Review of the approach to community radio Key Commitments

About this document

Key Commitments are the part of a community radio licence which describes the type of service that the community radio station must provide, and include elements such as the nature of the programme output, and the ways in which the station will deliver community benefits.

We published a consultation in July 2015 on a proposal to streamline and simplify how Key Commitments are recorded in community radio licences, and asked for views on this proposal.

Having considered all the consultation responses, we confirm our proposal to proceed with the proposed changes, with one minor modification to our original proposition.

Contents

Section 1

Executive summary

1.1 There has been a specific statutory framework for the licensing of community radio services since the Community Radio Order 2004 (the Order) was enacted. Ofcom has been licensing services since the legislation came into force, using the legal framework for community radio established by the Order (as amended) as the basis for inviting applications, considering applications and awarding licences. The legislation includes the requirement for each licence to include conditions that Ofcom considers are appropriate to secure that the character of the licensed service is maintained throughout the period of the licence. These conditions are known as the 'Key Commitments', and are based on the proposals in the application for the licence.

1.2 We published a consultation in July 2015 on whether the way Key Commitments are written is still appropriate, and asked for views on a proposal to revise Key Commitments to streamline and simplify them.

1.3 We received 15 responses to the consultation, which have been published (in whole or in part) on our website.[1]

1.4 We stated in the consultation that the Key Commitments in existing licences vary a great deal in a number of respects: the level of detail they contain, the level of operational flexibility they allow, the extent to which they accurately reflect an applicant's overall proposals, and their overall length.

1.5 Having carefully considered all of the responses, we have decided to implement the proposal to streamline and simplify the Key Commitments which was set out in the consultation, with one slight modification.

1.6 We consider that this approach will meet our objective of capturing the core elements of the character of service in each community radio licence that has to be maintained for the duration of the licence, but in a way that reduces the administrative burden for both the licensee and Ofcom, and provides stations with greater flexibility to better serve their target communities and deliver valuable social gain.

1.7 In the consultation we set out a proposed new format for Key Commitments that could be implemented for existing licences as well as for new licence applications. For new licence applications, applicants will be required to use the new template when submitting their proposed Key Commitments. For existing licences, we will implement the new template only with the consent of the licensee. Any licensee who does not wish to adopt the new streamlined and simplified approach will retain their existing Key Commitments.

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[1] http://stakeholders.ofcom.org.uk/consultations/key-commitments/?showResponses=true

Section 2

Background

Regulation of community radio through Key Commitments

2.1   Since the Community Radio Order 2004 (the Order) came into force there has been a specific statutory framework for the licensing of community radio services. Ofcom made a policy decision to start licensing such services as soon as the legislation came into force. The legal framework for community radio established by the Order (as amended) provides the basis upon which Ofcom invites applications to run community radio stations, considers those applications, and awards licences to operate those services.

2.2   The legislation includes the requirement for each licence to include conditions that appear to Ofcom to be appropriate for securing that the character of the licensed service, as proposed by the licence holder in its application, is maintained during the period of the licence.[2] We describe these character of service obligations in a community radio licence as the 'Key Commitments'. They are important for two main purposes. Firstly, the Key Commitments are used by Ofcom in making licence award decisions. Secondly, once a service is broadcasting, they are used to ensure that stations continue to deliver a service that is consistent with the characteristics specified in legislation and in the application. The legislation allows Ofcom to approve changes to Key Commitments provided certain specified criteria are met.[3]

2.3   Ofcom's approach to drawing up each service's Key Commitments has evolved over the ten years since we started licensing community radio services. We moved away from our initial approach whereby Key Commitments were drafted by Ofcom based on a description of the planned service in licence applications, to an approach whereby community radio applicants write their own Key Commitments as part of their application.

2.4   We provide guidance to applicants on how to draft their Key Commitments[4], but we have found that their Key Commitments vary a great deal in a number of respects: the level of detail they contain, the level of operational flexibility they allow a station, how they reflect the proposals elsewhere in the licence application, and their overall length.

2.5   When Key Commitments are very specific and detailed they may not allow for much flexibility in their delivery, but it is easier for stakeholders (including licensees and their target communities) to know precisely what a service is meant to be delivering, and for the regulator to assess whether or not a licence holder is complying with its Key Commitments. However there is also greater scope for stations to fall short of delivering very detailed Key Commitments that do not necessarily benefit the community they are meant to serve in a significant way. In our experience, the more

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[2] Section 106(1) Broadcasting Act 1990, as amended by the Community Radio Order 2004 (as amended).

