

Sanction Decision by Ofcom

Sanction: to be imposed on Big City Radio CIC

For failure to provide a service in accordance with ‘Key Commitments’ and failure to provide information to Ofcom on request

Ofcom’s Decision

of Sanction against:

Big City Radio CIC (“Big City” or “the Licensee”) in respect of its Community Radio licence (“the Licence”) for the service Big City Radio¹ (“the Licensed Service”) (CR000038)

For:

Breaches of Conditions 2(1), 2(4) and 9(1) in Part 2 of the Schedule to Big City’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”; and

“9(1) The Licensee shall maintain and furnish to Ofcom in such manner and at such time as Ofcom may reasonably require such documents, accounts, estimates, returns, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act or the Communications Act...”

Decision

To impose a financial penalty (payable to HM Paymaster General) of £1,200.

¹ The service is now known as ‘BRMB,’ but at the time of the breaches the service was broadcasting as ‘Big City Radio.’ As such, this Preliminary View will refer to the service as ‘Big City Radio’.

Overview

1. Big City Radio (now known as BRMB) is a community radio station based in Aston, Birmingham that serves all the communities of Aston with a particular focus on the area's ethnic communities. The service is provided by Big City Radio CIC ("Big City" 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. The Licensee also holds a Wireless Telegraphy Act licence authorising it to establish, install and use radio equipment for the transmission of the Licensed Service on a specific frequency allocated to it by Ofcom. Big City is licensed to broadcast the Licensed Service on 89.1 MHz on the FM band.
3. 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 Big City's Licence). These details are laid out in the Key Commitments.
4. Key Commitments form part of each community radio station's licence and set out how the service will serve its target community.² When Ofcom assesses compliance with Key Commitments (or compliance with other licence conditions relating to broadcast material), the Licensee is requested to supply recordings and associated documentation to Ofcom for assessment. This can be following receipt of a complaint or on Ofcom's own initiative.
5. Ofcom found the Licensee in breach of Licence Conditions 2(1) and 2(4) for failing to comply with its Key Commitments in 2015, 2018 and 2019. In 2019, we also found the Licensee in breach of Licence Condition 9(1) for failure to provide information to Ofcom on request. Due to the repeated nature of the breaches for failing to comply with its Key Commitments, we imposed a financial penalty on the Licensee in 2020. In 2022, Ofcom agreed to change Big City's Key Commitments by halving its requirement for original and local output by 50% to 12 hours per day.
6. Despite these previous breaches, a financial penalty and a change to its Key Commitments, we received a further complaint in 2022 that Big City was not providing the service specified in its Key Commitments regarding speech and original output. Ofcom subsequently recorded further breaches of Licence Conditions 2(1) and 2(4) against Big City for failing to maintain the character of the Licensed Service with regard to speech and original output set out in its Key Commitments.
7. We also recorded breaches of 8(1) and 8(2)(a) and (b) for failure to provide recordings on request and of 9(1) for failure to provide the programme schedule and associated information that Ofcom requested. That decision ("the 2023 Breach Decision") was published on 9 May 2023 and made clear that Ofcom would consider the imposition of a statutory sanction for the serious and repeated breaches of Licence Conditions 2(1), 2(4) and 9(1).³

² Big City Radio's [Key Commitments](#).

³ The 2023 [Breach Decision](#) was published in issue 473 of the Broadcast and On Demand Bulletin.

8. Taking into account the relevant factors discussed below, this document sets out our Decision that a financial penalty of £1,200 is an appropriate and proportionate sanction for the breaches of Licence Conditions 2(1), 2(4) and 9(1) identified in the 2023 Breach Decision.
9. If this sanction does not have the appropriate deterrent effect and Ofcom finds the Licensee in breach of its Licence again in the future, we would consider imposing a further statutory sanction and would consider the full range of sanctions available to us as set out in paragraphs 74 to 81 below.
10. It is important for the Licensee to ensure it has the appropriate resources and support to help with the management and day-to-day running of the station to ensure compliance with its Licence. We remind the Licensee that it is ultimately responsible for ensuring it complies with all the terms and conditions of its Licence.

Background

11. The station launched in 2007. Prior to the 2023 Breach Decision, Ofcom had found the Licensee in breach of Licence Conditions 2(1), 2(4) and 9(1) on multiple occasions and had previously imposed a financial penalty as detailed below.

