

Sanction Decision by Ofcom

Sanction: to be imposed on Retrocadia Limited

For failure to provide a service in accordance with 'Key Commitments'.¹

Ofcom's decision of sanction against: Retrocadia Limited ("Retrocadia" or the "Licensee") in respect of its Community Radio licence (the "Licence") for the service Shoreline FM² (the "Licensed Service") (CR103150)

For: Breaches of Conditions 2(1) and 2(4) in Part 2 of the Schedule to Retrocadia's Licence. These state:

"2(1) The Licensee...shall provide the service specified in Part 1 (b) of the Annex for the remainder of the licence period"

"2(4) Subject to Condition 2(5) below..., the Licensee shall ensure that the Licensed Service accords with the proposals set out in Part 1 (b) of 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 **£400**.

¹ See [Ofcom's Breach Decision](#) which was published in issue 443 of the Broadcast and On Demand Bulletin on 24 January 2022.

² The service is now known as 'Cinque Ports Radio', but at the time of the breaches the service was broadcasting as 'Shoreline FM'. As such, this Decision will refer to the service as 'Shoreline FM' for consistency with the Breach Decision (see above).

Executive Summary

1. Shoreline FM is a community radio service for Dymchurch and the surrounding areas of Romney Marsh, which is provided by Retrocadia Limited (“Retrocadia” or the “Licensee”) under a licence granted by Ofcom under Part 3 of the Broadcasting Act 1990 (the “1990 Act”) as modified by the Community Radio Order 2004 (the “Order”).
2. Under its 1990 Act licence, the Licensee is required to provide the Licensed Service, and to maintain the character of the Licensed Service throughout the licence period (Conditions 2(1) and 2(4) of Part 2 of the Schedule to Retrocadia’s licence).
3. Key Commitments³ form part of each community radio station’s licence and set out how the service will serve its target community.
4. 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. In September 2021 Ofcom received a complaint that Retrocadia was not broadcasting the Licensed Service described in its Key Commitments. In particular, the complainant stated that the Licensee was failing to meet its Key Commitments on speech output, original output and locally produced output. The complainant also stated that the Licensee was not meeting its ‘off-air’ Key Commitments to have a studio within the licensed coverage area, provide education or training for members of the local community and for members of the target community to contribute to the operation and management of the service.
6. On 29 October 2021, Ofcom requested that the Licensee provide us with recordings from Monday 27 September and Thursday 30 September 2021 for assessment, as well as a full programme schedule and information on how it was meeting its Key Commitments.
7. Retrocadia was unable to provide the requested recordings, which prevented Ofcom from completing a full assessment of the station’s broadcast output. However, from the information provided by the Licensee, we found that the Licensee was failing to broadcast any original output on the service, was not broadcasting from a studio within the licensed coverage area, and that members of the target community could not become involved in the management and operation of the service, all of which were required by the service’s Key Commitments. The information provided by the Licensee indicated that it was failing to meet these Key Commitments between March 2020 and October 2021.
8. This paper sets out Ofcom’s decision (“Sanction 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 **£400**.

³ Retrocadia Ltd’s Key Commitments can be found on the [Ofcom website](#). The Licensee has changed its Key Commitments since the breaches were recorded – details of this change are also available [on our website](#). This document includes details of the previous Key Commitments.

Sanction Decision

9. In accordance with [Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licence](#) ("the Sanctions Procedures"), 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 its Preliminary View. Ofcom took account of all the representations made by the Licensee, including those made in response to the Preliminary View, and had 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 a financial penalty should be imposed in accordance with Ofcom's 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 Retrocadia's breaches of its Key Commitments were 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 (the "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, Ofcom is required to secure certain outcomes. In particular: 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).
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 interest of national security, territorial 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.
17. Further, Ofcom must also have due regard⁴ in the exercise of its functions to equality including the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not.

Community Radio

18. Article 3(1)(b) of the Community Radio Order 2004 (the “Order”) provides that one of the characteristics of community radio services is that they are primarily 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. Article 2 also provides that social gain may also include the achievement of other objectives of a social nature and, in particular those mentioned in paragraph (3) of Article 2. The objectives set out in paragraph (2) of Article 2 include “the provision of sound broadcasting services to individuals who are otherwise underserved by such services; the facilitation of discussion and the expression of opinion; the provision (whether by means of programmes included in the service or otherwise) of education or training to individuals not employed by the person providing the service; and the better understanding of the particular community, and the strengthening of links within it.”
19. 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.
20. 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.

