

Ofcom Content Sanctions Committee

Consideration of sanction against

Islam Channel Limited (“Islam Channel Ltd” or “the Licensee”) in respect of its service Islam Channel (“the Islam Channel”).

For

Breaches of Ofcom’s Broadcasting Code: (“the Code”) as follows:

In the transmission of the programme *The Agenda with Yvonne Ridley* (“*The Agenda*”) on the Islam Channel between 25 March 2006 and 21 April 2006; and in *Politics and the Media* on the Islam Channel between 27 March 2006 and 1 May 2006, breaches in relation to a total of 24 programmes of Ofcom’s Broadcasting Code (“the Code”).

Rule 6.6: “*Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period*”;

In the transmission of the programme *The Agenda* on the Islam Channel on 28 March and 13 April 2006, two breaches of:

Rule 5.5: “*Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole*”;

In the transmission of the programme *The Agenda* on the Islam Channel on 30 March 2006, a breach of:

Rule 5.12: “*In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented*”;

In the transmission of the programme *Politics and the Media* on the Islam Channel

between 27 March and 1 May 2006, four breaches of:

Rule 6.6: *“Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period”*;

In the transmission of the programme *Politics and the Media* on the Islam Channel on 27 March 2006, breaches of:

Rule 6.8: *“Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion”*;

Rule 6.9: *“If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead)”*; and

In that Islam Channel Ltd failed on request to produce a copy forthwith of *The Agenda* containing a crawler text as broadcast on 10 August 2006, a breach of:

Licence Condition 11: *“the Licensee shall...at the request of Ofcom forthwith produce to Ofcom any such recording [of programmes included in the Licensed Service] for examination...”*; and

taking into account the serious nature of the breaches themselves and all other relevant factors.

Decision

To impose a financial penalty (payable to HM Paymaster General) of **£30,000** on Islam Channel Limited.

Summary

For the reasons set out in full in the Decision, under powers delegated from the Ofcom Board to Ofcom’s Content Sanctions Committee (“the Committee”), Ofcom has decided:

- 1.1 The Islam Channel is a specialist religious channel that broadcasts on the Sky platform (EPG 813) and is directed at a largely Muslim audience both in Britain

and around the world. Its output ranges from religious instruction programmes to current affairs and documentary programmes.

- 1.2 The Licensee broadcast a current affairs series, *The Agenda*, which examined political matters of national and international importance. The Islam Channel also broadcasts another current affairs show, *Politics and the Media*.
- 1.3 During the election period of the local elections in 2006 (25 March to 4 May 2006), both these programmes were presented, at times, by candidates who were standing in the local elections. Yvonne Ridley, was standing for the Respect Party and presented *The Agenda*. Abdurahman Akhtar Jafar, who was also standing for the Respect Party, but as a mayoral candidate in the London Borough of Newham, presented *Politics and the Media*.
- 1.4 It is a breach of Ofcom's Broadcasting Code ("the Code") for candidates standing in UK elections to act as news presenters, interviewers, or presenters of any type of programme during an election period. Further, in *Politics and the Media*, the programme breached the Code by containing a promotion of the mayoral candidate and failed to ensure that other candidates standing for election were given an appropriate opportunity to take part in what became an electoral area discussion.
- 1.5 During this election period, some of these programmes also failed to treat matters of political and industrial controversy and major matters relating to current public policy with due impartiality. This was also in breach of the Code.
- 1.6 The Islam Channel also broadcast, on two occasions, *Jerusalem: A Promise of Heaven*. This programme examined the position of the city of Jerusalem and argued that historically Muslims have been deprived of its ownership. The Islam Channel failed to ensure that this major matter of political controversy was treated with due impartiality. Ofcom considered that this failure was emblematic of the overall pattern of weak compliance at the Islam Channel. However, Ofcom did not consider this breach, in itself, to be sufficiently serious to warrant the imposition of a statutory sanction.
- 1.7 In addition to the above breaches Islam Channel Ltd failed to provide a copy forthwith, when requested, of an edition of *The Agenda* containing a crawler text which was the subject of a complaint to Ofcom. This was a breach of the conditions of its licence.
- 1.8 The breaches of Rule 6.6 of the Code (precluding candidates in UK elections from acting as news presenters, interviewers or presenters of any type of programme during the election period) in *The Agenda* and *Politics and the Media* were particularly serious since this Rule was designed to help secure the integrity of the democratic process, and the public's trust in that integrity, through preventing any unfair electoral advantage being afforded to a particular candidate. Rules regarding the conduct of elections come from Ofcom's statutory duties as outlined in the Representation of the People's Act 1983 (as amended). These are extremely important principles and the wording of Rule 6.6 of the Code is clear and unambiguous. Nonetheless Yvonne Ridley - a candidate in the election - was permitted to present *The Agenda* for three weeks between 25 March and 24 April 2006 during the election period. This represented a considerable period of time during which she was able to present and voice opinions that were in her interests as a candidate and that were also in the interests of the Respect Party, for whom she was standing in the elections.

- 1.9 Similarly in *Politics and the Media* Abdurahman Akhtar Jafar, who was a long-standing presenter of the programme, was allowed to promote his mayoral candidacy during the election period. The seriousness of these breaches was underlined by the fact that the management of Islam Channel Ltd claimed not to have been aware of Mr Jafar's candidacy before they were contacted by Ofcom on 21 April 2006. This was despite the fact that one of its own presenters, Yvonne Ridley had referred to his mayoral candidacy on air. This was clear evidence that Islam Channel Ltd could not have been properly monitoring its own output.
- 1.10 The potential harm caused by a disregard of democratic processes such as these is considerable. These rules are in place to ensure that elections are conducted fairly and that no unfair advantage is given to candidates through promotion in the broadcast media, irrespective of whether the candidate can be shown to have actually benefited in practice.
- 1.11 These breaches were a direct result of management and compliance failures both in the preparation of the programmes and in some cases during the broadcast of the programmes themselves. These breaches were of even greater concern as they occurred after Ofcom had investigated another programme broadcast on the Islam Channel, *Saturday Night*, and had given warnings and guidance to Islam Channel Ltd. In addition the majority of the breaches occurred after Ofcom had conducted a special compliance workshop at Islam Channel Ltd's offices on 8 April 2006. The fact that the majority of these breaches occurred after this workshop was inexcusable; seriously negligent; and demonstrated that the compliance procedures that Islam Channel Ltd had had in place were seriously inadequate.
- 1.12 Ofcom considered that Islam Channel Ltd's senior management must have been either not aware of the breaches at the time they occurred, or aware but considered that there was no compliance issue. This allowed the contraventions to continue over a period of several months.
- 1.13 Ofcom was also surprised to be asked questions at the hearing which suggested that Islam Channel Ltd still did not understand the application of the due impartiality rules. This was of particular concern in light of the guidance and workshop referred to above and the firm assurances the Licensee had given, that appropriate compliance procedures were now in place.
- 1.14 Islam Channel Ltd accepted these breaches and also accepted that at the time of the contraventions it had insufficient compliance procedures in place to ensure that such breaches did not occur.
- 1.15 However, when responding on the possible imposition of a sanction Islam Channel Ltd asked Ofcom to recognise that the launch of the Islam Channel broke new ground in that it became the first UK-based English language Islamic religious channel. As such it was perhaps inevitably regarded with some suspicion and/or reticence by potential programme guests, who were therefore more likely to be receptive to invitations from more 'mainstream' broadcasters.
- 1.16 Islam Channel Ltd also argued that:
- the breaches were not intentional or deliberate;
 - Islam Channel Ltd was a small organisation with limited resources, and it would be disproportionately damaged by a heavy financial penalty;

