

**Sanction: Decision by Ofcom
Imposed on Radio Asian Fever Community Interest Company**

For material broadcast on 17 and 18 August 2011¹.

Consideration of sanction against:	Radio Asian Fever Community Interest Company (“Radio Asian Fever” or “the Licensee”) in respect of its service Radio Asian Fever (Leeds) (Licence number: CR-031).
For:	A breach of Ofcom’s Broadcasting Code (the “Code”) ² in respect of: Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include... discriminatory treatment or language (for example on the grounds of... religion... and sexual orientation)...” 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 3.1: “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services”. Rule 4.1: “Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes”.
In relation to content broadcast on:	<i>Sister Ruby Ramadan Special 2011</i> , 17 August 2011 at 12:00 and 18 August 2011 at 11:00 (“the Programmes”).
Decision:	To impose a financial penalty (payable to HM Paymaster General) of £4,000 ; and

¹ The material broadcast on Radio Asian Fever and found in breach of Ofcom’s Broadcasting Code is detailed in Broadcast Bulletin 207, dated 11 June 2012 (“the Finding”). See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb207/obb207.pdf>

² The version of the Code which was in force at the time of the broadcasts took effect on 28 February 2011. 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/>

Sanction 81(12): Radio Asian Fever

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

Case summary

1. Radio Asian Fever (Leeds) is a community radio station that serves the South Asian communities of Leeds.
2. In Ofcom's Finding ("the Finding") published on 11 June 2012 in Broadcast Bulletin 207³, Ofcom found that material broadcast by the Licensee breached Rules 2.3, 2.4, 3.1 and 4.1 of the Code.
3. The Finding related to two episodes of the programme *Sister Ruby Ramadan Special 2011*, broadcast on 17 August 2011 at 12:00 and 18 August 2011 at 11:00, each approximately fifty minutes in duration, which were broadcast in Urdu.
4. In the broadcast on 17 August 2011, the presenter Rubina Nasir ("Sister Ruby"), commenced with a Qur'anic verse (Sura Al-Nisa, verse 16) and gave her interpretation of that verse as being highly critical of homosexuality. The presenter also discussed various historical events portrayed in the Qur'an in the context of her main theme of homosexuality.
5. Ofcom found that two of the presenter's statements were likely to encourage or to incite the commission of crime or to lead to disorder, in breach of Rule 3.1. This was because Ofcom considered that the two statements could be objectively and reasonably regarded as not only condoning but encouraging violent behaviour against homosexual people. Acts of violence and hatred on the grounds of sexual orientation are prohibited by UK law. We considered that the broadcast of these two statements made by the presenter was likely to encourage or incite the commission of crime, i.e. violence or other unlawful acts motivated by hatred on the grounds of sexual orientation. For the same reasons we concluded that these two statements were likely to encourage others to copy the sort of unacceptable behaviour towards homosexual people described by the presenter, in breach of Rule 2.4 of the Code.
6. In the broadcast on 18 August 2011, the presenter focused her discussion on another Qur'anic verse (Sura Al-Baqra, verse 221) and gave her interpretation of that verse as being critical of mixed-faith marriages. Muslims and non-Muslims entering mixed-faith marriages were described very negatively. We also noted that, in the sermon broadcast on 17 August 2011, homosexuality was described in a consistently derogatory way.
7. Ofcom considered that the two sermons clearly contained a number of statements which had the potential to cause offence to the audience. Ofcom concluded that the context was insufficient to justify the broadcast of the offensive content in this case, and that Radio Asian Fever did not apply generally accepted standards. Consequently, the Programmes were found in breach of Rule 2.3 of the Code.
8. Being programmes which dealt with "matters of religion as the central subject, or as a significant part" of the broadcasts, they were clearly "religious programmes" as referred to in Section Four of the Code (Religion). Ofcom considered that the Licensee did not exercise the proper degree of responsibility with respect to the content of these religious programmes because it was not able to demonstrate that it had taken appropriate steps to ensure this content complied with the Code when broadcast. The Programmes were therefore also found in breach of Rule 4.1 of the Code.

³ See footnote 1.

Summary of Ofcom's Sanction Decision

9. Ofcom considered that the breaches were so serious as to warrant the consideration of the imposition of a statutory sanction.
10. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences ("the Sanctions Procedures")⁴ and having considered all the evidence and all the representations made to it by the Licensee, Ofcom decided for the reasons set out in paragraphs 40 to 46 below that it would be appropriate to impose a financial penalty.
11. Having regard to the serious nature of the Code breaches, the Licensee's representations and the Ofcom Penalty Guidelines ("the Penalty Guidelines")⁵, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£4,000** on the Licensee in respect of the Code breaches (payable to HM Paymaster General).
12. 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. For the reasons set out in paragraphs 62 to 64 below, Ofcom considered that it would not be appropriate to shorten, suspend or revoke Radio Asian Fever's licence.