[3] Section 106(2) Broadcasting Act 1990, as amended by the Community Radio Order 2004 (as amended).

[4] To date we have done this in our guidance notes - http://licensing.ofcom.org.uk/binaries/radio/community/thirdround/notesofguidance.pdf - and by giving examples of Key Commitments in the application form.

detailed a Key Commitment is about, for example, staffing levels, partnerships or how to engage with target communities, the more likely it is that a licensee may wish to change it at some point to reflect its changing circumstances.

2.6   On the other hand, when Key Commitments are less specific and detailed they allow greater flexibility in how the characteristics of the service can be delivered, for example when personnel or partners change, but stakeholders will have less certainty about the characteristics of their specific community radio service. Licence award and enforcement decisions can also become more challenging for the regulator.

2.7   Community radio services are small-scale operations provided primarily to deliver social gain to their communities, rather than for commercial reasons. They are operated on a 'not for profit' basis, often by volunteers and enthusiasts, with profits reinvested in the service or for delivering social gain in the target community. Having regard to that core purpose, it is important to ensure that the level of regulation placed on these services is appropriate and proportionate, whilst conforming to the obligations in the legislation. At present, whilst these services are among the smallest radio services licensed by Ofcom, they have a higher degree of regulation than much larger commercial radio services. Specifically, it is important to strike the right balance in setting Key Commitments with a pragmatic approach that benefits the sector and the communities it serves, while at the same time being workable from a regulatory perspective and consistent with the legal framework.

Consultation

2.8   In our consultation of July 2015 we sought views on a proposed new simplified approach to Key Commitments, in which only those elements that are specific to the character of service of an individual community radio service would be set out in detail in the licence. Other characteristics, for which the detail may have to vary over time to meet changing circumstances, would be described in more general terms. Our objective was to capture the core elements of the character of service in each community radio licence, but in a way that provides those services greater flexibility to make best use of what can be scarce resources, freeing up those services to better deliver social gain to their target communities.

Section 3

Responses to the consultation and Ofcom's decision

Responses to the consultation

3.1   We received 15 responses to the consultation. In addition to a response from the UK representative body for the community broadcasting sector, the Community Media Association (CMA), ten responses were received from individual community radio stations (Blast 106, Bradford Community Broadcasting (BCB), Canalside Community Radio, Canterbury Youth and Social Media (CSRFM), Forest Community Radio, IÚR-fm, Raidió Fáilte, Seahaven FM, The Voice and one station that wished to remain anonymous), and four were from individuals.

3.2   The points made in the responses are summarised below by subject area, together with our view on these points. We then conclude by setting out our final decision on our approach to Key Commitments.

<u>Flexibility and administrative burden</u>

3.3   There was a general recognition among respondents that the sector needed flexibility and a lower administrative burden.

3.4   Seahaven FM, Forest Community Radio and the station that wished to stay anonymous each agreed with the proposal, emphasising the need for services to be able to develop and to have the flexibility to adjust to changing circumstances. Canalside Community Radio supported the proposal because, it said, circumstances at stations change over time. CSRFM also welcomed a more flexible approach. Two of the individual respondents fully supported the consultation proposal, with one stating specifically as a reason that Key Commitments need to be flexible.

3.5   The Voice supported the proposal, saying that it would result in an easing of the administrative pressure on the sector, freeing up time for organisations to serve their target audiences more efficiently. Raidió Fáilte stated that any change that reduces the level of bureaucracy and administration required by community radio stations is to be welcomed, and that the proposals are welcome insofar as they do this.

3.6   The CMA stated that it would broadly support a proposal to streamline and simplify the approach to Key Commitments in order to make the process easier for community radio stations to manage.

3.7   Canalside Community Radio indicated that the number of daily hours of live programming can go up and down for a station from day to day, going out of sync with the number of hours set out in its Key Commitments, depending on variations in its circumstances. It suggested that that flexibility should be allowed in this respect.

3.8   We remain of the view that there is an increased need for flexibility in the sector, and that our proposed new approach to Key Commitments would reduce the administrative burden for community radio stations. We noted the support from organisations and individuals for our proposal, as set out above, for these reasons.

