so serious that a financial penalty should be imposed in accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences ("Sanctions Procedures")<sup>2</sup>. Ofcom then also considered the level of the fine to be imposed, in accordance with Ofcom's Penalty Guidelines<sup>3</sup>.
11. Having regard to the serious nature of the breaches, and having regard to the Licensee's representations and Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£75,000** on the Licensee in respect of the Code Breaches (payable to HM Paymaster General).
12. Ofcom also deemed it appropriate and proportionate in the circumstances, to consider issuing a Direction requiring the Licensee to establish a separate account for monies received as a result of the broadcast of appeals for funds to make programmes or fund the service, in order to facilitate compliance with Rule 10.15, and to provide Ofcom with evidence of this.
13. In addition, Ofcom decided to direct the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom.

## **Legal Framework**

### **General**

14. In discharging its functions, Ofcom's principal duties set out in section 3(1) of the Communications Act 2003 ("the Act") are to further the interests of citizens in relation to communications matters and the interests of consumers and to secure a number of other matters. These include the application in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
15. Ofcom has a specific duty under section 319 of the Act to set standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives. The standards objectives are set out in section 319(2) of the Act. They 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)).
16. In performing these duties, Ofcom is also 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)); and

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/854750/statutory-sanctions.pdf>

<sup>3</sup> <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

- the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3(4)(h)).

### **The Human Rights Act 1998**

17. 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 of Human Rights (“the Convention”).
18. Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to “impart information and ideas” and also the audience’s “right to receive information and ideas without interference by public authority” (Article 10(1) of the Convention). Such rights may only be restricted if the restrictions are: “prescribed in law and 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).
19. Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights 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.

### **The Code**

20. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code.
21. 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.
22. The relevant Code rules in this case are set out in full on the first page of this Decision.

### **Remedial action and penalties**

23. Under section 325 of the Act, every programme service licensed under the Broadcasting Act 1990 or 1996 (“a Broadcasting Act Licence”) includes conditions for securing that the standards set by Ofcom under section 319 are observed. If Ofcom is satisfied that the holder of a Broadcasting Act Licence has contravened a condition of the Licence, it may impose the sanctions set out below where the relevant licence is a Television Licensable Content Service (“TLCS”) licence.
24. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or statement of findings (or both) or not to repeat a programme on contravention of a Licence condition.
25. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence of a maximum of whichever is the greater of £250,000 and 5 per cent of its qualifying revenue on each occasion that a breach of the Licence has occurred (whether as a result of a breach of the Code or another Licence condition). Ofcom may therefore impose a financial penalty on each occasion that a programme has breached the Code.

26. 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.

### **Code Breaches**

27. *Saturday Night Special* was a programme which mainly consisted of a presenter taking calls from viewers who donated money to the channel in return for prayers for themselves or for their relatives.
28. In Ofcom's Finding published in Broadcast Bulletin 184 on 20 June 2011, the Executive found the programme had breached the following Code Rules:
- 2.1: (generally accepted standards)
  - 2.2: (materially misleading)
  - 4.6: (the exploitation of susceptibilities of the audience by religious programmes)
  - 10.3: (promotion of products and services)
  - 10.15: (appeals for funds)
29. In Ofcom's view, the inducements which were made in this programme, i.e. the receipt of a "special gift" for a donation of £1,000, or the offer of a prayer that would improve the donor's health, wealth, success or good fortune carried the risk that susceptible members of the audience may have been persuaded to donate money to Noor TV when they would not otherwise have done so. In particular, the appeal focused heavily on religious beliefs, which Ofcom considered had created an additional risk that susceptible viewers would have been more likely to make donations than they otherwise would have done, in breach of Rules 2.1 and 4.6.
30. Ofcom found that Noor TV had not separately accounted for the donations viewers had made as a result of the appeal for funds, as required by Rule 10.15.
31. Ofcom was also extremely concerned that although viewers were told that their donations were for the purpose of funding Noor TV's programming, the funds donated via the Mohiuddin Trust website, were not in fact received by Noor TV and therefore were not used for their stated purpose, in breach of Rules 2.2 and 10.15.
32. Ofcom also found the programme in breach of Rule 10.3 of the Code for promoting a DVD during the programme.