Legal Framework

Communications Act 2003

13. Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 ("the 2003 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)).
14. Ofcom has a specific duty under section 319 of the Act to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services (section 319(2)(b)).
15. In performing its duties, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and where relevant, to have regard to a number of other considerations including:

⁴ Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences. These procedures came into effect on 1 June 2011.
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/statutory-sanctions.pdf>

⁵ Ofcom Penalty Guidelines published 13 June 2001.
<http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

- 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
- the desirability of preventing crime and disorder (section 3(4)(j)).

Human Rights Act 1998

16. In addition to section 3(4)(g) of the Act, under section 6 of the Human Rights Act 1998. Ofcom has a duty (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”). In particular, in the context of this case, Ofcom has taken account of the related rights under Article 9 and Article 10 of the Convention.
17. Article 9 of the Convention provides for the right to freedom of thought, conscience and religion. Article 9 primarily protects the sphere of personal beliefs and religious creeds and acts which are intimately linked to such beliefs or creeds, including acts of worship or devotion, rather than aims of an idealistic nature. This Article makes clear that freedom to “manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of...health...or for the protection of the rights and freedoms of others.” Consequently, the power to interfere with Article 9 rights is limited to manifestations of beliefs or convictions. However, idealistic aims are not protected.
18. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster’s freedom to impart and the audience’s freedom to receive information and ideas without interference by public authority and regardless of frontiers (Article 10(1) 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). Article 10 protects not only the substance of ideas or information expressed, but also the form in which they are conveyed. In some circumstances, this may include a polemical or aggressive tone. On the other hand, some types of expression, such as racist literature and expressions of political support for terrorism, have been regarded as deserving of lesser (or no) protection against restrictions.
19. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Ofcom Broadcasting Code

20. Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code which has been drafted in the light of the Human Rights Act 1998 and the Convention.
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 intended to assist broadcasters to interpret and apply the Code⁶.

⁶ See: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>

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, 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 Community Radio licence, Condition 5 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 Community Radio licence.
24. Where Ofcom has identified that a condition of a Community Radio licence has been contravened, its powers to take action are set out in sections 109 to 111 of the Broadcasting Act 1990 (“the 1990 Act”) insofar as relevant to the case.
25. Section 109 of the Broadcasting Act 1990 provides Ofcom with the power to direct the holder of a Community Radio licence to broadcast a correction or a statement of Ofcom’s findings (or both).
26. Section 110 of the 1990 Act provides Ofcom with the power to impose a financial penalty on the holder of a Community Radio licence. The maximum penalty which may be imposed in respect of each contravention of a licence condition is £250,000.
27. Section 110 of the 1990 Act provides Ofcom with the power to shorten a Community Radio licence by a specified period not exceeding two years, or suspend a licence for a specified period not exceeding six months, where a licensee is in contravention of a condition of a Community Radio licence or direction thereunder.
28. Section 111 of the 1990 Act provides Ofcom with the power to revoke a licence where a licensee fails to comply with a condition of a Community Radio licence or direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.

Background – The Finding

29. In the Finding⁷, Ofcom found that material broadcast by the Licensee breached Rules 2.3, 2.4, 3.1 and 4.1 of the Code. Further, in the Finding Ofcom stated that the breaches in this case were serious and warranted consideration of the imposition of a statutory sanction.
30. The Finding related to two episodes of the programme *Sister Ruby Ramadan Special 2011*, broadcast on 17 August 2011 at 12:00 and 18 August 2011 at 11:00, each approximately fifty minutes in duration, which were broadcast in Urdu.
31. Ofcom found that two of the presenter’s statements in the programme broadcast on 17 August 2011 were likely to encourage or to incite the commission of crime or to lead to disorder. The statements were as follows:
- i. *“What should be done if they do it [practise homosexuality]? If there are two such persons among you, that do this evil, the shameful act, what do you have to do? Torture them; punish them; beat them and give them mental torture.”*

⁷ See footnote 1.

