



## Providing a service in accordance with ‘Key Commitments’, retention and production of recordings and provision of information, Fiesta FM CIC

<b>Type of case</b>	Broadcast Licence Conditions
<b>Outcome</b>	In Breach
<b>Service</b>	Fiesta FM
<b>Date &amp; time</b>	16 to 22 January 2023 (Retention and production of recordings and general provision of information) 6 to 12 February 2023 (Key Commitments)
<b>Category</b>	Key Commitments Retention and production of recordings General provision of information
<b>Summary</b>	<p>The Licensee failed to fulfil the requirements specified in its Key Commitments to maintain its character of service. Breaches of Licence Conditions 2(1) and 2(4).</p> <p>The Licensee also failed to provide recordings to Ofcom on request. Breaches of Licence Conditions 8(1) and 8(2) (Retention and production of recordings).</p> <p>The Licensee also failed to provide information to Ofcom on request. Breach of Licence Condition 9 (General provision of information to Ofcom).</p>

## Introduction

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Fiesta FM is a community radio station licenced to provide a service for the Southampton area. The licence for the service is held by Fiesta FM CIC (“Fiesta FM” or “the Licensee”).

Like other community radio stations, Fiesta FM is required to deliver ‘Key Commitments’ (<http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr101278.pdf>), which form part of its licence. These set out how the station will service its target community and deliver social gain (community benefits), and also include a description of the programme service.

Ofcom received a complaint that Fiesta FM was not broadcasting the service described in its Key Commitments, in particular that Fiesta FM was broadcasting the output of another radio station and did not serve people with Latin American, Spanish, and Portuguese heritage living in Southampton or broadcast any programmes in Spanish.

Ofcom requested recordings of the output of the service from 16 to 22 January 2023. However, when we came to assess the recordings we noted that the Licensee appeared to have provided recordings of the output of the service from 6 to 12 February 2023.

Therefore, we requested the recordings from the week commencing 16 January 2023 again, but the Licensee was unable to provide them because the retention period for retaining recordings of broadcast output had passed.<sup>1</sup> Ofcom considered that this raised potential issues under Licence Conditions 8(1) and 8(2)(a) and (b), which state that:

- “8(1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings of the Licensed Service’s broadcast output”.; and
- “8(2) In particular, the Licensee shall:
- make and retain, for a period 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service...
- at the request of Ofcom forthwith produce to Ofcom any such recordings for examination...”

Ofcom also requested a full programme schedule and information from the Licensee about how it was meeting its Key Commitments. Despite stating that a schedule was attached to the information provided, we did not receive a schedule when the recordings were received. We asked the Licensee on at seven additional occasions to provide a schedule. Once the schedule was provided, the programmes listed on the schedule did not match the content provided for 6 to 12 February 2023 and the Licensee has still not provided a schedule for the week monitored.

In addition, Ofcom asked the Licensee on three separate occasions to confirm that the content provided was broadcast between 6 and 12 February but it did not respond.

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<sup>1</sup> The Licensee is required to retain recordings of its output for 42 days after broadcast.

Therefore, Ofcom considered that this raised potential issues under Condition 9(1) of the licence, which states:

“9(1) The Licensee shall maintain records of and furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, estimates, returns, reports, notices or other information as Ofcom may require for the purpose or other information as Ofcom may require for the purpose of exercising the functions assigned to it by other under the 1990 Act, the 1996 Act of the Communication Act...”

Having assessed the recordings the Licensee sent (i.e. recordings of content that appeared to have been broadcast between 6 and 12 February 2023), it appears that it was not delivering the following Key Commitments:

- Fiesta FM provides a service primarily for people with Latin American, Spanish, and Portuguese heritage living in Southampton. It reflects and celebrates the achievements, aspirations, and culture of Latino, Portuguese and Spanish people and promotes community cohesion.
- The service provides original output<sup>2</sup> for a minimum of 10 hours per day.
- The service provides locally-produced<sup>3</sup> output for a minimum of 13 hours per day.
- Members of the target community contribute to the operation and management of the service.

Ofcom considered that this raised issues under Licence Conditions 2(1) and 2(4). These state, respectively:

“2(1) The Licensee...shall provide the service specified in Part I (b) of the Annex...”

“2(4) ...the Licensee shall ensure that the Licensed Service accords with the proposals set out in Part I (b) of the Annex so as to maintain the character of the Licensed Service throughout the licence period”.