### **Ofcom's decision to impose a statutory sanction**

33. As set out in the Sanctions Procedures the imposition of a statutory 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.
34. In this case, Ofcom issued a preliminary decision ("Preliminary View"), that the Licensee had seriously breached the Code and that a statutory sanction should be imposed. Ofcom sent a copy of the Preliminary View to the Licensee on 3 August 2011, indicating that it was minded to impose a financial penalty of £75,000. The Licensee was given the opportunity to provide written and oral representations on the Preliminary View. The Licensee provided its written representations ("Written Representations") to Ofcom on 10 August 2011 which are summarised below. The Licensee did not respond to Ofcom's invitation for it to make oral representations on the Preliminary View.

35. In reaching its final decision, Ofcom is not bound by the Preliminary View. Ofcom therefore has taken into account all the evidence and representations from the Licensee, and has had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines.

### **Seriousness of the breaches**

36. In its Preliminary View, Ofcom considered that viewers should not be invited to make a donation in return for anything other than to make programmes or the provision of the service. Further, appeals for funds should not improperly exploit the susceptibilities of the audience. Ofcom considered that vulnerable people, such as those experiencing financial or emotional difficulties, may be unduly encouraged to give donations. In particular, Ofcom considered it unacceptable for a Licensee to persuade viewers to donate money on the basis of inducements such as offering a prayer for or on behalf of the donor; the promise of better health; or that a religious figure will create further wealth for donors or take particular care of donors.
37. In Ofcom's Preliminary View, the inducements which were made in the programme, i.e. the receipt of a "special gift" for a donation of £1,000, or the offer of a prayer that would improve the donor's health, wealth, success or good fortune carried a material risk that susceptible members of the audience may have been persuaded to donate money to Noor TV when they would not otherwise have done so. In particular, the appeal focused heavily on religious beliefs, which Ofcom considered had created an additional risk that susceptible viewers would have been more likely to make donations than they otherwise would have done.
38. Ofcom was extremely concerned that the Licensee had not separately accounted for the donations viewers had made as a result of the appeal for funds, as required by Rule 10.15. Viewers' donations were not appropriately accounted for by the Licensee, which made it impossible to quantify the level of financial harm that might have occurred. In addition, the Licensee was unable, and appeared to be unwilling, to demonstrate to Ofcom how it had spent the funds. In particular, it was a matter of significant concern to Ofcom that the Licensee was not able to provide Ofcom with any documentary evidence of its expenditure following the appeals, for example in relation to its satellite link-up with Medina.
39. Ofcom was also extremely concerned that although viewers were told that their donations were for the purpose of funding Noor TV's programming, the funds donated via the Mohiuddin Trust<sup>4</sup> website were not in fact received by Noor TV and therefore were not used for their stated purpose.
40. Ofcom considered that the breaches by the Licensee are of an extremely serious nature because the programme misled its audience about the purpose of the money donated via the Mohiuddin Trust website, the potential to cause financial harm to viewers, particularly vulnerable viewers, and the failure to separately account for the funds received.
41. Ofcom was also of the view that the Licensee appeared to have wholly insufficient compliance procedures, as demonstrated by the breaches in this case. Further, while Ofcom noted that the Licensee had submitted that the company was under different

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<sup>4</sup> The Mohiuddin Trust is registered charity whose stated charitable purpose is to provide financial and educational support to four educational establishments in the earthquake areas of Kashmir and Pakistan. The Mohiuddin Trust uses Noor TV for its advertising its appeals for funds. The Chairman/a trustee of the Mohiuddin Trust is a director of Al Ehya Digital Television Limited.

management at the time that the breaches occurred, Ofcom did not consider that this lessened the seriousness of the breaches. In particular, Ofcom noted that throughout the lengthy investigation of the breaches in this case, the current management of the Licensee had not indicated that it taken any appropriate steps (other than dismissing the presenter in question) to indicate that it improved its compliance procedures to prevent a future recurrence of the serious compliance issues in this case.

