

Sanction: Decision by Ofcom To be imposed on Takbeer TV Limited

For material broadcast on 9 June and 3 July 2012¹.

Ofcom's Decision of Sanction against:	Takbeer TV Limited ("TTVL" or "the Licensee") in respect of its service Takbeer TV (TLCS-1030).
For:	Breaches of the February 2011 version of Ofcom's Broadcasting Code ("the Code") ² in respect of: Rule 4.1: "Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes." Rule 4.2: "The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment."
In:	<i>Global Khatm-E-Nabuwat Movement</i> , broadcast on 9 June 2012 at 22:00; and <i>Khatm-E-Nabuwat</i> , broadcast on 3 July 2012 at 22:00.
Decision:	To impose a financial penalty (payable to HM Paymaster General) of £25,000 ; and To issue a direction to the Licensee directing it to broadcast a statement of Ofcom's findings in this sanctions case, on a date and in a form to be determined by Ofcom.

¹ The material broadcast on Takbeer TV and found in breach of the Code is detailed in Broadcast Bulletin 222, dated 21 January 2013 ("the Finding"), which can be found at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb222/obb222.pdf>.

² The version of the Code that was in force at the time of the broadcast 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-february2011/>. Guidance accompanying this version of the Code can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>.

Executive Summary

1. Takbeer TV broadcasts religious and general entertainment content directed towards the Sunni Muslim community. It is broadcast mainly in Urdu and is available on the Sky satellite platform and internationally. The licence for Takbeer TV is held by Takbeer TV Limited (“TTVL” or “the Licensee”).
2. Ofcom’s finding (“the Finding”), published on 21 January 2013 in Broadcast Bulletin 222³, found that material broadcast by the Licensee breached Rules 4.1 (proper degree of responsibility with respect to the content of religious programmes) and 4.2 (abusive treatment of religious views and beliefs) of the Code.
3. The Finding related to the following programmes, both of which were broadcast in Urdu:
 - *Global Khatm-E-Nabuwat Movement* – Broadcast on 9 June 2012 at 22:00, this was a two and a quarter hour ‘phone-in’ programme in which a panel of four people answered telephone callers’ questions on issues of Islamic theology; and
 - *Khatm-E-Nabuwat* – Broadcast on 3 July 2012 at 22:00, this was a two hour programme that showed the proceedings of a symposium⁴ on Islamic themes held in Luton.
4. Both the programmes focussed on issues of Islamic theology and were therefore clearly “religious programmes”⁵.
5. In the Finding, Ofcom stated that, in light of previous Code breaches concerning abusive treatment of Ahmadis on Takbeer TV⁶, together with previous assurances by the Licensee that steps had been taken to avoid recurrence of such breaches, we regarded the current breaches of Rules 4.1 and 4.2 of the Code so serious as to warrant consideration of a statutory sanction.
6. The Finding set out the various broadcast statements concerning the Ahmadi community that were in breach of Rules 4.1 and 4.2. Ofcom found that this material subjected members of the Ahmadi community⁷ and their beliefs to abusive treatment and was therefore in breach of Rule 4.1. Further, we found that by subjecting members of the Ahmadi community to such treatment, the broadcaster did not exercise the proper degree of responsibility with respect to the content of either programme, in breach of Rule 4.1.

³ See footnote 1.

⁴ The symposium was called the *Aalmi Khatn-E-Nabuwat Symposium*.

⁵ Code Section Four defines a “religious programme” as: “[A] programme which deals with matters of religion as the central subject, or as a significant part, of the programme.”

⁶ See Broadcast Bulletin 184, 20 June 2011, at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb184/obb184.pdf>.

⁷ The Ahmadi community is a comparatively small Islamic movement. Founded by Mirza Ghulam Ahmad Qadiani, it grew out of mainstream Islam in the nineteenth century. Its followers believe themselves to be true Muslims. Followers of Mirza Ghulam Ahmad Qadiani are known as Ahmadis or Qadianis or Ahmadiyya.

Summary of Ofcom's Sanction Decision

7. Ofcom considered that, in light of previous Code breaches concerning abusive treatment of Ahmadis on Takbeer TV⁸, together with previous assurances by the Licensee that steps had been taken to avoid recurrence of such breaches⁹, we regarded the current breaches of Rules 4.1 and 4.2 of the Code as sufficiently serious to warrant the imposition of a statutory sanction.
8. In accordance with its Procedures for the consideration of statutory sanctions in breaches of broadcast licences ("the Sanctions Procedures")¹⁰, and having considered all the evidence and all the representations made to it by the Licensee, Ofcom has decided, for the reasons set out in paragraphs 61 to 86, below, that it would be appropriate to impose a financial penalty.
9. Having regard to the serious nature of the Code breach, the Licensee's representations and Ofcom's Penalty Guidelines ("the Penalty Guidelines")¹¹, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£25,000** on the Licensee in respect of the breaches of Rules 4.1 and 4.2.
10. In addition, Ofcom decided it should issue a direction to the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom.
11. Ofcom is concerned by the weak compliance record of the Licensee and expects it to take immediate and effective steps now, to redress this position. In addition to the statutory sanctions imposed, we put TTVL on notice that Ofcom will:
 - visit the Licensee at its premises to agree how to improve its understanding of, and compliance with, all applicable legal and regulatory requirements;
 - review the Licensee's compliance arrangements periodically, as appropriate and necessary, to ensure they are fit for purpose; and
 - monitor the Licensee's content for a period of time, to ensure it remains compliant with the Code.

