

Sanction Decision by Ofcom and Notice under sections 110(1)(a) and 110(1)(b) of the Broadcasting Act 1990

Sanction: to be imposed on Leith Community Mediaworks Ltd

For failure to retain and provide recordings¹

**Ofcom's decision
of sanction against:**

Leith Community Mediaworks Ltd ("LCMWL" or the "Licensee") in respect of its service **Castle FM (or the "Licensed Service")** (CR000080BA).

For:

Breaches of Licence Conditions 8(2) (a) and (b) contained in Part 2 of the Schedule to LCMWL's licence. These state respectively:

"The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings of any programme which is the subject of a Standards Complaint and in relation to the production of recordings of any programme which is the subject of a fairness complaint the Licensee shall also comply with the requirements of Condition 19 below"; and

"In particular, the Licensee shall: (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time reference checks; (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction; and (c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which he is able to produce it."

Decision:

To impose a financial penalty (payable to HM Paymaster General) of £850.

¹ See: http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb286/Issue_286.pdf

Executive Summary

1. Castle FM is a community radio service for the residents of Leith, Edinburgh, which is provided by LCMWL (or “the Licensee”) under a licence granted by Ofcom under Part 3 of the Broadcasting Act 1990 (the “1990 Act”). The service is licensed to broadcast on 98.8 MHz on the FM band.
2. Key Commitments² form part of each community radio station’s licence and set out how the station will serve its target community. When an investigation is launched by Ofcom to assess compliance with Key Commitments (or compliance with other licence conditions relating to broadcast material), the licensee is requested to supply recordings to Ofcom for assessment.
3. During 2014, Ofcom recorded five licence condition breaches by LCMWL in three separate Findings³. These related to failures to retain and produce recordings, and to breaches of Key Commitments. In each Finding, we put the Licensee on notice that, should similar compliance issues arise in future, we would consider taking further regulatory action which may include consideration of a statutory sanction.
4. In December 2014, we asked LCMWL for recordings of its audio output across three days (8 to 10 December inclusive) so that we could assess whether the Licensee was now complying with its Key Commitments. When these recordings were received in January 2015, we raised concerns with LCMWL regarding their accuracy.
5. We subsequently asked LCMWL for recordings of its audio output across three days (06:00 to midnight, 29 to 31 January 2015 inclusive) so that we could assess whether the Licensee was now complying with its Key Commitments. We assessed this material alongside recordings obtained from Radiomonitor Limited (“Radiomonitor”), an independent monitoring company.
6. The audio supplied by LCMWL differed materially from the recordings Ofcom had sourced independently through Radiomonitor.
7. As a result of the failure to provide accurate recordings, Ofcom found LCMWL in breach of Licence Conditions 8(2)(a) and (b) in a decision published on 1 September 2015.
8. Although not under consideration for the imposition of a statutory sanction, other breaches were also recorded in the same decision published on 1 September 2015. These were recorded because the Licensee had failed to meet the Key Commitments required by its licence.

² <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000080.pdf>

³ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb254/obb254.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb259/obb259.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb268/obb267.pdf>

Sanction Decision

9. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences ("the Sanctions Procedures")⁴, Ofcom considered whether the breaches under consideration in this case were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee.
10. Ofcom has reached the Decision that a sanction is merited in this case since the breaches were serious and repeated. They were repeated because this was the fourth occasion on which the Licensee breached the requirements to retain and produce recordings. The breaches were serious because failures to retain and produce recordings significantly undermine Ofcom's ability to assess compliance with licence conditions on broadcast content. Such conditions include, as in this case, compliance with Key Commitments intended to ensure that the benefit to the community, for which the service is licensed, is in fact being delivered. On this most recent occasion, it is only because Ofcom took the additional precaution, based on experience, of engaging a third party that it was able to assess the Licensee's compliance with Key Commitments and record separate breaches in that respect.
11. For the reasons set out below, Ofcom's Decision is that LCMWL's failures to retain and provide recordings were of sufficient seriousness to justify a financial penalty under section 110(1)(a).