42. In view of the factors set out above Ofcom considered that the breaches are sufficiently serious to warrant the imposition of a statutory sanction and that the statutory sanction should be in the form of a financial penalty.
43. In its Written Representations, the Licensee did not dispute the breaches. It explained that its presenter, and chief executive officer at the time, allowed the programme to be broadcast “without due consideration” and without the knowledge of the Chairman of the Licensee who was out of the country at the time the programme *Saturday Night Special* was broadcast on 13 November 2010. The Licensee submitted that both personnel had acted on their own initiative and were subsequently dismissed. The Licensee suggested that the penalty should reflect that the breaches were caused by “the actions of two employees acting on their own”.
44. In Ofcom’s view, the Licensee should have had sufficient compliance procedures in place to prevent any employee or person acting on its behalf from being able to act in contravention of the Code regardless of whether they were acting of their own volition or otherwise. Consequently, Ofcom does not consider this to reduce the level of seriousness of the breach.

#### **Imposition of a financial penalty**

45. 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 in this case is up to £250,000 or 5 per cent of the Licensee’s qualifying revenue relating to its last accounting period, whichever is greater.
46. 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.
47. 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 Preliminary View, Ofcom took 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**

48. In considering the appropriate amount of a financial penalty for each of the breaches, Ofcom took account of relevant factors in accordance with Ofcom’s Penalty Guidelines, as set out below:

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

49. Donations were made on the basis of inducements such as receipt of a “special gift”, or the offer of a prayer that would improve the donor’s health, wealth, success and good fortune. Ofcom considered that this carried the risk that susceptible members of the audience may have been persuaded to donate money to Noor TV when they would not otherwise have done so. In particular, the appeal focused heavily on religious beliefs, which Ofcom considered had created an additional risk that susceptible viewers would have been more likely to make donations than they otherwise would have done. Viewers were told that their donations were for the purpose of funding Noor TV’s programming, yet funds donated via the Mohiuddin Trust website were not in fact received by Noor TV and consequently not used for their stated purpose.
50. Ofcom noted that following the above inducements, emphasis on religious beliefs and misleading information on the purported application of funds, viewers pledged a total of £27,720 during the appeal. It further noted that during the period 13 November and 20 November 2010, the sum of £42,564.83 was deposited in Noor TV’s account through what appear to be viewer donations. However, due to the absence of appropriate record keeping by the Licensee, it is impossible to state with any certainty whether the funds raised by this appeal were in fact more or less than £42,564.83. Ofcom was concerned therefore that the level of harm in this case cannot be established with any clarity, both as to the amounts raised and in the respect of the application of those funds.
51. Therefore Ofcom considered that because of the potential to cause financial harm to viewers, particularly vulnerable viewers, the degree of harm was significant.
52. In its Written Representations, the Licensee disputed Ofcom’s calculation of viewer donations which it said implied that the appeal on the 13 November 2010 raised over £42,000. The Licensee submitted that “appeals on behalf of Noor TV are made daily by the station and personally throughout the Country and their donations are consistent. The time of year of the programme is a particularly notable appeal time in the Islamic world and thus funds coming into Noor TV are reliant on the period of the year as its biggest donation time in the normal course of events.”
53. Ofcom acknowledged that the £42,000 of donations, which it had calculated from the Licensee’s bank statements, may have included donations which were made in response to other appeals for funds broadcast by Noor TV. However, as the Licensee was unable to separately account for the donations in response to the appeal for funds broadcast on 13 November 2010 Ofcom had no alternative but to arrive at an estimate of the amount donated as a result of that broadcast appeal, based on the bank statements which the Licensee had provided. Ofcom therefore continued to use the estimate when considering this factor in the final determination of the penalty amount.