Legal Framework

Communications Act 2003

12. 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

⁸ See footnote 6.

⁹ The breaches recorded in 2011 were against Channel S World Limited (Company No. 05398413), holder of TLCS licence 1030 (issued on 31 January 2006). Channel S World Limited changed its name to Takbeer TV Limited on 7 July 2010.

¹⁰ Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences came into effect on 1 June 2011 and can be found at:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/statutory-sanctions.pdf>.

¹¹ Ofcom's Penalty Guidelines were published 13 June 2011 and can be found at:
<http://www.ofcom.org.uk/files/2010/06/penguid.pdf>.

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)).

13. 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 set out in section 319(2). These include the objective that “the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes” (section 319(2)(e)), which is reflected in Rule 4.1 of the Code. Further, Ofcom must ensure that “religious programmes do not involve... any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination” – an objective reflected in Rule 4.2 of the Code.
14. In performing these duties, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)). Where relevant, Ofcom shall also 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
 - “the different interests of ... the different ethnic communities within the United Kingdom...” (section 3(4)(l)).

Human Rights Act 1998

15. 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 that 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.
16. 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 that 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.
17. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right 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). The exercise of these rights may be subject only to conditions and restrictions that 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.

18. Ofcom must exercise its duties 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.

Ofcom Broadcasting Code

19. 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.
20. 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 Code¹².
21. The relevant Code rules in this case are set out in full on the first page of this Decision.

Remedial action and penalties

22. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 are observed by the licensee. In the case of a television licensable content service ("TLCS") licence, Condition 6 of the licence requires the licensee to ensure that the provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.
23. Ofcom's powers to take action for contravention of TLCS licence conditions are set out in sections 236 to 238 of the Act, insofar as relevant to the case.
24. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme that was in 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. The maximum penalty that may be imposed under section 237 is whichever is the greater of £250,000 and 5% of the qualifying revenue on each occasion that a breach of the licence has occurred (whether as the result of a breach of the Code or another licence condition).
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. Section 238 sets out a general power that is targeted at serious ongoing breaches of the Code by a licensee. Ofcom is required under section 238 to serve a notice to start revocation proceedings if we are satisfied that there has been a breach of the licence and that the breach, if not remedied, would justify revocation.

¹² See footnote 2.

Background – The Finding

27. In the Finding¹³, the Executive found that material broadcast by the Licensee breached Rules 4.1 and 4.2 of the Code. Further, Ofcom stated that, in light of previous assurances and Code breaches by the Licensee for similar breaches, recorded in Broadcast Bulletin 184 (published on 20 June 2011)¹⁴, the breaches of Rules 4.1 and 4.2 in this case were serious and warranted consideration of a statutory sanction.
28. The Finding related to two programmes, both of which were broadcast in Urdu. The first, *Global Khatm-E-Nabuwat Movement* (“Programme One”), broadcast on 9 June 2012 at 22:00, was a two and a quarter hour ‘phone-in’ programme, in which a panel of four people answered telephone callers’ questions on issues of Islamic theology. The second, *Khatm-E-Nabuwat* (“Programme Two”), broadcast on 3 July 2012 at 22:00, was a two hour programme that showed the proceedings of a symposium¹⁵ on Islamic themes held in Luton, from where the programme was produced.
29. In its Finding, Ofcom had regard to both Article 10 and Article 9 of the Convention, while also recognising both that the latter was “subject ... 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”, and that Rule 4.2 of the Code directly reflects the requirements of section 319(6)(b) of the Act.

Programme One

30. In the Finding, Ofcom noted that:

- members of the Ahmadi community were described in words that amounted to abusive treatment of the Ahmadiyya religion and the Ahmadi community more generally. For example, they were described as having “*monstrous*” intentions and being both “*lying monsters*” and worthy of elimination by Allah, “*by using worms and vermin*”;
- one of the panellists and a caller made statements that were highly abusive to members of the Ahmadi community and their beliefs, by, for example, equating such beliefs to having “*piles*” and agreeing that Ahmadis require “*operating on ... without ... anaesthesia*”; and
- two callers made sustained, repeated and derogatory references to Mirza Ghulam Ahmad Qadiani, founder of the Ahmadiyya religion¹⁶, stating, for example, that “*the whole world knows... Mirza died in a shit cubicle.*”

31. The Finding detailed further material in the above broadcast that was in breach of Rule 4.2. Ofcom found that the material subjected to abusive treatment the religious views and beliefs of those belonging to the Ahmadiyya religion.