3.9   The additional flexibility will enable stations to adjust over time to changing circumstances whilst continuing to focus on the substance of their social gain objectives, and will reduce the likelihood that applicants for licences overpromise in the detail regarding their Key Commitments and later find that they need to adjust them. We consider that the proposals will ease the administrative pressure on community radio stations by reducing the need for them to frequently apply to Ofcom to change Key Commitments, and will therefore allow them to spend more time on serving their target communities and audiences as best as possible.

3.10   With regard to the suggestion that there should be flexibility for licensees in their delivery of quantified Key Commitments (see paragraph 3.7), under the proposed new approach this would apply only to two requirements: those for original and locally-made programming. While we recognise that on occasion there may be particular circumstances which mean a licensee cannot meet its requirements in this respect, we would take this into account in the event that we had cause to investigate a licensee's delivery of these requirements. However, we consider that these are important aspects of a station's character of service, and that it is not unduly onerous to expect licensees to meet their obligations in this respect on a consistent basis. We would also note that it is always open to a licensee to request to change these particular aspects of its Key Commitments, should it feel unable to comply with its existing requirements.

Detail set out in social gain commitments

3.11   Some responses expressed concern about our proposal to reduce the extent to which social gain details are included in Key Commitments.

3.12   BCB stated its view that Key Commitments should continue to contain specific details of how social gain will be delivered. It felt that our proposal diluted this too much, to the extent that a community radio station could become more similar to a commercial radio service, and that it could become harder to hold community radio services to account on the delivery of social gain objectives.

3.13   The CMA also took issue with the fact that the consultation proposed to record social gain objectives in Key Commitments without incorporating detail, and suggested that the full range of social gain objectives set out in the Community Radio Order 2004 should be incorporated, rather than just those defined as 'mandatory'. It expressed concern that the importance of social gain objectives needed to be re-emphasised, and that the proposals would increase the workload for individual stations as they would have to take greater responsibility for planning their own social gain.

3.14   Blast 106 and IÚR-fm expressed a preference for an increase in quantifiable targets.

3.15   We do not agree that the lack of detail, including quantitative detail, about social gain in Key Commitments dilutes the importance of social gain objectives. Nor do we agree that it removes the distinction between the community radio and the commercial radio sector. We consider that the importance of social gain objectives, as specified in the Community Radio Order, remains paramount. Under the new approach, every community radio station will still be required to deliver social gain, but will have much greater flexibility in how it chooses to do so, and will more easily be able to make adjustments to its activities to reflect the changing needs of its target community.

3.16   We remain convinced that the different elements of social gain provision need not be bespoke to each set of Key Commitments, but should instead be incorporated in

more general terms on a standardised basis across all community licences. Stations should have flexibility to evolve and decide in changing circumstances how best to deploy their resources to deliver appropriate social gain to their target community. However, where a licensee or Ofcom considers that a specific element of its social gain delivery is fundamental to the character of its service, this would be included in the summary description of the service in the Key Commitments.

3.17   In response to the suggestion that Key Commitments should include all eleven social gain objectives set out in the Community Radio Order 2004 (rather than just the four designated as 'mandatory' in the legislation which we proposed to include), we consider that our proposal to focus on the "mandatory" social gain objectives remains preferable, for the same reasons we have set out in the previous two paragraphs. In addition, we do not consider it would be appropriate or proportionate to require every community radio station to deliver aspects of social gain which are specifically designated in the legislation as 'optional' rather than 'mandatory'.

Accountability to the community

3.18   Two individual respondents were concerned about the proposal in the consultation because they did not consider that it would improve the accountability of one particular community radio station to which both referred. Both suggested that all stations should be required to hold an annual general meeting open to all those involved with the station, and to publish minutes of the meetings.

3.19   We noted the concerns about lack of accountability to its community of a specific station, and that these comments seemed to be related to a very specific station, rather than to the sector as a whole. We consider that the suggestion to remedy this with an obligatory AGM would be inconsistent with our general approach, and would not be appropriate for many stations. In the event that we were to receive a complaint about a station's accountability, we would still require that station to demonstrate to us in detail how it is accountable to its target community, and failure to satisfy us on this may result in regulatory action being taken.

Consent of licensees

3.20   Two respondents were concerned that new Key Commitments would be imposed upon them without their consent. Specifically, Blast 106 and IÚR-fm emphasised that any changes must be agreed with licensees.