Legal Framework

Ofcom's regulatory duties and functions

12. Ofcom's principal duties, which are set out in section 3(1) of the Communications Act 2003 ("2003 Act"), are to further the interests of citizens in relation to communications matters and the interests of consumers, in carrying out its functions. In addition, it is required to secure certain outcomes, in particular: the optimal use for wireless telegraphy of the electro-magnetic spectrum; the availability throughout the United Kingdom of a wide range of television and radio services; and the maintenance of a sufficient plurality of providers of different television and radio services (section 3(2) of the 2003 Act).
13. Under section 85 of the 1990 Act, Ofcom has the duty of doing all it can to secure a range and diversity of local services. In fulfilment of this duty, Ofcom grants licences under Part 3 of the 1990 Act, including licences for the provision of community radio services (as defined in Article 2 of the Community Radio Order 2004).
14. 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 on Human Rights ("the Convention").
15. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster's right "to impart information and ideas" and also the audience's right "to receive information and ideas without interference by public authority" (Article 10(1) of the Convention). The exercise of these rights may be subject only to conditions and restrictions which are "prescribed in law and are necessary in a democratic society, in the interests of national security, territorial

⁴http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/proceduresjuly2013/Procedures_for_consideration.pdf

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).

16. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Licensing and enforcement

17. Under section 334 of the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community Radio licences reflect these obligations in Licence Condition 8.
18. Under Licence Condition 8(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 42 days after broadcast. Under Licence Condition 8(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request. These aspects are underpinned by Licence Condition 8(1), which requires licensees to adopt procedures acceptable to Ofcom for the retention and production of recordings.
19. Ofcom’s powers to take enforcement action for a breach of the conditions of a community radio service licence are set out in sections 109 to 111 of the 1990 Act. These provisions include:
 - the power to impose on the licensee a financial penalty of up to £250,000 or 5% of the licensee’s qualifying revenue, whichever is the greater (sections 110(1)(a), 110(1A) and (1B) of the 1990 Act);
 - the power to shorten the licensee’s licence by up to two years (section 110(1)(b));
 - the power to suspend the licence for up to six months (section 110(1)(c) of the 1990 Act); and
 - the power to revoke the licence (section 111 of the 1990 Act).

Background

20. The Licensee holds a licence granted under Part 3 of the 1990 Act for the provision of a community radio service – Castle FM – to serve the people of Leith and surrounding area. The service is licensed to broadcast on 98.8 MHz on the FM band.
21. ‘Key Commitments’⁵ form part of each community radio station’s licence and are contained in an annex to the licence. They set out how the station will serve its target community and include a description of the programme service.
22. When an investigation is launched by Ofcom to assess compliance with Key Commitments (or compliance with other Licence conditions relating to broadcast material), the licensee is requested to supply recordings to Ofcom for assessment. Condition 8 of community radio licences, reflecting section 334 of the Communications Act 2003, requires licensees to adopt suitable procedures for retention of recordings, to

⁵ <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000080.pdf>

retain recordings for 42 days, and to produce them to Ofcom on request.