¹³ See footnote 1.

¹⁴ See footnote 6.

¹⁵ See footnote 4.

¹⁶ See footnote 7.

32. Further, the Finding noted that TTVL provided no evidence to Ofcom to show that it had any appropriate procedures or systems in place for monitoring live content to ensure compliance with the Code or to take appropriate action when required. In this instance, Ofcom therefore considered the Licensee had not exercised the proper degree of responsibility with respect to the content of programmes which are religious programmes. Accordingly, Ofcom found the Licensee in breach of Rule 4.1.

Programme Two

33. In the Finding, Ofcom noted in particular that the presenter:

- stated that Ahmadi holy books were: “*replete with filth*”;
- said “*the word ‘Qadiani’ is ... detestable*”; and
- described the Ahmadi religion as “*filth*”.

Ofcom found that these statements amounted to abusive treatment of the Ahmadiyya religion and the Ahmadi community more generally, in breach of Rule 4.2.

34. Further, the Finding noted that TTVL did not sufficiently demonstrate what compliance procedures it had in place to ensure programmes produced at locations away from the Licensee’s studios complied with the Code. In this instance, Ofcom therefore considered TTVL had not exercised the proper degree of responsibility with respect to the content of programmes which are religious programmes. Accordingly, Ofcom found the Licensee in breach of Rule 4.1.

35. In the Finding, Ofcom noted that this case followed a number of earlier breaches of Rule 4.2, recorded in 2011 (“the 2011 Code Breaches”), which also involved derogatory and abusive references to the religious views and beliefs of the Ahmadi community. Ofcom was sufficiently concerned about these breaches that we asked the Licensee to attend a meeting, at which Takbeer TV explained the improvements it would make to its compliance procedures to prevent similar breaches occurring in the future. Given this background, the Finding explained that Ofcom was greatly concerned by the current breaches and therefore stated that the contraventions of Rules 4.1 and 4.2 were serious and were being considered for statutory sanction.

Ofcom’s Decision to Impose a Statutory Sanction

36. 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.

37. In this case, Ofcom issued a preliminary view (“Preliminary View”) that TTVL had seriously breached the Code and that Ofcom was minded to impose a statutory sanction in the form of a substantial financial penalty and direct the Licensee to broadcast a statement of Ofcom’s findings in this sanctions case, on a date and in a form to be determined by Ofcom. Ofcom sent a copy of the Preliminary View to TTVL on 31 May 2013, at the same time giving the Licensee the opportunity to provide written and oral representations (“the Representations”) on the Preliminary View. TTVL provided its written representations to Ofcom on 20 June 2013. The Representations are summarised in paragraphs 39 to 45, below.

38. In reaching its final Decision on whether to impose a statutory sanction and, if so, what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the evidence and representations on behalf of TTVL, including the Representations on the Preliminary View, and has had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines in reaching its Decision in this sanctions case (see further below).

Licensee's representations

39. In both its written and oral representations, ("the Representations") the Licensee apologised unreservedly for its breach of the Code and "any offence or hurt that may have been unintentionally caused". The Representations stated that the Licensee aimed to enhance inter-faith dialogue, Takbeer TV having been "set up and run by people who are wholly committed to Sufi Islam, which teaches and practices tolerance and love towards all people". The Licensee added that this had made the Code breaches extremely embarrassing for it, going "entirely against [its] worldview". It insisted that the breaches were unintentional.

40. TTVL said in its oral representations that Takbeer TV is a non-commercial, religious community channel run by volunteers, with six paid technical staff, one of whom is a Programming Controller who had been appointed two months before the hearing (see also, paragraphs 43 and 66). TTVL failed to clarify whether a Quality Controller had been appointed previously, as it said had been the case at a meeting with Ofcom following the 2011 Code Breaches. However, the Licensee said that, following that meeting, it had:

- implemented "a programme of training and evaluation of all presenters and staff to continually update them and remind them about their obligations and ... good practice...";
- translated the Code into Urdu and given it to all presenters, who had also signed a Code of Conduct;
- advised presenters "to condemn and discourage callers who are disrespectful, using morally unacceptable and inappropriate language"; and
- introduced "a delayed calling system" (used to enable intervention prior to broadcast).

41. TTVL said it considered the presenter of the programmes in the present case bore significant responsibility for the broadcast of the material found in breach of the Code, confirming that he had subsequently been banned from further appearances on Takbeer TV. It clarified that this decision had not been easy for the channel, because the presenter had "a very established history in facilitating inter faith dialogue and bettering community relations" and, although "not a professionally qualified presenter", had generally done his utmost to ensure Code compliance. In its oral representations the Licensee added that the "delayed calling system" (used to enable intervention prior to broadcast) had not worked in this case due to "negligence of the transmission staff", who were also tasked with compliance responsibilities.