3.21   We said in the consultation document (paragraph 3.11) that, for existing licences, we will implement the new template only with the consent of the licensee. Any licensee who does not wish to adopt the new streamlined and simplified approach will retain their existing Key Commitments. This remains our position.

Record-keeping, annual reporting and compliance

3.22   Some responses focused on the impact of the proposals on the record-keeping that stations will need to undertake, and annual reporting by the sector.

3.23   CSRFM stated that detailed Key Commitments are useful as guidelines for the volunteers at the station, particularly given the frequency with which volunteers change.

3.24   The CMA expressed concern that the new proposals would create uncertainty about what records stations would have to keep, and noted that the standards of record-

keeping and reporting across the sector will vary considerably between stations if they take responsibility for privately and locally recording their delivery on the optional social gain objectives.

3.25 The CMA asked Ofcom to deploy training and education resources to work with it to share best practice and record-keeping standards; to co-host an online directory of community radio services and their Key Commitments, and; to explain to the sector what would be required under the new Key Commitments proposal if it is adopted.

3.26 The CMA also asked what would happen to the annual reporting process which Ofcom has previously employed, and emphasised what it saw as the value of the annual reporting process.

3.27 Blast 106 and IÚR-fm asserted that any changes which would lead to increased subjectivity or interpretation by persons who are not members of the community for which the station is established to serve would be unacceptable.

3.28 We recognise that a new system of simplified Key Commitments will lead to some changes for community radio licensees with regard to record-keeping required to demonstrate compliance. However, we do not consider that these changes would increase the regulatory burden on any existing licensee, given that licensees are already required to provide details of how they are delivering against their existing Key Commitments when Ofcom requests this information. Licensees will already keep records of many of their activities, such as volunteer inputs, training provision, on-air guests and interviews, attendance at or broadcasting from local events, feedback received, accountability measures and so on. Most stations are likely to record such information for use when applying for grants, building relationships with partners, evidencing the impact of their service to advertisers, and for reporting to their board, for example.

3.29 If the sector thinks that there are benefits from standardised record-keeping beyond what is currently required by Ofcom, it remains possible for the sector to organise this, perhaps via an umbrella organisation such as the CMA. We welcome the suggestion from the CMA to contribute to the development of a number of training and education initiatives around record-keeping under the new Key Commitments, and will explore this further with the CMA as part of our regular engagement programme with them.

3.30 We were asked what would happen to the annual reporting process which Ofcom has previously employed, should the new approach to Key Commitments be adopted. We envisage three key ways in which we will request information from stations:

1) Ofcom will continue to require community radio licensees to produce an annual financial report, so we can check that they are complying with the financial restrictions which apply to the sector.

2) To reduce the reporting burden on stations, we will no longer routinely require licensees to report annually on their delivery of Key Commitments. We will usually only request information on the delivery of Key Commitments if we need to assess a complaint or investigate a potential issue about the service being provided by the licensee, or the community radio sector in general.

3) To ensure that we continue to review the sector adequately in our Communications Market Report as we have done in the past, we will continue to

ask stations to provide us annually with some key information such as the average number of original programming hours per week, the total number of volunteers involved during the year, the average number of volunteer hours per week as well as the number of people trained during the year.

3.31 Although we recognise that our new approach may increase the need for subjective judgments to be made when assessing Key Commitment compliance, we consider that this is outweighed by the benefits of the new approach as outlined in the consultation document and elsewhere in this statement.

Speech and music programming

3.32 The station that wished to remain anonymous expressed concern that community radio should be retained as a distinctive tier, and that the Key Commitments should therefore describe speech ambitions and the music output: i.e. "specify the range and general ambition of speech, and where it is carried throughout the day … and [describe] music output".

3.33 We do not consider that it would be appropriate, as a general rule, for Key Commitments to refer specifically to when music and/or speech are provided on any given day. This is because we consider that services should have the flexibility to adjust their programming within the overall character of service. However, Key Commitments will specify the main types of speech and music output a service provides over the course of a week.

Original and local programming

3.34 There were comments about our proposed definition of original output as "output that has never transmitted elsewhere before".

3.35 The CMA believed that the proposed definition is too restrictive, and that it would reduce the range and diversity of syndicated content. It also stated that the definition of locally-produced output as "output made and broadcast from a studio located within the service's licensed coverage area" is too restrictive and not enforceable.