2015 Breach Decision

12. Following an investigation arising from the submission of its 2013 Annual Report, Ofcom found Big City in breach of Licence Condition 2(4) for failing to provide all of the types of programming set out in the speech requirement of its Key Commitments during 2013.⁴ This decision was dated 29 June 2015 ("[the 2015 Breach Decision](#)").

2018 Breach Decision

13. Ofcom had received a number of complaints suggesting that Big City was not providing a service in accordance with its Key Commitments. The programming schedule suggested that Big City was not delivering the 24 hours per day of original output required. We assessed three days of recordings and concluded that the content was neither 24-hour original or local, as required by the Key Commitments.
14. As a result, we found Big City in breach of Licence Conditions 2(1) and 2(4) for not providing a service in accordance with its Key Commitments, specifically not providing 24 hours a day of either original or locally produced content. This decision was dated 21 May 2018 ("[the 2018 Breach Decision](#)").⁵ The decision made clear that Ofcom was likely to monitor the service again and, should further breaches of this type occur, we may consider further regulatory action including the imposition of a statutory sanction.

⁴ The [2015 Breach Decision](#) was published in issue 282 of the Ofcom Broadcast Bulletin on 29 June 2015. See page 61 and 62.

⁵ The [2018 Breach Decision](#) was published in issue 354 of the Broadcast and On Demand Bulletin on 21 May 2018. See pages 7 to 10.

2019 Breach Decision and 2020 Sanction

15. Ofcom received two complaints that Big City Radio was not broadcasting the service described in its Key Commitments, in particular that it was not delivering its programming requirements relating to the provision of speech content and original output.
16. Following investigation, we found Big City in breach of Licence Conditions 2(1) and 2(4) of its Licence. This decision was dated 28 January 2019 ("[the 2019 Breach Decision](#)").⁶ Given that this was the second breach of Licence Conditions 2(1) and 2(4) that had been recorded by Ofcom within eight months, we put the Licensee on notice that we were minded to consider this breach for the imposition of a statutory sanction.
17. In the same Broadcast and On Demand Bulletin, Ofcom also recorded a breach of Licence Condition 9(1) against Big City for non-provision of information. Ofcom had requested information from Big City to assist in carrying out a timely assessment of the recordings it had provided to check whether it had met its Key Commitments. The Licensee did not provide the information requested.⁷
18. In February 2020, Ofcom also imposed a statutory sanction in the form of a financial penalty of £500 on the Licensee in relation to the 2019 Breach Decision. This penalty took into account of the serious and repeated nature of the breaches of 2(1) and 2(4) recorded between 2015 and 2019. This decision was dated 17 February 2020 ("[the 2020 Sanction Decision](#)").

Change to Key Commitments

19. Big City submitted a request to Ofcom to change to its Key Commitments, requesting a reduction to 12 hours per day for each of original and local output. [Ofcom agreed to the request in September 2020](#).

The 2023 Breach Decision

20. In October 2022, Ofcom received a complaint that Big City was not providing the service specified in its Key Commitments regarding speech and original output.
21. Ofcom's assessment included monitoring the Licensed Service from 10 to 16 November 2022 ("the relevant period") and requesting information from the Licensee about how it was meeting its Key Commitments. We also requested from the Licensee a programme schedule and associated information, specifically:
 - i) an explanation of the type(s) of speech content broadcast during each programme;
 - ii) which programmes were original output, as defined in the Key Commitments; and
 - iii) whether programmes were broadcast live or if the links were recorded by a presenter at a different time to the broadcast.

⁶ The [2019 Breach Decision](#) was published in issue 371 of the Broadcast and On Demand Bulletin on 28 January 2019. See pages 55 to 57.

⁷ See pages 67 to 68 of [issue 371 of the Broadcast and On Demand Bulletin](#). For the purposes of this sanction references to "the 2019 Breach Decision" includes the breaches of Licence Conditions 2(1) and 2(4) as well as 9(1).