42. TTVL said that, moving forwards, it would be more careful. It added that it had decided not to broadcast programmes on Takbeer TV that were "against any sect – Ahmadhis or Shia or any other sect..." and not to feature scholars in programmes, as it considered them "very difficult to tackle".

43. The Licensee considered it had made “genuine and substantial efforts” to improve compliance, noting that Takbeer TV had “not had any problems or issues of this nature for some time”, primarily due to “improved editing and production control”, including the appointment of a Programming Controller to check programming content. TTVL also referred to improved feedback from viewers over recent years.
44. The Licensee said it would be happy to broadcast anything to which it was directed by Ofcom, to “compensate the complainant”, but claimed that the imposition of a financial penalty would be very damaging to a channel [X] and “may result in it simply not being feasible to run the station any longer”. TTVL said that, although the channel was funded in part by the two charities [X]. The Licensee added that it was trying to increase its revenue from advertising, which was currently limited, and that the channel’s director had been funding its deficit.
45. TTVL said that similar Code breaches would not recur.

Seriousness of breaches

46. Ofcom considered that the breaches of Rules 4.1 and 4.2 in this case were sufficiently serious to warrant the imposition of a statutory sanction for the reasons set out below.
47. Ofcom considered that breaches of Rule 4.2 were potentially serious when the abusive treatment related to a long standing and inflammatory dispute between religious groups. Ofcom understood this to be the case in this instance, with the Ahmadi minority being considered by some to be heretics and non-Muslim, especially in countries with Sunni majorities. Ofcom understood that there had been historical tensions between the two communities, which had in some instances resulted in acts of violence against Ahmadis. Under such circumstances, broadcasters must take great care when broadcasting views that may be abusive towards such a minority religion and its followers. Takbeer TV would have been reasonably expected to take such care especially given that it is aimed at members of the Sunni Muslim community in the UK and internationally.
48. The breaches of Rule 4.2 in this case were repeated, as noted in paragraph 35, above. Following the 2011 Code Breaches, Ofcom specifically warned TTVL that it was “put on notice ... that any further breaches of the Code in this area [would] lead to Ofcom considering a statutory sanction”.
49. As also noted above, and in the Finding, the Licensee had given Ofcom assurances following the 2011 Code Breaches that it had taken, or was going to take, various steps to ensure that going forward it would ensure compliance with Rule 4.2 and would not broadcast further programmes that treated Ahmadis abusively. Ofcom considered the current breaches against this background which compounded the seriousness of the breaches and the seriousness of the Licensee’s failure to exercise a proper degree of responsibility with respect to its religious programmes.
50. In assessing the seriousness of the breaches, Ofcom noted that, in Programme One, the presenter twice attempted to challenge callers’ references to Mirza Ghulam Ahmad Qadiani having “*died in a shit cubicle*”. However, these were the only instances where the presenter sought to challenge gratuitously abusive remarks being made by callers or contributors to the programme and, as noted in the Finding, TTVL itself said the presenter’s attempt to challenge what was being said “was not enough”. Ofcom therefore considered that the extent to which attempts had been made by the presenters to contextualise and/or mitigate the abuse caused was minimal. Further, Ofcom noted in the Finding that it was the presenter himself who, in Programme Two, made abusive remarks. This was particularly concerning in light of TTVL’s assurances following the

2011 Code Breaches in relation to providing additional compliance training to all its presenters.

51. Further, Ofcom was concerned that viewers of Takbeer TV may have perceived that part of its *raison d'être* was to attack the Ahmadi community. We noted, for example, that one of the callers in Programme One said he had been watching the programme regularly, adding:

"There was a need for a TV channel against the Ahmadis, to raise voice against the Ahmadis, and I am very happy and I have to congratulate you for this and I offer my regards to the administration of Takbeer TV and to you honourable scholars – my heartiest congratulations to you all".

This was not contradicted by the presenter, who merely thanked the caller, adding:

"May Allah grant you a great reward for your noble sentiments and enable us to fulfil your desires..."

Another caller in the same programme also said (addressing the presenter):

"I congratulate you and hail your courage for the way you contest with these people [the Ahmadis]. Brother, may Allah grant you more courage."

Again, this was not contradicted by the presenter, who thanked the caller, adding:

"Amen, sister, thank you. When the prayers of sisters and such support is with me, it enhances my courage".