- ii. *“Allah states, ‘If they do such a deed [i.e. homosexuality], punish them, both physically and mentally.’ Mental punishment means rebuke them, beat them, humiliate them, admonish and curse them, and beat them up. This command was sent in the beginning because capital punishment had not yet been sent down.”*
32. Ofcom found that these statements were likely to encourage or to incite the commission of crime or to lead to disorder, in breach of Rule 3.1. This was because Ofcom considered that the two statements could be objectively and reasonably regarded as not only condoning but encouraging violent behaviour against homosexual people. Acts of violence and hatred on the grounds of sexual orientation are prohibited by UK law. We considered that the broadcast of these two statements made by the presenter was likely to encourage or incite the commission of crime, i.e. violence or other unlawful acts motivated by hatred on the grounds of sexual orientation. For the same reasons we concluded that these two statements were likely to encourage others to copy the sort of unacceptable behaviour towards homosexual people described by the presenter, in breach of Rule 2.4 of the Code.
33. In the broadcast on 18 August 2011, the presenter focused her discussion on another Qur’anic verse (Sura Al-Baqra, verse 221) and gave her interpretation of that verse as being critical of mixed-faith marriages. Muslims and non-Muslims entering mixed-faith marriages were described very negatively, for example: going to *“hellfire”*; having *“impure”* hearts; dealing in *“filth”*; and having *“no concept of cleanliness and uncleanliness”*.
34. We also noted that, in the sermon broadcast on 17 August 2011, homosexuality was described in a consistently negative and derogatory way, for example: it was called *“evil”*; a *“bad act”*; a *“disease”*; as *“such a bad deed as no one can accept”*; and *“shameful”*.
35. The two sermons clearly contained a number of statements which had the potential to cause offence to the audience. Ofcom considered that the terms used to describe homosexuality and homosexuals and Muslims and non-Muslims entering mixed-faith marriages were so derogatory and offensive that they amounted to gratuitous abuse and so exceeded legitimate criticism and comment – regardless of the fact that this material was broadcast to a largely Muslim audience which may disapprove of homosexuality and mixed-faith marriages on religious grounds. Ofcom therefore concluded that the context was insufficient to justify the broadcast of the offensive content in this case, and that Radio Asian Fever did not apply generally accepted standards. Consequently, the Programmes were found in breach of Rule 2.3 of the Code.
36. Being programmes which dealt with “matters of religion as the central subject, or as a significant part” of the broadcasts, they were clearly “religious programmes” as referred to in Section Four of the Code (Religion). Ofcom considered that that the Licensee did not exercise the proper degree of responsibility with respect to the content of these religious programmes because it was not able to demonstrate that it had taken appropriate steps to ensure this content complied with the Code when broadcast. The Programmes were therefore also found in breach of Rule 4.1 of the Code.

Ofcom’s decision to impose a statutory sanction

37. 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.

38. In this case, Ofcom issued a preliminary view (“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 £4,000. 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 17 September 2012, at the same time giving the Licensee the opportunity to provide written and oral representations on the Preliminary View. The Licensee provided three sets of written representations (“Written Representations”) to Ofcom on 2, 25 and 30 October 2012 and attended a hearing at Ofcom on 31 October 2012 to provide oral representations (“Oral Representations”) (together the “Representations”). The Representations are summarised below.
39. 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. However, Ofcom took account of all the evidence and representations from the Licensee including representations on the Preliminary View, and had regard to the Sanctions Procedures and to Ofcom’s Penalty Guidelines in reaching its Decision (see further below).

Seriousness of the breaches

40. Ofcom considered that the breach of Rule 3.1 on its own was sufficiently serious to warrant the imposition of a statutory sanction for the reasons set out below.
41. Section 319(2)(b) of the Act requires that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services (section 319(2)(b)). This requirement is reflected in Rule 3.1 of the Code. Any breach of this rule must be regarded as potentially serious.
42. The statements were delivered in a sermon in a religious programme seeking to give interpretation of sacred texts to a largely Muslim audience during the holy month of Ramadan. In Ofcom’s view this gave the comments extra weight, which compounded the seriousness of the breach of Rule 3.1.
43. As made clear in the Finding, the presenter delivered her interpretation of the particular Qur’anic reference, as the correct interpretation – as a matter of fact. The presenter relied to some extent on non-theological statistical sources which, she claimed, backed up the views she was putting forward. This would, in Ofcom’s view, have helped to establish in listeners’ minds that what she was presenting was established fact. Ofcom noted that the presenter’s viewpoint was not mediated or challenged and the presenter did not seek to qualify her remarks in any way to ensure that they would not be misinterpreted, or would not be likely to encourage or incite the commission of crime or lead to disorder.
44. The breaches of Rules 2.3, 2.4 and 4.1 compounded the seriousness of this case, because they demonstrated that at the time of the broadcast the Licensee had wholly insufficient compliance arrangements in place. The Licensee had: not made any checks for problematic material before the sermons were broadcast; allowed the material to be broadcast uninterrupted; appeared to base its compliance decisions in this case on the fact that there had been no problems with the presenter’s sermons before; and provided no evidence to Ofcom to show that it had any proper procedures or systems in place for monitoring live content to ensure compliance with the Code or to take appropriate action when required.