Remedial action and penalties

21. Where Ofcom has determined that a licensee is in breach of its licence, Ofcom has the power to impose the sanctions set out in sections 109, 110 or 111 of the 1990 Act. Under section 109, Ofcom may require a licensee to provide scripts in advance and/or require a licensee to publish a statement of our finding. Under section 110, Ofcom may impose a financial penalty on the holder of a community radio licence of up to £250,000. Section 110 also provides that Ofcom has the power to shorten the licence by up to two years or suspend the licence for up to six months. Under section 111, Ofcom has the power to revoke the licence.

Consideration of a statutory sanction

22. 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 Sanction Decision considers the

⁴ Section 149 of the Equality Act 2010

seriousness of the breaches, sets out why Ofcom considered that the breaches are so serious as to warrant the imposition of a statutory sanction, and sets out Ofcom's decision as to the appropriate and proportionate sanction to impose in this case.

23. Shoreline FM is a community radio service for Dymchurch and the surrounding areas of Romney Marsh, which is provided by Retrocadia Limited ("Retrocadia" or the "Licensee") under a licence granted by Ofcom under Part 3 of the Broadcasting Act 1990 (the "1990 Act") as modified by the Community Radio Order 2004 (the "Order").
24. Under its 1990 Act licence, the Licensee is required to provide the Licensed Service, and to maintain the character of the Licensed Service throughout the licence period (Conditions 2(1) and 2(4) of Part 2 of the Schedule to Retrocadia's licence).
25. In September 2021 Ofcom received a complaint that Retrocadia was not broadcasting the Licensed Service described in its Key Commitments. In particular, the complainant stated that the Licensee was failing to meet its Key Commitments on speech output, original output and locally produced output. The complainant also stated that the Licensee was not meeting its 'off-air' Key Commitments to have a studio within the licensed coverage area, provide education or training for members of the local community and for members of the target community to contribute to the operation and management of the service.
26. On 29 October 2021, Ofcom requested that the Licensee provide us with recordings from Monday 27 September and Thursday 30 September 2021 for assessment, as well as a full programme schedule and information on how it was meeting its Key Commitments.
27. Retrocadia was unable to provide the requested recordings, although it did provide the information and schedule as requested.
28. Ofcom considered that this failure to provide recordings warranted investigation under Conditions 8(1) and 8(2) in Part 2 of the Schedule to Retrocadia's licence. These state:
 - "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 to produce to Ofcom any such recording for examination..."
29. The Licensee's failure to provide the requested recordings prevented Ofcom from completing a full assessment of the station's broadcast output. However, from the information provided by the Licensee, which included short samples of its speech content and programming schedules, it appeared that the Licensee was failing to broadcast any original output on the service whatsoever and was instead broadcasting only music and advertising content.

30. The information provided by the Licensee also indicated that it was not broadcasting from a studio within the licensed coverage area, and that members of the target community could not become involved in the management and operation of the service, as required by the service's Key Commitments. The information provided by the Licensee indicated that it was failing to meet these Key Commitments between March 2020 and October 2021.
31. Ofcom considered that this raised potential issues warranting investigation under Conditions 2(1) and 2(4) contained in Part 2 of the Schedule to Retrocadia's Licence. These state, respectively:
 - "2(1) The Licensee shall provide the service specified in Part 1 (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 1 (b) of the Annex so as to maintain the character of the Licensed Service throughout the licence period".
32. Ofcom's decision in relation to the licence breaches was that the Licensee breached Licence Conditions 2(1) and 2(4) of its Licence requiring it to maintain the character of the Licensed Service in accordance with the Key Commitments set out in the annex to the Licence, and also breached Licence Conditions 8(1) and 8(2)(a) and (b) requiring it to retain recordings of its output and provide these to Ofcom for assessment upon request. We were satisfied that the Licensee was meeting its obligations in relation to the "training" aspect of its Key Commitments.
33. [Ofcom's Breach Decision](#) ("the Breach Decision") was published on 24 January 2022 in issue 443 of Ofcom's Broadcast and On Demand Bulletin. Ofcom put the Licensee on notice that it would consider the breaches for the imposition of a statutory sanction.
34. Following the publication of the Breach Decision, Ofcom undertook further monitoring of the Licensee's service in March and April 2022 to ensure that it was now in compliance with its Key Commitments. During this period of monitoring, Ofcom found that the Licensee was retaining recordings taken directly from its playout system, rather than recordings of the output broadcast on the transmitter. The Licensee made changes to its recording system to ensure output from the transmitter was recorded. On 25 July 2022 we published a [Further Decision](#) in which we stated that we considered the subsequent failure to retain recordings of the Licensed service between 4 and 10 April 2022 to be "resolved".⁵
35. Ofcom did not seek to impose a statutory sanction on the Licensee of the breaches of Licence Conditions 8(1) and 8(2)(a) and (b) recorded in the Breach Decision. Our reasons for this are set out at paragraph 49 below.