*The duration of the contravention.*

54. Ofcom noted that the recorded breaches were in relation to the broadcast of one programme, but it should be noted that the channel broadcasts appeals for funds on a regular basis.
55. The Licensee did not make any Written Representations on this matter.

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

56. As a result of the viewer donations during the programme not being separately accounted for by the Licensee, it was unable to provide satisfactory evidence of: i) how much was raised as a result of the appeal for funds, or indeed whether any donations had been received in return for a “special gift”; or ii) documentary evidence of what the funds raised as a result of the appeal were used for. While it is not possible to demonstrate with certainty that viewers were caused financial harm, it is nevertheless the case that the evidence available to Ofcom indicates that a total of £27,720 was pledged (as opposed to being actually donated) during the appeal programme. However, Ofcom noted that £42,564.83 was deposited into Noor TV’s bank account through what appear to Ofcom to be viewer donations between 13 November and 20 November 2010. This period covered the date of the broadcast appeal and the subsequent six days.
57. When Ofcom asked the Licensee for confirmation of the amount it had raised during this particular appeal for funds, it informed Ofcom that a total of £3,375 was received by Noor TV from credit card payments. However, Ofcom noted from the bank statements that the Licensee provided that it appeared that payment was accepted by means other than credit cards. Given that payment was accepted by other methods and that no evidence had been provided to Ofcom to support an assertion that £3,375 was the total sum received in respect of the broadcast appeal, it was not reasonable to rely on this figure of £3,375 as a basis for the total amount received.
58. In light of the above, it was not possible to determine with any certainty the amount of any gain made by the licensee. Ofcom therefore took full account of the payments received at the time of the broadcast and shortly thereafter.
59. The Licensee in its Written Representations submitted that “from the programme, Noor TV could ascertain certain pledges to be made by credit card and that is the figure given to Ofcom as the most money that they could have received and indeed those figures were clearly not honoured as the production of Noor TV’s bank statements show. Pledges were clearly not honoured as can be more than adequately evidenced by the non-existent payment from Norway.”
60. As detailed above, Ofcom acknowledged that the £42,000 of donations, which it had calculated from the Licensee’s bank statements, may have included donations which were made in response to other appeals for funds broadcast by Noor TV. However, as the Licensee was unable to separately account for the donations in response to the appeal for funds broadcast on 13 November 2010 the only option available to Ofcom was to arrive at an estimate of the amount donated as a result of that broadcast appeal, based on the bank statements which the Licensee had provided. Ofcom therefore continued to use the estimate when considering this factor in the final determination of the penalty amount.

*Any steps taken for remedying the consequences of the contravention.*

61. The Licensee informed Ofcom that the presenter of *Saturday Night Special* was responsible for the breaches and has since been dismissed. The Licensee has offered no other details about how it intends to remedy the consequences of the breaches.
62. Further, Ofcom noted that the Licensee has not proposed to attempt to reimburse its viewers. Even if it were to attempt to do so, it appears unlikely that it could identify those that contributed due to the insufficient records it kept of donations received.

63. The Licensee did not make any representations on this matter.

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

64. Ofcom noted that the Licensee has not had any breaches recorded against it previous to the breach now being considered for statutory sanction.

65. The Licensee did not make any representations on this matter.

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

66. Ofcom was concerned that the Licensee has provided no detailed evidence to date of any compliance procedures it had in place, or steps it had taken to prevent or reduce the risk of the breaches occurring at this time.

