

**Sanction Decision by Ofcom**

**Sanction: to be imposed on Big City Radio CIC**

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**For failure to broadcast a licensed radio service in accordance with its Licence Conditions<sup>1</sup>.**

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

Big City Radio CIC (or "the licensee" in respect of its Community Radio licence ("the licence") for the service Big City Radio (the "Licensed Service") (CR000083).

**For:**

Breaches of Conditions 2(1) and 2(4) in Part 2 of the Schedule to Big City Radio CIC's licence. These state respectively:

"The Licensee shall provide the Licensed Service specified in the Annex for the licence period and shall secure that the Licensed Service serves so much of the licensed area as is for the time being reasonably practicable"; and,

"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".

**Decision:**

To impose a financial penalty (payable to HM Paymaster General) of **£500**.

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<sup>1</sup> See Ofcom's Decision which was published in issue 371 of the Broadcast and On Demand Bulletin on 28 January 2019: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/134755/Issue-371-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/134755/Issue-371-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf) (pages 55 to 57).

## Executive Summary

1. Big City Radio is a community radio service for the communities of Aston, Birmingham which is provided by Big City Radio CIC (or “the Licensee”) under a licence granted by Ofcom under Part 3 of the Broadcasting Act 1990 (or the “1990 Act”).
2. The Licensee also holds a Wireless Telegraphy Act licence authorising it to establish, install and use radio equipment for the transmission of the Licensed Service on a specific frequency allocated to it by Ofcom. Big City Radio CIC is licensed to broadcast the Licenced Service on 89.1 MHz on the FM band.
3. Under its 1990 Act licence the Licensee is required to provide the service and maintain the character of the service throughout the licence period (Conditions 2(1) and 2(4) of Part 2 of the Schedule to Big City Radio CIC’s licence).
4. Key Commitments<sup>2</sup> 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.
5. Ofcom received two complaints that Big City Radio was not broadcasting the service described in its Key Commitments, in particular, that it was not delivering its programming requirements relating to the provision of speech content and original output.
6. Ofcom requested programme schedules across ten days (9 to 13 July and 6 to 10 August 2018) and recordings of four days (9 and 10 July 2018, and 6 and 7 August 2018) so that we could assess whether the Licensee was complying with its Key Commitments.
7. Over the period monitored, it was clear that the Licensee failed to deliver its Key Commitments relating to the number of hours of original output. We found that the Licensee was broadcasting significantly less original output per day than the required 24 hours per day. Original output amounted to three hours on 9 July 2018 and two hours on 10 July 2018. No original output was broadcast on 6 and 7 August 2018. Additionally, we found that there was no local news, travel, community/‘what’s on’ information or national and local sport being broadcast over the period monitored. There was also no content which Ofcom considered met the definition of information aimed at, and likely to appeal to, the target community in the licensed area (defined in the Key Commitments as “all the communities of Aston with a particular focus on the area’s ethnic communities”).
8. This paper sets out Ofcom’s decision, having taken into account all of the relevant material, that a sanction is appropriate and that it would be proportionate to impose a financial penalty of **£500**.

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<sup>2</sup> <sup>2</sup> Big City Radio’s Key Commitments:

<http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000038.pdf>

## **Sanction Decision**

9. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences ("the Sanctions Procedures")<sup>3</sup>, Ofcom considered whether the breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee.
10. In arriving at its Decision of the appropriate type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee, including those on the Preliminary View, and has regard to the Sanctions Procedures in reaching its Decision.
11. After considering all the evidence and the representations made by the Licensee, Ofcom decided that the breach was serious and repeated and a financial penalty should be imposed in accordance with Ofcom's Procedures for the consideration of statutory sanctions in the breaches of broadcast licences (the "Sanctions Procedures"). Ofcom also considered the level of fine to be imposed, in accordance with Ofcom's Penalty Guidelines.
12. For the reasons set out below, Ofcom's Decision is that Big City Radio's failure to provide the Licensed Service is of sufficient seriousness to justify a financial penalty under section 110(1)(a).

## **Legal Framework**

### **Ofcom's regulatory duties and functions**

13. 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).