23. During 2014, Ofcom recorded five licence condition breaches by LCMWL in three separate Findings⁶. The 19 May 2014 Finding related to two failures to produce and retain recordings, and one failure to provide the licensed service in accordance with its Key Commitments. The 28 July 2014 Finding related to a further failure to produce and retain recordings. The 17 November 2014 Finding related to a further failure to provide the licensed service in accordance with its Key Commitments. In each Finding, we put the Licensee on notice that, should similar compliance issues arise in future, we would consider taking further regulatory action which may include consideration of a statutory sanction.
24. In December 2014, we asked LCMWL for recordings of its audio output across three days (8 to 10 December inclusive) so that we could assess whether the Licensee was now complying with its Key Commitments. When these recordings were received in January 2015, we raised concerns with LCMWL regarding their accuracy, in particular due to an on-air reference to "Monday, 15 December", which was a date falling after the specific days of output we had requested, and which LCMWL said they had supplied us with.
25. Given this, and past issues (as set out in the earlier Findings) regarding provision of recordings from LCMWL, we decided to engage Radiomonitor, an independent monitoring company, to record and supply audio from the FM output of Castle FM, and to request audio covering the same period from LCMWL.
26. We then asked LCMWL for recordings of its audio across three days (06:00 to midnight, 29 to 31 January 2015 inclusive) so that we could assess whether the Licensee was now complying with its Key Commitments. We received a memory stick but it was damaged and inaccessible on receipt. Following a request to LCMWL that it be re-sent, a second memory stick was then received. We assessed this material alongside the recordings from Radiomonitor.
27. The audio supplied by LCMWL differed materially from the recordings Ofcom had sourced independently through Radiomonitor. In particular, the material supplied by LCMWL included speech content which would have contributed to meeting the Key Commitments. This led us to be concerned that the material provided by LCMWL may have been put together after the broadcast dates to suggest compliance with Key Commitments. This was particularly the case for Saturday 31 January; when listening to the independent recordings, we heard continuous music whereas the recordings supplied by LCMWL for the same date contained a large element of speech.
28. The total amount of material supplied by LCMWL should have been 54 hours based on three 18-hour days. In fact, the audio supplied contained approximately 47.5 hours of output (adding together all audio files received). Additionally, several of the individual audio files received from LCMWL contained fewer minutes than indicated on the file label. Again, this contributed to a concern that the material was put together subsequently rather than providing the actual output on the days in question.
29. Ofcom considered that this raised issues warranting investigation under Condition 8(2)(a) and (b) of LCMWL's licence, which require that the Licensee shall:

⁶ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb254/obb254.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb259/obb259.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb268/obb267.pdf>

“(a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...; and

(b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction...”.

30. We therefore supplied the Licensee with the independently sourced material and at the same time requested formal comments from the Licensee on its compliance with these licence conditions.

31. In this case, LCMWL maintained that the recordings it had provided to Ofcom were accurate and that the Radiomonitor recordings were not. We sought representations from Radiomonitor on the points raised by the Licensee on its recordings. Having considered the representations both from LCMWL and Radiomonitor, Ofcom did not agree with LCMWL for several reasons. In particular:

- Radiomonitor systems *automatically* applied the current date and time to audio files, and a Radiomonitor representative had been present for the recordings;
- the recordings included identifying material such as jingles, making clear that the recording was of Castle FM and not a different station that had not been recorded by mistake;
- Radiomonitor had no reason to falsify material;
- LCMWL’s response did not include an explanation for the overall duration of material supplied by LCMWL being insufficient to cover the full period of the request; and
- Ofcom has previously recorded breaches against LCMWL for failing to produce and retain recordings, indicating an ongoing difficulty in this area.

32. Ofcom found LCMWL in breach of Licence Conditions 8(2)(a) and (b) in Part 2 of the Schedule to the community radio licence for Castle FM. The breaches were recorded on 1 September 2015 in issue 286 of the Broadcast Bulletin⁷. In the Decision, Ofcom put the Licensee on notice that the breaches warranted consideration for a statutory sanction.

Ofcom’s Decision to Impose a Statutory Sanction

33. As set out in paragraph 1.10 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.

34. Having taken into account all the relevant material in this case Ofcom considered that these breaches were serious and repeated and so warranted the imposition of a statutory sanction. Accordingly, Ofcom issued a Preliminary View (“Preliminary View”) that it was minded to impose a statutory sanction in the form of a financial penalty of £850 and/or to shorten the period for which the licence is in force by three months, such that it would expire on 23 December 2016. Ofcom sent a copy of the Preliminary View to the Licensee on 1 December 2015, at the same time giving the Licensee the opportunity to provide written and oral representations on the Preliminary View. The Licensee stated that it wished to provide oral representations only, and did so at a sanctions hearing on

⁷ http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb286/Issue_286.pdf

14 January 2016.

35. In reaching its final Decision on whether to impose a statutory sanction and, if so, the type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee and had regard to its published Sanctions Procedures in reaching its Decision.