45. The contravention of Rule 2.3 also added to the seriousness because it underlined that a considerable amount of offensive material was allowed to be broadcast in the Programmes which was in breach of generally accepted standards (in addition to that which was so problematic as to lead to breaches of Rules 3.1 or 2.4).
46. As a community radio station, Radio Asian Fever has a relatively small footprint. It is targeted at the Asian community in Leeds, broadcasting in Urdu within a narrow geographical area. The overall impact of this particular broadcast may therefore have been somewhat tempered by the limited audience reach of the station. However, this does not lessen the seriousness of the breaches.

Licensee's representations

47. The Licensee argued that in this case a direction to broadcast a statement of Ofcom's findings would on its own be an effective deterrent. It cited the following reasons:
- Ofcom's investigation had been a very stressful, demeaning and embarrassing experience for the Chairman of Radio Asian Fever and the station as a whole;
 - The presenter of the Programmes no longer works at the station;
 - The Licensee has improved its compliance procedures since the breaches were recorded; and
 - The station is in an uncertain financial position.

Background to the Code breaches

48. The Licensee said that during the first two weeks of Ramadan (1 to 15 August 2011), the Chairman of Radio Asian Fever monitored the station's output and found no compliance issues.
49. The Licensee explained that the presenter had been broadcasting on the station for several years, was one of the most popular presenters, and her broadcasts had never previously raised any cause for concern regarding compliance. Therefore, the Licensee trusted the presenter to ensure the content she was broadcasting was appropriate. A young and inexperienced trainee member of staff had responsibility for production and compliance at the time the material was broadcast. However, she was not fluent in Urdu so was unable to fully understand the content of the presenter's sermons broadcast during the Programmes. Further, as a junior member of staff, she did not feel comfortable about questioning or challenging the presenter whom she respected on account of her authority and superior experience. The Licensee took full responsibility for not providing her with adequate training. The Licensee explained that this was in part due to the fact that there had been a pre-occupation with the station's relocation to new premises on 10 July 2011.
50. The Licensee said that the station had a book of guidelines in place for volunteers and staff but admitted that complacency had set in at the station and that employees and volunteers had not been using it. The Licensee stated that it took it for granted that employees and volunteers would use common sense about what content could be broadcast. The Licensee was confident that had the Programmes been presented in English, the trainee responsible for production and compliance would have halted their transmission. However, it also acknowledged that nobody had sat down to explain the guidelines to her.
51. Ofcom was greatly concerned by these admissions and in particular by the fact that at the time the Programmes were broadcast, the Licensee did not appear to have any

proper compliance procedures in place to ensure that content broadcast on the station complied with the Code. The Licensee had relied on a single individual who was inexperienced, had not been trained in compliance with the Code and was not fluent in the language in which the Programmes were broadcast.

52. The Licensee said it only agreed with the breach of Rule 4.1 of the Code which Ofcom had recorded in respect of the Programmes, but it accepted Ofcom's view that four rules had been breached. With regards to Rule 3.1 in particular, the Licensee suggested that it is not uncommon for religious scripture and sacred texts, which are many hundreds if not thousands of years old, to refer to acts of violence and retribution, but the simple act of reciting them does not lead to people committing the same or similar acts of violence. The Licensee argued that its audience is very familiar with the texts in question and well used to hearing these passages. Nonetheless, it stated that it had enquired of West Yorkshire Police whether the Programmes had led to criminal acts against homosexuals and was told that there had been nothing out of the ordinary and that nobody had made a report to the police.
53. Taking these submissions into account, Ofcom was concerned that the Licensee had not fully understood the significance of the issues underlying Rule 3.1 and the gravity of the breach that had been recorded in respect of the programme broadcast on 17 August 2011. Ofcom was also concerned by remarks made by the Licensee in its Oral Representations which suggested that the Licensee considered that the presenter, rather than the Licensee, bore responsibility for the contravention.
54. Ofcom considers it important to note that the purpose of Rule 3.1 is not to prevent material being broadcast which includes discussion or recital of passages from ancient religious scripture and sacred texts that refer to acts of violence and retribution. However, in this case the presenter delivered her personal interpretation of the particular Qur'anic reference, as the correct interpretation – as a matter of fact and in doing so she placed reliance on various statistics which, she claimed, backed up the views she was putting forward. As noted in the Finding, in Ofcom's view this would have helped to establish in listeners' minds that what she was presenting was established fact. The presenter's viewpoint was not mediated or challenged and the presenter did not seek to qualify her remarks in any way to ensure that they would not be misinterpreted by the audience. In this context Ofcom considered that the two statements could be objectively and reasonably regarded as not only condoning but encouraging violent behaviour against homosexual people.
55. Further, in judging whether Rule 3.1 has been breached Ofcom does not need to demonstrate that any particular content has caused, or has contributed to the commission of specific criminal acts. Rather the rule requires Ofcom to assess whether the broadcast content is *likely* to encourage or incite the commission of crime or to lead to disorder. In this case, Ofcom found for the reasons referred to above and more fully set out in the Finding that the statements (see paragraph 31 above) which were broadcast were likely to encourage or incite the commission of crime against homosexuals or lead to disorder.
56. The Licensee also stated in its Oral Representations that it was very sorry for any offence it had caused and that it had broadcast an apology to the gay community. The Licensee did not state when this apology had been broadcast, or provide a recording of it to Ofcom.