### **Licensing and enforcement**

14. Article 3(1)(b) of the Community Radio Order 2004 (the "Order") provides that a community radio service must be provided in order to deliver "social gain". Social gain is defined in article 2 as the achievement of the four objectives set out in paragraph (2) of that article together with the achievement of any other objectives of a social nature, which may include those listed in paragraph (3) of the Order which specifies characteristics of community radio services. Included in paragraph (2) is the objective of the provision of sound broadcasting services to individuals who are otherwise underserved by such services.
15. Section 106(1) of the 1990 Act provides that a licence shall include such conditions as appear to Ofcom to be appropriate for securing that the character of the licensed service is maintained during the period for which the licence is in force.

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<sup>3</sup> See: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/71967/Procedures\\_for\\_consideration.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf)

16. Section 106(2) of the 1990 Act provides that a licence shall include conditions requiring the licence holder to secure that the licensed service serves so much of the area or locality for which it is licensed to be provided as is for the time being reasonably practicable.
17. Where Ofcom has determined that a licensee is in breach of its licence, Ofcom may commence the sanctions proceedings set out in sections 110 or 111 of the 1990 Act. Under the former, Ofcom may impose on the Licensee a financial penalty on the holder of a community radio licence of up to £250,000. Under section 110, Ofcom may also shorten the Licence by up to two years, suspend the Licence for up to six months, or decide to revoke the Licence under section 111 of the 1990 Act.

### Relevant Licence Conditions

18. Condition 2(1) in Part 2 of the Schedule to the 1990 Act licence states that: “The Licensee shall provide the Licensed Service specified in the Annex for the licence period.”
19. Condition 2(4) contained in Part 2 of the Schedule to the licence 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.” Both conditions are included pursuant to sections 106(1) and 106(2) of the 1990 Act.

### Penalty Guidelines

20. 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”).

### Consideration of a Statutory Sanction

#### Background

21. As set out in paragraph 1.13 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. This decision considers the seriousness of the breaches and sets out why Ofcom considers that the breaches are so serious as to warrant the imposition of a statutory sanction.
22. Big City Radio is a community radio service for the communities of Aston, Birmingham which is provided by Big City Radio CIC (or “the Licensee”) under a licence granted by Ofcom under Part 3 of the Broadcasting Act 1990 (or the “1990 Act”).
23. Under its 1990 Act licence the Licensee is required to provide the service and maintain the character of the service throughout the licence period (Conditions 2(1) and 2(4) of Part 2 of the Schedule to Big City Radio CIC’s licence).
24. Ofcom received two complaints that Big City Radio was not broadcasting the service described in its Key Commitments, in particular, that it was not delivering its programming requirements relating to the provision of speech content and original output.

25. Ofcom requested programme schedules across ten days (9 to 13 July and 6 to 10 August 2018) and recordings of four days (9 and 10 July 2018, and 6 and 7 August 2018) so that we could assess whether the Licensee was complying with the Key Commitments.
26. Ofcom assessed the recordings, it appeared to Ofcom that Big City was not delivering the following of its Key Commitments:
- Description of character of service: “The service comprises music and information aimed at, and likely to appeal to, the target community groups in the licensed area”.
  - Speech: “The main types of speech output broadcast over the course of each week are: news (international and local), travel, community information and ‘what’s ons’, weather, national and local sport”.
  - Original output: “The service provides original output 24 hours per day” (“original output” is defined in a footnote as, “output that is first produced for and transmitted by the service and excludes output that was transmitted elsewhere before. Original output can be live or voice-tracked. Repeat broadcasts of original output do not count towards the minimum requirement”).
27. Over the period monitored, it was clear that the Licensee failed to deliver its Key Commitments relating to the number of hours of original output. We found that the Licensee was broadcasting significantly less original output per day than the required 24 hours per day. Original output amounted to three hours on 9 July 2018 and two hours on 10 July 2018. No original output was broadcast on 6 and 7 August 2018. Additionally, we found that there was no local news, travel, community/‘what’s on’ information or national and local sport being broadcast over the period monitored. There was also no content which Ofcom considered met the definition of information aimed at, and likely to appeal to, the target community in the licensed area (defined in the Key Commitments as “all the communities of Aston with a particular focus on the area’s ethnic communities”).
28. Ofcom considered that the failure of the Licensee to deliver its specified Key Commitments raised issues warranting investigation under Conditions 2(1) and 2(4) contained in Part 2 of the Schedule to its licence. These state, respectively:
- “The Licensee shall provide the Licensed Service specified in the Annex for the licence period.” (Section 106(2) of the 1990 Act); and
  - “...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.” (Section 106(1) of the 1990 Act).
29. As a result, Ofcom found the Licensee in breach of the Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the Community Radio licence for Big City Radio.
30. Ofcom’s Breach Decision (“the Decision”) was published on 28 January 2019 in issue 371 of the Broadcast and On Demand Bulletin.
31. The breach published on 28 January 2019 were Big City Radio CIC’s second set of breaches of Licence Conditions 2(1) and 2(4) during an eight-month period, having previously been found in