⁵ [Issue 455 of Ofcom's Broadcast and On Demand Bulletin](#)

Preliminary View on the imposition of a statutory sanction

36. Ofcom issued a Preliminary View on sanction (“the Sanction Preliminary View”) stating that we were minded to impose on the Licensee a statutory sanction in the form of a financial penalty. Ofcom sent a copy of the Sanction Preliminary View to the Licensee on 13 March 2023 and gave the Licensee the opportunity to provide written and oral representations on it. The Licensee did not provide written representations on the Sanction Preliminary View, but did provide oral representations in an oral hearing on 19 April 2023. These representations are summarised in paragraphs 37 to 44 below.

The Licensee’s representations

37. In its oral representations at the hearing on 19 April 2023, the Licensee acknowledged the serious nature of the breaches in question, and said that it understood why Ofcom considered a sanction was appropriate in such a case.
38. However, the Licensee highlighted that the breaches in question had occurred under the previous management of Retrocadia Ltd, and that the directors at the time of the breaches had subsequently left the organisation. The Licensee submitted that it was therefore unfair for Ofcom to impose a sanction on the Licensee because that would be penalising the current management for the actions of the former management of the station.
39. The Licensee stated that it did not have any lines of communication with the previous management, [~~S~~CONFIDENTIAL]
40. The Licensee said that, since the new management team had taken over the Licensee in March 2022, it had made significant investments of time and money into the service, in order to ensure that the Licensee now provides an effective community radio service. It highlighted that Ofcom has monitored the service since the arrival of the new management and found that it was in compliance with its Key Commitments.
41. The Licensee explained that it had ensured that the station’s output was compliant with the Key Commitments set out in the annex to the Licence from the day the new management had taken over. The Licensee’s directors explained that before becoming directors of Retrocadia Ltd and therefore taking over the management of the Licensed Service, they had run an internet station. The directors explained that from the morning that they took over Retrocadia Ltd, they “put the stream of [their] internet station through the FM transmitter with some alterations” and were therefore “compliant with the key commitments” immediately.
42. The Licensee explained that it has replaced “the entire transmission system” because “it wasn’t working” and that it has created a “fully-fledged studio station, [with] remote DJs and live content” and that as result the station had seen an improved response to its operations from local stakeholders, including both listeners and local businesses and organisations. In light of this, the Licensee reiterated that it would be ‘unfair’ for Ofcom to impose a financial penalty for breaches that occurred under different management, given that having to pay this penalty would damage the Licensee’s ability to continue to engage with its local community and provide an effective local service.

43. The Licensee also highlighted its financial situation. [CONFIDENTIAL~~X~~]
44. The Licensee made representations in the oral hearing regarding the issue of maintaining and providing recordings of its output, including references to the decision published in July 2022 (see paragraph 34 above). Ofcom's Preliminary View was clear that Ofcom did not propose to impose a sanction on the Licensee for any recordings failures. The Preliminary View was to impose a sanction for the breaches, recorded in the Breach Decision, relating to the Licensee's failure to comply with the station's Key Commitments. The breach recorded for failure to maintain and provide recordings in the Breach Decision was not sufficiently serious, in our view, to warrant the imposition of a statutory sanction. In our Further Decision dated July 2022, we considered the failure to maintain appropriate recordings to be resolved.