- as an Islamic religious channel with limited resources providing a “niche service to the UK’s Muslim Community”, the service faces particular compliance pressures which it was working hard to address;
 - no electoral gain was proved to have been obtained by either election participant in relation to the failure to comply with Rule 6.6 of the Code;
 - overall the station’s compliance record since it went on air in 2004 has been good;
 - the breaches occurred during a confined period – March to May 2006 – before compliance was improved;
 - its senior management was completely unaware that Abdurahman Akhtar Jafar was a candidate in the mayoral elections and was unaware of any compliance problems. It had taken radical steps since the breaches occurred to improve compliance procedures; and
 - regarding the breach of Licence Condition 11, there was a misunderstanding by the in-house legal adviser which led to a delay in sending to Ofcom the recording requested by the regulator.
- 1.17 Ofcom accepted that the breaches were not intentional or deliberate. It believed it was particularly important to take into account that the Islam Channel is an Islamic religious channel with relatively limited resources and that the service faces particular compliance pressures which it is working hard to address.
- 1.18 Ofcom noted the special remit of the Islam Channel to broadcast programmes from an Islamic perspective designed to appeal at the same time to a largely underserved domestic audience and to an international audience with very different expectations. Ofcom accepted that this created particular challenges for compliance.
- 1.19 Ofcom is very conscious of the rights of all broadcasters relating to freedom of expression. In deciding on the level of a financial penalty, Ofcom was concerned not to impose a penalty which in its view would have an inappropriate chilling effect on the Islam Channel, stifling diversity and debate in its programmes. Ofcom did not underestimate the importance of the Islam Channel in providing a platform for different views. Ofcom considered that it was important to ensure that the plurality of viewpoints and broadening of the debate on key issues facing society that a channel like the Islam Channel can provide was not discouraged.
- 1.20 Ofcom also accepted that Islam Channel Ltd was a small organisation with limited resources. Its ability to function might be damaged disproportionately by an excessively heavy financial penalty which could impact on funds that might otherwise be used to support the station.
- 1.21 However, having considered all the circumstances, and after weighing all these matters carefully, Ofcom concluded that these were very serious breaches of the Code. Islam Channel Ltd was seriously negligent in failing to ensure that its presenters and staff were fully trained in all the appropriate procedures in order to ensure that programmes would be fully compliant with the requirements of the Code. This was despite having been made aware of Ofcom’s concerns in this area and having been given special assistance and training to a degree not generally provided to Licensees. Islam Channel Ltd had shown a reckless disregard for the important rules of the Code with respect to ensuring fairness in the conduct of elections and for compliance generally.

- 1.22 Having considered the relevant facts as outlined above and the representations made by Islam Channel Ltd, and taking account of the factors referred to above, Ofcom considered that a financial penalty of **£30,000** should be imposed in respect of the breaches on the Islam Channel and that this is a proportionate and appropriate penalty taking all the relevant circumstances into account. The fine is payable to HM Paymaster General.

Background

- 2.1 The Islam Channel is a specialist religious channel that broadcasts on the Sky platform (EPG 813) and is directed at a largely Muslim audience both in Britain and around the world. Its output ranges from religious instruction programmes to current affairs and documentary programmes.
- 2.2 *The Agenda* is a current affairs discussion programme which debates political matters of national and international importance. An Ofcom investigation was launched on 20 April 2006 into *The Agenda* when Ofcom was informed that the programme was being presented by Yvonne Ridley, who was, at the time, standing as a Respect Party candidate in the local elections. The election period for those elections ran from 25 March 2006 to 4 May 2006. After Ofcom contacted the Licensee, Ms Ridley stopped presenting the programme from 21 April 2006. In addition, while viewing the editions of *The Agenda* supplied by Islam Channel Ltd, it became apparent to Ofcom that a number of potential breaches of the Code rules relating to due impartiality had also occurred. This was of particular concern because of Islam Channel Ltd's history of compliance regarding this area of the Code.
- 2.3 Further Ofcom became aware that some editions of another current affairs programme, *Politics and the Media*, had been presented by Abdurahman Akhtar Jafar, who was at the time standing as the Respect Party's mayoral candidate in the London Borough of Newham. Again the programmes were presented by the candidate during the election period.
- 2.4 About two and a half weeks after Ofcom had begun to investigate *The Agenda* for these possible breaches of the rules relating to due impartiality, Islam Channel Ltd broadcast *Jerusalem: A Promise of Heaven*. This programme examined the competing territorial claims to the city of Jerusalem from a purely Palestinian perspective. The status of Jerusalem is disputed and is considered as a 'major matter' of political controversy under the Code. Any treatment of the subject is therefore required to contain "*an appropriately wide range of significant views*" (Rule 5.12). By concentrating solely on the Palestinian perspective, Ofcom considered these 'significant views' were not present in the programme. The programme was repeated on the Islam Channel a week later.
- 2.5 The fact that these three programmes raised issues under Sections Five and Six of the Code (rules relating to elections and due impartiality) particularly concerned Ofcom (see section headed Compliance Issues below).
- 2.6 In relation to an unrelated complaint, Ofcom also requested a recording of programme. The Licensee was not able to supply Ofcom with a recording of the programme as broadcast, and within a required timeframe.

Legal Framework

The Communications Act 2003

- 3.1 Ofcom has a duty under section 319 of the Communications Act 2003 (“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.
- 3.2 The standards objectives are set out in section 319(2) of the Act. Section 319(2)(c) sets out objectives relating to impartiality including the need to ensure that the impartiality requirements of section 320 are complied with.
- 3.3 Section 320(1) (a) and (b) sets out “special impartiality requirements” that apply to television services as follows:

“(1) The requirements of this section are -

- (a) the exclusion, in the case of television and radio services (other than a restricted service within the meaning of section 245), from programmes included in any of those services of all expressions of the views or opinions of the person providing the service on any of the matters mentioned in subsection (2);
- (b) the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters; and
- (c) the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.”

Subsections (2) to (6) go on to explain as follows:

“(2) Those matters are -

- (a) matters of political or industrial controversy; and
- (b) matters relating to current public policy.

(3) Subsection (1)(a) does not require -

- (a) the exclusion from television programmes of views or opinions relating to the provision of programme services; or
- (b) the exclusion from radio programmes of views or opinions relating to the provision of programme services.

(4) For the purposes of this section -

- (a) the requirement specified in subsection (1)(b) is one that (subject to any rules under subsection (5)) may be satisfied by

being satisfied in relation to a series of programmes taken as a whole; and

- (b) the requirement specified in subsection (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.

(5) OFCOM's standards code shall contain provision setting out the rules to be observed in connection with the following matters –

- (a) the application of the requirement specified in subsection (1)(b);
- (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of subsection (4)(a); and
- (c) the application of the requirement in subsection (1)(c).

(6) Any provision made for the purposes of subsection (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately) -

- (a) matters of major political or industrial controversy; and
- (b) major matters relating to current public policy,

as well as of the need to ensure that the requirement specified in subsection (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.”

3.4 In discharging its functions, Ofcom’s principal duties are to further the interests of citizens in relation to communications matters and the interests of consumers (section 3(1)) and to secure a number of other matters including:

- The availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests (section 3(2)(c)); and
- The maintenance of a sufficient plurality of providers of different television and radio services (section 3(2)(d)).

3.5 In performing its duties under section 3(1), Ofcom is also required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and where relevant to the circumstances, a number of other considerations including:

- The different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.

Representation of People Act 1983 (as amended)

3.6 In addition, the Representation of People Act 1983 (as amended) places relevant obligations on Ofcom. In particular section 93 states that:

“(1) Each broadcasting authority shall adopt a code of practice with respect to the participation of candidates at a parliamentary or local government election in items about the constituency or electoral area in question which are included in relevant services during the election period.

(2) The code for the time being adopted by a broadcasting authority under this section shall be either -

- (a) a code drawn up by that authority, whether on their own or jointly with one or more other broadcasting authorities, or
- (b) a code drawn up by one or more other such authorities;

and a broadcasting authority shall from time to time consider whether the code for the time being so adopted by them should be replaced by a further code falling within paragraph (a) or (b).

(3) Before drawing up a code under this section a broadcasting authority shall have regard to any views expressed by the Electoral Commission for the purposes of this subsection; and any such code may make different provision for different cases.

