
Secklow Sounds (Milton Keynes)

Request to change Key Commitments

STATEMENT

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1. Overview

A community radio station's Key Commitments set out the type of broadcast output it is required to provide, and form a part of its licence. Key Commitments include: a description of the community to be served; a summary of the character of the service; a description of the programme service; social gain objectives; access and participation arrangements; and mechanisms to ensure accountability to the target community. When a request to change Key Commitments constitutes a substantial alteration to the character of service, the request is subject to consultation.

In June 2019, Secklow Sounds CIC ('Secklow Sounds') submitted a request to Ofcom to make changes to the FM community radio licence it holds for Milton Keynes, which broadcasts as 'Secklow Sounds.' In Ofcom's view, the proposed changes were substantial and therefore the request was subject to a public consultation.

What we have decided

Ofcom has decided to approve the Key Commitments changes requested by Secklow Sounds.

These are as follows:

- A reduction in Secklow Sounds' original output requirement from "a minimum of 100 hours per week" to 40 hours per week, with the remainder of airtime to be filled with repeated programmes and themed playlists.
- A change to Secklow Sounds' music output requirements from "mainstream popular genres from the 1930s to the present and specialist music [...]" to "mainstream music from the 1960s onwards".
- A change to Secklow Sounds' speech output requirements by including a reference to national news in addition to the existing reference to local news.

2. Statutory and policy criteria

- 2.1 Community radio services are licensed under the terms of three related pieces of legislation. In particular, the Community Radio Order 2004 (the “Order”) applies modified versions of the provisions of the Communications Act 2003 (the “2003 Act”) and Broadcasting Act 1990 (the “1990 Act”) to community radio. The legislation sets out requirements that must be met for radio services to qualify as ‘community radio services’, including that such services are not profit-distributing, are provided for a target community, deliver social gain objectives, invite access and participation in the service, and are accountable to the target community.
- 2.2 Section 106(1) of the 1990 Act (as modified by the Order) requires that community radio licences include such conditions as appear to Ofcom to be appropriate for securing that the character of the licensed service (as proposed by the licence holder when making its application) is maintained during the period for which the licence is in force.
- 2.3 The way section 106(1) applies in practice is that, when a prospective licence holder applies for a community radio licence, it must set out its proposals as to the character of the service it intends to provide. Those proposals are summarised in what is known as a ‘Key Commitments’ document, which then forms the basis for the terms and conditions contained in the licence regarding the ‘character of the service’ and its delivery. Such terms and conditions are agreed with each licensee before the station starts broadcasting. (The ‘licensee’ is the organisation which holds the community radio licence.)
- 2.4 The Key Commitments document includes:
- a description of the community to be served;
 - a summary of the character of service (a short description of the station’s aims);
 - a description of the programme service;
 - social gain objectives (including how the station will satisfy the mandatory social gain requirements set out in the legislation, and any other social gain objectives of the service);
 - access and participation arrangements; and
 - mechanisms to ensure accountability to the target community.
- 2.5 In determining the licence conditions that should be included in a licence under section 106(1) of the 1990 Act, section 106(1A) provides that Ofcom may, in particular, include conditions that enable it to consent to a “departure from the character of a licensed service” (or, in other words, the Key Commitments) should a licence holder subsequently request such a change. This is embodied in condition 2(5) of each community radio licence, allowing Ofcom to consent to changes in Key Commitments. Before Ofcom can give its consent, it must be satisfied that one or more of five statutory criteria has been fulfilled (see below). However, the legislation also gives Ofcom discretion not to consent to a proposed change, even if one of these criteria is satisfied.
- 2.6 The statutory criteria that Ofcom must apply when considering requests to change Key Commitments are set out in Section 106(1A) of the 1990 Act (as modified by the Order), and are as follows:

- i) that the departure would not substantially alter the character of the service (section 106(1A)(a));
- ii) that 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));
- iii) that there is evidence that, among 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));
- iv) that 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
- v) that the departure would not be prejudicial to the delivery of social gain resulting from the provision of the service provided under that licence (section 106(1A)(f)).

2.7 Where Ofcom is considering whether or not to consent to a proposed change on the basis of sections 106(1A)(b), (d), (e) or (f) above, it is under a general obligation to consult with those who, in its opinion, are likely to be affected by the change. Ofcom is not, however, required to consult when it is satisfied that a proposed change satisfies section 106(1A)(a) - i.e. that a proposed change would "not substantially alter the character of the service". The term 'character of the service' is not defined in the legislation. We consider that it includes everything that is set out in each service's Key Commitments section of its licence. For the avoidance of doubt, this goes beyond a sub-section in the Key Commitments document entitled 'description of character of service' to encompass the entirety of the Key Commitments annex to the licence.