Ofcom's Decision to impose a statutory sanction

45. We set out below Ofcom's reasons for considering that it is appropriate and proportionate to impose a statutory sanction in this case. We also explain our reasons for our decision concerning the particular sanction Ofcom considers should be imposed on the Licensee, taking into account all the relevant material, including the Licensee's representations and Ofcom's Penalty Guidelines.

Serious nature of the breaches

46. The Licensee's Key Commitments are based on assurances made by the Licensee in its original application for the Licence. Provision of the Licensed Service as described in the Key Commitments is the fundamental purpose for which the Licence was originally granted to Retrocadia. Through the provision of a Licensed Service, community radio services fulfil the requirements of Article 3 of the Order – including that these services are provided primarily for the good of members of the public, or of particular communities, and in order to deliver social gain. It also enables Ofcom to carry out its duty to secure a wide range and diversity of radio services that are calculated to appeal to a variety of tastes and interests, and the maintenance of a sufficient plurality of providers for different television and radio services. Any failure by a community radio licensee to broadcast its Licensed Service as described in the Key Commitments is therefore a serious matter. Such a failure is all the more serious if it persists for a substantial period of time.
47. In this case, the Licensee failed to provide any original output on its on-air broadcast service, as required as part of its Key Commitments. As well as the failure to provide these important aspects of the on-air service, we also found that the Licensee was not meeting its Key Commitments with regard to the involvement of members of the community in the operation and management of the service. As a result of these multiple failings, the service that was being provided to listeners in the Dymchurch and Romney Marsh area did not reflect certain key characteristics of a community radio service as set out under the Order, such as the requirement that the service is provided primarily for the good of members of the public, or of particular communities, and in order to deliver social gain. Further, the information provided by the Licensee during the course of our investigation indicated that these failings occurred for a substantial period of time between March 2020 (before the start of the first national lockdown due to the Covid-19 pandemic) and October 2021.

48. The Licensee also failed to have a studio in the licensed coverage area between March 2020 and October 2021. While the failure to broadcast from a studio within the licensed area may be attributable, in part, to the pandemic and subsequent Government imposed lockdowns, we noted that this particular breach first occurred before the start of the first national lockdown. We therefore consider that the failure to meet this Key Commitment can only be partly mitigated by the circumstances of the pandemic.
49. Due to the failures in the on-air and off-air service explained above, the Licensee failed to meet the objective of the facilitation of discussion and the expression of opinion, in addition to the objective of the better understanding of the community and the strengthening of the links within it. Members of the target community were unable to contribute to the operation and management of the service. By failing to meet these objectives, the service that the Licensee was providing was, in essence, not a community radio service.
50. We also considered the failure to retain and provide recordings of the broadcast output to be a concerning breach of Retrocadia's licence, as it prevented us from fully assessing other aspects of the broadcast output, such as the speech and music content. However, Ofcom's decision was that it would not sanction the Licensee for this breach. This was the Licensee's first breach of this nature. Further, the Licensee provided clear information to Ofcom as to the technical nature and duration of the breach. We have also taken into account that there was a subsequent failure by the Licensee to provide the correct recordings to Ofcom in April 2022, as the Licensee provided us with output from its processing PC rather than recording of the output broadcast on its FM transmitter. However, we considered this incident to be "resolved" for the reasons provided in the Further Decision published in issue 455 of our Broadcast and On Demand Bulletin – including that the Licensee explained to us following our notification of this failure that it now had the capacity to provide recordings of its FM output.

Consideration of the appropriate sanction

51. Ofcom considered the available statutory sanctions under section 110(1) of the 1990 Act. The following paragraphs set out the enforcement action we have considered and the sanction we have decided to impose.

Directions

52. We considered that a direction under section 109 of the 1990 Act would not be an appropriate sanction in this case, as it is unlikely that there would be an opportunity for this Licensee to 'repeat' the breaches in terms of programming in the same way as a case involving, for example, a breach of broadcast standards. We also considered that directing the Licensee to broadcast a statement of our findings would not be effective in deterring further breaches of this nature by either this or another Licensee.