Improvements to compliance

57. The Licensee explained that since the breaches were recorded, it has translated its procedures into three languages and given a guidance booklet to all employees. Volunteers have had one-to-one meetings on the requirements of the guidance. The Licensee also explained that the Chairman sits down personally with each presenter before they go on air to explain the responsibility that they have and that rules stating that presenters should not “slander or belittle or highlight or attack any race, religion, business or individual group or sect” are displayed on a notice board and above the mixing desk.
58. The Licensee stated that the station broadcasts for 15 to 16 hours per day and that three paid staff are responsible for monitoring compliance (the community outreach officer, the development officer and the Chairman). The Licensee also explained that if for some reason one of the staff does not hear something, the senior volunteers (approximately thirty) have the authority to come into the studio or phone the presenter to stop a programme if they have grounds to believe that the content is offensive to any particular person, group or sect.
59. Ofcom acknowledged that the Licensee had taken steps to improve compliance since the breaches had been recorded. However, Ofcom remained concerned by the adequacy of the measures that had been taken and the fact that these compliance improvements were limited by the narrow focus of the guidance that the Licensee had described. In particular, Ofcom was not satisfied that the Licensee’s rules (which appeared to be primarily concerned with preventing offence), adequately reflected the full panoply of standards set out in the Code and were sufficient to ensure strict compliance with its rules. In particular, Ofcom was concerned that the requirements of Rule 3.1 had still not been fully understood.

Imposition of sanctions

60. As set out in paragraphs 23 to 28 above, Ofcom’s powers to take action are set out in sections 109 to 111 of the 1990 Act insofar as relevant to the present case.
61. In view of the factors set out above, Ofcom considered that the breaches were sufficiently serious to warrant the imposition of a statutory sanction.

Consideration of the imposition of sanctions other than a financial penalty

62. Given the seriousness of the breaches in this case, Ofcom considered whether revocation of the licence would be an appropriate sanction. Section 111 of the 1990 Act provides Ofcom with the power to revoke a licence where a licensee fails to comply with a condition of a Community Radio licence or direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence. Ofcom also considered whether to shorten or suspend Radio Asian Fever’s licence. Section 110 of the 1990 Act provides Ofcom with the power to shorten a Community Radio licence by a specified period not exceeding two years, or suspend a licence for a specified period not exceeding six months, where a licensee is in contravention of a condition of a Community Radio licence or direction thereunder.
63. In considering the application of sections 110 and 111, Ofcom noted that the breaches have not been repeated and are not ongoing. The Licensee explained steps it has taken in light of the breaches to improve its compliance procedures and prevent similar breaches occurring in the future. As a general observation, Ofcom also noted that the

Licensee had a good overall compliance history and had not previously been found in breach of these particular Code rules.

64. In light of these factors, and taking into account the broadcaster's and audience's right to freedom of expression Ofcom did not consider it would be appropriate to take action under sections 110 or 111.
65. Section 109 of the 1990 Act provides Ofcom with the power to direct the holder of a Community Radio licence to broadcast a correction or a statement of Ofcom's findings (or both).
66. Ofcom considered that on its own, a direction to broadcast a statement of Ofcom's findings in this case would not be a sufficient incentive to compliance, having regard to the seriousness of the breaches. However, Ofcom considered that a direction to broadcast a statement of Ofcom's findings in combination with a financial penalty would be proportionate, and would act as an effective deterrent to the Licensee and other licensees and send an appropriate message about the severity of the breaches and the need to have robust and effective monitoring and compliance procedures in place.