67. The Licensee did not make any representations on this matter.

*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.*

68. As set out above, the Licensee had provided no detailed evidence of how it had sought to prevent the breaches occurring, and it therefore appeared to Ofcom that the Licensee had no effective compliance procedures in place either to prevent the breaches occurring, or for their occurrence to have been brought to senior management's attention. Given the significant sums of money being raised by the Licensee as a result of the appeals, Ofcom considered the Licensee to have demonstrated a degree of recklessness in this regard. Senior management ought to be aware of the provisions of the Code and should ensure that procedures are in place to ensure compliance. In this case, the Licensee had not demonstrated sufficient understanding of the rules of the Code and did not appear to have made any provision to ensure compliance, whether through a dedicated compliance officer or training of production personnel.

69. The Licensee did not make any representations on this matter.

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

70. Ofcom noted that, the Licensee has not provided details about any improvements to its compliance procedures and record keeping, which would serve to prevent similar breaches from occurring again.

71. In its Written Representations, the Licensee said that it was incorrect to state that it had not improved its compliance procedures, and argued that it had informed Ofcom that compliance procedures had been improved.

72. In fact, in its Preliminary View, Ofcom stated that "the current management of the Licensee had not indicated that it taken any appropriate steps (other than dismissing the presenter in question) to indicate that it improved its compliance procedures to prevent a future recurrence of the serious compliance issues in this case" and

it “remains concerned that, the Licensee *has provided no details* [emphasis added] about any improvements to its compliance procedures and record keeping, which would serve to prevent similar breaches happening again.”

73. Further, in the Licensee’s Written Representations, the Licensee did not provide any details about the improvements it had made to its compliance procedures. Ofcom therefore remained of the view that the Licensee has provided no evidence that it has improved its compliance procedures and record keeping. In this regard, Ofcom was concerned that the failure to demonstrate any improvements to compliance procedures risks further contraventions of the Code. Ofcom will therefore consider issuing a Direction, requiring the Licensee to establish a separate account for monies raised as a result of broadcast appeals for funds.

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

74. Ofcom’s considered the proposed penalty to be proportionate as it achieved the appropriate level of deterrence and it is unlikely to place the Licensee in a financially precarious position.
75. In its Written Representations, the Licensee considered that the penalty should be based on its advertising revenue and not on the sponsorship revenue which consisted of viewer donations, since “the penalty would only damage and hurt the viewers themselves since Noor TV as is abundantly clear is run as near as maybe on a non-profit making organisation and is not operated as a commercial business in the accepted sense of the word.”
76. Ofcom noted that in its statement of principles entitled ‘Qualifying Revenue and Multiplex Revenue’<sup>5</sup>, which reflects section 19(2) to (6) of the Broadcasting Act 1990, it states that in respect of TLCS licences, Qualifying Revenue means all payments, received or to be received, by the licensee, as well as by any connected person:
- in consideration of the inclusion in the licensed service in that period of advertisements or other programmes;
  - in respect of charges made by him in that period for the reception of programmes included in the licensed service;
  - in connection with the inclusion of any advertisement or other programme in the licensed service in order to meet any additional payments, other than the cash bid;
  - by way of financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards the costs incurred or to be incurred in connection with any programme included in the licensed service.
77. Ofcom considered that revenue, pledged in advance by viewers to support the costs of running the service/programmes provided by Noor TV, met the definition of sponsorship and therefore can be considered to be Qualifying Revenue. In light of that conclusion, Ofcom took into account both advertising revenue and sponsorship revenue in considering the appropriate penalty.
78. In its Written Representations, the Licensee submitted that “there is consistent lack of consideration throughout Ofcom’s enquiries and Preliminary View given to the way that Noor TV is financed.” The Licensee submitted that in 2010, the majority of its income

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<sup>5</sup> [http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/qualifying\\_revenue.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/qualifying_revenue.pdf)

was donated by viewers “to support the television station and in consequence all penalties imposed on Noor TV are thus paid for by the giving and viewing audience.”