(4) The Office of Communications shall do all that they can to secure that the code for the time being adopted by them under this section is observed in the provision of relevant services; and the British Broadcasting Corporation and Sianel Pedwar Cymru shall each observe in the provision of relevant services the code so adopted by them.

(5) For the purposes of subsection (1) “the election period”, in relation to an election, means the period beginning—

- (a) (if a parliamentary general election) with the date of the dissolution of Parliament or any earlier time at which Her Majesty's intention to dissolve Parliament is announced,
- (b) (if a parliamentary by-election) with the date of the issue of the writ for the election or any earlier date on which a certificate of the vacancy is notified in the London Gazette in accordance with the Recess Elections Act 1975, or
- (c) (if a local government election) with the last date for publication of notice of the election,

and ending with the close of the poll.

(6) In this section—

“broadcasting authority” means the British Broadcasting Corporation, the Office of Communications or Sianel Pedwar Cymru;

“candidate”, in relation to an election, means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it; and

“relevant services”—

- (a) in relation to the British Broadcasting Corporation or Sianel Pedwar Cymru, means services broadcast by that body; and
- (b) in relation to the Office of Communications, means services licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996.”

The Human Rights Act 1998

- 3.7 Under section 6 of the Human Rights Act 1998, there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention of Human Rights (“the Convention”).
- 3.8 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to “impart information and ideas” and also the audience’s “right to receive information and ideas without interference by public authority”. Such rights may only be restricted if the restrictions are *“prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary”* (Article 10(2) of the Convention).
- 3.9 Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

The Ofcom Broadcasting Code

- 3.10 Standards set by Ofcom in accordance with section 319 of the Act are set out in Ofcom’s Broadcasting Code (“the Code”) which came into force on 25 July 2005.¹ See page 1 for full details of the relevant sections of the Ofcom Broadcasting Code.
- 3.11 Accompanying Guidance Notes to each section of the Code are published and from time to time updated, on the Ofcom website.² The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
- 3.12 By virtue of section 325 of the Act, a condition is included in a broadcaster’s licence requiring the broadcaster to secure observance with the Ofcom Code in connection with the provision of their services and the programmes included in their services.
- 3.13 Accordingly, Islam Channel Ltd is required under its licence to ensure that the programmes it transmits comply with the Rules of the Code.

¹ The Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

² Guidance Notes can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>

Issues and Response

- 4.1 There follows a summary of the investigations by Ofcom into the different breaches of the Code in three programmes on the Islam Channel (*The Agenda*, *Politics and the Media* and *Jerusalem: A Promise of Heaven*), and of Licence Condition 11 concerning the duty to provide a copy of a programme forthwith to Ofcom, together with the main points made by Islam Channel Ltd in response.

The Agenda

The Agenda with Yvonne Ridley (“*The Agenda*”), 25 March 2006 - 21 April 2006 (Rule 6.6)

- 4.2 On 20 April 2006 Ofcom received a complaint which stated that Yvonne Ridley was standing as a candidate for the City of Westminster Church Street Ward in the local elections which were due to take place on 4 May 2006. At the same time she continued to present her daily current affairs show *The Agenda* on the Islam Channel. Ofcom therefore started an investigation and asked Islam Channel Ltd how these programmes presented by Yvonne Ridley complied with Rule 6.6 of the Code which states: “*Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period*”. The election period referred to in the Rule had begun on 25 March 2006.
- 4.3 Islam Channel Ltd raised various points to explain these events and why it did not consider at the time that there was a breach of Rule 6.6. These centred on the belief of management that the incidents fell within the exception contained in Rule 6.7³ in that: (a) the programme was not in breach because it was a non-political programme that was planned or scheduled before the election; and (b) Islam Channel Ltd ensured Yvonne Ridley did not appear on the news and altered the content of *The Agenda* so that it became a non-political programme during the course of the election period.

The Agenda, 28 March 2006 (Rule 5.5)

- 4.4 While viewing editions of *The Agenda*, presented by Yvonne Ridley, Ofcom became concerned that some of the programmes did not, in dealing with matters of political controversy, appear to preserve due impartiality as required by the Code. Ofcom therefore asked Islam Channel Ltd to explain how certain programmes complied with Rule 5.5 of the Code i.e. “*Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole.*” By way of example Ofcom singled out an edition of *The Agenda*, broadcast on 28 March 2006, which discussed the Control Orders introduced under the Prevention of Terrorism Act 2005.
- 4.5 Islam Channel Ltd stated that the press offices at the Home Office and the Prison Service were contacted prior to the broadcast but both declined to participate and that statements explaining this were read out in the programme. As a general point Islam Channel Ltd said that different views are put forward

³ Rule 6.7 states: “Appearances by candidates (in UK elections)...in non-political programmes that were planned or scheduled before the election...period may continue, but no new appearances should be arranged and broadcast during the period.”

on different issues during the daily paper review. They also pointed to the fact that *The Agenda* had several presenters and that this contributed to the plurality of views. Lastly, they said that compliance had been tightened in the light of the concerns expressed by Ofcom.

The Agenda, 30 March 2006 (Rule 5.12)

- 4.6 Ofcom began an investigation into comments on the programme of 30 March 2006 in which a caller described Condoleezza Rice, the US Secretary of State, as “*nothing but a war criminal*” and said she should be put on trial for the Muslims she has “slaughtered”. Yvonne Ridley did not comment on this view. Ofcom pointed out to Islam Channel Ltd that the US position on the war on Iraq was a ‘major matter’ under the Code as it was a matter of political controversy of international significance. It asked Islam Channel Ltd to explain how the programme complied with Rule 5.12 of the Code: “*In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented*”.
- 4.7 In response the main points made by Islam Channel Ltd were: that it had invited on to the programme a person who was on the welcoming committee for Condoleezza Rice but the invitation had not been accepted; alternative views were broadcast during 2006 (the Islam Channel provided some names of guests who appeared but no dates); and that the Islam Channel aimed to cater to its audience which was searching for an alternative viewpoint on Middle East issues to that provided by the “mainstream media”.

The Agenda, 13 April 2006 (Rule 5.5)

- 4.8 Another specific edition of *The Agenda* investigated by Ofcom was broadcast on 13 April 2006 which contained a discussion on the Terrorism Act 2006. During the ‘newspaper review’ in that show, Yvonne Ridley referred to the ‘glorification of terror laws’ (The Terrorism Act 2006) having come into force that day. She stated that: “*people are bound to feel intimidated and not able to express themselves with this new law*”. In discussion, the studio guest then agreed, saying: “*self censorship is not supposed to apply to democracy.*”
- 4.9 Ofcom asked Islam Channel Ltd to comment on how the discussion in this programme complied with Rule 5.5 of the Code (due impartiality). In reply, the Licensee made the following main points: in an edition of *The Agenda* of 21 June 2006, Lord Carlile spent half an hour presenting a case for the legislation; the Islam Channel accepted the gap between 13 April and 21 June 2006 was not ideal but it asked various government ministers to appear on the programme before this date but none had accepted; and the Islam Channel acknowledged that it was not made clear on air on 21 June 2006 that the programme featuring Lord Carlile was linked editorially to the 13 April programme.

Politics and the Media

Politics and the Media, 27 March 2006 – 1 May 2006 (Rules 6.6, 6.8 & 6.9))

- 4.10 During its investigation into *The Agenda*, Ofcom noted the presenter made reference to a fellow presenter on the Islam Channel. Yvonne Ridley stated that Abdurahman Akhtar Jafar was standing as mayoral candidate in the

London Borough of Newham for the Respect Party. Ofcom therefore began an investigation. Mr Jafar appeared as a co-presenter on three editions of *Politics and the Media* during the election period. In one broadcast on 27 March 2006, Abdurahman Akhtar Jafar said:

"...I am also running for the executive mayor in Newham and I also visit many of the Mosques and many of the Mosques are really, really receptive....and very eager to ensure that Muslims are out there and engaging in politics because they have so many concerns....the Mosques need planning..."