2.8 The legislation leaves the decision as to whether to permit a change, if one or more of the above criteria is satisfied, to Ofcom's discretion. There may be reasons (depending on the circumstances of the case) why Ofcom may not consent to the proposed change, notwithstanding that one of the statutory criteria is met. We have [published criteria](#) we use to help us judge whether a request of this kind should be approved, namely:

- a) whether the proposed change conflicts with the community radio 'characteristics of service' set out in legislation;
- b) the time elapsed since the licence commenced;
- c) the reason for the change (including the environment in which the service operates and whether a station may need to adjust Key Commitments better to serve its target community);
- d) the extent of the impact of the change on the character of the service; and
- e) the avoidance of 'format creep' through a series of small changes.

2.9 We also take account of our general statutory duties, including:

- a) our principal duty to further the interests of citizens and consumers;

- b) our duty to secure the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests (including specifically a range and diversity of local radio services), as well as the maintenance of a sufficient plurality of providers of different services; and
- c) our duty to have regard to the different interests of persons in the different parts of the UK, of the different ethnic communities within it and of persons living in rural and in urban areas.

2.10 Where we consult, we will usually do so by publishing a consultation document on our website. We will usually include in that document a preliminary view about the request. That is not a decision, but a provisional view, subject to the consultation process, so that those who wish to respond to the consultation can do so on an informed basis. We then consider all the responses to the consultation and make our decision on the request.

3. Ofcom's analysis and decision

- 3.1 In respect of its Milton Keynes community radio licence, Secklow Sounds asked Ofcom to:
- a) Reduce its original output requirement from “a minimum of 100 hours per week” to 40 hours per week, with the remainder of airtime to be filled in with repeated programmes and themed playlists;
 - b) Change to its music output requirements from “mainstream popular genres from the 1930s to the present and specialist music [...]” to “mainstream music from the 1960s onwards.” Furthermore, music from earlier decades would feature in specialist programmes and would no longer form part of the station's core music offer; and
 - c) A change to its speech output requirements by including a reference to national news in addition to the existing reference to local news.
- 3.2 The request was made on the basis that the changes would satisfy all five of the statutory criteria in section 106(1A) of the 1990 Act, and that they are consistent with Ofcom's generally applied policy criteria for such requests.
- 3.3 Secklow Sounds' main reasoning for the proposed changes was “to do with tightening some areas and ensuring we can deliver on our promises”, particularly on achieving minimum hours of original output under its Key Commitments. Furthermore, the station said it wished to place more focus on more recent music in order to attract a younger demographic, as it said it regularly received feedback from listeners requesting more modern music to be aired.

Ofcom's preliminary view

- 3.4 We considered that the change in speech output satisfied criterion (a), because the addition of a specific reference to national news or the re-ordering of speech commitments would not substantially alter the character of the service. Therefore, this aspect of the station's change request did not require consultation.
- 3.5 However, Ofcom considered that, taken together, Secklow Sounds' proposed change to its music output and the significant reduction in hours of original output would substantially alter the character of the service (i.e. we were not satisfied in relation to criterion (a)), hence we undertook a public consultation on Secklow Sounds' proposals).
- 3.6 We said in the consultation that we were minded to consider that statutory criterion (e) of section 106(1A) of the Act was met: that the changes would not be prejudicial to the access by members of the target community to the facilities used for the provision of the service and for training in the use of those facilities.
- 3.7 The Key Commitments change legislation leaves the decision as to whether to permit a change to Ofcom's judgement, even if one of the statutory criteria is satisfied. In our preliminary view, we considered it would be appropriate to allow the changes having considered the policy grounds, as set out in our [published criteria](#).

Summary of consultation responses

- 3.8 Ofcom received eight responses to the consultation, including one from the Community Media Association ('CMA'), which agreed with Ofcom's preliminary view on the request. This was on the grounds that the proposed changes would "improve its [Secklow Sounds'] delivery of community radio broadcasting to the station's target community in the Milton Keynes area".
- 3.9 The remainder of the respondents, though, disagreed with our preliminary view. Five of the respondents thought Ofcom should reject the request on the basis that the change in music output would result in the service having less appeal for the older listeners in Milton Keynes, giving that audience less choice of radio services to listen to.
- 3.10 On the proposed 60% reduction in the amount of original hours broadcast by the station each week, four respondents felt that the current 100 hours per week of original output should be easily achievable for a station serving a town the size of Milton Keynes, or that Secklow Sounds should be held to the commitments it made in originally winning the licence. Some respondents alleged that the station was failing to reach out to the local community, and that the existing original hours requirement would not be an issue if it did so more effectively.
- 3.11 Finally, four respondents to the consultation raised issues which were not directly relevant to the Key Commitments change request, but highlighted some concerns about how Secklow Sounds was managing its radio service with regard to the treatment of volunteers and potential volunteers. Ofcom has a duty under section 3(3) of the Broadcasting Act 1990 to ensure broadcasting licensees are "fit and proper" persons to hold a licence. We therefore required Secklow Sounds to respond to the concerns that were raised, setting out the policies and measures it had in place to manage volunteers. Having considered consultation responses and the information provided by Secklow Sounds we did not consider there was evidence that the Licensee was not a "fit and proper" person to hold a broadcast licence. We note that, as with all broadcast licensees, Ofcom has an ongoing duty to ensure licences are held by fit and proper persons, and we have the power to revoke where fresh evidence comes to light.