Licensee Representations

36. In its oral representations, the Licensee explained that it had experienced operational difficulties in the past for a number of reasons, but had dedicated staff who had acted in good faith to try to comply with licence conditions. The Licensee expressed regret to the extent it had fallen short of expected standards, and expressed concern about the impact of any sanction on an organisation that had struggled in the past, noting it had limited funds on hand (albeit some plans to improve its financial position).
37. LCMWL stated that staff members are aware of the requirement to keep recordings and explained the procedures and type of equipment that has been put in place since the most recent breach finding. In particular, it said it had made improvements to the physical security of recording equipment, introduced a back-up recorder, and made software changes such that broadcasting cannot take place without recording equipment being activated.
38. The Licensee stated that it planned to make management changes and improve its financial position.

Imposition of a sanction

39. Retention and production of recordings are of fundamental importance to Ofcom's ability to assess compliance with licence conditions on broadcast content. Such conditions include, as in this case, compliance with Key Commitments intended to ensure that the community benefit for which the service is licensed is in fact being delivered. They also include conditions designed to ensure audiences are adequately protected from harm and offence, and from unfair treatment and unwarranted infringements of privacy. Failure to retain and produce recordings on request risks seriously undermining Ofcom's ability to secure compliance with such conditions in line with its duties.
40. If Ofcom had not taken the unusual step of obtaining its own recordings (a step taken due to previous breaches), LCMWL's actions would have prevented Ofcom from carrying out its duty with regard to assessing compliance with Key Commitments. Indeed, given the recordings supplied by LCMWL were in fact inaccurate, the effect – had Ofcom not sourced material independently – would inevitably have been not only to frustrate the investigation but to mislead the regulator.
41. The breaches were repeated since the most recent finding (1 September 2015) was the third finding (after 19 May 2014 and 28 July 2014) that the Licensee had failed to retain and produce recordings. The May 2014 finding covered failures to retain recordings over two separate periods⁸.
42. For completeness, it is noted that breaches were recorded for failure to provide the service in compliance with Key Commitments in November 2014, and again in the most

⁸ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb254/obb254.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb259/obb259.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb268/obb267.pdf>

recent Finding alongside the failures to retain and produce recordings under consideration in this sanctions case. These breaches for failure to comply with Key Commitments, although repeated, were not considered by Ofcom to be as serious as those currently under consideration and a decision was taken to proceed with sanction only for the failure to retain and produce recordings. That is not, however, in any way intended to downplay the importance of compliance with Key Commitments. In particular, Ofcom is required to consider the likelihood of contravention of Key Commitments in assessing any application by a community radio licensee for extension to a licence, and is not able to grant extension unless satisfied in that respect⁹.

43. There were also breaches recorded which are of less direct relevance in 2010 for the Licensee's failure to submit its annual Finance report on time, and in 2013 for failure to pay its Broadcasting Act fee on time.
44. In view of the factors set out above, Ofcom considered that the breaches under consideration in this case were serious and repeated, and so warrant the imposition of a statutory sanction.