*Any relevant precedents set by previous cases (but Ofcom may depart from them depending on the facts and the context of each case)*

79. In accordance with paragraph 6 of the Penalty Guidelines, Ofcom also had regard to relevant precedents set by previous cases.
80. In this instance, there are no direct precedent cases as this is the first case involving appeals for funds considered by Ofcom for statutory sanction. This case presents issues of financial harm and materially misleading the audience. The most relevant precedent cases therefore involve those in which there was financial harm caused to audiences in the conduct of listener competitions on radio, as summarised below:
81. **DM Digital Limited:** sanction of £17,500 and a direction to broadcast a statement of Ofcom’s findings, for breaches of the CAP (Broadcast) TV Advertising Standards Code (“the BCAP Code”)<sup>6</sup>. This case concerned the broadcast of an advertisement offering advice to individuals based on faith based practices for personal problems which was likely to exploit vulnerable viewers. The advertisement caused financial harm of £1,150 to one viewer and potential financial harm to viewers in general.
82. **ARY Digital UK Limited:** sanction of £15,000 and a direction to broadcast a statement of Ofcom’s findings, for breaches of the Code<sup>7</sup>. This case concerned the broadcast of a programme which promoted the services of Dr Surjeet Kaur, who claimed to be able to treat serious medical conditions (such as cancer, sterility, sciatica, psoriasis and leprosy) with herbal medicine and with the use of special medicines sold by her practice. Dr Kaur also promoted her alternative health practices and explained how to order an array of her medicines by telephone.
83. In considering the level of the financial penalty set out in paragraph 34 with regard to the relevant precedents, as summarised above, Ofcom noted that the breaches in the case under consideration were distinguished by a number of factors which, in Ofcom’s view, rendered them significantly more serious than those in the relevant precedents.
84. While, on the one hand, the Licensee’s case did not involve misleading the audience about serious medical conditions (as in the ARY Digital UK Limited case), it involved a greater probability of potential financial harm to viewers than in any of these cases. Further, Ofcom considered that the inducements made in the Noor TV programme, i.e. the receipt of a “special gift” of a religious nature for a donation of £1,000, or the offer of a prayer that would improve the donor’s health, wealth, success or good fortune, involved a material risk that susceptible members of the audience (i.e. those with financial or emotional difficulties) may have been persuaded to make a donation to Noor TV when they otherwise would not have done so.
85. Ofcom also noted that in the relevant precedent cases, the licensees in question made no or virtually no financial gain. By contrast, the core purpose of the broadcast in the Licensee’s case was to raise funds for the Licensee’s benefit, to fund its channel and operation. As such, Ofcom considered it particularly serious that the Licensee stood to

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<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/dmdigitaltd.pdf>

<sup>7</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/ary\\_digital.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/ary_digital.pdf)

benefit, and did benefit, from the encouragements and inducements made to the audience, which were likely to have persuaded susceptible viewers to pay money to Noor TV (or indeed, the Mohiuddin Trust) when they otherwise would not have done.

86. While it was not possible to demonstrate with certainty that viewers were caused financial harm, it was nevertheless the case that the evidence available to Ofcom indicated that a total of £42,564.83 was deposited into Noor TV's bank account through what appeared to Ofcom to be viewer donations between 13 November and 20 November 2010. This period covered the date of the broadcast appeal and the subsequent six days.