22. We did not receive the requested programme schedule or the associated information set out in points i) to iii) above which we required to assist us in using the programme schedule to assess whether the Licensee had been compliant with its Key Commitments.
23. Having assessed the recordings for the relevant period, and information the Licensee did provide, it appeared that the Licensee was not delivering its following Key Commitments:
 - “The service provides original output for a minimum of 12 hours per day.”
 - “Speech. The main types of speech output broadcast over the course of each week are: news (international and local), travel, community information and what’s on, weather, national and local sport.”
24. Ofcom considered that this raised potential issues warranting investigation under Conditions 2(1) and 2(4) contained in Part 2 of the Schedule to Big City’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”.
25. In respect of speech output, Ofcom’s investigation found that the requirement was not met, because no local news, travel, weather, community information or sport was broadcast on the days assessed.
26. In respect of the original output requirement, the Licensee stated that every show broadcast was original output. Ofcom was concerned that the Licensee had misinterpreted the definition of original output⁸ and had included in its calculation syndicated programming which had not been first produced for, and transmitted by, the Licensed Service. Ofcom’s investigation found that at most, six hours of original output was broadcast on 12 November, five hours on 13 November, and two hours on 15 November, all less than the required 12 hours of original output per day required by its amended Key Commitments.
27. Ofcom’s 2023 Breach Decision published on 9 May 2023 was that the Licensee breached Licence Conditions 2(1) and 2(4) of its Licence requiring it to comply with the speech and original output requirements in its Key Commitments set out in the annex to the Licence. This was despite the fact we had agreed to halve Big City’s requirement for original and local output to 12 hours per day in September 2020.
28. In addition, Big City failed to provide the information we requested to assist us in using the programme schedule to assess whether the Licensee had been compliant with its Key

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 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. A summarised definition is included in the Licensee’s Key Commitments document.

Commitments. This prevented Ofcom from making a timely assessment of the complaint. Therefore, Ofcom also recorded a breach of Licence Condition 9(1) against the Licensee.

29. Given the serious and repeated nature of the breaches of Licence Conditions 2(1) and 2(4) (as amended)⁹ and 9(1), Ofcom put the Licensee on notice that we were minded to consider them for the imposition of a statutory sanction.
30. This document sets out our decision on what sanction is considered appropriate for the breaches identified in the 2023 Breach Decision.

Legal Framework

Ofcom's regulatory duties and functions

31. 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). When performing our duties and where relevant, we are also required to have regard to the different interests of persons in the different parts of the United Kingdom and the different ethnic communities within the United Kingdom (section 3(4)(l) of the 2003 Act).
32. 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").
33. 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).
34. 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.
35. Further, Ofcom must also have due regard 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 (section 149 of the Equality Act 2010).

⁹ As explained in paragraph 19 above, Ofcom agreed to a change to Big City's Key Commitments in September 2020 to reduce its original and local output to 12 hours per day.

Licensing and enforcement

36. Article 3(1)(b) of 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 together with the achievement of any other objectives of a social nature. These may include those listed in paragraph (3) of Article 2 which specifies characteristics of community radio services. One of the objectives set out in paragraph (2) of Article 2 is the provision of sound broadcasting services to individuals who are otherwise underserved by such services.
37. 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.
38. 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.
39. To ensure that licensees comply with the statutory requirements for community radio services and their licence conditions, Condition 9(1) of the licence requires the community radio licensees to provide Ofcom such information as it may reasonably require. Under this condition, Ofcom requires community service licensees to provide programme schedules when they provide recordings of their broadcast output to assist Ofcom in the full and timely assessment of content.
40. 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 and 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 or 5% of the licensee’s qualifying revenue, whichever is greater. 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.

Relevant Licence Conditions

41. Condition 2(1) of the Licence provides: “The Licensee...shall provide the service specified in Part I (b) of the Annex for the remainder of the licence period”.
42. Condition 2(4) provides: “Subject to Condition 2(5) below..., the Licensee shall ensure that the Licensed Service accords with the proposals set out in Part I (b) of the Annex so as to maintain the character of the Licensed Service throughout the licence period”.
43. Condition 9(1) provides: “The Licensee shall maintain and furnish to Ofcom in such manner and at such time as Ofcom may reasonably require such documents, accounts, estimates, returns, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act or the Communications Act...”.

Preliminary View on the imposition of a statutory sanction

44. 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 11 January 2024 and gave the Licensee the opportunity to provide written and oral representations on it.
45. The Licensee provided written representations on the Sanction Preliminary View on 12, 18 and 26 January 2024 and provided oral representations in an oral hearing on 21 February 2024. These representations are summarised below.

