

## In Breach

### Breach of licence condition

*Rossendale Radio, community radio service for Rossendale Uplands  
5 March – 16 April 2012*

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#### Introduction

Rossendale Radio was a community radio station licensed to provide a service for the population of the Rossendale Uplands in Lancashire. It started broadcasting on 26 April 2010. The licence was held by Agapao International ("the Licensee").

Community radio licences are granted for a five-year period and broadcasting a service, as well as providing other outputs (such as opportunities for volunteers) described in the licence, is required throughout the licence period.

On 5 March 2012 the station manager of Rossendale Radio contacted Ofcom to enquire about the procedure for surrendering a community radio licence. He explained that the financial situation at the station meant that it may have to close, and the Licensee was unlikely to request a transfer of the licence to a new owner, but gave no indication of a timeframe for when a decision might be made about the station's future. Later that same day, however, the owner of the technical equipment that the station uses to broadcast its service contacted Ofcom to say that he was going to be removing transmission and studio equipment that evening. He also indicated that the station had stopped broadcasting at 3pm.

On 6 March, we contacted the Licensee whose representative confirmed that the station had indeed ceased broadcasting at 3pm the previous day.

At the same time, we became aware that a statement had been posted on Radio Rossendale's website, which said: "Rossendale Radio has experienced financial difficulties for the past 18 months. Despite the best efforts of a number of individuals and organisations to resolve the issues, it has been made clear that the problems are insurmountable and it is with deep regret that Rossendale Radio is being forced to close down. Following meetings and discussions with an independent financial advisor, involving the staff members of Rossendale Radio Station Limited, Agapao International and REAL, it was made apparent that Rossendale Radio is not viable and it is with great sadness that Rossendale Radio must cease live broadcast from 3pm on Monday 5<sup>th</sup> March 2012. The team involved would like to take this opportunity to thank everyone for your support."

Accordingly, on 9 March Ofcom wrote to the Licensee to ask how it was complying with the following two conditions in its licence relating to the delivery of its service.

1. Condition 2(1) contained in Part 2 of the Schedule to the licence, which states that:  
"The Licensee shall provide the Licensed Service specified in the Annex\* for the licence period."
2. Condition 2(4), contained in Part 2 of the Schedule to the licence, which states that:  
"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex\* so as to maintain the character of the Licensed Service throughout the licence period."

\*The annex sets out the radio station's 'key commitments'. The key commitments include a description of the programme service, social gain (community benefit) objectives (such as training provision), arrangements for access for members of the target community, opportunities to participate in the operation and management of the service, and accountability to the community. Rossendale Radio's key commitments can be found here <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr159.pdf>

## Response

The Licensee replied on 21 March. The letter said "Agapao International was granted the broadcasting licence transfer from Rossendale Radio CIC in November 2011. This decision was made purely as a 'stop gap', as the focus of our work is the relief of poverty in developing countries; the station operates from our building, relationships had been forged and it had become a valuable asset in the Valley. The intention was to find another organisation to support it long term to allow Agapao to revert back to its core objects."

The letter went on to explain that it had explored the possibility of finding another organisation to take over the licence and the running of the radio service. An organisation looking into the matter for the Licensee "had appointed an independent financial advisor who had concluded that the company is not viable and that it needed to liquidate. A meeting was arranged with the staff for 12 noon on the 5th March ... where the situation was explained and the conclusion drawn that the station had to close immediately to avoid further debts. A statement was read out on-air at 3pm and the station ceased live broadcasting."

"The owner of the transmission equipment was notified and, as he was not going to be receiving future payment, he arrived at 6pm to collect his items which resulted in 104.7fm going off air. Later that same evening, an email arrived from an interested party who offered to get the station back open. They have experience of running community stations, the transmission equipment needed and the ability to take on the license, if agreed by Ofcom<sup>1</sup>. We are pursuing this course of action and hope to be broadcasting within a couple of weeks. We would ask that grace be given to allow the partnership to develop, which would restore a much valued asset to this community."

No request to transfer the licence was made, and on 16 April the Licensee surrendered the licence

## Decision

By ceasing to provide its licensed service from 5 March 2012, the Licensee was in breach of licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence. Ofcom has therefore formally recorded this breach by Agapao International.

The Licensee set out the circumstances that had led to its decision to cease broadcasting. We note that this was as a result of financial difficulties. However, the Licensee did not notify Ofcom directly that it had ceased broadcasting. In addition, the Licensee allowed transmission equipment to be removed, so that it could not resume broadcasting. Following these decisions, the Licensee was approached by a number of interested parties about the possibility of requesting Ofcom to transfer the licence. However, the service was not being provided during this period.

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<sup>1</sup> A licence can only be transferred from one body to another with the written consent of Ofcom. The legislation stipulates that such consent shall not be given unless Ofcom is satisfied that the person (body or company) to whom it is proposed to transfer the Licence would be in a position to comply with all of the licence conditions throughout the remainder of the licence period.

In its response of 21 March the Licensee indicated that it may request that the licence be transferred, and that it expected to resume broadcasting “within a couple of weeks” (i.e. before 4 April). However the station did not resume broadcasting and nor did Ofcom receive a request to transfer the licence.

Provision by a Licensee of its licensed service is the fundamental purpose for which a community radio licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. These matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required community radio programme output is provided. In addition, choice for listeners is reduced.

The Licensee did not specifically state whether ‘off-air’ activities included in the licence (as set out in the Licensee’s key commitments) were being delivered. These include ‘social gain’ (such as training programmes) and access to and participation in the service (volunteering opportunities, for example). Taking into account the Licensee’s confirmation that it announced that the station had closed down, it seems unlikely that off-air key commitment activities were being delivered. This was to the potential disadvantage of the target community.

It is a duty placed upon Ofcom to ensure optimal use is made of the electromagnetic spectrum. The non-provision of its licensed radio service by Agapao International was not optimal use of that radio spectrum.

**Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence formerly held by Agapao International (licence number CR159), and now surrendered.**