Licence revocation, suspension or shortening

53. Despite their serious nature, we took into account that these breaches are the first recorded against the Licensee and since the Breach Decision was recorded, the directors of the Licensee have been replaced and the service has been 're-launched' by the new

directors. We monitored the service recently, after the change of directors, and found that the Licensee was complying with its Key Commitments during this period.

54. Having regard to the right to freedom of expression⁶ of both the Licensee and the audience, we therefore did not consider that revocation, suspension or shortening of the Licence would be proportionate.

Imposition of a financial penalty

55. Ofcom's Decision was that the imposition of a financial penalty would be appropriate in relation to the breach of numerous aspects of the Licensee's Key Commitments explained above. This is in light of the serious nature of these failures and the need for there to be an effective deterrent against breaches of Key Commitments – both for Retrocadia and other licensees.

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

56. 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 is £250,000.
57. Ofcom's 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."*⁷
58. In reaching our Preliminary View on the imposition of a sanction in this case, Ofcom took into account the factors set out at paragraph 1.12 of the Penalty Guidelines. We set out below the factors which we considered to be relevant to this case.

The seriousness and duration of the contravention

59. Ofcom regarded the breaches to be serious for the reasons set out above. Ofcom considered that the Licensee's failure to perform the key aspects of its community radio licence – namely, the failure to produce any original content; the failure to broadcast from a studio within the coverage area; and the failure to appropriately involve members of the community in the operation and management of the service – essentially meant that the service provided by Licensee did not have the fundamental characteristics of a community radio station.
60. With regard to the duration of the breaches, the information provided by the Licensee in response to our investigation indicated that the Licensee was in breach of a number of its Key Commitments since its launch in March 2020, including the requirement to broadcast from a studio within the licensed coverage area and to broadcast a specified number of

⁶ The right to freedom of expression includes the right to "hold opinions and to **receive** and impart information and ideas without interference by public authority and regardless of frontiers"

⁷ Paragraph 1.11 of the [Penalty Guidelines](#).

hours of original content. This is a significant period during which the Licensee was in breach of its licence conditions.

61. Specifically in relation to the breach concerning studio location, we have had regard to the fact that the Licensee stated that the timing of the Covid-19 pandemic, and the numerous national lockdowns which occurred from March 2020, impacted upon its ability to broadcast from a studio within the coverage area. While we accept that compliance with this requirement at times of national lockdown may have been difficult, we note that the launch of the Licensee's service pre-dated March 2020 and the Licensee failed to meet this requirement before the first national lockdown.
62. As stated in paragraphs 37 and 38, the Licensee acknowledged the serious nature of the Key Commitments breaches and that they had occurred for a considerable duration. However, the Licensee explained that the breaches occurred under the previous management and submitted that it was therefore unfair for Ofcom to impose a sanction on the Licensee because that would be penalising the current management for something over which it had no control.
63. Ofcom acknowledged that the Licensee's breaches occurred under previous management, and the sincerity of the representations made by the Licensee's representatives at the oral hearing, the Licensee had incurred liabilities prior to their appointment. As stated in paragraph 56, the central objective of imposing a penalty is deterrence both in terms of the Licensee and other broadcasters.
64. Ofcom was satisfied on the evidence available that the Licensee had been brought into compliance by its new management team, making a significant investment in the station in terms of time and money in order to provide a community radio service to the target community. Ofcom also had regard to the need for proportionality, including the impact of the size of the penalty on the Licensee which would detract from funds which might otherwise be allocated for the benefit of the community served by the Licensee.
65. However, Ofcom also took into account the need to deter this and other licensees from non-compliance with the Key Commitments conditions of their licence. Key Commitments are an essential part of the awarded licence in each case. If a Licensee could avoid penalties merely by changing its management team, the broadcast licensing enforcement system would be ineffective.

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

66. Where a licensed service is not being provided in accordance with its Key Commitments, there is an obvious potential disadvantage to the target community. In this case, a number of aspects of the Key Commitments were not being met, which means that the risk of harm to the target community is increased compared with a breach of one aspect of the Key Commitments.
67. The Licensee's target audience includes individuals in older age groups within the licensed coverage area. Under Section 3(4)(i) of the Communications Act 2003, in performing our duties, Ofcom must have regard to the needs of the elderly. We took into account that the

service was intended to offer “a voice for mature members” of the community within that area and to provide “uplifting and nostalgic entertainment through a combination of music, humour and memories, whilst promoting local community initiatives and current events”. The failure to provide the service as required by the Key Commitments would therefore have impacted older age groups within the community, given that they were the Licensee’s target audience.