Consideration of the appropriate sanction

45. As noted above, the retention and production of recordings are crucial for Ofcom to be able to carry out its regulatory duties. In previous cases (May 2014 and July 2014), the failure by LCMWL to provide recordings prevented us from investigating properly, including a case concerning a possible breach of the Broadcasting Code, and a case involving compliance with Key Commitments. A licensee's obligations to retain and produce recordings are relied upon by Ofcom as it has no other means of listening to output which has been broadcast in the past.
46. In this case, the only way that Ofcom was able properly to investigate the Licensee's compliance with its Key Commitments (LCMWL was found in breach of the relevant licence conditions) was to obtain our own recordings, sourced by an independent third party.
47. The decision to obtain our own recordings was taken on this occasion because of the previous breaches in this area by LCMWL. Ofcom cannot practically do this in all cases in relation to compliance with Key Commitments, and it is not an option for investigating complaints relating to past conduct (such as any material listeners consider offensive).
48. Ofcom has considered the available statutory sanctions under section 110(1) of the 1990 Act. These are: imposition of a financial penalty; licence shortening; and licence revocation.
49. In relation to revocation, the breaches under consideration did not relate to broadcasting harmful or offensive material, or to causing direct harm through unfair treatment or unwarranted infringements of privacy. Whilst failure to retain and produce recordings would restrict Ofcom's ability to investigate such matters, Ofcom recognised in this case that the principal concerns over Castle FM's content did not relate to these types of direct harm. Consequently, we did not consider revocation to be proportionate in the circumstances.

⁹ See section 253A(5) and (6) of the Communications Act 2003 as included by virtue of the Community Radio Order 2004 (as amended).

50. Ofcom considered licence shortening and proposed it as an option in its Preliminary View. This measure would have had the effect of bringing the deadline to apply for a licence extension forward (in the event the Licensee wished to do so). Ofcom noted some merits of such a course, including bringing forward the date by which the Licensee would need to bring its house into order in relation to compliance with its licence conditions. Were the Licensee to fail to do so, it would also bring forward the date on which spectrum would become available for other uses.
51. However, the Licensee's oral representations provided specific information on positive steps that had been taken, at least in respect of retention of recordings. On balance, Ofcom considered the measures sufficient to satisfy it that licence shortening should not be imposed in this instance. Ofcom noted that the Licence is due to expire relatively soon in any event (in March 2017, meaning any application would need to be made by September 2016) such that there is already an imperative for the Licensee to take prompt steps to ensure it is in compliance with all relevant licence conditions. Ofcom also confirmed to the Licensee in the oral hearing that it intends to monitor the service in relation to retention of recordings and compliance with Key Commitments, prior to deciding on any renewal application by the Licensee.
52. Notwithstanding the Decision not to revoke or shorten the Licence, Ofcom considered the retention of recordings to be inherently serious, and noted that it occurred in the context of Castle FM having breached its licence conditions requiring it to meet its Key Commitments, meaning there were real and ongoing concerns regarding the delivery of the community benefit it is licensed to provide. Those issues and concerns have persisted for a considerable period; previous breaches in relation to the same matters were recorded in 2014 as noted above.

Level of sanction

53. In determining the amount of any financial penalty to be imposed Ofcom must have regard to its penalty guidelines issued under section 392 of the 2003 Act ("Penalty Guidelines")¹⁰.
54. The Penalty Guidelines state that Ofcom will "consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty". The Penalty Guidelines note that the factors taken into account will vary depending on relevance to the case, but provides examples of potentially relevant factors. The factors we considered most relevant to this case are discussed below.

Seriousness and duration

55. As noted above, failures to retain and produce recordings undermine Ofcom's ability to investigate concerns about the content of broadcast output (including Key Commitments in this case). The repeated nature of the breaches also indicated that problems in retaining recordings endured for a significant period. This is relevant to the level of the penalty.

Degree of harm to consumers and other market participants

¹⁰ http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty_guidelines_2015.pdf

56. The ability of licensees to retain and provide recordings to Ofcom is important because it helps to maintain confidence in the regulatory system and enables Ofcom to consider complaints made to it by consumers. However, Ofcom has also taken into account that the requirement is not directly consumer facing.

Any gain (financial or otherwise) made by the Licensee

57. There are costs involved in having an effective recording and record keeping system, and the Licensee would have been likely to have made savings by failing to introduce such a system for a period. Ofcom recognised that the Licensee's oral representations indicated some improvements had now belatedly been made at some cost, and that savings would have been modest.