52. Ofcom noted the Licensee's representations that there was "consistent broadcasting of messages of love, respect for all and a peaceful existence – which is the actual *raison d'être* of the station and has been since its inception". Ofcom was, however, concerned that this statement of the Licensee did not accord with what was broadcast in Programme One and Programme Two as well as in the live programmes to which the 2011 Code Breaches related.
53. Ofcom also took into account that the language used in the broadcasts was particularly strong and offensive. For example, members of the Ahmadi community were described as both having "*monstrous*" intentions and being "*lying monsters*" and worthy of elimination by Allah, and the Ahmadi religion was described as "*filth*".
54. Moreover, some callers in Programme One also appeared to encourage the launching of a *jihad*¹⁷ against the Ahmadis, saying that:

"[When] Prophet Muhammad told us that 30 such prophets will come, he told us this so that we should launch jihad against these lying monsters; if we are martyred in this cause, we will be the fortunate ones because Allah does not need us for this purpose; if he wants he can eliminate these Mirzais by using worms and vermin [i.e. Allah can kill the Ahmadis without needing us but if we do so and are martyred in the process, it would be our privilege]".

The presenter did not contest this, but merely thanked the caller, adding:

¹⁷ The Oxford Dictionary defines the term "jihad" as "a holy war undertaken by Muslims against unbelievers".

“...the quotes you have represented are indeed very important. All Muslims read these and they follow these”.

Imposition of sanctions other than a financial penalty

55. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom’s findings (or both), if Ofcom is satisfied that the contravention can be appropriately remedied by such a direction. This may include a direction not to repeat the programme.
56. Ofcom noted in the Finding that the Licensee indicated in its written representations that, as one of various changes to its procedures, it has set up a programme approval committee (comprised of key programming staff), to ensure Code compliance, and has suspended further broadcast of *Khatm-e-Nabuwat* until approved by this committee. In its oral representations the Licensee stated that it would stop the transmission of this programme. In light of these representations by the Licensee, Ofcom is satisfied that repeat broadcasts are highly unlikely to occur. We do not therefore consider a direction not to repeat the programmes is necessary in this instance.
57. Ofcom considers that directing the Licensee to broadcast a statement of Ofcom’s findings (as provided by Ofcom and at times stipulated by Ofcom) is an appropriate way to remedy the breaches. Ofcom considers in particular that such a statement would remedy to some extent the potential offence to the members of the Ahmadi community by reassuring them that their abusive treatment in the broadcasts at issue has been properly addressed. A statement could also, in our view, contribute towards mitigating tensions between certain Muslim and Ahmadi communities that could have been caused by the broadcasts.
58. In Ofcom’s view, broadcasting a statement of our findings to the public is also appropriate here, given that the Licensee did not offer a public apology following the broadcasts. The proposed direction to broadcast a statement of Ofcom’s findings would partly compensate for this omission, even though the potential harm caused by the broadcasts would have been more adequately remedied by a voluntary and prompt apology on air by the Licensee to the members of the Ahmadi community.
59. Ofcom’s decision is that, in this case, revocation of the licence would be disproportionate.
60. Ofcom considered that, on its own, a direction to broadcast a statement of Ofcom’s findings in this case was not a sufficient statutory sanction, given the seriousness of the breach. However, Ofcom considered that a direction to broadcast such a statement in combination with a financial penalty (see paragraphs 61 to 86) should provide an appropriate remedy, while also reflecting the seriousness of the breach and acting as an effective deterrent to discourage the Licensee from repeating the breach, and other licensees from contravening the Code in a similar manner.

Imposition of a financial penalty

61. Under section 237(3) of the Act, the maximum level of financial penalty that can be imposed on the holder of a TLCS licence is the greater of £250,000 and 5% of the licensee’s qualifying revenue relating to its last complete accounting period falling within the period for which its licence has been in force.

62. Qualifying revenue is calculated by adding together revenue gained from advertising, sponsorship and subscription. It does not include revenue gained from, for example, interactive services.
63. In the calendar year 2011, the Licensee reported qualifying revenue for Takbeer TV less than £250,000. In accordance with section 237(3) of the Act, Ofcom may therefore impose a penalty of up to £250,000.

Factors taken into account in determining the amount of a penalty

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

Deterrence

65. The Penalty Guidelines make clear that the “central objective of imposing a penalty is deterrence” and that 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 infringement¹⁸.
66. Ofcom noted that the broadcaster declared that it had understood and regretted its failure to fulfil its obligations, that it had put in place training schemes for its personnel and that it had taken the precaution “to immediately stop all these programmes which, in any sense, can create hatred or discriminate any sect.” TTVL also stated in its oral representations that it had recently employed a Programming Controller. Ofcom also noted, however, that following the 2011 Code Breaches, the Licensee had again outlined a number of steps it had taken to prevent similar breaches from recurring. These measures included the provision of additional training to all presenters and producers and the appointment of a bi-lingual Quality Controller who would “take responsibility to oversee programme quality and output to prevent any such incidences occurring again”¹⁹. The Licensee had also stated on that occasion that “we do not intend to deal with any of the specific issues raised [i.e. relating to the Ahmadi community] that have caused controversy in respect of these complaints in any future programmes and have advised our presenters to avoid the same”.
67. Given this background, Ofcom is particularly concerned that our previous finding of the 2011 Code Breaches did not prove to have acted as an effective incentive to better compliance for the Licensee and that this was despite the assurances given by TTVL on that occasion that it would improve its compliance processes. Ofcom had therefore limited confidence in the Licensee’s identical assurances following the current breaches and was concerned that these would again not be put into effect or that any measures taken would be insufficient. Ofcom also noted that, despite the Licensee’s reassurances during its oral representations that similar Code breaches would not recur, the Licensee had already stated – as reported in the Finding²⁰ – that “clearly, it will be impossible to eliminate such possibilities [i.e. potential breaches of the Code] in absolute terms”. Ofcom considered that the Licensee did not appear to give an unequivocal reassurance that it would no longer broadcast programmes giving rise to a risk of similar breaches as