Inyat Bunglawala, the co-presenter then says:

"You are our live experiment in participation...we are going to give the viewers a week by week, blow by blow account of your participation in the mainstream and what happens on D Day, on May 4"

Abdurahman Akhtar Jafar responds:

"May 4...you are invited to come along..."

Inyat Bunglawala finally says:

"Well, we hope (he) is successful on May 4...let's all wish him well...Insh'Alah"

- 4.11 Ofcom asked the Islam Channel to explain how Abdurahman Akhtar Jafar's appearances as co-presenter during the election period complied with Rules 6.6, 6.8 and 6.9 of the Code. These rules require that candidates standing in elections must not present programmes and that when there are discussions on constituency matters due impartiality is maintained and other candidates in the constituency are given an opportunity to take part.
- 4.12 Islam Channel Ltd stated that: as soon as it became aware that Mr Jafar was standing for Mayor of Newham, it immediately removed him from the programme; Mr Jafar presented only three out of the six shows during the election period; Mr Jafar was not successful in the election; and that the Licensee had tightened its compliance procedures in relation to election periods as a result of this incident.

Jerusalem: A Promise of Heaven

Jerusalem: A Promise of Heaven, 7 May 2006 (repeated 14 May 2006) (Rule 5.12)

- 4.13 This programme examined the position of the city of Jerusalem and argued that historically Muslims have been deprived of its ownership. The status of Jerusalem is disputed and is a 'major matter' of political controversy under Rule 5.12 of the Code. Any treatment of the subject is therefore required to contain *"an appropriately wide range of significant views"*. By concentrating solely on the Palestinian perspective, Ofcom considered these 'significant views' were not present in the programme. Ofcom therefore requested the Licensee to comment on the programme in light of Rule 5.12 of the Code: *"In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented"*.

- 4.14 Islam Channel Ltd initially denied there was a breach of Rule 5.12 of the Code. It argued that it is accepted by International Law that Jerusalem is an occupied city and that the issue of due impartiality should be considered in light of the Palestinian struggle, the nature of the Islam Channel and likely expectation of its audience. It also pointed to having broadcast alternative views to those contained in *Jerusalem* on 15 June 2006.

Licence Condition 11

Licence Condition 11 - failure to provide recordings forthwith when requested

- 4.15 In August 2006, Ofcom requested from Islam Channel Ltd a copy of *The Agenda* of 10 August 2006. This was in relation to a complaint that had been made about the appearance of the word 'kafir' on the scrolling text bar on that edition of programme. The complainant alleged that this word was offensive. Ultimately this complaint was not upheld and forms no part of this sanctions process. However, the Licensee was obliged to supply Ofcom with a copy of the programme immediately in accordance with Condition 11 of its licence. This states that "*the Licensee shall...at the request of Ofcom forthwith produce to Ofcom any such recording [of programmes included in the Licensed Service] for examination...*"
- 4.16 Islam Channel Ltd at first provided a copy of the programme from which the relevant segment of the programme was missing. The Islam Channel then said it was not able to supply a copy of the programme with the crawler text. Finally on 15 November 2006, it stated that it might be possible to retrieve such a recording and it was attempting to do so. The copy of the programme containing the crawler text had still not been received by Ofcom by 9 January 2007.

In Breach

- 5.1 Having taken into account all relevant material, including Islam Channel Ltd's representations and its admissions of various breaches of the Code and its Licence, Ofcom concluded that the following breaches of the Code and of the Islam Channel Ltd's Licence were serious and in some cases repeated. These are set out by programme and in chronological order below. This was considered against a background of evidence of a serious and longstanding failure in the Licensee's compliance procedures (see section headed Compliance Issues below).

The Agenda

The Agenda, 25 March 2006 - 21 April 2006 (Rule 6.6)

- 5.2 During the 'election period' for the May 2006 local elections, Yvonne Ridley presented this weekday current affairs discussion programme while at the same time standing as a candidate in those elections. In total 20 programmes were presented, each representing a breach of Rule 6.6 of the Code which states: "*Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period*".

The Agenda, 28 March 2006 (Rule 5.5)

- 5.3 A discussion took place on this programme about Control Orders. These were introduced by the Prevention of Terrorism Act 2005. At the time Control Orders were a matter of political controversy and their introduction was the subject of a legal challenge against the Government. In this programme all of the participants including Yvonne Ridley put forward the same view on Control Orders, with the result that due impartiality was not achieved. Irrespective of whether a licensee has requested interviews from other parties, it is the responsibility of a broadcaster to ensure due impartiality is maintained. Failure to achieve due impartiality was a breach of Rule 5.5 of the Code which states: *“Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole.”*

The Agenda, 30 March 2006 (Rule 5.12)

- 5.4 During discussions about the visit of the United States Secretary of State, Condoleezza Rice, to Blackburn, comments were made about US policy on Iraq. Such a topic under the Code is a ‘matter of major political controversy’. The comments made on the programme were singularly critical of the US policy and Islam Channel Ltd was unable to direct Ofcom to any other significant views on this topic either in the programme or in a clearly linked or timely programme as required by Rule 5.12 of the Code. The programme therefore was in breach of Rule 5.12. which states: *“In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented”.*

The Agenda, 13 April 2006 (Rule 5.5)

- 5.5 A discussion on The Terrorism Act 2006 took place. Yvonne Ridley and her studio guest expressed the same view of the legislation (‘the glorification of terror laws’) so that the due impartiality required by Rule 5.5 of the Code was not preserved. Islam Channel Ltd stated that it interviewed Lord Carlile on 21 June 2006, but failed to say that these items were editorially linked. However, the Code requires that when a broadcaster seeks to achieve due impartiality over time this must be achieved “within an appropriate period”. In the circumstances of this case, Ofcom does not consider that an interview some two months later, not editorially linked, was within an appropriate timeframe. The issue on The Terrorism Act 2006 was raised during an election period, and therefore the “appropriate period” for achieving due impartiality in this case would have been during the election period. This was a breach of Rule 5.5 of the Code.

Politics and the Media

Politics and The Media, 27 March 2006 -1 May 2006 (Rules 6.6, 6.8 & 6.9)

- 5.6 During the ‘election period’ for the May 2006 local elections, Abdurahman Akhtar Jafar co-presented this weekly current affairs discussion programme while at the same time standing as a candidate in those elections. In total four programmes were co-presented by him, each representing a breach of Rule

6.6 of the Code. In addition on 1 May 2006 a 'review' programme was transmitted in which he featured prominently.

- 5.7 Comments by Abdurahman Akhtar Jafar and his co-presenter included in the broadcast of 27 March 2006 amounted to an electoral area discussion in that reference was made to the borough in which Mr Jafar was standing and partiality was shown in that his co-presenter wished him luck in the elections. Rule 6.8 of the Code states: "*Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion.*" Islam Channel Ltd was unable to direct Ofcom to any alternative views on this topic as required.
- 5.8 No evidence was provided that candidates of each of the major parties were offered the opportunity to take part in this electoral area discussion about the London Borough of Newham in which Abdurahman Akhtar Jafar was standing as mayoral candidate. This was a breach of Rule 6.9 of the Code which states: "*If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)*".

Jerusalem

Jerusalem: A Promise of Heaven, 7 May 2006 (repeated 14 May 2006) (Rule 5.12)

- 5.9 This programme examined the position of the city of Jerusalem and argued that historically Muslims have been deprived of its ownership. The status of Jerusalem is disputed and is a major matter of political controversy under Rule 5.12 of the Code. Any treatment of the subject is therefore required to contain a wide range of significant views. By concentrating solely on the Palestinian perspective, these 'significant views' were not present in the programme. Subsequent investigation by Ofcom revealed also that they were not present in 'clearly linked or timely programmes' as required by the Code. The programme therefore breached Rule 5.12.

Licence Condition 11

Licence Condition 11: failure to provide recordings forthwith when requested

- 5.10 Islam Channel Ltd did not provide a copy forthwith, when requested, of *The Agenda* of 10 August 2006 containing a crawler text which was the subject of a complaint to Ofcom. This was a breach of Licence Condition 11 which states: "*the Licensee shall...at the request of Ofcom forthwith produce to Ofcom any such recording [of programmes included in the Licensed Service] for examination...*".