breach of those conditions in May 2018. Big City Radio CIC was also found in breach of Licence condition 2(4) for failing to meet its Key Commitments in June 2015.

32. Given the repeated nature of the breaches Ofcom put the Licensee on notice in the Decision that it considered these breaches to be serious, and that it would consider the imposition of a statutory sanction.
33. Ofcom took into account the Licensee's representations during the investigation, as set out in the Decision, that the staffing problems during holiday periods and a high turnover of volunteers had caused it not to meet its Key Commitments on this occasion, However, Ofcom took into account that the Licensee had been found in breach of Licence Conditions 2(1) and 2(4) on two occasions so had been aware for some time that steps were required to ensure it could consistently meet its Key Commitments.

### **Ofcom's Decision to Impose a Statutory Sanction**

34. As set out in paragraph 1.10 of the Sanctions Procedures, the imposition of a statutory 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.
35. In this case, Ofcom issued a Preliminary decision ("Preliminary View"), that the breaches were serious and repeated and warranted the imposition of a statutory sanction. Ofcom sent a copy of the Preliminary View to the Licensee on 15 July 2019, indicating that it was minded to impose a financial penalty of £500. The Licensee was given the opportunity to provide written and oral representations on the Preliminary View. The Licensee did not provide any written representations, but it provided oral representations at a sanctions hearing at Ofcom's Birmingham office on 15 August 2019. The representations are summarised in paragraphs 37 and 42 below.
36. 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 has had regard to its published Sanctions Procedures in reaching its Decision.

### **Licensee Representations**

37. In its oral representations the Licensee set out various reasons that it was unable to meet its Key Commitments, which are set out below.
38. The Licensee explained the staff turnover at the station was high; Big City Radio had lost staff, while the new staff did not yet understand how to run a radio station. This meant that the Licensee had to start over and train new staff which resulted in the radio station not delivering output as required by its Key Commitments.
39. Big City Radio explained that it is hard to recruit and retain staff because they do not always feel safe coming into Aston due to issues in the community. The Licensee stated to combat this, Big City Radio seeks to help the young people of Aston, by providing sports, coaching and lifestyle training and it is an integral part of South Aston Community Association.

40. The Licensee understood it had not kept in line with its Key Commitments and acknowledged that the current commitments were too high and it would be beneficial for the station to apply to reduce its Key Commitments relating to the provision of speech content and original output.
41. The Licensee admitted there had been confusion with Ofcom's definition of 'Original output' and 'Locally-produced output', in particular, it had believed that automated programming counted towards its quota.
42. The Licensee explained that it is actively applying for grants to hire a full-time programme maker and it currently has a full-time volunteer over-seeing the station.