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

68. There is no evidence to suggest that the Licensee made any financial or other gain from the breaches of the Licence. However, there are costs involved in complying with Licence Conditions and Key Commitments (e.g., expenses of volunteers to present shows, and premises costs for a studio and related equipment) which 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

69. The Licensee provided representations during the investigation, as set out in the Breach Decision, to which we had regard in considering whether the Licensee had taken appropriate steps to prevent the breaches of its Key Commitments.
70. In relation to original output, the Licensee stated that the “events and public activities” and “health and wellbeing advice” which it broadcast on the service delivered social gain to the target community. In the information provided to Ofcom, the Licensee also referenced that it broadcast programming sourced from the Audio Content Fund. This does not meet the definition of original output as it was not originally produced for the Licensee and was instead syndicated across a number of radio services. The Licensee also said that the content which it broadcast constituted original output and that it was repeated only to enhance the effectiveness of the messages. Ofcom received samples of this content, and on review it was clear to us that this was advertising content and not original output. The definition of original output set out in the Licence⁸ is clear that advertising content is excluded.
71. In relation to studio location, the Licensee indicated that its plans to build a studio within the local area from which to broadcast the Licensed Service had been interrupted by the Covid-19 pandemic. While we appreciate the difficulties caused by the pandemic and associated lockdowns, we note from our records that Ofcom issued the Licence in January 2020, approximately two months prior to the start of the first UK national lockdown on 23 March 2020. The Licensee told us that it had begun broadcasting three weeks before the first national lockdown. We therefore infer that the Licensee was not meeting its studio location requirements from around the week commencing 3 March 2020.

⁸ “Original output is content which is first produced for, and transmitted by, the station and excludes output that was transmitted elsewhere before. Original output can be live, pre-recorded or voice-tracked. 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 produced by a third party) do not meet Ofcom’s definition of original output”.

72. As stated in paragraph 38, the Licensee explained that the breaches occurred under the previous management.

The extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur

73. We note that the Key Commitments of the Licence were agreed with a Director of the Licensee prior to the launch of the service. Senior management were therefore aware of the Key Commitments. Furthermore, sample community radio licences are available on the Ofcom website. The Licensee's apparent lack of awareness of the Licence Conditions, as demonstrated in its asserting, incorrectly, that the advertising content it broadcast met the definition of original output, suggests a profound failure on the part of the Licensee in relation to the breaches of its Key Commitments, as does the fact that more than one aspect of the Licensee's Key Commitments was not being met.

74. As stated in paragraph 38, the Licensee explained that the breaches occurred under the previous management.

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

75. As above, we note that the Key Commitments for the Licensee were agreed with one of the Licensee's Directors prior to the launch of the service. There was no evidence that the Licensee took steps to remedy the breaches of its Key Commitments once it became aware of the complaint received by Ofcom in September 2021.
76. In March 2022, after Ofcom published its Breach Decision, the Licensee was subject to a change of control, and a change in personnel among the Directors. The service also underwent a name change to 'Cinque Ports Radio'. It successfully applied to amend its Key Commitments, changing its original output requirement to a weekly rather than daily requirement, and adding 80s music to its music output requirements. Ofcom monitored the service after these amendments to the Key Commitments were introduced and, at the time of monitoring, the Licensee was in compliance with its Key Commitments.
77. As stated in paragraph 40, upon taking over management, the new management of the Licensee ensured that the station's output was compliant with the Key Commitments set out in the annex to the Licence. Ofcom was satisfied on the evidence available that the Licensee's new management had brought the Licensee into compliance.

Any steps taken for remedying the consequences of the contravention

78. As stated in paragraph 41, the Licensee said that from the day that new management took over the station it became compliant with the Key Commitments set out in the annex to the Licence.
79. As stated in paragraphs 40 to 42, the Licensee said that since the new management had taken over the station in March 2022, it had invested a significant amount of time and money into the station. The Licensee explained that it has replaced "the entire transmission system" and that it has created a "fully-fledged studio station, [with] remote

DJs and live content” and that as result the station had seen an improved response to its operations from local stakeholders, including both listeners and local businesses and organisations.