Compliance Issues

- 6.1 Ofcom was concerned that the above breaches had occurred against a background of compliance issues with the Licensee. These had resulted in Ofcom giving considerable compliance advice to the Licensee. In July 2005, Islam Channel Ltd broadcast, on the Islam Channel, *Saturday Night Live*. This discussion programme dealt with what is defined in the Communications Act 2003 and the Code as 'major matters', in this case the 7 July 2007 terrorist bombings in London.

- 6.2 Although Ofcom decided not to record a formal breach of the Code in respect of this programme, Ofcom made clear its concerns to Islam Channel Ltd about the Licensee's compliance with the due impartiality rules in Section Five of the Code. It is significant that during the course of Ofcom's investigation into *Saturday Night Live* Ofcom had entered into detailed correspondence with Islam Channel Ltd about the requirements of Section Five of the Broadcasting Code. The due impartiality requirements in Section Five of the Code were specifically brought to the Licensee's attention at that time, prior to the breaches relating to the current case occurring. In a letter to Islam Channel Ltd of 14 February 2006, Ofcom had pointed out to Islam Channel Ltd that if further complaints raising issues of due impartiality were received, Ofcom would ask Islam Channel Ltd to explain clearly how each Code rule was met.
- 6.3 Further, it was agreed that Ofcom would attend the offices of Islam Channel Ltd and present a compliance workshop to those members of Islam Channel Ltd staff who dealt with Code issues in the course of their work. This was to assist the Islam Channel in gaining the required expertise in how to comply with the Broadcasting Code. The workshop took place on 8 April 2006. Copies of the Code and Ofcom Guidance Notes were distributed to attendees. Relevant sections of the Code were explored in depth. In particular - because at that time local elections were less than a month away - the rules in Section Six of the Code were discussed at length.
- 6.4 It is significant that the breaches, which occurred between March and May 2006, began after Ofcom's correspondence with the Islam Channel in February 2006 and continued beyond the date on which the Ofcom workshop was held at the offices of Islam Channel Ltd in April 2006. Ofcom considered that it was entitled to take these matters into account when considering the seriousness of the breaches in the current case and whether to impose a statutory sanction and, if so, at what level.

Referral to Ofcom's Content Sanctions Committee

- 7.1 It was considered that the breaches outlined above were serious and in some cases repeated. Ofcom was particularly concerned about the extent of the breaches given the previous difficulties experienced by the Licensee and the measures Ofcom had already taken to assist the Licensee in understanding its compliance obligations in this area. In the circumstances, in accordance with Ofcom's published procedures (Outline procedure for the consideration of statutory sanctions in content cases), it was recommended that the case be referred to Ofcom's Content Sanctions Committee ("the Committee") for consideration of the imposition of a statutory sanction.

Licensee's Representations on Sanction

- 7.2 Islam Channel Ltd represented itself in correspondence with Ofcom until February 2007. The Licensee then instructed the solicitors Carter-Ruck who prepared responses in relation to the consideration of the imposition of a statutory sanction (and the level of any sanction). It was at this stage that Islam Channel Ltd first admitted some of the breaches. In summary, the Licensee (through its solicitors) admitted that Rule 6.6 of the Code was breached during a 27 day period when Yvonne Ridley presented *The Agenda* while standing as a Respect Party candidate in the local elections. The Islam Channel also accepted that the same rule was breached between 27 March 2006 and 1 May 2006 when *Politics and the Media* was presented by Abdurahm Akhtar Jafar

who was standing as a Respect Party mayoral candidate in the same elections. Further, it was accepted that the Licensee did not have sufficient compliance procedures in place to ensure live programmes complied with the sorts of issues raised by Rules 6.8 and 6.9 of the Code. In relation to Rule 5.5 of the Code the Islam Channel accepted that two editions of *The Agenda* (of 28 March 2006 and 13 April 2006) “potentially fell foul of the rule”. In relation to Rule 5.12 the Islam Channel Ltd accepted that ‘on the face of it’ comments made on *The Agenda* about US policy on Iraq “potentially fell foul of the rule”. The Licensee also accepted Ofcom’s finding of a breach of Rule 5.12 of the Code in respect of the broadcast of the programme *Jerusalem*. Finally, in relation to the breach of licence condition 11, the Islam Channel accepted that it did not supply forthwith when requested a copy of *The Agenda* as broadcast of 10 August 2006.

- 7.3 Islam Channel Ltd argued that it was not appropriate for Ofcom to consider imposing a statutory sanction on it at all for the recorded breaches; but that, if a sanction was to be imposed, this should not be a financial penalty.
- 7.4 Islam Channel Ltd stated that since January 2007 in particular it had continued an “ongoing drive to ensure compliance with its regulatory obligations”. This included the management taking immediate action to ensure compliance e.g. taking *The Agenda* off air in response to Ofcom’s findings of 9 January 2007. Islam Channel Ltd said it had also made a number of “significant changes” to improve its compliance processes and procedures.
- 7.5 Islam Channel Ltd asked Ofcom to recognise that the launch of the Islam Channel broke new ground in that it became the first UK-based English language Islamic religious channel and as such was perhaps inevitably regarded with some suspicion and/or reticence by potential programme guests more likely to be receptive to invitations from more 'mainstream' broadcasters.
- 7.6 Islam Channel Ltd also stated that:
- the breaches were not intentional or deliberate;
 - it is a small organisation with limited resources, and its functioning would be damaged disproportionately by a heavy financial penalty;
 - as an Islamic religious channel providing a “niche service to the UK’s Muslim Community” with limited resources, the service faces particular compliance pressures which it is working hard to address;
 - no electoral gain was proved to have been obtained by either election participant in relation to Rule 6.6 of the Code;
 - Islam Channel Ltd received only one complaint in relation to any one programme;
 - overall the station’s compliance record since it went on air in 2004 has been good;
 - the rule breaches occurred during a confined period – March to May 2006 – before compliance was improved;
 - regarding the breach of Licence Condition 11, there was a misunderstanding by the in-house legal adviser which led to a delay in sending to Ofcom the recording requested by the regulator; and
 - there have been other analogous Ofcom cases involving breaches of the Code where there has been no referral to the Committee or a financial penalty, including adjudications in relation to breaches on, World in Focus, R Mornings, Revelation TV, London Greek Radio, Bloomberg TV and Life TV Media Ltd.

The Agenda

The Agenda, 25 March 2006 - 21 April 2006 (Rule 6.6)

- 7.7 Islam Channel Ltd emphasised that on 21 April 2006 immediately upon receipt of Ofcom's telephone call of that date informing the Islam Channel of the complaint regarding this issue, Islam Channel Ltd removed Yvonne Ridley from *The Agenda* for the rest of the election period.
- 7.8 Islam Channel Ltd also asked Ofcom to consider the precedent set by Ofcom's published finding in London Greek Radio of 24 July 2006. This case concerned a candidate in local elections who was acting as a weekend newsreader at London Greek Radio on the weekend of the 25 and 26 March 2006 but who ceased presenting the news the following weekend on the 1 April 2006. Ofcom found the station in breach but did not, in the circumstances of the Greek case, decide to refer the matter for consideration of a statutory sanction. Islam Channel Ltd argued it had taken the same steps as London Greek Radio and so their case also was not appropriate for consideration of a sanction.

The Agenda, 28 March 2006 (Rule 5.5)

- 7.9 Islam Channel Ltd admitted the broadcast potentially fell foul of this rule. It reiterated that the Home Office and Prison Service press offices were contacted to provide guests on this programme, but both declined. It argued it had attempted to achieve due impartiality in terms of who was invited to speak about the subject.