¹⁸ Paragraph 3 of the Penalty Guidelines.

¹⁹ See footnote 6.

²⁰ See footnote 1.

it only generally stated that it had decided not to broadcast programmes “against any sect”.

68. Against this background, Ofcom considered that a financial penalty was necessary to ensure not only that the Licensee fully understands the very serious nature of the Code breaches recorded against it but implements all necessary improvements to ensure compliance with the Code in future. Ofcom also concluded that a financial penalty is needed to send a message to other licensees, underlining the need to understand and respect the Code, and, in particular, the requirement to comply with Rules 4.1 and 4.2.

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

69. As set out above, Ofcom concluded that the material broadcast in this case amounted to abusive treatment of the Ahmadiyya religion, the views and beliefs of those belonging to it and the Ahmadi community as a whole. Ofcom considered that this created the potential for harm, especially given the sensitivity of the issue and the historical tensions between certain Muslim and Ahmadi communities (see paragraph 47). Such harm could consist of: distress and offence being caused to the Ahmadi community; reinforcement of prejudice and discrimination against Ahmadis; threats of further violent acts against Ahmadis; and resurgence of the tension between the two communities. TTVL’s failure to exercise a proper degree of responsibility with respect to the content of its religious programmes also created, in our view, a potential for significant harm for the same reasons. Ofcom recognises that the potential for harm in this case (where the licensee was broadcasting content directed towards the Sunni Muslim community in the UK and internationally) was greater than would have been likely in the case of, for example, a broadcast service of more restricted coverage.

The duration of the contravention

70. Ofcom noted that the recorded breaches of Rules 4.1 and 4.2 were in relation to material broadcast in two programmes on 9 June and 3 July 2012. We are unaware of the material having been broadcast again.

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

71. We have no evidence to suggest that the Licensee made any financial gain from these breaches of the Code.

Any steps taken for remedying the consequences of the contravention

72. Ofcom noted TTVL’s representation that “appropriate presenters” of *Khatm-e-Nabuwat* would be “prepared to undertake a public apology” after the programme had been “fully re-evaluated” by its programme approval committee. TTVL considered that, despite the delay in broadcasting such an apology, the Licensee would “ensure that the audience hearing [it] would be the same make up as the one” that heard the offensive comments in the original broadcasts. Ofcom also noted that the Licensee stated it was “ready to broadcast any statement” suggested by us. Ofcom took the view, however, that in order to mitigate potential offence to the audience most effectively, TTVL would need to have issued a public apology soon after broadcast and, in any case, immediately once it was aware of the potential breaches under the Code. As TTVL had not provided any evidence that such an apology had been broadcast, Ofcom concluded that the Licensee failed to take any steps to remedy the consequences of the contravention.

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

73. The Licensee has the following previous Code contraventions recorded against it, all in respect of its service, Takbeer TV:

- Breach of Licence Condition 11 for failing to provide recordings of three programmes broadcast between 24 July and 7 August 2010²¹;
- Breaches of Rule 4.2 for abusive treatment of Ahmadis in five programmes broadcast between 17 October 2010 and 26 March 2011 (see paragraphs 5, 27 and 35)²²; and
- Breach of Rule 9.22(b) for undue prominence of sponsorship credits across three programmes broadcast on 9 June 2012²³.

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

74. Ofcom's view is that the Licensee did not have effective compliance arrangements in place and, as a result, failed to take appropriate steps to prevent the contravention. We consider that the identified compliance failure would have become apparent to the Licensee had it had an effective strategy to monitor and assess ongoing compliance. Ofcom is of the view that, although compliance processes may have been put in place following Ofcom's previous breach decisions (outlined at paragraph 35), these were insufficiently robust to prevent the contravention that occurred on 9 June 2012 and 3 July 2012. Such failure to adequately address shortcomings in its compliance process over time played a significant part in the circumstances which gave rise to the breaches.

75. In particular, Ofcom was concerned that, although the Code had been translated into Urdu and copies distributed to Takbeer TV's presenters following the 2011 Code Breaches, the Licensee was unable to provide any evidence as to whether the Code had been explained to them. Ofcom noted that the Licensee was unable to clarify to the satisfaction of Ofcom's Sanctions Committee whether a Quality Controller had been recruited after the 2011 Code Breaches. Further, Ofcom noted that the Licensee's oral representations had been made by a representative of TTVL who had been recruited on a volunteer basis after the time of the breach and appeared to have limited knowledge of the compliance steps it had taken to prevent the contravention.

