

## Providing a service in accordance with ‘Key Commitments’ Retention and production of recordings, Retrocadia Ltd

**Type of case** Broadcast Licence Conditions

**Outcome** In Breach

**Service** Shoreline FM

**Date & time** October 2021

**Category** Key Commitments  
Retention and production of recordings

**Summary** The Licensee failed to fulfil the requirements specified in its Key Commitments to deliver original output, to broadcast from a studio located within the licensed coverage area, and to involve members of the target community in the operation and management of the service. Breach of Licence Conditions 2(1) and 2(4).

The Licensee also failed to provide recordings to Ofcom for the purpose of assessing the content. Breach of Licence Conditions 8(1) and (2)(a) and (b).

### Introduction

Shoreline FM is a community radio station based in Dymchurch and the surrounding areas of Romney Marsh. The licence for Shoreline FM is held by Retrocadia Ltd (“Retrocadia” or “the Licensee”).

Like all other community radio stations, Retrocadia Ltd is required to deliver ‘[Key Commitments](#)’, 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 its Key Commitments. The complaint stated that the service was not complying with its Key Commitment to broadcast at least 10

hours per day of original output and was not broadcasting from a studio within the licensed coverage area. It also stated that Retrocadia was not providing social gain in the form of community involvement in the licensed service, training or education of members of the target community, or the involvement of members of the target community in the operation and management of the service.

Ofcom requested recordings of the output of the service from Monday 27 September and Thursday 30 September 2021. The Licensee confirmed that it was not able to provide these recordings upon request, as the logger which it used to record its output was not operational at the time. Ofcom considered that this raised potential issues under Licence Condition 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.
- 8(2) 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...
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination...”

Ofcom also requested a full programme schedule, and information from the Licensee on how it was meeting its Key Commitments. The Licensee was able to provide this information, and also provided samples of speech content.

The speech content provided largely consisted of adverts for local events, as well as speech items provided by external providers, including other media companies and charitable groups. We did not consider that music punctuated by these items, repeated in rotation as indicated by the Licensee, would meet our definition of ‘original output’. The Key Commitments state that “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 provided by a third party) do not meet Ofcom’s definition of original output”.

Having assessed the information and content provided, it appeared that Retrocadia was not delivering the following Key Commitments:

- The service provides original output for a minimum of 10 hours per day
- The studio is located within the licensed coverage area
- [The service provides] education or training to individuals not employed by the person providing the service
- Members of the target community contribute to the operation and management of the service.

Ofcom considered that this raised potential 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” and
- “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 the Licensee on how it was complying with the above conditions.

## Response

In its response, Retrocadia acknowledged that it was not able to provide the recordings which we requested as part of our assessment, and said that it “should have been more attentive to the recording logger”. The failure to provide recordings was attributed to power cuts in the local area, causing the recording equipment to switch off, after which it was not checked to ensure that it was recording.

In relation to the broadcast of original output, the Licensee stated that:

“The speech items that we sent were a small sample of promotions and events listings that had been broadcast over the previous few weeks. The amount of these depends on the flow of information, either observed by us, or from regular contributors. These are rotated around the 24 hour a day schedule to catch as many listeners as possible. To broadcast one trailer just once would be a grave disservice to the charity or community organisers. You'll know that radio and TV advertising only works with repetition - and that is certainly also the case for local events and information. The more regularly these are heard the more likely is a positive response. These items are certainly 'original output' broadcast across the 24 hour day and are continually refreshed with new trailers on a daily basis”.

In its comments on Ofcom’s Preliminary View, the Licensee set out again that it felt it unnecessary to continue to vary the delivery of its ‘speech content’ to meet the original output requirement of its Key Commitments.

The Licensee also acknowledged that “there was no central studio” in its transmission area, while noting that remote recordings meant that volunteers could record output from “individual mini studios” in their homes. The Licensee noted that it “had plans for a small studio in the church building but, three weeks after [its] launch date, [it was] enveloped in the first national lockdown”.

The Licensee also set out the ways in which, in the absence of a studio, volunteers on the service had recorded output for broadcast on the service remotely, such as through USB microphones and the use of remote recording and editing software.

With regard to the requirement in the Key Commitments that the service will provide “education or training to individuals not employed by the person providing the service”, the Licensee stated that:

“we did have a small group of volunteers before commencing transmission, but with the lockdown it was felt that training would be safer by individuals learning about, for instance, audio editing in the safety of their own homes, with a free flow of advice given via email, zoom and phone conversations”.

Finally, in relation to the provision in the Key Commitments that “members of the target community contribute to the operation and management of the service”, the Licensee set out how listeners from the target community had been surveyed prior to the launch of the station, and that the responses to this, and feedback received after the station had launched, informed the content broadcast on the station.

With reference to the delivery of social gain through the provision of the service, the Licensee stated that this was achieved through the training provided to volunteers, who learnt about “scripting, recording and editing audio material”. The Licensee also stated that there was “huge gain” provided to listeners because the service played music focussed on their interests, together with health information and information about local groups.

## **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 licence is granted.

## **Original Output**

While Ofcom was not able to listen to the recordings of the service in full, Retrocadia did provide some examples of speech content as broadcast on the service, which it considered to be original output. The speech items which the Licensee provided were mainly advertising for local events and community groups, as well as charitable groups and the NHS (including public health messages).

While these items are of benefit to listeners, Ofcom does not consider that the rotation of these items, many of which were shorter than thirty seconds, with continuous music would constitute original output, particularly because the Licensee set out that these items were frequently repeated in its response to Ofcom. Had Ofcom considered these items to constitute original output at the time of their first broadcast, they would have nonetheless not been original output once repeated.