Imposition of a financial penalty

67. Under section 110 of the 1990 Act, the maximum level of financial penalty that can be imposed on the holder of a Community Radio licence in respect of each breach of a Community Radio licence is £250,000.
68. The 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 took full account of the need to ensure that any penalty acts as a deterrent and also took account of the specific factors set out in paragraph 4 of the Penalty Guidelines⁸.

Factors taken into account in determining the amount of a penalty

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

70. Deterrence

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 needed to send a message to other licensees underlining the need to understand and comply with the Code, and in particular the requirement not to broadcast material likely to encourage or incite the commission of crime or to lead to disorder.

⁸ See footnote 5.

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

In relation to Rule 3.1, Ofcom is not required to identify any causal link between the content included in the programme broadcast on 17 August 2011 and specific actions of criminal behaviour. However, as the Finding made clear, Ofcom is conscious of evidence of instances of homophobic hate crimes committed by certain members of the Islamic community, on the basis of their understanding of the Qur'an⁹. The possibility of remarks like those of the presenter in this case encouraging crime or disorder was therefore in Ofcom's opinion likely. Given that the programme contained, in Ofcom's view, calls to action which would be likely to encourage or incite the commission of crime or lead to disorder against homosexual people, the degree of potential harm could have been substantial.

As already noted in paragraph 46 above, the overall impact of the potential harm may have been somewhat tempered by the fact that, Radio Asian Fever is a community radio station with a relatively small footprint. It is targeted at the Asian community in Leeds, broadcasting in Urdu within a narrow geographical area. However, this does not lessen the seriousness of the breach.

72. *The duration of the contraventions*

Ofcom noted that the recorded breaches were in relation to two programmes broadcast on 17 and 18 August 2011 and that the broadcasts were not repeated.

73. *Any steps taken for remedying the consequences of the contraventions*

Ofcom noted that since the broadcast of the Programmes, the Licensee had sought to improve compliance by implementing the following range of measures:

- i. barring the presenter from presenting any future programmes on the station;
- ii. translating the rules into "each trainee's native language" and distributing and explaining these documents to all presenters;
- iii. re-introducing signed presenter agreements which "forbid anyone to slander or belittle any person, group, organisation, sect or business in any way" and suspending or dismissing (depending on the circumstances), any presenter who breaches the agreement;
- iv. explaining the station's rules to all presenters, in the appropriate language;
- v. ensuring members of staff "manning the controls for a community language programme" are able to understand English, Urdu and Punjabi;
- vi. requiring all presenters to seek permission from "staff/management on any lecture/topic" to be broadcast on the station; and
- vii. discussing the Licensee's guidelines at regular staff and team meetings.

⁹ For example, in January 2012, three Muslim men from Derby became the first people in Britain to be convicted of inciting hatred on the grounds of sexuality after they distributed leaflets calling for gay people to be killed on the basis that, according to the three men, this is what is required by Islamic teaching: <http://www.guardian.co.uk/world/2012/jan/20/three-muslims-convicted-gay-hate-leaflets>

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

The Licensee was previously found in breach of Rules: 6.1 (due impartiality at the time of elections) and 6.2 (due weight to the coverage of political parties in elections) of the Code in relation to coverage of the European Elections on Radio Asian Fever (Leeds) on 10 May 2009 at 18:00. These breaches were recorded on 3 August 2009 in Broadcast Bulletin 139¹⁰.

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

No appropriate steps had been taken by the Licensee to prevent the contraventions. In particular, Ofcom noted that:

- i. Since 2007, the Licensee had required all presenters to sign the 'Radio Asian Fever Agreement' which "forbid[s] anyone to slander or belittle any person, group, organisation, sect or business in any way". Since 2009/10, however, the Licensee no longer required its presenters to sign the agreement because "it was so repetitive... but also because it was feared that it was insulting to the intelligence of somebody who had already signed such a document dozens of times".
- ii. The Licensee stated that "no one in the management or staff was aware that [the presenter] was going to present a lecture on the gay community and mixed marriages"¹¹ and no one from the Licensee's Management Committee "actually heard" the Programmes when broadcast in this case due to other commitments.
- iii. The presenter was "not given any permission, nor was any permission sought" by the presenter in relation to broadcasting the sermons in question. The Licensee said that the presenter should have asked if she could cover the topics in the Programmes. However, the Licensee also said that because the presenter had worked at the station for three to four years, it had placed its trust in her not to broadcast anything inappropriate..
- iv. The member of staff who was present when the Programmes were broadcast was inexperienced and had not received any compliance training. Further, the member of staff "was unable to understand the lectures as her Urdu is very weak and she did not ask what the topic of the day was... because [the member of staff] had heard [the presenter's] lectures since 1st of August and everything seemed fine". Accordingly, the member of staff "did not take much notice or understand" the two lectures included in the Programmes. She also felt she was too junior to have the authority to question someone who she respected and who was older and more experienced in broadcasting.