The Agenda, 30 March 2006 (Rule 5.12)

- 7.10 Islam Channel Ltd accepted that the discussion about Condoleezza Rice potentially fell foul of Rule 5.12 of the Code and pointed out that, despite appeals on air by the presenter, no one could be found to appear on the programme to express an alternative viewpoint; it referred to the US Ambassador to London, Robert Holmes Tuttle, appearing in a special interview on the Islam Channel on 6 December 2005 in which he spoke about subjects including US Policy on Iraq.

The Agenda, 13 April 2006 (Rule 5.5)

- 7.11 Islam Channel Ltd accepted that this programme, which discussed The Terrorism Act 2006, potentially fell foul of this rule of the Code.

Politics and the Media

Politics and The Media, 27 March 2006 -1 May 2006 (Rules 6.6, 6.8 & 6.9)

- 7.12 The Licensee admitted the breach of Rule 6.6 of the Code and accepted that sufficient procedures were not at that time in place to check whether relevant staff were standing for election or to ensure that presenters/interviewers were aware of the prohibition on presenting during an election period.
- 7.13 With specific regard to the exchange broadcast on 27 March 2006 (detailed above) Islam Channel Ltd admitted the breaches of Rules 6.8 and 6.9 of the Code and accepted that at that time of the contravention compliance procedures were insufficient. Procedures were not at that time in place to check whether relevant staff were standing for election or to ensure that

presenters/interviewers were aware of the prohibition on presenting during an election period.

Jerusalem

Jerusalem: A Promise of Heaven, 7 May 2006 (repeated 14 May 2006) (Rule 5.12)

- 7.14 Islam Channel Ltd accepted Ofcom's finding of a breach in respect of Rule 5.12 of the Code. It pointed out that: the decision to broadcast the programme was made in the context of its remit to present the Islamic viewpoint and values, to be an Islamic alternative television channel and to provide programmes relevant to the Muslim community; and that its decision to broadcast the programme took into account Ofcom guidance on 'due impartiality' as set down at the beginning of Section Five of the Code that: *"The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience."*

Licence Condition 11

Licence Condition 11: failure to provide recordings forthwith when requested

- 7.15 Islam Channel Ltd acknowledged that it did not supply a copy *forthwith* when requested of *The Agenda* of 10 August 2006 containing the crawler text. It said that it had in fact recorded the programme and the text separately and, while this was not at first appreciated by the in-house legal adviser, it then took some time for the recording and the text to be re-constituted. The Licensee's firm recollection is that the recording containing the crawler text was provided on 11 December 2006 although it understood that Ofcom has no record of receipt.

The Hearing

- 8.1 Ofcom held an oral hearing on 6 July 2007 to give the Licensee a full opportunity to make representations before deciding whether the breaches of the Code by Islam Channel Ltd warranted the imposition of a statutory sanction, and if so at what level. Ofcom was addressed by: Mohamed Ali Harrath, Chief Executive Officer, Madeeha Dani, Legal Adviser, and Carl Arrindell, Head of Strategic Planning.
- 8.2 Islam Channel Ltd outlined its aims and remit, namely to promote understanding and tolerance between all Muslims and between Muslims and others, and to dispel misunderstanding about Islam, through providing a variety of programmes to its audience – which was mainly in Europe, the Middle East and Africa. It also aimed to promote community cohesion within the Muslim community and outside of it and to encourage Muslims to take a more active role in society and to participate in the democratic process. In trying to achieve its aims the Licensee believed it faced particular challenges as regards complying with the Code rules on due impartiality in particular because of the need to serve the diverse Muslim community within the United Kingdom, whilst competing for viewers against channels based outside the United Kingdom which are not subject to the same rules.
- 8.3 Islam Channel Ltd asserted that its compliance record from the time it first started broadcasting in 2005 until the breaches in March - May 2006, and after

those breaches, had been good. It had been the subject of only 12 complaints. The Licensee reiterated that it now accepted all the breaches of the Code.

- 8.4 Islam Channel Ltd asserted that Ofcom's investigations resulted from only two complaints which it described as "partial" – one from a Jewish organisation and the other from an electoral opponent of one of the Respect Party candidates featured in the Islam Channel broadcasts found in breach. The Licensee also asked the Committee to take into account what it referred to as its "difficult" financial circumstances, pointing to the fact that it relied on donations from the Islamic community and was in financial difficulty.
- 8.5 Considerable improvements had been made to compliance procedures, stated Islam Channel Ltd. These were principally: recruitment of a compliance officer with a media background and four new producer/directors with compliance experience; regular compliance training for all presenters and producers; the introduction of a new system for recording programmes (allowing text to be recorded with the programme); and the rigorous checking of all programmes bought from third parties before transmission. Islam Channel Ltd was also pre-recording most shows and considering whether to continue with live transmission of its remaining shows.
- 8.6 As regards the seriousness of the breaches, the Licensee said they were not deliberate but rather "naive errors of judgement" by a relatively young channel that resulted from insufficient understanding of the rules and their full implications. The Licensee also argued that:
- it had not repeatedly committed breaches of a wide number of Code Rules;
 - it had taken *The Agenda* off air in response to on-going compliance concerns (Islam Channel Ltd said it stood by this decision in spite of negative publicity and complaints from parts of the Islamic community and the resulting drop in advertising revenue);
 - the majority of breaches took place before the compliance workshop led by Ofcom on 8 April 2006; and
 - there were various precedents of breach findings or decisions of the Committee which had been cited in Islam Channel Ltd's written submissions to Ofcom, suggesting in the present case that either a statutory sanction was inappropriate or that it should not include a financial penalty.
- 8.7 Islam Channel Ltd stressed that it looked forward to working with Ofcom to further improve its compliance.
- 8.8 If the Committee did decide that a financial penalty was appropriate, Islam Channel Ltd asked Ofcom to take account of the following points:
- Islam Channel Ltd had made no financial gain from the breaches, indeed it had suffered a substantial loss of income and viewership from removing *The Agenda*;
 - the contraventions concerned only three programmes, were of limited duration and the Islam Channel had taken steps to remedy the breaches immediately and cooperated with Ofcom's investigation throughout;

- the impact of the breaches had been minimal (both candidates were unsuccessful in the local elections);
- despite having grown rapidly from 20 employees in 2005 to around 60 now, the Islam Channel remained a small community channel subsidised by the community and reliant on around 100 volunteer workers;
- its audience expected the Islam Channel to debate topics of importance like terrorist legislation; and
- its senior management was completely unaware that Abdurahman Akhtar Jafar was a candidate in the mayoral elections and was unaware of any compliance problems, but had taken radical steps since the breaches occurred to improve compliance procedures.

8.9 In summary, Islam Channel Ltd suggested any financial penalty would be a punitive measure and not an incentive to comply.

8.10 There were several areas in which the Committee had additional questions and sought clarity from Islam Channel Ltd. In particular, the Licensee provided the following information in response:

- Islam Channel Ltd confirmed that while representatives from the Licensee had attended all Ofcom's code seminars, the presenters concerned; Yvonne Ridley, Abdurahman Akhtar Jafar and Inyat Bunglawala had not attended. Nevertheless it took compliance issues seriously and it understood Ofcom's sanctions process and completely accepted Ofcom's findings;
- it gave an estimate of Islam Channel Ltd's most recent annual turnover and explained the impact on its advertising and sponsorship revenue following the decision to remove *The Agenda* from its schedules;
- it confirmed that responsibility for compliance at the time of the breaches rested with the programme manager who would plan and discuss the programme with the producer and the presenter, both of whom also had a level of responsibility for ensuring compliance;
- Yvonne Ridley's influence over compliance matters at Islam Channel Ltd had been relatively strong and the Licensee had relied on her assertions that there would be no problem, from a compliance perspective, with her continuing to present *The Agenda* during the local elections; and
- all programme managers had been at the Ofcom workshop on 8 April 2006 and all presenters had been urged to attend (though, as stated above, the three presenters in question did not).

Sanctions Decision

9.1 The Committee considered carefully all the oral and written submissions provided by Islam Channel Ltd regarding the circumstances of the breaches and, in particular, the points raised by the Licensee in respect of whether to impose a financial penalty and, if so, the level of any such penalty. In

considering the latter, it had regard to the criteria set out in the Ofcom Penalty Guidelines.