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

80. The breaches were the first breaches recorded against the Licensee.

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

81. In Ofcom’s view the Licensee has generally been co-operative over the course of the investigation, with the caveat that it was unable to supply recordings of the assessment (but, as set out above, we did not consider it appropriate to impose a sanction in relation to this). The Licensee provided us with all of the written material and representations we requested.

82. We have also taken into account the fact that, during our investigation, the Licensee was open with us regarding the duration of the breaches. In its oral representations, the Licensee acknowledged the seriousness of the breaches.

Precedents

83. Ofcom’s Penalty Guidelines provide that, when considering the imposition of a sanction, Ofcom will have regard to any relevant precedents set by previous cases but may depart from them depending on the facts and the context of each case.⁹ We have set out the precedents which we consider relevant to this case below.

84. **February 2020, Big City Radio CIC**¹⁰ – Ofcom imposed a penalty of £500 on Big City Radio CIC in respect of its community radio service “Big City 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 licensed period.

85. Big City Radio failed to deliver its Key Commitments relating to the number of hours of original output. Additionally, 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 met the definition of information aimed at, and likely to appeal to, the target community in the licensed area. These findings concerned two separate two-day periods in July and August 2018.

86. In determining the sanction in this case, Ofcom took into account Big City Radio’s representations that the staffing problems during holiday periods and a high turnover of volunteers had caused it not to meet its Key Commitments. However, Ofcom considered that Big City Radio had been found in breach of Licence Conditions 2(1) and 2(4) on two occasions within an eight-month period so had been aware for some that steps were required to ensure it could consistently meet its Key Commitments.

⁹ Paragraph 1.14 of the [Penalty Guidelines](#).

¹⁰ [Decision by Ofcom - Big City Radio CIC](#)

87. **January 2016, Leith Community Mediaworks Ltd¹¹** – Ofcom imposed a penalty of £850 on Leith Community Mediaworks Ltd (LCMWL) in respect of its community radio service Castle FM for a breach of licence conditions 8(2)(a) and (b) in Part 2 of the Schedule to the 1990 Act licence, requiring the licensee to retain recordings of its output and provide these recordings to Ofcom upon request.
88. During 2014, Ofcom recorded five licence condition breaches by LCMWL in three separate findings. Breaches were recorded for failure to provide the service in compliance with Key Commitments in May and November 2014, and again in September 2015, alongside failures to retain and produce recordings.
89. In relation to the May 2014 finding, it was clear from LCMWL’s representations that no programming at all was broadcast on Sunday 8 and Monday 9 December 2013. This meant that, on those (and possibly other) dates, the licensee was in breach of its Key Commitment that “live daytime (08.00 to 19.00) output will typically compose 70% music and 30% speech”. In relation to the November 2014 finding, from 5 September 2014 to 17 November 2014, the service was not being provided from the licensed location. In relation to the September 2015 finding, we calculated the station’s overall speech levels as being below the required 30% on the first two days, by 5% and 17% respectively, with no speech at all broadcast on the third day.
90. The breaches for failure to comply with Key Commitments, although repeated, were not considered by Ofcom to be as serious and a decision was taken to proceed with sanction only for the failure to retain and produce recordings. The finding on 1 September 2015 was the third finding (after 19 May 2014 and 28 July 2014) that LCMWL had failed to retain and produce recordings. The penalty reflected that LCMWL had failed to make sufficient improvements following earlier breach decisions in relation to failure to retain and produce recordings and may have made cost savings by not having implemented an adequate recording system earlier.
91. **December 2011, BBA Media Limited¹²** – Ofcom imposed a penalty of £500 on BBA Media Ltd (BBA Media), 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.
92. BBA Media admitted that it had not been compliant throughout much of February 2011 during which a programme service had not been provided. Subsequently BBA Media provided an automated service that did not meet the requirement to provide typically 12 hours per day of live output. Ofcom found that BBA Media did not provide any service whatsoever for “the best part of a month”, and then did not provide a service meeting its Key Commitments for a further period of more than 20 days. This was BBA Media’s first breach.