### **Imposition of a sanction**

43. 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.
44. Ofcom considers that the breaches in this case are serious and repeated and so warrant the imposition of a statutory sanction.
45. Big City's Key Commitments are based on assurances made by the Licensee in its original application for the licence and require that the service comprises original and local output 24 hours per day. Provision by a licensee of its licensed service as described in the Key Commitments is the fundamental purpose for which a community radio licence is granted. It also facilitates Ofcom in carrying out its duty to secure a range and diverse community radio services that appeal to a variety of tastes and interests and its duty to ensure the optimal use of the radio spectrum. Where a licensed service is not being provided in accordance with its Key Commitments, there is potential disadvantage to the target community, and in addition, choice for listeners is reduced. A significant failure by a community radio licensee to broadcast its licensed service as described in its Key Commitments – for example, where (as in this case) the difference between required and actual output is very substantial – is therefore a serious matter.
46. The Licensee occupies a broadcast radio frequency which is a scarce public resource. Ofcom has a statutory duty to ensure optimal use for wireless telegraphy of the electro-magnetic spectrum<sup>4</sup>. Where Ofcom makes spectrum available for analogue community radio, it carries out a competitive award process and, in deciding whether and to whom to make an award of a licence, takes into account of the nature of the proposed service which is then embodied in licence conditions for the successful applicant. The Licensee's failure to provide a service in accordance with its licence conditions therefore compromises the public interest in securing that spectrum is used efficiently.
47. Ofcom considers the breaches are particularly serious because of their repeated nature. These current breaches were the Licensee's second breaches of Licence Conditions 2(1) and 2(4) during an eight-month period following a breach decision in May 2018. The Licensee had also been found in breach of Licence Condition 2(4) in June 2015. In the breach decision of May 2018<sup>5</sup>, we

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<sup>4</sup> Section 3(2)(a) 2003 Act.

<sup>5</sup> Issue 354 of Ofcom's Broadcast and On Demand Bulletin available at:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0011/114104/issue-354-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0011/114104/issue-354-broadcast-on-demand-bulletin.pdf)

See Annex 2.

reminded all community radio licensees of the importance of ensuring that they are practically able to deliver their Key Commitments, and that if they are unable to they should ask Ofcom to change them accordingly. In the May 2018 breach decision we also notified the Licensee that, should further breaches of this type occur, we may consider further regulatory action including the imposition of a statutory sanction.

48. We consider this case to be serious because, as set out in the January 2019 breach decision in which we found the Licensee in breach of Licence Conditions 2(1) and 2(4), the Licensee had significantly under delivered on its Key Commitments for the provision of original and locally-produced output, and as a result, listeners in the Aston area did not receive a community radio service that delivered the social gain intended and embodied in the Key Commitments. As a result of the significant failure of the Licensed Service to meet its Key Commitments, the station's output was:

1. Broadcasting significantly less original output per day than the required 24 hours per day (between zero and three hours per day).
2. Not broadcasting any local news, travel, community, 'what's on' information, national or local sport.
3. Not broadcasting any content which Ofcom considered met the definition of information aimed at, and likely to appeal to, the target community groups in the licensed area.

49. Ofcom requested additional recordings from 10, 11, 12 July 2019 and a programme schedule for the week from 8 July to 12 July 2019 in its Preliminary View. After listening to the output, Big City was again not delivering on the following Key Commitments:

- Description of the character of service: "The service compromises...information aimed at, and likely to appeal to, the target community groups in the licensed area".
- Speech: "The main types of speech output broadcast over the course of each week are: (international and local), travel, community information and what's on, weather national and local sport".
- Original output: "The service provides original output 24 hours per day".

50. Over the period monitored, it was clear that Big City was still failing to deliver its Key Commitments for the number of hours of original output. We found that the Licensee was broadcasting significantly less original output per day than the required 24 hours per day. Original output amounted to 9 hours on 10 July, 5 hours on 11 July and 7 hours on 12 July.

51. Ofcom considered this to be serious. After two breach decisions, the Licensee is still significantly under delivering despite stating there will be measures put in place to ensure it will broadcast the service licensed by Ofcom.

### **Consideration of the appropriate sanction**

52. As noted above, we consider the breach is sufficiently serious to warrant imposition of a sanction. 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.

53. The optimal outcome for the station's target audience is for the Licensee to remedy the breaches by meeting its Key Commitments in relation to the "description of character of service", "speech", "original output" and "locally-produced output".
54. To revoke the licence, Ofcom would need to satisfy itself that it was in the public interest. Such a course would result in no radio service for a period of time, and would remove the prospect of the Licensee improving the service to bring it into compliance with the Key Commitments. On balance, Ofcom considers that it is in the interests of listeners to receive the community radio service for the full licence period and to give the Licensee a further opportunity to comply with its Key Commitments.
55. Ofcom could consider shortening the 1990 Act licence by a specified period not exceeding two years or suspending the 1990 Act licence for a specified period not exceeding six months. However, as noted in relation to revocation, Ofcom considers that it is in the interests of listeners to receive the community radio service for the full licenced period and to give the Licensee a further opportunity to comply with its Key Commitments. As such, shortening or suspending the licence are not Ofcom's preferred forms of penalty.