¹⁰ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb139/Issue139.pdf> – This breach was recorded against Radio Asian Fever Limited (co. reg. no. 5264616) which became Radio Asian Fever Community Interest Company (co. reg. no. 5264616) on 15 June 2009. Therefore, the name of the Licensee in the Decision published on 3 August 2009 should have read Radio Asian Fever Community Interest Company.

¹¹ In the Finding, the presenter's sermon on mixed marriages was broadcast on 18 August 2011 and was found in breach of Rules 2.3 and 4.1 of the Code. See footnote 1.

- v. The Licensee explained that it conducts team meetings “especially before any religious week or month”. However, due to the pressure of relocating to new premises on 10 July 2011, shortly before the commencement of its Ramadan programming in August 2011, the Licensee “did not get a chance to have a team meeting for the month of Ramadan”.
- vi. The Licensee had provided no evidence in either its Written or Oral Representations to satisfy Ofcom that it had any proper procedures or systems in place for monitoring the content when broadcast in this case, to ensure compliance with the Code, or to take appropriate action when required.

76. The extent to which the contraventions occurred intentionally or recklessly, including the extent to which senior management knew, or ought to have known, that contraventions were occurring or would occur

As set out in paragraph 44 above, the breaches in this case occurred because the Licensee clearly did not have adequate compliance arrangements in place to ensure compliance with the Code. The Licensee should have had appropriate systems in place to ensure presenters of live output were properly trained and briefed, and that output was monitored to prevent the broadcast of material likely to: i) cause offence to the audience due to the lack of justifiable context so as not comply with generally accepted standards; ii) condone or glamorise violent, dangerous or seriously antisocial behaviour which is likely to encourage others to copy such behaviour; and/or, iii) encourage or incite crime. With such monitoring, the Licensee would have been aware at the earliest opportunity that contraventions were taking place, and would have been able to take immediate steps to intervene as appropriate.

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

As set out in paragraph 73 above, the Licensee explained the range of steps it took to improve compliance, once it became aware of Ofcom’s investigation.

Ofcom acknowledged that the Licensee had taken steps to improve compliance since the breaches had been recorded. However, Ofcom remained concerned by the adequacy of the measures that had been taken and the fact that these compliance improvements were limited by the narrow focus of the guidance that the Licensee had described. In particular, Ofcom was not satisfied that the Licensee’s rules (which appeared to be primarily concerned with preventing offence), adequately reflected the full panoply of standards set out in the Code and were sufficient to ensure strict compliance with the rules.

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

The Licensee explained its current financial situation and the difficulties posed by the current economic climate. The Licensee provided documentation to support these representations and urged Ofcom not to impose the financial penalty of £4,000 which had been proposed in the Preliminary View.

Taking account of the Licensee’s representations about its financial situation and the documentary evidence it had provided, Ofcom considered whether the level of penalty was proportionate in all the circumstances.

Ofcom recognised that the penalty must be proportionate taking into account the Licensee's rights under Articles 9 and 10 of the Convention and the fact that deterrence is the central objective of imposing a penalty: if any financial penalty was to be so high that its probable effect would be to close the radio station, then it might be a disproportionate interference with the Licensee's and the audience's right to freedom of expression in particular and exceed the purpose of imposing a penalty. Ofcom therefore had regard to this issue as explained in the following paragraphs and considered that the proposed financial penalty was proportionate taking into account the size and turnover of the Licensee and the information provided to it by the Licensee about its financial situation.

Radio Asian Fever (Leeds) is a community radio station employing three salaried individuals (an Outreach Worker, a Development Officer and the Chairman) and over 60 volunteers who take part in various activities including production, administration and presenting programmes. In the calendar year 2011, the Licensee was funded by local authority funding, other public funding and private funding.

In deciding a proportionate penalty, Ofcom took account the Licensee's total turnover for the calendar year 2011. Ofcom also took into account the Licensee's Oral and Written Representations about its financial situation and the documentary evidence it had provided to support these representations. Having weighed all these factors, Ofcom considered that a penalty of £4,000 would be proportionate taking into account all the relevant circumstances, including the need to achieve an appropriate level of deterrence and the serious nature of the Code breaches in this case.