¹¹ [Decision by Ofcom - Leith Community Mediaworks Ltd](#)

¹² [Decision by Ofcom – BBA Media Ltd](#)

93. **December 2011, Neath Port Talbot Broadcasting CIC¹³** – 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.
94. 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. It did not provide the service for two separate periods, lasting six days and three days respectively. This was Neath Port Talbot Broadcasting CIC’s first breach.
95. **August 2011, Voice of Africa Radio Limited¹⁴** - Ofcom imposed a penalty of £1,000 on Voice of Africa Radio Limited (Voice of Africa Radio) 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 Voice of Africa Radio Limited to provide the licensed service and maintain the character of the licensed service throughout the licence period.
96. The licensed service was not broadcast between 18 December 2010 and 1 January 2011. Ofcom considered that this breach was sufficiently serious to warrant a financial penalty. Further, Ofcom was concerned that Voice of Africa Radio did not have immediate access to transmission equipment, and at the nature of its response to Ofcom’s investigation. This was Voice of Africa Radio’s first breach of this nature. It had one previous (unrelated) finding of a breach.
97. 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.
98. We consider that there are similarities here between the present case and the above cases. The cases of Neath Port Talbot Broadcasting CIC, Voice of Africa Radio and BBA Media involved a first breach. There are also similarities between the above cases and the case concerning this Licensee in terms of the serious failures of the Licensee to comply with multiple Key Commitments. The licensees in those cases were doing nothing (or very little) in terms of providing the output required to meet their respective Key Commitments to provide the licensed service and maintain the character of the service. In the cases of Voice of Africa Radio, Neath Port Talbot Broadcasting CIC and BBA Media, it was found that no service had been provided at all for a significant period of time. Neath Port Talbot Broadcasting CIC broadcast back-to-back music with little else. In Retrocadia’s case, the entirety of the content broadcast during the relevant period assessed was music and advertising content, or else content provided by the Audio Content Fund. This content

¹³ [Decision by Ofcom – Neath Port Talbot Broadcasting CIC](#)

¹⁴ [Decision by the Ofcom Broadcasting Sanctions Committee – Voice of Africa Radio](#)

does not constitute original output as it was not originally produced for the station and was instead syndicated across a number of radio stations. By contrast, Castle FM was meeting a percentage of its Key Commitments in terms of output on most of the relevant period assessed by Ofcom, as opposed to not providing the service at all.

99. Retrocadia's failure to meet its Key Commitments in this case lasted for a longer period than in the cases set out above. The longest duration in any of these cases was approximately 45 days in the case of BBA Media, whereas Retrocadia failed to produce any original output at all for approximately 18 months. It also failed to have a studio within the coverage area from the launch of the service and failed to involve members of the community in the operation and management of the service for a considerable period also. These are fundamental failures to meet the Key Commitments as required under the Licence, meaning that the service being provided could not and did not reflect the characteristics of a community radio station.

Size and turnover of the regulated body

100. As set out in our Penalty Guidelines, 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 ensure compliance, having regard to the seriousness of the infringement. Any proposed penalty must be proportionate taking into account the size and turnover of the Licensee, its rights under Article 10 of the Convention and the fact that deterrence is the central objective of imposing a penalty.
101. We had particular regard to the fact that, as a community radio station, the Licensee is a not-for-profit organisation which is largely staffed by volunteers. We carefully considered the potential impact of a financial penalty on the Licensee's ability to operate the service.
102. Ofcom has taken into account the size and turnover of the Licensee. We asked the Licensee for information about its finances for its most recent accounting period, including its qualifying revenue. [~~CONFIDENTIAL~~]
103. In its response letter to Ofcom's request for provision of qualifying revenue information, the Licensee said that the imposition of a substantial penalty would be damaging for the station and would be likely to lead to the Licensee surrendering the Licence.
104. As stated in paragraph 43, the Licensee also highlighted its financial situation to Ofcom in its oral representations during the sanctions hearing. [CONFIDENTIAL~~CONFIDENTIAL~~]

Decision

105. Having regard to all the factors referred to above and all the representations to date from the Licensee, Ofcom's Sanction Decision was that the appropriate and proportionate sanction would be to impose a financial penalty (payable to HM Paymaster General) of £400.

Ofcom

16 June 2023