The seriousness of the breaches

- 9.2 The Committee noted first that Islam Channel Ltd did not accept that the breaches were sufficiently serious and/or repeated as to warrant the imposition of a statutory sanction.
- 9.3 The Committee acknowledged that the breaches did not appear to be intentional or deliberate. However, the Committee considered that the nature of the breaches, some of which were repeated, was very serious. In the Committee's view, therefore, they merited a statutory sanction.
- 9.4 The Committee viewed the breaches of Rule 6.6 of the Code (precluding candidates in UK elections from acting as news presenters, interviewers or presenters of any type of programme during the election period) in *The Agenda* and *Politics and the Media* as particularly serious since this rule is designed to help secure the integrity of the democratic process, and the public's trust in that integrity, through preventing any unfair electoral advantage being afforded to a particular candidate. These rules regarding the conduct of elections, which come from Ofcom's statutory duties as outlined in the Representation of the People's Act 1983 (as amended), are extremely important principles and the wording of Rule 6.6 is clear and unambiguous. Nonetheless Yvonne Ridley - a candidate in the election - was permitted to present *The Agenda* for three weeks between 25 March and 24 April 2006 during the election period. This represented a considerable period of time during which she was able to present and voice opinions that were in her interests as a candidate and that were also in the interests of the Respect Party, for whom she was standing in the elections.
- 9.5 Similarly in *Politics and the Media* Abdurahman Akhtar Jafar, who was a long-standing presenter of the programme, was allowed to promote his mayoral candidacy during the election period. This was in breach of Rules 6.6, 6.8 and 6.9 of the Code. In the Committee's view the seriousness of these breaches was underlined by the fact that Islam Channel Ltd's management claimed not to have been aware of Mr Jafar's candidacy before they were contacted by Ofcom on 21 April 2006. This is despite the fact that one of its own presenters, Yvonne Ridley had referred to his Mayoral candidacy on air. This provided clear evidence to the Committee that Islam Channel Ltd could not have been properly monitoring its own output.
- 9.6 The Committee was concerned to note that a montage of clips of previous programmes presented by Mr Jafar was shown even after Mr Jafar's co-presenter, Inyat Bunglawala explained to viewers of *Politics and the Media* on 24 April 2006 the reason for Mr Jafar's absence from the screen:
- "Our regular viewers will know that Abdurahman Akhtar Jafar is standing in the forthcoming council elections in the London Borough of Newham for the Respect Party. There are regulations about appearing on programmes as presenter in terms of neutrality. The new Ofcom codes apparently prohibit appearing as a presenter in the two weeks in the run up to elections..."*
- 9.7 The showing of these clips further aggravated the breaches which had already been committed by the programme and suggested a fundamental lack of understanding of Rule 6.6 of the Code as well as a failure to have adequate or

appropriate compliance and monitoring procedures in place. As a result the Committee viewed this additional breach of Rule 6.6 as particularly flagrant and seriously negligent.

- 9.8 The Committee considered the impartiality breaches all the more serious given their sustained and repeated nature. Breaches of Rule 6.6 of the Code were recorded against both programmes, with Yvonne Ridley presenting 20 editions of *The Agenda* during the election period whilst a candidate and Abdurahman Akhtar Jafar appearing as a presenter on four editions of *Politics and the Media* as well as being shown in a fifth programme, three days before polling, as a presenter in several pre recorded clips (as noted above). It was also significant that the majority of the breaches of the Code occurred after Ofcom's compliance workshop of 8 April 2006 (including the appearances of election candidates as presenters and breaches of the due impartiality).
- 9.9 In relation to Islam Channel Ltd's breach of Licence Condition 11 the Committee was concerned that the Licensee continued to believe they had complied with their obligation to supply Ofcom on request with an acceptable recording but did not appear wholeheartedly or unambiguously to have accepted that its failure to supply a recording in the correct form put them in breach of its licence. In this particular instance when the initial request for the programme was made, it was supplied in an unreadable format; the second copy supplied did not contain the actual scrolling text that had been the subject of the complaint meaning that Ofcom's investigation was hampered. Although there is dispute as to when the tape was supplied it is the Islam Channel's case that it was supplied on 11 December 2006 – some three and a half months after it had been requested. In the Committee's view this was unacceptable.
- 9.10 In deciding that these breaches were sufficiently serious so as to merit a statutory sanction, the Committee also had regard to the fact that Ofcom had previously raised concerns with Islam Channel Ltd about compliance with impartiality requirements in Section Five of the Code during the course of its investigation into an edition of *Saturday Night Live* broadcast in July 2005. In its correspondence during the course of that process Ofcom had given Islam Channel Ltd specific guidance in this area and had put the Licensee on notice in respect of its compliance with the rules on due impartiality.
- 9.11 It was against this background that the Committee viewed the breaches with even greater concern as they occurred after Ofcom's correspondence with Islam Channel Ltd in relation to *Saturday Night* and persisted beyond the date of the workshop in April 2006. As mentioned above, the Committee was also concerned to hear that although most key staff at Islam Channel Ltd had attended this seminar, Yvonne Ridley, Mr Jafar and Mr Bunglawala had not done so. Notwithstanding the compliance measures that Islam Channel Ltd assured Ofcom had now been taken, the Committee considered that the particular breaches were inexcusable and, in the Committee's view, demonstrated that the compliance procedures that Islam Channel Ltd had had in place were seriously inadequate and continued to be so after the 8 April 2006 workshop and for some time beyond, as demonstrated in part by the breach of Rule 5.12 of the Code which took place when *Jerusalem* was broadcast on 7 May and 14 May 2006.
- 9.12 The Committee was also surprised to be asked questions at the hearing which suggested that the Licensee still did not understand the application of the due impartiality rules. This was of particular concern in light of the guidance and

workshop referred to above and the firm assurances the Licensee had given that appropriate compliance procedures were now in place.

- 9.13 In the Committee's view, the breach of Rule 5.12 of the Code (ensuring that due impartiality is maintained when dealing with matters of major political and industrial controversy and major matters relating to current public policy) resulting from the two transmissions of *Jerusalem* was emblematic of the overall pattern of weak compliance at Islam Channel Ltd. However, the Committee did not consider this breach, in itself, to be sufficiently serious so as to warrant the imposition of a statutory sanction and was conscious that the imposition of a sanction might have the effect of disproportionately limiting freedom of expression.
- 9.14 Importantly, the Committee stressed that this was not a case where the issues raised by the programme could not be raised under any circumstances (there was no absolute prohibition). This was a critical point for the Committee, as such programmes provide a real alternative to mainstream views and help to encourage wider political debate on important and controversial issues. However in order for the programme to have been compliant with the Code the appropriate balance and context should have been provided by giving an alternative view on the subject, for example in a separate, but editorially linked programme within an appropriate period. The Committee recognises and applauds the Islam Channel's aims to provide alternative views. However, in exercising its right to freedom of expression the Licensee must ensure it does so in accordance with its legal obligations and the requirements of the Code.
- 9.15 In deciding to impose a sanction in this case, the Committee also took account Islam Channel Ltd's submissions about other Ofcom cases where there have been breaches of Sections Five and Six of the Code and there has been either no referral to the Committee or there has been a referral to the Committee but no financial penalty imposed. Each case must be based on the individual facts and circumstances. Direct comparisons between cases may be relevant but, in the Committee's view, can also be of limited value.
- 9.16 The Committee considered that all the cases cited by Islam Channel Ltd had clear distinguishing factors.
- 9.17 The case concerning London Greek Radio which was not referred for consideration of a statutory sanction concerned a candidate in local elections who was acting as a weekend newsreader at London Greek Radio on the weekend of the 25 and 26 March 2006 but who ceased presenting the news the following weekend on the 1 April 2006, before Ofcom launched its investigation. Ofcom found the station in breach but did not, in the circumstances of that case, refer the matter for consideration of a statutory sanction. However, Ofcom considered that case to be materially different in that the Islam Channel's breaches concerned two presenters and were repeated over a period. The breaches on London Greek Radio had occurred in a news programme where the presenter read scripts prepared by journalists. In the current case, the presenters were permitted to put forward their own views and either directly or indirectly promote their own candidacy for election. Further and importantly, the breaches that occurred with Islam Channel Ltd were compounded by additional serious breaches of the requirements for due impartiality.
- 9.18 Only one of the cases cited, in the Committee's view (Life TV Media Ltd) was sufficiently similar to be regarded as a useful precedent. Life TV Media

concerned a programme which breached the rules on due impartiality and elections. It was presented by someone who at the time of the breach was an active member of a political party and was contesting a European Parliament seat, and was shown during the election period. However, in the Committee's view the current case was more serious. In the case of Life TV, there was one programme, repeated on a number of occasions. In the case of *The Agenda* and *Politics and the Media*, these were live programmes covering different, fresh issues each day. The Committee therefore considered that the penalty of £12,000 in that case provided a helpful starting figure for deciding what was appropriate in the current case.