We requested comments from the Licensee on how it was complying with Conditions 8(1), 8(2)(a) and (b), 9(1) and 2(1) and 2(4) of the licence.

## Response

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The Licensee stated that it did not have any comments in response to Ofcom’s Preliminary View. We took into account the following information provided by the Licensee prior to the Preliminary View.

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<sup>2</sup> Original output is content which is first produced for, and transmitted by, the station and excludes output that was transmitted elsewhere before. Original output can be live, pre-recorded or voice-tracked. Repeat broadcasts of original output and continuous music with no speech content other than advertisements, station idents and/or outsourced news bulletins (i.e. news bulletins produced by a third party) do not meet Ofcom’s definition of original output.

<sup>3</sup> Locally-produced output is any output made and broadcast from within the service’s licensed coverage area. It may include all types of local production

## Retention and production of recordings

Fiesta FM acknowledged that, due to human error, the wrong recordings were sent to Ofcom. The Licensee explained that by the time it was made aware of this error in June, the recordings had already been deleted from its recording software. It stated that it keeps a back-up copy of recordings in its external hard drive but the memory in this drive only has capacity to keep recordings for up to five months, and the recordings were automatically deleted from this drive before they could be retrieved. Fiesta FM set out that it is investing in larger software to retain recordings for a longer period in the future.

## Provision of information

Fiesta FM explained that the programme schedule along with the recordings were sent to Ofcom via a file transfer system and that it had received an email to confirm that the files had been successfully downloaded. Fiesta FM provided copies of a programme schedule, one on 21 July and one on 11 August 2023, neither of which matched the recordings it had provided which appeared to be of content broadcast between 6 and 12 February 2023. The final programme schedule provided set out which programmes were original or locally-produced as we had originally requested. The Licensee did not respond to our request to confirm that dates of the content provided in the recordings.

## Character of service

Fiesta FM said that it targets people with “Latin American, Spanish, and Portuguese heritage living in Southampton”. It stated that, throughout the year as reflected on its social media pages, it celebrates the “achievements, aspirations, and culture of the Latino, Portuguese and Spanish people”. In its response it also emphasised some of the shows that they had broadcast throughout the week in Portuguese, Spanish and English, such as Habla Conmigo, Onda Portuguesa and Friday Fiesta.

## Original and locally-produced output

The Licensee explained that it was unable to produce a minimum of 13 hours per day of locally-produced output due to “the lack of volunteers returning to the studio” but had been broadcasting locally-produced output for a minimum of five hours per day while it recruits new volunteers.

Fiesta FM recognised that it was not producing a minimum of ten hours per day of original output. The Licensee cited mental health challenges and financial hardships, caused by the cost-of-living crisis as the cause of broadcasting lower amounts of both original and locally-produced output temporarily. It explained that as of July 2023, it has only been able to broadcast 45 hours per week of original output but it now meeting its locally-produced requirement of 13 hours per day.

The Licensee stated that it is considering submitting a request to Ofcom to reduce its original output requirement to a minimum of six hours per day.

## Involvement of the target community

Fiesta FM stated that members of the target community actively get involved with the service, and gave the example of the Wessex League Football Show broadcasting regularly for over a year. It also explained that the members of its management team are local and from the target community, and that it has an “active steering group made up of community members who participate in the operation of the service”.

## Decision

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Reflecting our duties to ensure a diverse range of local radio services, community radio licensees are required to provide the licensed service specified in its Key Commitments. This is a fundamental purpose for which a community licence is granted.

### Retention and production of recordings

In our broadcaster's licence, there are conditions requiring the licensee to retain recordings for a specific number of days after broadcast, and to comply with any request by Ofcom to produce recordings of programmes as broadcast. For community radio licenses, this is reflected in Licence Conditions 8(1) and 8(2) and (b).

The requirement for licensees to retain recordings of their broadcast output is significant for Ofcom's ability to carry out its statutory duties in regulating broadcast content, because a failure to retain recordings and produce them to Ofcom upon request prevents us from assessing the output of the service. This is a key part of the enforcement process for cases about compliance with both licence conditions and the Broadcasting Code.

Ofcom requested recordings of content broadcast between 16 and 22 January 2023 but received the recordings which appeared to be of content broadcast between 6 February 2023 and 12 February 2023. The Licensee failed to provide the correct recordings due to human error. When we asked for the correct recordings in June 2023, the Licensee no longer had them as Ofcom's recording retention period had lapsed.