#### **Imposition of a financial penalty**

56. Ofcom's Penalty Guidelines<sup>6</sup> state (in paragraph 11) 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".

#### **Factors taken into account in determining the amount of any financial penalty**

57. Under section 110 of the 1990 Act, the maximum level of financial penalty that can be imposed on the holder of a community radio licence in respect of each breach of the licence is £250,000.
58. Ofcom must take full account of the need to ensure that any financial penalty acts as a deterrent and must also take account of the following specific factors set out at paragraph 1.12 of the Penalty Guidelines.

#### **The seriousness and duration of the contravention**

59. Ofcom regarded the breaches to be serious for the reasons set out in paragraphs 43 to 51.

#### **The degree of harm, whether actual or potential, caused by the contravention, including any increased cost incurred by consumers or other market participants**

60. As noted in paragraph 45, where there is a significant failure and a licensed service is not being provided in accordance with its Key Commitments, there is potential disadvantage to the target community, and in addition, choice for listeners is reduced.
61. As noted in paragraph 46 the Licensee occupies a broadcast frequency which is scarce public resource. Ofcom has a statutory duty to ensure optimal use for wireless telegraphy of the electro-magnetic spectrum.<sup>7</sup> The Licensee's failure to provide a service in accordance with its licence conditions therefore compromises the public interest in securing that spectrum is used efficiently.

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<sup>6</sup> Available at: [http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty\\_guidelines\\_2015.pdf](http://www.ofcom.org.uk/content/about/policies-guidelines/penalty/Penalty_guidelines_2015.pdf). See Annex 4.

<sup>7</sup> Section 3(2)(a) 2003 Act.

Any gain (financial or otherwise) made by the regulated body in breach (or any connected body) as a result of the contravention

62. We have no direct evidence to suggest that the Licensee made any financial or other gain from these breaches of its licence. However, there are costs involved in complying with Key Commitments (e.g. it is more costly to provide original output) which it is likely that the Licensee avoided by not complying with its Key Commitments.

Whether in all the circumstances appropriate steps had been taken by the regulated body to prevent the contravention.

63. Ofcom took into account that the Licensee had been found in breach of Licence Conditions 2(1) and 2(4) on two occasions so had been aware for some time that steps were required to ensure it could consistently meet its Key Commitments.

64. Ofcom has encouraged the Licensee to apply to change its Key Commitments to ensure it is practically able to deliver the required output. In February 2018, the Licensee submitted a Change Request Form, but the form did not request any changes to the Licensee's current Key Commitments. Ofcom explained to the Licensee that the form did not request any changes and the form needed to set out these details if the Licensee wished Ofcom to consider its request. It did not subsequently submit any details of its proposed changes.

65. Since the Licensee attended the sanctions hearing to provide its oral representations to Ofcom, it has submitted a Key Commitments Change Request Form, which is under consideration by Ofcom.

66. Although the Licensee has now requested to change their Key Commitments, the Licensee should have implemented changes after each Ofcom Decision in order to ensure it could meet its Key Commitments, including where there were holiday periods or issues in relation to volunteer turnover. We do not have evidence of adequate steps having been taken.

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

67. The Licensee had previously given assurances to Ofcom that it was "back up to its full complement of presenters and there would be more live programmes going forwards".

68. In the case of the most recent breaches, the Licensee explained that it would "employ, with the help of grants, a full-time programme maker who will record all the necessary speech content for all the programmes". It also indicated that it wanted to discuss with Ofcom applying to reduce its Key Commitments relating to the provision of speech content and original output.

69. As referred to in paragraph 65, Ofcom has encouraged the Licensee to apply to change its Key Commitments, and explained what it needed to provide to do so, but the Licensee has not submitted a completed request.

Whether the regulated body in breach has a history of contraventions (repeated contraventions may lead to significantly increased penalties).

70. As outlined in paragraph 35, it is the repeated breaches of Licence Conditions 2(1) and 2(4) as well as the inherent seriousness of significantly under delivering its requirements under its Key Commitments that have led us to consider this statutory sanction.