Precedent

79. In accordance with the Penalty Guidelines, Ofcom had regard to relevant precedents set by previous cases.
80. There are no relevant precedents of sanctions in relation to breaches of Rules 3.1 and 4.1, nor any directly relevant sanctions precedents in terms of breaches of Rule 2.4¹², which is a rule that also deals with the issue of incitement in programming. However, concerning Rule 2.4, the following case may have some relevance to the present case.
81. **8 May 2012, Dama (Liverpool) Limited (Aden Live)**¹³ – Sanction of £10,000 and a direction to broadcast a statement of Ofcom's findings, for breaches of Rule 2.4, 5.4, 5.11 and 5.12. This case concerned various programmes broadcast on Aden Live, a service which broadcasts predominantly to a South Yemeni audience. Ofcom concluded that, in relation to Rule 2.4, given that many of Aden Live's audience would have been likely to be: in support of the secession of South Yemen from the Republic of Yemen; and/or in support of the Southern Movement and oppose the Government of Yemen, material broadcast by Aden Live could reasonably be considered as material likely to encourage others to copy violent or dangerous behaviour.
82. In addition, breaches of Rule 2.3 have on occasion been subject to sanction. Set out below are summaries of potentially relevant precedent cases.

¹² Rule 2.4 states: "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".

¹³ http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden_Live_sanctions_decisio1.pdf

83. **2 August 2005, Channel Four Television Corporation (Channel 4)**¹⁴ – Sanction to direct Channel 4 (and S4C) to broadcast a statement of Ofcom’s findings on three separate occasions, for breaches of 2.3 and 1.3 (inappropriate scheduling). This case concerned the fifth series of *Big Brother*. As the series progressed, disagreements began to develop between some of the housemates, including Shilpa Shetty, a former Miss India. Many complainants found comments made by some of the housemates to be racially offensive. In relation to Rule 2.3, Ofcom found that in the case of three incidents which occurred in three separate post-watershed programmes (one of which was repeated pre-watershed), the Licensee failed to apply generally accepted standards to the material and the racially offensive remarks were not adequately justified by the context.
84. **4 June 2008, MTV Networks Europe (TMF, MTV France, MTV UK and MTV Hits)**¹⁵ – Sanction of an aggregate financial penalty of £255,000, part of which was attributable to breaches of Rule 2.3. This case concerned a number of breaches in relation to content broadcast on four channels. In the case of MTV France, a fine of £35,000 was imposed for breaches of Rule 2.3 and Condition 11 (failure to supply recordings) of the Licence. In this case, racist and homophobic text messages were transmitted and the Licensee failed to supply to Ofcom a recording of the output. (Part of this £35,000 fine related to the broadcasting of texts containing homophobic material.) In the case of MTV UK, a fine of £80,000 was imposed for breaches of Rules 1.3, 1.4 (failure to observe the watershed), 1.14, and 2.3. The breach of Rule 2.3 was recorded for the broadcast of offensive language in three programmes. In the case of MTV Hits, a fine of £60,000 was imposed for breaches of Rule 1.3 and 2.3 for one programme and Rule 1.14 for another programme. The breach of Rule 2.3 was recorded for the transmission of text messages of a sexual nature before the watershed, which Ofcom considered to be “grotesque, unpleasant and offensive for a channel aimed at the youth music market.” In the case of the channel TMF, a fine of £80,000 was imposed for one breach of Rule 1.3 (inappropriate scheduling) and two breaches of Rule 1.14 (the most offensive language must not be broadcast before the watershed).
85. Ofcom is satisfied that the level of penalty proposed in this case is consistent with the precedent cases, taking due account of the factors outlined in the Penalty Guidelines and the seriousness of the breaches in this case.

Conclusion

86. Ofcom concluded that the Code breaches by the Licensee were serious for the reasons set out earlier in this Decision. Ofcom was particularly concerned by the breach of Rule 3.1 and the fact that the Licensee had failed to have any proper compliance procedures in place at the time of the breaches or appropriate systems for monitoring content to ensure compliance with the Code. Having considered the Licensee’s Written and Oral Representations, Ofcom was not satisfied that sufficient steps had been taken since the breaches were recorded to improve the compliance position sufficiently to ensure full adherence with the entirety of the Code. Ofcom remains concerned about the Licensee’s understanding and acceptance of the severity of the breaches that occurred and that the requirements of Rule 3.1 have still not been fully understood.

¹⁴ http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/channel4_cbb.pdf

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/mtv.pdf>

87. Ofcom is therefore requiring the Licensee to attend a meeting with Ofcom to review the effectiveness of the changes the Licensee has made to compliance processes in light of the recorded breaches, and to discuss improvements to its compliance processes going forward.
88. Having regard to all the factors referred to above and all the representations from the Licensee, Ofcom's Decision was that an appropriate and proportionate sanction would be a financial penalty of **£4,000**. In addition, Ofcom considered that the Licensee should broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom.

23 November 2012