*Failure to co-operate fully with Ofcom's investigation*

87. In accordance with paragraph 8 of the Penalty Guidelines, Ofcom also had regard to the extent to which the Licensee co-operated with Ofcom's investigation.
88. Ofcom was concerned about the Licensee's level of co-operation in providing requested information during the investigation, as summarised below:
- Ofcom asked the Licensee to provide a recording of the programme in which the audience were informed of how much had been raised as a result of the broadcast appeal for funds. The Licensee stated that it was unable to provide a copy of the programme because "the current management are not the past management and since Noor TV broadcast 24 hours, the idea of trawling through 24 hour broadcasting over a period of time to find the appropriate mention is clearly an unacceptable request."
  - On 1 March 2011, during the investigation, Ofcom asked the Licensee to provide evidence to demonstrate how it had used the funds raised from viewer donations. In its response dated 7 March 2011, the Licensee did not provide any documentary evidence. In fact, the Licensee did not refer to the issue of how the viewer donations were used at all.
  - On 14 March 2011, Ofcom again asked the Licensee to provide evidence to demonstrate how it had used the funds raised from viewer donations. The Licensee provided two responses, but neither response provided the requested documentary evidence.
  - On 11 May 2011, Ofcom again asked the Licensee to provide evidence to demonstrate how it had used the funds raised from viewer donations. In the Licensee's response dated 19 May 2011 it stated that "the funds were to assist with the additional staff who have to download the link and play out through the system. There is therefore not an invoice as such. If you feel it relevant, the Company can go through staff payment records and find you the additional staff salaries and wages etc." The Licensee added that this information "could be provided but clearly is not going to be the easiest on earth to identify staff salaries as such in general terms."
89. The Licensee's responses to requests for comments and information during the investigation called into question the adequacy of the Licensee's existing compliance procedures and whether it would be able to adequately meet its licence obligations going forward. Licensees are expected to co-operate fully with Ofcom's investigations and Ofcom had significant concerns regarding the level of co-operation of the Licensee in this case.

90. Taking into account the relevant factors in accordance with Ofcom's Penalty Guidelines, and in order to provide a deterrent to any failure to co-operate, Ofcom, therefore considered it appropriate to impose a penalty of £75,000.
91. In its Written Representations, the Licensee considered the Preliminary View to be "generally slanted and misleading" and that "there has been a determination to interpret [the Licensee's] answers as unhelpful or inaccurate over what is admittedly a totally incorrect programme but in so far as Noor TV is concerned as an appeal was a disastrous failure."
92. The Licensee stated that it was "criticised for failing to provide adequate information on the additional expense for the Medina link. Since most of this as was made clear was in staff salaries and wages for the additional work, it was said that it was not going to be the easiest thing to identify those specifically but in general terms that is the situation and indeed Ofcom was informed that if it was relevant the Company would go through the staff payment records and find the additional staff salaries and wages. No such request was received."
93. The Licensee submitted that it was incorrect to state that it had been unable or unwilling to demonstrate to Ofcom how funds had been spent. It argued that there had been "a lack of follow up request by Ofcom to provide that information."
94. Further, the Licensee submitted that it is unfair to state that Noor TV has not co-operated with Ofcom. It said that it has answered all questions put to it and if further information has not been given "it is simply because Ofcom has not requested it".
95. Ofcom had, on three occasions, requested documentary evidence from the Licensee to demonstrate how it had used the funds it had raised from viewer donations. Ofcom therefore considered that it had provided the Licensee with ample opportunity to provide evidence to Ofcom and it had not done so. Moreover, Ofcom noted that the Licensee did not take the further opportunity to provide any evidence about how the funds were used when it submitted its written representations on Ofcom's Preliminary View. Ofcom therefore remained of the view that the Licensee had not co-operated fully with its investigation.

#### **Other issues raised by the Licensee in its Written Representations**

96. In its Written Representations, the Licensee also raised the following issues:
97. The Licensee informed Ofcom that it was willing to broadcast an apology or statement as required by Ofcom.
98. The Licensee stated that "there is grave misunderstanding and misrepresentation as to the position of the Mohiuddin Trust.... The Mohiuddin Trust is a huge respected Islamic Charity which has not only provided financial and educational support to educational and medical universities in Pakistan and the recent flood relief disaster fund but also operates a substantial educational element particularly for girls in the UK to enable them to be better adapted to the British way of life. The properties owned by the Trust run into several million pounds."
99. The Licensee informed Ofcom that the Mohiuddin Trust does not only raise funds by advertising on Noor TV, but also through "personal appeals" throughout mosques in the UK.