76. In response to TTVL's representation that, by way of mitigation, Ofcom should take into account that Takbeer TV is "a small community channel with very limited resources", we maintain that the lack of resources is, in our view, not a factor that would absolve a broadcaster from its obligations under its licence and the Broadcasting Code.

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

²¹ See Broadcast Bulletin 169, 8 November 2010, at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>.

²² See footnote 6.

²³ See Broadcast Bulletin 216, 22 October 2011, at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb216/obb216.pdf>.

77. Ofcom noted that the Licensee said it was “very much embarrassed at the situation” and admitted that the breaches were due to negligence and human error.

78. Ofcom considered that the breaches in this case were not only a result of negligent behaviour but occurred because the Licensee had acted recklessly by failing to put adequate compliance arrangements in place to ensure compliance with the Code and its obligations under the licence.

79. Ofcom took particular account of the following factors:

- The Licensee had been previously found in breach of Rule 4.2 of the Code and had been put on notice that any further breaches of the Code in this area would lead to Ofcom considering a statutory sanction;
- Following our Finding with respect to the 2011 Code Breaches, the Licensee appeared to have understood the harm caused by some of its live programming and the need to take measures to prevent similar breaches from recurring;
- The Licensee was unable to clarify in its oral representations whether there was a member of its staff who, having received appropriate training, was in charge of monitoring and ensuring compliance of its programming with the Code at the time the breaches occurred;
- The Licensee admitted to have been aware of the risks raised by live programmes such as Programme One and Programme Two. For example, in its oral representations the Licensee stated that it was hard to tackle some of the individuals calling into the live programmes as “they have very intolerant attitude towards each other”;
- The fact that the Licensee’s oral representations were made by a volunteer with no specific knowledge of the compliance arrangements that the Licensee had in place up to and at the time of the breaches suggested to Ofcom that the Licensee continued not to understand fully the importance of its responsibilities and obligations under the Code, nor to take them sufficiently seriously, given the gravity of the breaches; and
- Despite the breaches that occurred in Programme One, the Licensee took no steps to prevent further breaches in Programme Two.

80. In Ofcom’s view, it was clear from the above that the Licensee was aware of the risks raised by the programmes as broadcast and that, by failing to take appropriate steps to prevent them, it willingly undertook the risk of breaching the relevant rules and causing harm to viewers.

81. Ofcom therefore considered the breaches in this case to be evidence of reckless conduct on the part of the Licensee.

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

82. Each programme at issue was only broadcast on one occasion. Ofcom notes, however, that the Licensee did not take timely and effective steps to prevent the repetition of the

abusive remarks throughout the entire duration of the shows. Further it took no steps to ensure future compliance following the broadcast of Programme One.

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

83. Takbeer TV's qualifying revenue figure derives from the channel's Transmission & Revenue Return to Ofcom for the calendar year 2011. The Licensee also explained that it was a "community channel and most of the people are giving their efforts voluntarily", with the exception of the six technical staff it employs. The Representations detailed the channel's current financial position and noted that it receives funding from two charities and has had its deficit funded by its Director. [X].
84. Ofcom took into account the Licensee's representations that "any penalty imposed may result in it simply not being feasible to run the station any longer" [X]. Ofcom recognised in this respect that the penalty must be proportionate taking into account the Licensee's rights under Articles 9 and 10 of the Convention. If any financial penalty was to be so high that its effect would be to close a service down, 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 purposes of imposing a penalty. Ofcom therefore took this point into account and carefully weighed it in reaching its decision on the proportionality of the financial penalty.
85. However, as noted above, the "central objective of imposing a penalty is deterrence". Ofcom considered that the breaches in this case were serious for the reasons explained above (paragraphs 46 to 54) and arose from what amounted to reckless conduct on behalf of the Licensee. Ofcom carefully assessed all the evidence provided by the Licensee about its size and current financial situation, including the Licensee's accounts, the Licensee's Representations and the Licensee's responses at the hearing to Ofcom's questions about its sources of funding and its current and projected revenues.
86. Having weighed all these factors with the utmost care, Ofcom considered that a penalty of **£25,000** would be proportionate taking into account all the relevant circumstances as set out and discussed in this Decision.