In addition, we consider that the Licensee’s response above, which references that “radio and TV advertising only works with repetition”, demonstrates both that the content as broadcast is not original, given the repetition of it on the service, and that the content referenced is in fact advertising content, and so its broadcast would not constitute original content.

Ofcom is clear that the broadcast of advertising and pre-recorded health messages does not constitute ‘original output’. Original output generally consists of original speech content delivered by a presenter, for example relating to the music played on the station, or the speech elements referenced in a

service's Key Commitments. The information provided to us by the Licensee demonstrates that none of this kind of content was broadcast on the service.

The information provided suggests that there was no original output broadcast on the service and therefore this meant that Retrocadia failed to meet its minimum requirement for original output.

### Studio Location

The Key Commitments for all community radio services include the obligation that the service's studio "is located within the licensed coverage area". Retrocadia confirmed that the service is not broadcasting from a studio within the licensed coverage area, stating that instead the service is recorded in 'mini-studios' in the homes of members of the target community.

To ensure that a service fulfils the requirement to providing access and participation as well as providing locally-produced output, we require the studio to be based in the licensed coverage area. Although we acknowledge that on-air contributions can be made by members of the target community from home, not having a studio can create difficulties in the delivery of social gain through training and the involvement of the target community in the operation of the service because there is no main location at which the target community can engage with the service. We recognise that the Licensee attributed the COVID-19 pandemic as a factor behind its failure to build a studio. In our initial Note to broadcasters on coronavirus, dated 23 March 2020, Ofcom stated that:

"...where broadcasters are genuinely unable to continue to meet the programming and production requirements set out in their licence as a result of the disruption due to Covid-19, we would consider the force majeure condition in the licence to be engaged, and a licensee would not be liable to enforcement action as a result."

In our subsequent Note to broadcasters, dated 12 April 2021, Ofcom stated that:

"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 Retrocadia during this period to indicate that it would not be able to meet its Key Commitments, including whether it would be able to broadcast from a studio within the licensed coverage area.

Ofcom also notes that the Licensee launched the service before the pandemic, without a studio, and so the pandemic and subsequent lockdown cannot act as a full explanation for the Licensee's failure to

comply with its Key Commitment. We consider that Retrocadia is not complying with its Key Commitments by not broadcasting the service from a studio within its licensed coverage area.

### Provision of Training

In its response, the Licensee set out how training was being conducted remotely, on topics such as audio editing, while the COVID-19 pandemic prevented in-person training. We are satisfied, therefore, that the Licensee is complying with this aspect of its Key Commitments.

### Involvement of the Target Community

The Key Commitments for all community radio services state that “members of the target community contribute to the operation and management of the service”. We acknowledge that the Licensee had consulted with members of the target community prior to launch, in order to formulate the type of service which it believed would attract listeners from the community. While this is commendable, in Ofcom’s view it does not satisfy the requirement in the Key Commitments; seeking listener feedback on the content of the service does not equate to the involvement of the community in the operation of the service.

In reference to the Licensee’s comments that the service provided “huge gain” for listeners through playing music and health messages aimed at the target community, Ofcom would like to emphasise that the ‘social gain’ which community radio services must provide is separate from the benefit derived to listeners by the provision of the service alone. We acknowledge that providing a service of targeted music is of benefit to any community, but the ‘social gain’ element of a Community Radio licence goes beyond this, and includes the facilitation of discussion and the expression of opinion and the better understanding of the particular community and the strengthening of links within it, as set out in the Key Commitments.

### Retention and production of recordings

In each 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 licensees, this is reflected in Licence Conditions 8(1) and 8(2)(a) and (b).

Breaches of Licence Conditions 8(1) and 8(2)(a) and (b) are significant because they impede Ofcom’s ability to assess whether a particular broadcast raises potential issues under the relevant codes. This affects Ofcom’s ability to carry out its statutory duties in regulating broadcast content. Retrocadia could not provide recordings of the Licensed Service’s broadcast output in full, and our Preliminary View is therefore that the Licensee is in breach of Licence Conditions 8(1) and 8(2)(a) and (b).

Further to this, the Licensee stated, in an email from November, that it “installed a higher grade logger last year which appeared to work for a month and then stopped. In January this year it restarted but only ran for one month”. This raises concerns about the severity of the breach of Licence Condition 8, as it appears that the service was in breach of the requirement to retain recordings for at least nine months between February and October 2021.

The failure of the Licensee to provide the requested recordings has also created difficulties for Ofcom's assessment of the complaint received, as we have not been able to listen to the output of the station as a whole.

## **Conclusion**

Ofcom's Decision is that Retrocadia Ltd is in breach of Licence Conditions 2(1) and 2(4) for failing to comply with the following Key Commitments:

- The service provides original output for a minimum of 10 hours per day
- The studio is located within the licensed coverage area
- Members of the target community contribute to the operation and management of the service.

Our Decision is that the Licensee is also in breach of Licence Condition 8(1) and (2)(a) and (b).

We expect the Licensee to rectify these issues immediately. Ofcom will monitor this service to ensure that Retrocadia is complying with the Key Commitments. **Ofcom is putting the Licensee on notice that this contravention of its licence will be considered for the imposition of a statutory sanction.**

**Breach of Licence Conditions 2(1) and (4) and 8(1) and (2)(a) and (b) in Part 2 of the Schedule to the community radio licence held by Retrocadia Ltd (licence number CR103150).**