100. The Licensee submitted that “the supporters of the Trust and its renowned and respected leader Pir Sahib Alauddin Siddiqui who founded Noor TV consider Noor TV as one of its voices and thus donations are received by the Trust for the Trust itself or donations are made to Noor TV. It is incorrect and a misrepresentation to set out the view that Mohiuddin Trust received monies as a result of the broadcast on the 13th November for that stated purpose. It has been made abundantly clear during correspondence with Ofcom that viewers could make the appeal for donation or to Mohiuddin Trust in general terms and not for the specific appeal of that night.”
101. The Licensee said that “at no time has Mohiuddin Trust been approached [by Ofcom] as to whether they had received any funds from this appeal and in any event the Mohiuddin Trust would have strenuously denied that any funds arising from that programme for the stated purpose had been received by them.”
102. Ofcom considered that the reputation of the Mohiuddin Trust and the manner in which it raises funds were irrelevant to this case. The breaches in this case resulted from the fact that the programme misled the audience about the purpose of the money donated via the Mohiuddin Trust website. Although viewers were told that their donations were for the purpose of funding Noor TV’s programming, Noor TV did not receive any donations which may have been made by viewers through the Mohiuddin Trust’s website.
103. Ofcom confirmed in its Preliminary View, that it did not state that the Mohiuddin Trust had received monies as a result of the broadcast on the 13 November 2010. Ofcom’s Preliminary View stated that “Ofcom was...extremely concerned that although viewers were told that their donations were for the purpose of funding Noor TV’s programming, the funds donated via the Mohiuddin Trust website were not used for their stated purpose” and that “the programme misled the audience about the purpose of the money donated via the Mohiuddin Trust website”.
104. Ofcom did not consider that the issues raised by the Licensee have any effect on the position set out in the Preliminary View.

### **Future compliance**

105. Ofcom noted that the Licensee continues to broadcast appeals for funds. As all donations in respect of broadcast appeals for funds must be separately accounted for and used for the purpose for which they were donated in order to comply with Rule 10.15, separate accounting practices are required. Ofcom considered the establishment of a separate bank account for funds received from broadcast appeals to be an appropriate method of separately accounting for funds and will now consider imposing a Direction to this effect. The Licensee will be given an opportunity to make representations on any proposed Direction.

### **Conclusion**

106. In summary, Ofcom concluded that the breaches by the Licensee were of an extremely serious nature because: the programme misled its audience about the purpose of the money donated via the Mohiuddin Trust website; there was potential for viewers to suffer financial harm, particularly vulnerable viewers; and there was a failure to separately account for the funds received.
107. Ofcom was also of the view that the Licensee appeared to have wholly insufficient compliance procedures. In particular, Ofcom noted that throughout the lengthy investigation of the breaches in this case, the current management of the Licensee

had not indicated that it taken any appropriate steps (other than dismissing the presenter in question) to improve its compliance procedures to prevent a future recurrence of the serious compliance issues in this case.

108. In view of the factors set out above, Ofcom deemed that the breaches were sufficiently serious to warrant the imposition of a statutory sanction of £75,000. In addition, Ofcom concluded that Licensee should broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom.
109. Further, Ofcom will now consider issuing a Direction, following the publication of this sanctions decision, requiring the Licensee to ensure greater financial transparency in relation to monies received as a result of the broadcast of appeals for funds for the channel. Ofcom considered the establishment of a separate bank account for funds received from broadcast appeals to be an appropriate method of separately accounting for funds. The Licensee will be given an opportunity to make representations on any proposed direction.
110. In view of the seriousness of the breaches in this case, and the risk of financial harm to viewers resulting from breaches in this area, Ofcom intends to monitor Noor TV's output to assess whether or not the Licensee's compliance procedures have improved.

**28 September 2011**