Ofcom advises licensees to retain recordings of content Ofcom has notified them it is assessing until the assessment and any subsequent investigation is concluded. In this case, Fiesta FM did not retain the relevant recordings and provide them to Ofcom on request as required under conditions 8(1) and 8(2)(a) and (b) of its licence.

### Provision of information

In each broadcaster's licence, there are conditions requiring the licensee to provide information that Ofcom reasonably requires to exercise its functions and to do so in a timely manner. For community radio licensees, this is reflected in Licence Condition 9.

Fiesta FM said it had provided the programme schedule alongside the original recordings; however, Ofcom has no record of receiving it. We made the Licensee aware on seven occasions that the schedule had not been provided but it did not provide a programme schedule until 21 July 2023. This did not set out the programmes that were original or locally produced. The licensee then sent a further schedule on 11 August 2023, which did not contain this information either. Neither of the schedules matched the content the Licensee had provided to Ofcom. In addition, the Licensee failed to confirm the broadcast dates of the content it had provided despite this information being requested on three occasions (17 May, 2 June and 22 June 2023).

Fiesta FM's failure to provide confirmation of the broadcast dates of the content it provided to Ofcom and its failure to provide a programme schedule of the content which matched the recordings it had provided, impeded Ofcom's ability to assess the Licensee's compliance with its Key Commitments and Licence Conditions in a timely manner. In particular, it was difficult to determine whether Fiesta FM broadcast the required locally-produced output set out in its Key Commitments.

Ofcom's Decision is therefore that Fiesta FM CIC is in breach of Condition 9(1) of the Licence.

## Character of service

It is clear from the recordings that Fiesta FM provided that it does broadcast content relevant to “people with Latin American, Spanish, Portuguese heritage”. However, the majority of programmes targeted Brazilians living in the UK, predominantly broadcasting in the Portuguese language. There was only one programme broadcast in Spanish, and Ofcom is therefore not satisfied that Fiesta FM is adequately serving people with Spanish heritage living in Southampton.

We therefore consider that Fiesta FM is not meeting its character of service set out in its Key Commitments.

## Original and locally-produced output

Fiesta FM admitted that it was not broadcasting ten hours of original output per day. Our monitoring indicated that the Licensee under-delivered against this Key Commitment each day of the week monitored and on 19 and 21 January, it appeared a maximum of two hours of original output per day was broadcast.

Fiesta FM admitted that it was not broadcasting a minimum of 13 hours per day of locally-produced output. The Licensee significantly under-delivered against this Key Commitment on all of the days that we monitored, with a maximum of five hours per day. On one of the days monitored only one hour of locally-produced content was broadcast.

Therefore, we consider that Fiesta FM was not meeting its original or locally-produced output requirements during the week 6 to 12 February 2023.

## Involvement of the target community

The Licensee provided limited information about how the target community is involved in the operation and management of the service. We acknowledge that it broadcasts the Wessex League Football Show which provides listeners with the opportunity to get involved in the programme by contacting the station via a link on its website. However, we have received no supplementary information or explanation of why this is important or significant to the target community. The Licensee also did not specify how the members of its steering group are involved in the operation of the service.

Therefore, we do not consider that Fiesta FM is meeting the requirement that “Members of the target community contribute to the operation and management of the service”.

## Conclusion

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Ofcom’s Decision is that Fiesta FM is in breach of Licence Condition 2(1) and 2(4) for failing to comply with the following Key Commitments:

- Fiesta FM provides a service primarily for people with Latin American, Spanish, and Portuguese heritage living in Southampton. It reflects and celebrates the achievements, aspirations, and culture of Latino, Portuguese and Spanish people and promotes community cohesion.
- The service provides original output for a minimum of 10 hours per day.
- The service provides locally-produced output for a minimum of 13 hours per day.
- Members of the target community contribute to the operation and management of the service.

Ofcom's Decision is that the Licensee is also in breach of Licence Condition 8(1) and 8(2)(a) and (b) for failing to retain and produce recordings to Ofcom on request.

Ofcom's Decision is that the Licensee is also in breach of Condition 9(1) for failing to confirm that the content provided was broadcast between 6 and 12 February 2023 and to provide a programme schedule for the week of the recordings it had provided.

We expect the Licensee to work to rectify these issues immediately. Ofcom will monitor this service to ensure that Fiesta FM is complying with these Key Commitments.

**Breaches of Licence Conditions 2(1) and 2(4), Conditions 8(1) and 8(2) and Condition 9(1)**