Analysis and conclusion

- 3.12 In our consultation we recognised that Secklow Sounds' proposed changes to its music output and the reduction in hours of original output had not met statutory criterion (a) and, therefore, the impact on the character of service would be substantial.
- 3.13 However, we also considered that the proposed changes would not be prejudicial to the access by members of the target community to the facilities used for the provision of the service and for training in the use of those facilities, and therefore that statutory criterion (e) was met. Given one of the statutory criteria was met, we considered whether it was appropriate to allow the change in light of our published criteria, and our provisional view was that it was.

- 3.14 We first considered whether, in light of consultation responses, we still considered statutory criterion (e) was met. In relation to original hours, while we understand the concerns raised by respondents to the consultation regarding such a large reduction in the amount of original hours, no evidence was put forward by respondents that this reduction in the amount of original programming would, by itself, affect issues around access and training. We consider that 40 hours remains a substantial amount of original output over the course of a week, requiring Secklow Sounds to continue to provide access to facilities for the provision of the service and relevant training. We therefore remain of the view that that statutory criterion (e) of section 106(1A) of the Act is met.
- 3.15 Regarding the proposed change in music output, we recognised the comments from some respondents that the change would reduce Secklow Sounds' distinctiveness and could potentially make its output more similar to that of other community and commercial radio stations in the Milton Keynes area, thereby reducing choice for older listeners. However, we do not consider this point has a bearing on whether statutory criterion (e) is met as the change does not impact on access to facilities and the provision of training (its potential relevance is to the published policy criteria as discussed below).
- 3.16 We then considered whether it would be appropriate to allow the changes, which remains a matter for Ofcom's discretion where statutory criterion (e) is met. We recognise the changes would have some impact on character of service, and the extent of the impact on character of service is also one of the relevant [policy criteria](#) in considering whether Ofcom should allow the change. In relation to this, we recognise there will be a substantial reduction in original output and change in music output (as stated above).
- 3.17 The number of hours of original output is a factor in the character of the service and is likely to be closely related to the success of a community radio service in engaging its target community. We recognise that Milton Keynes is a large town, meaning there is a reasonably big population close to Secklow Sounds' studio who are potential volunteers. However, we also recognise the need to balance quantity with quality of original output in serving the target community effectively and note the experience Secklow Sounds has had in trying to provide 100 hours of high quality original output over the three years since it came on air.
- 3.18 We consider that the change in original output will maintain the characteristics of service as set out in legislation in terms of serving the defined community. We note reasons for the change, including the station's proposed studio partnership with a local Academy and its consequent impact on available 'live hours'. We also note that, notwithstanding that the reduction is likely to increase repeats and the use of themed playlists, there will still be 40 hours a week (an average of nearly six hours a day) of original output and this is relevant to the extent of the impact on the character of service. We also note that a reasonably challenging but more achievable minimum of 40 hours is likely to have a positive impact on quality in this case.
- 3.19 Regarding the change to music genres, we considered that, while the change from "popular genres from the 1930s to the present" to "popular genres from the 1960s to the present" may slightly reduce the amount of music from before 1960, the revised Key Commitments add a reference to "plus music from earlier decades" requiring the inclusion

of some earlier material. We also had regard to the addition of a commitment to “feature local and other independent artists” and considered that this may have a positive impact on the range of programmes available and the extent to which they serve the target community.

- 3.20 While the change in music output could have a significant impact on the character of the service in terms of Secklow Sounds’ programming output, we also recognise that these changes should have much less of an impact (if any) on the station’s ability to continue to comply with the core characteristics of a community radio service, and in particular its ability to deliver social gain for both the disadvantaged of Milton Keynes and the wider community. We also note that the extent of the impact on the character of the service is likely to be relatively low, given the retention of the reference to music from earlier decades in specialist shows.
- 3.21 In summary, we are approving the changes to Secklow Sounds CIC’s Key Commitments, because we are satisfied in relation to one of the statutory criteria and, on balance, we consider the policy criteria make it appropriate to approve the request.