9.19 In these circumstances, and given the very serious, and in some cases repeated, nature of the breaches (and taking into account the relevant precedent detailed above), the Committee concluded that a financial penalty was appropriate.

Factors affecting the level of the financial penalty

9.20 The Committee then went on to consider the amount of the penalty to be imposed having regard, in particular, to the criteria set out in Ofcom's Penalty Guidelines. Under section 237 of the Communications Act 2003 the maximum financial penalty that Ofcom can impose in the case of Islam Channel Ltd may not exceed the greater of £250,000 or 5 per cent of the Licensee's qualifying revenue.

9.21 As already discussed, the Committee viewed the breaches of the Code as very serious (see above under "The seriousness of the breaches"). The breaches of Rule 6.6 of the Code were contraventions of clear and significant rules designed to protect the integrity of elections in the United Kingdom. The Committee was particularly concerned by the fact that breaches of the rules on due impartiality occurred during an election period in programmes whose presenters were themselves candidates in those elections. It is significant that the rules on due impartiality result from a specific duty placed on Ofcom under section 320 of the Communications Act 2003 and that Ofcom's rules in Section Six about elections are also a requirement of the Representation of the People Act 1983. For these reasons the Committee considered the breaches in relation to *The Agenda* and *Politics and the Media* to be very serious.

9.22 The breaches were a direct result of management and compliance failures both in the preparation of the programmes and in some cases during the programmes themselves. This was despite Ofcom previously investigating *Saturday Night Live*, and having given warnings and guidance to Islam Channel Ltd and even conducting a special compliance workshop at the Islam Channel's offices.

9.23 Even after the Ofcom workshop on 8 April 2006, senior management of Islam Channel Ltd acted on the basis of a "misunderstanding" that Rule 6.6 of the Code only applied to news programmes, and not others; and that despite the considerable guidance already received from Ofcom, and the improvements in compliance, the Licensee at the oral hearing appeared still not to display a suitable understanding of the Code.

9.24 It was clear to the Committee that Islam Channel's senior management was either not aware of the breaches at the time they occurred, or aware but considered that there was no compliance issue.

- 9.25 Further, the contraventions that resulted from the absence of proper compliance took place over a period of several months and persisted in spite of specific advice and guidance from Ofcom. In this regard the Committee also noted that Ofcom had specifically warned the Licensee in a letter to Mohamed Ali Harrath on 14 February 2006 that if further complaints concerning due impartiality were received Ofcom would “obviously ask you to explain clearly how each Code rule was met.” Islam Channel Ltd had been seriously negligent as regards ensuring compliance with the Code beyond this date. The need to ensure proper compliance with the Code remained unequivocal and in the Committee’s view, the Licensee’s senior management had to accept responsibility for failing to monitor the Islam Channel’s output and for failing to properly ensure that effective compliance processes were in place.
- 9.26 The Committee did not accept Islam Channel Ltd’s submission that the degree of harm caused by the breaches was minimal. The potential harm caused by a disregard of democratic processes such as these is considerable. Rule 6.6 of the Code is there to ensure that elections are conducted fairly and that no unfair advantage is given to candidates through promotion in the broadcast media, irrespective of whether the candidate can be shown to have actually benefited in practice.

Mitigating factors

- 9.27 The Committee then went on to consider those factors which might limit the amount of any financial penalty to be imposed including all those matters raised by Islam Channel Ltd or otherwise accepted by the Committee in mitigation.
- 9.28 The Committee believed it was particularly important to take into account that Islam Channel Ltd is an Islamic religious channel and that the service faces particular compliance pressures which it is working hard to address.
- 9.29 The Committee noted the special remit of the Islam Channel to broadcast programmes from an Islamic perspective designed to appeal at the same time to both a largely underserved domestic audience and an international audience with very different expectations. The Committee accepted that this created particular challenges for compliance. Ofcom is very conscious of the right of all broadcasters to freedom of expression and in deciding on the level of a financial penalty the Committee was concerned not to impose a penalty which in its view would have an inappropriate chilling effect on the Islam Channel and stifle diversity and debate in its programmes. The Committee did not underestimate the importance of the Islam Channel in providing a platform for different views. The Committee considered that it was important to ensure that the plurality of viewpoints and broadening of the debate on key issues facing society provided by a channel like Islam Channel Ltd was not discouraged.
- 9.30 The Committee accepted that the Licensee is a small organisation with apparently limited resources and that its ability to function may be damaged disproportionately by an excessively heavy financial penalty which could impact on funds that might otherwise be used to support the station.
- 9.31 The Committee accepted that the breaches were not intentional or deliberate. It also acknowledged that some immediate – but very limited - action was taken to remedy/limit some of the breaches once notified by Ofcom (e.g. by taking *The Agenda* off air). Although the Committee noted that the Islam Channel’s compliance record may have been good during its first year of broadcast, it

believed that overall it was a cause for some concern as from July 2005 when *Saturday Night Live* was investigated. Ofcom may not have recorded a formal breach against Islam Channel Ltd concerning this complaint, but the regulator as a result made clear its considerable concerns about the Licensee's compliance with the due impartiality rules in Section Five of the Code.

9.32 Lastly, the Committee took account of the Licensee's explanation of the new compliance apparatus and structures that have now been put in place. Whilst the Committee had some residual concerns that the Licensee appeared still to be seeking clarity from Ofcom as to the interpretation of the impartiality rules, the Committee accepted the Channel's commitment to avoiding future breaches. This was taken into account in diminishing the level of the fine.

Conclusion

9.33 The Committee was conscious that the imposition of a financial penalty on Islam Channel Ltd would cause it some degree of financial pain. However, in all the circumstances, and weighing all these matters carefully, the Committee concluded that these were serious breaches of the Code by the Licensee and that it had shown a reckless disregard for the important rules of the Code with respect to ensuring fairness in the conduct of elections. The breaches had the potential to cause considerable harm to the democratic process by conferring an unfair electoral advantage on particular candidates. Some were repeated over a period of several months. There was also a series of serious and avoidable management and compliance failures – despite warnings and specific guidance from Ofcom. The seriousness of the breaches of Rule 6.6 of the Code was compounded by the fact that many of the contraventions occurred after a specific Ofcom compliance workshop held at Islam Channel Ltd's offices.

9.34 Islam Channel Ltd was seriously negligent in failing to ensure that its presenters and staff were fully trained in all the appropriate procedures in order that programmes would be fully compliant with the requirements of the Code. This was despite having been made aware of Ofcom's concerns in this area.

9.35 Having considered the relevant facts as outlined above and the representations made by Islam Channel Ltd, and taking account of the factors referred to above, the Committee considered that a financial penalty of **£30,000** should be imposed in respect of the breaches on the Islam Channel and that this is a proportionate and appropriate penalty taking all the relevant circumstances into account. The fine is payable to HM Paymaster General.

Content Sanctions Committee

Philip Graf

Chris Banatvala

Kath Worrall

31 July 2007