71. In addition to these breaches, in January 2019 Ofcom recorded a breach of Licence Condition 9(1) (provision of information to Ofcom) as the Licensee failed to provide full programme schedules that Ofcom had requested to assist it with considering the breaches of Key Commitments to which this Preliminary View relates.

72. Further, Ofcom recorded a breach of Licence Condition 3(2) on 7 November 2016<sup>8</sup> in relation to late payment of annual licence fees.

*The extent to which the regulated body in breach has cooperated with our investigation.*

73. In Ofcom's view, the Licensee has generally been co-operative over the course of the investigation. It admitted the breaches of the licence conditions, provided representations in response to Ofcom's formal requests for information relating to material broadcast and the service in general and attended a sanctions hearing to give its oral representations to Ofcom on 15 August 2019.

*Financial position of the Licensee*

74. Ofcom took into account that the Licensee has stated it has received no income over the past two years and the Licensee is a small community radio station. Financial penalties are inevitably lower for small services, but Ofcom considered that a financial penalty should have a deterrent effect that would discourage the Licensee from further breaches of its Key Commitments and the potential deterrent effect on other licensees.

**Precedent**

75. In accordance with the Penalty Guidelines Ofcom has also had regard to relevant precedents set by previous cases.

76. **December 2011, BBA Media Limited**<sup>9</sup> – Ofcom imposed a penalty of £500 on Voice BBA Media Ltd, in respect of its community radio service Westside Radio for breaches of licence conditions 2(1) and 2(4) in Part 2 of the Schedule to the 1990 Act licence, requiring the licensee to provide the licensed service and maintain the character of the licensed service throughout the licence period.

77. BBA Media Limited admitted that it had not been compliant throughout much of February 2011 during which a programme service had not been provided. Subsequently BBA Media Limited provided an automated service that did not meet the requirement to provide typically 12 hours per day of live output.

78. **December 2011, Neath Port Talbot Broadcasting CIC**<sup>10</sup> – Ofcom imposed a penalty of £500 on Neath Port Talbot Broadcasting CIC in respect of its community radio service Afan FM for breaches of licence conditions 2(1) and 2(4) in Part 2 of the Schedule to the 1990 Act licence, which sets out the conditions requiring the licensee to provide the licensed service and maintain the character of the licensed service throughout the licence period.

79. Ofcom launched an investigation following a complaint that Neath Port Talbot Broadcasting CIC was broadcasting non-stop music without presenters and was not broadcasting any news bulletins. Neath Port Talbot Broadcasting CIC admitted that the radio service broadcast had not been compliant during the relevant period in that it had broadcast back-to-back music and little else for much of this period.

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<sup>8</sup> Issue 316 of Ofcom's Broadcast and On Demand Bulletin can be viewed at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/93635/Issue-316.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/93635/Issue-316.pdf) (pages 67 to 68).

<sup>9</sup> Decision by Ofcom: [http://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/BBA\\_Media\\_Sanction.pdf](http://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/BBA_Media_Sanction.pdf). Also at Annex 5.

<sup>10</sup> Decision by Ofcom: [http://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/NPT\\_Sanction.pdf](http://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/NPT_Sanction.pdf). Also at Annex 6.

80. **July 2011, Voice of Africa Radio Limited**<sup>11</sup> – Ofcom imposed a penalty of £1,000 on Voice of Africa Radio Limited in respect of its community radio service Voice of Africa Radio for breaches of licence conditions 2(1) and 2(4) in Part 2 of the Schedule to the 1990 Act licence, which sets out the conditions requiring the licensee to provide the licensed service and maintain the character of the licensed service throughout the licence period.
81. While Ofcom considers that the nature of the licence condition breaches in the cases listed in the paragraphs above are relevant to the current case, we note that, as set out in the Penalty Guidelines, Ofcom may depart from them depending on the facts and context of the current case.

### **Conclusion**

82. In reaching this decision, Ofcom took into account all the matters referred to above. The need to achieve an appropriate level of deterrence; the serious and repeated nature of the breaches in this case; and all representations to date from the Licensee.
83. 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 £500.

17 February 2020

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<sup>11</sup> Decision by the Ofcom Broadcasting Sanctions Committee:  
<http://webarchive.nationalarchives.gov.uk/20160704225532/http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/?pageNum=2#in-this-section>. Also at Annex 7.