

## Statement on Chorley FM Limited's request to change its Key Commitments

A request from Chorley FM Limited, the holder of a community radio licence for Chorley, to change the Key Commitments of Chorley FM has been approved by Ofcom's Broadcast Licensing Committee (BLC).

Chorley FM's target community, as set out in its Key Commitments, was "*young people (15-25 years of age) and the lesbian, gay, bisexual and transgender community of Chorley.*"

Following the approval of the requested changes, the target community will now be: "*The population that live, work and study in Chorley and to include targeted content for the young people of Chorley (15-25 years of age) and the lesbian, gay, bisexual and transgender community*".

Chorley FM requested a number of other changes to its Key Commitments. These are under the headings: "character of service", "programming" and "social gain objectives". A copy of Chorley FM's current Key Commitments with the requested changes 'tracked' into it was reproduced in Ofcom's consultation document dated 16 September 2015<sup>1</sup>.

### Statutory and policy criteria

Ofcom may consent to a departure from the character of a licensed community radio service (a "Key Commitment change") in accordance with section 106(1A) of the Broadcasting Act 1990 (as modified by the Community Radio Order 2004) only if it is satisfied in relation to at least one of the following criteria (the "statutory criteria"):

- "*the departure would not substantially alter the character of the service*" (section 106(1A)(a));
- "*the departure would not narrow the range of programmes available by way of relevant independent radio services to persons comprising the relevant community*" (section 106(1A)(b));
- "*there is evidence that, amongst persons comprising that community, there is a significant demand for, or significant support for, the change that would result from the departure*" (section 106(1A)(d));
- "*the departure would not be prejudicial to the access by members of that community to the facilities used for the provision of the service and for training in the use of those facilities*" (section 106(1A)(e)); or
- "*the departure would not be prejudicial to the delivery of social gain resulting from the provision of the service provided*" (section 106(1a)(f)).

Under section 106ZA of the Broadcasting Act 1990, Ofcom must consult on a change that it considers does not satisfy the first of these criteria.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/consultations/chorley-fm-change-request/>

On initial review, Ofcom considered that the cumulative effect of the changes would represent a substantial departure from the character of the service of Chorley FM. This was on the basis that there were proposed changes to the station's target community, changes to its programming and social gain objectives, a proposed reduction in required speech output and proposed changes to the description of the music played by the station.

We therefore published a public consultation, which ran from 16 September until 13 October 2015. We received 54 responses, of which 43 were in favour of the change and 11 opposed. The non-confidential responses (or, where requested by the respondent, a short summary) may be found here: <http://stakeholders.ofcom.org.uk/consultations/chorley-fm-change-request/>.

Where Ofcom is satisfied that the proposed change would meet one of the statutory criteria, it still has discretion as to whether or not to agree to the change. Ofcom has published guidance about how it generally expects to exercise its discretion<sup>2</sup>. This guidance specifically refers to the following factors (the "policy criteria"):

- Whether the proposed change conflicts with the community radio 'characteristics of service' set out in the legislation. We consider that such a conflict would run counter to the legislation.
- The time elapsed since the licence commenced. We propose that a station should be operating under its agreed Key Commitments for at least one year before we will consider a change to Key Commitments.
- The reason for the change. It may be appropriate for us to take account of the kind of environment within which the station operates and that in the light of experience a station may need to adjust its commitments to better serve its target community.
- The extent of the impact of the change on the character of the service. A judgement will need to be made on the basis of the overall sound of the station, as well as whether the change is likely to affect the delivery of an appropriate service to the stated target community, and what effect the change will have on the delivery of off-air activity such as social gain objectives.
- The avoidance of 'format creep'. We will be alert to the possibility that a series of small changes could result in a substantial alteration, and we will therefore take into account the effect of any proposed change in the context of previous changes.

## **Ofcom's decision**

### Statutory criteria

As noted above, Ofcom was not satisfied in relation to **section 106(1A)(a)**, as it considered that the cumulative effect of the changes was likely substantially to alter the character of the service.