3.36 Raidió Fáilte felt that the distinction between original output and local output is somewhat unclear at present, and that the definition of local is unclear for stations such as itself, which are serving a scattered community of Irish language speakers, not only on FM but also online.

3.37 We do not agree that our definitions of 'original' and 'locally-produced' output are "overly restrictive", or difficult to enforce.

3.38 Locally-produced output (i.e. output made *in* a station's licensed area) has to be defined clearly to ensure it is not confused with local content (i.e. output *about* a station's licensed area). We do recognise, however, that not all of a radio station's output will be made in a studio, and will modify the definition in the new Key Commitments template to reflect this.

3.39 Similarly, the definition of 'original' programming is simply designed to clearly distinguish such output from other types of programming. The extent to which it must be provided will be specified in each station's Key Commitments.

3.40 Any stations that wish to reach a wider community by broadcasting online, and that wish to use a wider definition of their target group for online purposes are not

prevented from doing so, as online radio output is not subject to the community radio licensing regime.

3.41   In addition, any stations that want to broadcast content that is not made in the coverage area or not original would remain free to do so under our new approach (consistent with the overall description of their character of service), as they can ensure that the number of hours of each type of output they commit to in their Key Commitments leaves sufficient room in the schedule to transmit other types of output.

Other issues

3.42   Some other issues that fall outside the remit of this consultation were raised in consultation responses, in particular regarding the funding rules for community radio and geographical coverage limits. The funding restrictions are set by statute and thus not open to Ofcom to amend, while our coverage policy is set out in our document 'Notes of guidance for community radio licence applicants and licensees'.[5]

Ofcom's decision and next steps

3.43   Having carefully considered all of the responses, we have decided to implement the proposal for a new Key Commitments template, as set out in the consultation, but with one minor modification: it is not essential that all locally-produced content is made in a studio, and we are therefore removing the reference to a studio in the definition for locally-produced content. As a result, locally-produced output will be defined as "output made within the service's licensed coverage area".

3.44   Next steps:

- We will write to every existing licensee with a proposed revised version of their Key Commitments using the new Key Commitments template. Each licensee will be given the opportunity to make representations at this stage. We will consider any representations, and then finalise the Key Commitments and publish them online as soon as they are agreed. If they wish to do so, a licensee can use this opportunity to opt to retain their existing Key Commitments.

- We will follow the same process for stations which have been awarded, but not yet granted, a licence (apart from the fact that the final agreed Key Commitments will be published online when the service commences, rather than as soon as they are agreed).

- For groups which have applications currently under consideration (applicants for licences in the south east of England), if licence awards are made we will propose Key Commitments to these new awardees using the new Key Commitments template. However, each awardee will also be given the opportunity to have Key Commitments based on the template they used in their application, if they prefer.

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[5] http://licensing.ofcom.org.uk/binaries/radio/community/thirdround/notesofguidance.pdf

- For future applicants, we will amend our community radio licence application form to include the new Key Commitments template, and any future applicant will be required to use the new Key Commitments template in the application process.

3.45 A copy of the new Key Commitments template can be found in Annex 1.

Annex 1

New Key Commitments template

Service name	**XXX**
Licence area	**XXX and surrounding area (as shown in the licensed coverage area map)**
Frequency	**XXX MHz**

Description of character of service

describe, in no more than 80 words:
- the main purpose of the service:
- its target community(communities):
- its primary functions or activities:

The service broadcasts:

- Music (if relevant): The main types of music[6] broadcast over the course of each week are: [insert in maximum 30 words]

- Speech (if relevant): The main types of speech output[7] broadcast over the course of each week are: [insert in maximum 30 words]

- The service provides original output[8] for a minimum of XX hours per day.

- The service provides locally-produced output[9] for a minimum of XX hours per day.

- [If relevant] Programming in [insert language(s)]

The studio is located within the licensed coverage area.

The service provides a range of community benefits (social gain objectives mandated by statute) for the target community, both on-air and off-air, and in doing so, achieves the following objectives:

- 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

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[6] e.g. mainstream pop, urban etc.
[7] e.g. local news, what's on etc.
[8] Original output is 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.
[9] Locally-produced output is output made within the service's licensed coverage area.

- the better understanding of the particular community and the strengthening of links within it.

Members of the target community contribute to the operation and management of the service.

The service has mechanisms in place to ensure it is accountable to its target community.