

## Providing a service in accordance with ‘Key Commitments’, Cross Counties Radio

<b>Type of case</b>	Broadcast Licence Conditions
<b>Outcome</b>	In Breach
<b>Service</b>	Cross Counties Radio
<b>Date &amp; time</b>	9 to 15 January 2023
<b>Category</b>	Key Commitments
<b>Summary</b>	The Licensee failed to fulfil the requirement specified in its Key Commitments to provide original output for a minimum of 161 hours per week. Breaches of Licence Conditions 2(1) and 2(4).

### Introduction

Cross Counties Radio is a community radio station for the community of Lutterworth and surrounding towns and villages. The licence for Cross Counties Radio is held by Cross Counties Radio (“CCR” or the “Licensee”).

Like all other community radio stations, CCR is required to deliver ‘[Key Commitments](http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr102863.pdf)’ (<http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr102863.pdf>), which form part of its licence. These set out how the station will serve its target community and deliver social gain (community benefits), and also include a description of the on-air programme service.

Ofcom received a complaint about the Licensee’s compliance with the requirement of its Key Commitments to broadcast a minimum of 161 hours of original output per week. Ofcom therefore requested recordings of the Licensee’s output between 9 and 15 January 2023, along with a full programme schedule and information from the Licensee about how it was meeting its Key Commitments.

Having assessed the recordings, associated programme schedule and information from the Licensee, it appeared that the Licensee was not delivering the following Key Commitment:

- The service provides original output for a minimum of 161 hours per week.

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 for the remainder of the licence period”.
- 2(4) “Subject to Condition 2(5) below..., 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 CCR on how it was complying with these conditions.

### **Response**

CCR stated that “the figure of 161 hours of original output did not derive from Cross Counties Radio, it was a figure that Ofcom inserted into [its] Key Commitments based on [Ofcom’s] own calculations”. It recognised that it did not fully understand the meaning of original output when it applied for the licence and assumed this meant output originating from Cross Counties Radio.

The Licensee stated that it recognised the error and attempted to correct this prior to launching in 2020, requesting to reduce this to 56 hours. It stated that “Ofcom noted [its] comments and gave [it] assurances...that [Ofcom] would update [CCR’s] Key Commitments accordingly. In terms of original output hours, 161 would be impossible to maintain and no other Community Radio Station would be expected to adhere to this commitment”.

The Licensee stated that it believes it “made every effort to correct the original output hours in the draft of [its] Key Commitments back in May 2020, and Ofcom’s acknowledgement of the error and assurances that it would be corrected indicate that there was still an opportunity to correct them at that time”.

CCR went on to explain that, in September 2020, it was informed by Ofcom that its 161 hours of original output could not be changed but that:

“due to Covid-19 Ofcom had relaxed their enforcement approach. [Ofcom] suggested we achieve what was possible and directed us to a formal change request at a later date if necessary.

The pandemic continued for a further 18 months, so Cross Counties Radio did not submit their Change Request to correct the original hours from 161 to 70 hours until 7th July 2022”.

The Licensee stated that the complaint was “a very opportunistic attempt by an individual with their own agenda to damage our radio station during the consultation process”. CCR stated that once the change request is approved, the situation would be rectified.

## Decision

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

Ofcom's assessment of the recordings provided by the Licensee demonstrated that the service was not meeting its Key Commitment to broadcast a minimum of 161 hours per week of original output. We found that, during the week of 9 to 15 January, CCR broadcast a maximum of 86 hours of original output across the week, and therefore significantly underdelivered on its weekly original output requirement of 161 hours.

We acknowledge that the Licensee attributed its inability to provide 161 hours per week of original output at launch to the impact of the Coronavirus pandemic, and Ofcom set out in a note to broadcasters in May 2020 that a licensee would not be liable to enforcement action where it is genuinely unable to meet the programming requirements set out in its licence. In a note to broadcasters, dated 12 April 2021, Ofcom stated:

“If you anticipate that you may still face challenges in meeting any of your production and programming commitments beyond 30 September 2021 as a result of the ongoing impact of the pandemic, we ask that you notify us as soon as possible before this date to explain what obligation(s) may be missed, the circumstances that have led to this, and any mitigations you have sought to put in place. We may seek further relevant information as necessary. If no attempt to contact Ofcom is made and a licensee subsequently fails to meet its programming and production commitments, we may commence enforcement action”.

Ofcom received no communication from the Licensee after this note to broadcasters was published stating any continuing difficulties that it was experiencing until we queried the amount of original output reported in its Community Radio Finance Report in June 2022, after which the Licensee submitted a Key Commitment change request.

We note that the Licensee asked to change its original output requirement prior to the launch of the service. Ofcom's response to this stated that “We note your comments / will update accordingly”, which we acknowledge did not make it clear at the time that the original output requirement could not be changed, especially because we did specify that we could not amend another aspect of the Key Commitments. Ofcom does not allow Licensees to change their Key Commitments prior to launch, or within the first year of broadcast.

The Licensee had requested a reduction in the minimum hours of original output required to be provided from 161 hours per week to 70 hours per week. The original request was made in July 2022 and a revised request was received in November 2022. Ofcom considered that this request would substantially alter the character of the service and therefore published a consultation relating to this request on 11 January 2023. A statement following this consultation, setting out Ofcom's decision not to approve the request, was published on 25 April 2023. Any Key Commitment change request,

whether or not it requires a consultation, must be approved by Ofcom before a licensee makes any changes to its output.

Ofcom's Decision is that Cross Counties Radio is in breach of Licence Conditions 2(1) and 2(4) for failing to comply with its Key Commitment to provide original output for a minimum of 161 hours per week.

We expect the Licensee to work to rectify this immediately.

**Breaches of Licence Conditions 2(1) and 2(4)**