With regard to **section 106(1A)(b)**, the effect of the proposed changes (in particular, the proposed changes to references to the "LGBT community" and "young people") was

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/kc-changes-guidance.pdf>

considered likely to narrow the range of programmes available to the relevant community i.e. the community to be served as referred to in the Key Commitments: “*young people (15-25 years of age) and the lesbian, gay, bisexual and transgender community of Chorley.*” The Committee also considered that the proposed changes to music and speech output, and in particular the reduction in the variety of music genres during daytime that would result from the changes, would serve to reduce Chorley FM’s distinctiveness and its ability to cater for different tastes and interests from those catered for by existing local services. Ofcom was therefore not satisfied in relation to this criterion.

With regard to **section 106(1A)(d)**, the Committee took into account the expressions of support for the service received in response to the consultation. However, it also noted that there did not appear to be significant support for the proposed changes from persons comprising the current target community of young people and members of the lesbian, gay, bisexual and transgender (LGBT) community. It noted that Chorley FM said changes were based on feedback it sought from the target community, but the consultation responses did not conclusively support this position. Given that the Committee was satisfied in relation to two of the other statutory criteria (below), it was not necessary to reach a final view in relation to this one and the Committee did not do so.

In relation to **section 106(1A)(e)** the Committee considered Chorley FM’s assertion that the changes would not be prejudicial to the access by members of its (current) target community to the service’s facilities or training. However, the Committee also noted that the service proposes to broaden its target community to include the general population as well as the youth and LGBT communities. Access to the service’s facilities and training has always been open to all members of the Chorley community. Although the service proposes to no longer offer a single focus on the youth and LGBT communities, the Committee considered that there are grounds on which to believe that the changes would not be prejudicial to the access by members of those communities to the station, and therefore it was satisfied in relation to this statutory criterion.

In relation to **section 105(1A)(f)**, Chorley FM maintained that the Key Commitment changes will “*absolutely not*” be prejudicial to the delivery of social gain resulting from the provision of its service. However, the Committee considered the changes would tend to reduce the amount of certain types of content and social gain commitments primarily targeted at the youth and LGBT communities. The Committee sought clarification from the Licensee with regard to three specific references to the youth and LGBT communities in the ‘social gain commitments’ section of the Key Commitments. Chorley FM Limited responded that it would like these references maintained in the Key Commitments, rather than removed (as had originally been requested). As a result, the Committee was satisfied in relation to this criterion.

### Policy criteria

Having been satisfied in relation to at least one of the relevant statutory criteria, the Committee then considered this request under Ofcom’s policy criteria. As noted above, the legislation gives Ofcom discretion as to whether or not to consent to a proposed change, if one of the statutory criteria is satisfied. Unlike with the statutory criteria, where only one

need be satisfied to allow Ofcom to move on to consider the policy criteria, Ofcom reaches a view in the round when considering a request in relation to its policy criteria.

In relation to the **third policy criterion**, namely *“The reason for the change ... in the light of experience a station may need to adjust its commitments to better serve its target community”* the Committee noted the large number of responses supporting such a change, particularly from the wider population that it was proposing to serve, but also took into account that the service was currently licensed to serve the youth and LGBT communities. The Committee accepted that the station would continue to be inclusive of young people and the LGBT community within the context of a broadened target community, and that the changes to the Key Commitments, as clarified by the licensee, would guarantee the continued provision of some specific content for these communities on a weekly basis.

In considering the proposed changes in relation to the **fourth policy criterion**, namely *“The extent of the impact of the change on the character of the service”* and *“whether the change is likely to affect the delivery of an appropriate service to the stated target community”*, the BLC considered that while the likely cumulative effect of the changes would be substantial, and would clearly affect the nature of the service (including changes to music and speech output which would reduce Chorley FM’s overall distinctiveness), it recognised that there would still be specific obligations to offer an alternative to existing local radio services and, in particular, to provide specific content and social gain for the youth and LGBT communities of Chorley.

The Committee considered and did not have any concerns in relation to the **first, second, and fifth policy criteria**.

On balance, considering all policy criteria in the round, the Committee considered it was appropriate to consent to the proposed changes.

**In conclusion, therefore, the BLC agreed the request to change the Key Commitments for Chorley FM because it was satisfied in relation to two of the relevant statutory criteria, and for the policy reasons set out above.**

November 2015