Whether the contravention occurred deliberately or recklessly, including whether senior management knew, or ought to have known, that a contravention was occurring

58. The previous breach decisions indicated that management was aware of ongoing problems in recording and retaining material, and had failed to respond sufficiently to bring those problems to an end. Whilst recognising the improvements set out in the Licensee's oral representations, including planned management changes, this was a matter which was relevant to the level of penalty.

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

59. Ofcom took into account that some steps had now been taken to improve the retention of recordings, but noted that the contraventions continued for a considerable period, evidenced by the previous breaches relating to the same Licence conditions.

Any steps taken to remedy the consequences of the contravention

60. Ofcom itself independently obtained recordings to enable it to monitor Key Commitments compliance, and the Licensee took no steps to remedy the consequences of contravention (although as noted it had since made improvements to reduce the risk of repetition).

Whether the Licensee has a history of contraventions

61. As noted above, the Licensee has a history of contraventions of both the Licence conditions concerned and other Licence conditions. This history was a matter which was relevant to the level of penalty

The extent to which the Licensee has cooperated with our investigation

62. The Licensee has engaged with Ofcom in the course of the investigation and made oral representations including setting out steps taken since the breaches were recorded, so Ofcom considered that the Licensee had cooperated.

Financial position of the Licensee

63. Ofcom took into account that the Licensee is a small community radio station and the representations made regarding difficulties (including financial ones) it had experienced. Financial penalties are inevitably lower for small services due to concerns over viability, but Ofcom considered that a financial penalty should have a deterrent effect and, in

particular, make clear that it is not acceptable for the issues raised in earlier breach decisions to go unaddressed.

Relevant precedent

64. Ofcom has imposed a financial penalty on television licensees who have breached equivalent licence conditions. These are summarised below.
65. Springdoo Media Ltd: Ofcom imposed a penalty of £6,000 for two breaches of Condition 11 (equivalent to Condition 8 in a Community radio licence). The breaches were attributed to a technical failure of the licensee's manual recording system. Given that Ofcom had previously reminded licensee of its obligations under this Condition, it was considered these were serious breaches¹¹.
66. Bang Channels Limited and Bang Media (London): on five occasions, the licensees failed to provide a recording of material that was the subject of a complaint. A financial penalty of £6,000 was imposed on each licensee¹².
67. Satellite Entertainment Limited: Ofcom imposed a penalty of £90,000 for nine breaches. The breaches were made "even more serious" because the licensee had refused to supply the recordings that Ofcom had requested¹³.

Conclusion

68. Having regard to all the factors referred to above and all representations from the Licensee, Ofcom's decision was that an appropriate and proportionate sanction would be to impose a financial penalty of £850.
69. In reaching its decision on this penalty, Ofcom took into account all the matters referred to above. In particular, the penalty reflected limitations in the Licensee's ability to pay and factors including its putting into place, since 1 September 2015, some improvements in its recording systems. However, it also reflected the seriousness of the breaches and provided an incentive for compliance with what are important licence conditions. Further, the penalty reflected that the Licensee had failed to make sufficient improvements following earlier breach decisions, and may have made cost savings by not having implemented an adequate recording system earlier.
70. Ofcom remained concerned by the Licensee's compliance procedures and has put the Licensee on notice that it should take immediate and effective steps to ensure it is in compliance with its Licence. In addition to the financial penalty above, Ofcom will monitor Castle FM with a view to verifying that corrective action has been taken to address the earlier breaches in relation both to retention and provision of recordings, and Key Commitments compliance. The outcome of this monitoring (whether a breach or not in breach conclusion) would be a factor in determining whether or not to grant a licence extension if an application was made.

¹¹ <http://www.ofcom.org.uk/files/2010/07/springdoo.pdf>

¹² <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/bangchannels.pdf>

¹³ <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/satellite-entertainment.pdf>