Precedent

87. In accordance with the Penalty Guidelines, Ofcom shall also have regard to relevant precedents set by previous cases, but may depart from them depending on the facts and context of each case.
88. In this instance, there is no precedent in relation to a sanction for either a breach of Rule 4.2 of the Code or concurrent recorded breaches of Rules 4.1 and 4.2 of the Code.
89. There is only one precedent (Radio Asian Fever) in terms of financial sanction in relation to a recorded breach of Rule 4.1 of the Code. On 23 November 2012 the Leeds-based community radio station was fined £4,000 for allowing the broadcast of various homophobic remarks²⁴. That sanction took account of the individual circumstances of the licensee – in particular that it was a community radio station broadcasting to a very limited audience focussed on just one UK city. This differs from the current case, which

²⁴ Ofcom's adjudication can be found at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/radio-asian-fever.pdf>.

involves a channel broadcasting across the UK and internationally. Also, the precedent concerned a sanction for concurrent recorded breaches of Rules 2.3, 2.4 and 3.1, in addition to Rule 4.1.

90. While not a direct precedent, on 4 June 2008 Ofcom imposed an aggregated financial penalty of £255,000 on MTV Networks Europe in relation to its services, TMF, MTV France, MTV UK and MTV Hits²⁵. In the case of MTV France, a fine of £35,000 was imposed for breaches of both Rule 2.3 (generally accepted standards) and Condition 11 (failure to supply recordings) of the Code. The breaches of Rule 2.3 concerned racist and homophobic text messages in a programme called Belge Chat. Amongst other things, the texts said *“the white race will triumph”*, *“death to all immigrants”*, *“death to gays”* and *“immigrants are going to fuck your mother”*.
91. In assessing the seriousness of the breach Ofcom took particular account of the racial and homophobic tone of the offensive texts, as well as the fact that a breach of the Code had been recorded in the past against MTV Networks and the Licensee had stated that it would update its internal training programme. In mitigation, Ofcom took into account that the audience was likely to have been relatively small, the Licensee completely condemned any racist or homophobic language and the sentiments expressed on Belge Chat were totally abhorrent to the Licensee. The Licensee had also admitted the breaches and had taken steps to improve compliance.
92. Ofcom is satisfied that both the level of financial penalty and the combination of sanctions proposed in this case are appropriate, taking due account of the factors outlined in the Penalty Guidelines and the seriousness of the breach.

Cooperation

93. In accordance with the Penalty Guidelines, Ofcom may increase the penalty where a licensee has failed to cooperate with Ofcom’s investigation.
94. In Ofcom’s view, the Licensee has, in general, been cooperative. For example, it has provided full representations in response to Ofcom’s formal requests for comments under the Code in relation to the programmes and expressed its intention to take steps to remedy its failure to comply with Rules 4.1 and 4.2 of the Code. The Licensee also offered to broadcast a statement in order to “compensate the aggrieved” as directed by Ofcom. Ofcom does not therefore consider it appropriate to increase the penalty on account of a failure to cooperate in this instance.

Conclusion

95. Any financial penalty Ofcom imposes on the Licensee must be appropriate and proportionate to the contravention in respect to which it is imposed. Ofcom’s central objective in setting a penalty is deterrence both for the Licensee and other broadcasters. An appropriate penalty would be one that secures this objective (doing so in a proportionate way).
96. As regards the weighting of the factors considered above, it is Ofcom’s view that the following factors are of particular importance in the circumstances of this case, and in the consideration of the level of the penalty:

Factors which serve to increase the penalty

²⁵ Ofcom’s adjudication can be found at: http://www.ofcom.org.uk/tv/obb/ocsc_adjud/mtv.pdf.

- (a) the contraventions were both serious and repeated (see paragraphs 46 to 54);
- (b) the failure of the Licensee to implement sufficiently robust compliance processes following Ofcom's previous breach decisions, including with respect to the same Code Rule, and despite its previous assurances to this effect (see paragraphs 66 and 75);
- (c) the recklessness and admitted negligence of the Licensee, given its failure to put in place effective arrangements to monitor and assess ongoing compliance during and between the programmes in this instance (see paragraphs 77 to 81); and
- (d) the weak compliance record of the Licensee prior to this serious breach of the Code, particularly its recorded previous breach of Rule 4.2 for the same type of material, i.e. programming including derogatory and abusive references to the Ahmadi community (see paragraph 73).

Factors which serve to decrease the penalty

- (a) the cooperation of the Licensee with Ofcom during the sanctions process (see paragraph 94); and
 - (b) the current financial position of the Licensee (see paragraphs 83 to 85).
97. Having regard to all the factors referred to above and all the representations to date from the Licensee, Ofcom's decision is that an appropriate and proportionate sanction would be a financial penalty of **£25,000**.
98. In addition, Ofcom considers 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.
99. Ofcom is concerned by the very weak compliance record of the Licensee and expects it to take immediate and effective steps now, to redress this position. In addition to the statutory sanctions imposed above, we put TTVL on notice that Ofcom will:
- visit the Licensee at its premises to agree how to improve its understanding of, and compliance with, all applicable legal and regulatory requirements;
 - review the Licensee's compliance arrangements periodically, as appropriate and necessary, to ensure they are fit for purpose; and
 - monitor the Licensee's content for a period of time, to ensure it remains compliant with the Code.

23 August 2013