The Licensee’s representations

46. Some of the content of the Licensee’s written and oral representations concerned a separate case regarding compliance with the Broadcasting Code which was not pursued and consequently closed in 2022. Those representations are therefore not relevant to this decision to impose a statutory sanction.
47. The Licensee also made representations on the breaches of Licence Conditions 8(1) and 8(2) which had been recorded in the 2023 Breach Decision. As the Sanctions Preliminary View did not propose to impose a statutory sanction in relation to those breaches, those representations are not relevant.
48. Referring to the level of the proposed financial penalty, the Licensee said “...because we are a community station not a rich one, I would like you to reconsider the amount of money...” and that the amount was “excessive under the circumstances”.
49. The Licensee provided copies of emails it had sent to Ofcom in order to support its argument that the breaches recorded in the 2023 Breach Decision should not have been recorded and therefore no statutory sanction should be imposed (see paragraphs 50 and 54 below).

Compliance with Key Commitments

50. The Licensee supplied, as part of its written representations, a copy of an email intended for Ofcom dated 30 November 2022 in response to our request for recordings and associated information during our assessment of the complaint. The email contained information relating to how the Licensee considered it was compliant with its Key Commitments. Ofcom did not receive this email as an incorrect spelling of our email address had been used.
51. During the oral hearing, Big City was asked what changes had been put in place to ensure that the Licensee delivers a service in line with its Key Commitments. The Licensee explained “...We now have local news on the half hour read by a professional. We have obviously [got] the national news. We give out weather. We give out – everything that we’re accused of doing wrong, we don’t do anymore...”
52. The Licensee also said “... we are [complying with our Key Commitments]...It says our music policy must appeal to the ethnic minorities and local people and it does do that...” and “...It’s a very good station now, delivering more local [content] to the area than any other station, including the major stations...”

53. The Licensee also made reference in its oral representations to who was managing the station. The Licensee stated “...I have changed – I am now in charge of the station again properly...”. When Ofcom asked if the Licensee accepts that regardless of handing over responsibilities to other individuals, the Licensee had to effectively maintain ultimate control over the service, the Licensee confirmed it accepted that it was ultimately responsible at all times.

Provision of information

54. The Licensee supplied, as part of its written representations, a copy of an email intended for Ofcom dated 28 November 2022. The email contained a copy of the station’s programme schedule from the week Ofcom had requested on 9 November 2022. Ofcom did not receive this email as an incorrect spelling of our email address had been used.

Ofcom’s response to the Licensee’s representations regarding emails dated 28 and 30 November 2022

55. As set out above, the emails dated 28 and 30 November 2022 were intended for Ofcom’s attention during the course of the assessment of the complaint but these emails were not received as our email address was misspelt. The error was brought to the Licensee’s attention in a phone call on 6 December 2022 when Ofcom established that was an issue despite the assertion by the Licensee that they had been sent. The contents of the phone call were confirmed in an email to the Licensee the same day and the correct email address was provided again. We have no evidence that the emails were resent to the correct email address as a result of this phone call and email.

Compliance with Key Commitments

56. Although Ofcom did not receive the Licensee’s email dated 30 November 2022 at the time, we did receive formal representations dated 25 January 2023 in response to our preliminary view that the Licensee was in breach of its licence conditions. These formal representations did not provide any new or additional information over and above the information provided in the email dated 30 November 2022. These formal representations were reflected in the 2023 Breach Decision in accordance with our procedures.
57. Ofcom is therefore satisfied that the Licensee’s representations were duly taken into account in reaching the 2023 Breach Decision. Ofcom is also satisfied that the Licensee’s representations in response to the Sanction Preliminary View do not undermine or impact the 2023 Breach Decision.

Provision of information

58. The Licensee’s written representations on our Sanction Preliminary View, included a copy of an email intended for Ofcom on 28 November 2022 which contained the programme schedule we had formally requested on 9 November 2022.
59. For the reasons stated above in paragraph 54, we did not receive the email dated 28 November 2022 which contained the station’s programme schedule. Even if we had received the email, it did not contain the additional information we requested to assist us in using the programme schedule to assess whether the Licensee had been compliant with its Key Commitments, specifically:
- i) an explanation of the type(s) of speech content broadcast during each programme;

- ii) which programmes were original output, as defined in the Key Commitments; and
- iii) whether programmes were broadcast live or if the links were recorded by a presenter at a different time to the broadcast.

60. The Licensee failed to provide a response to our request for this information on multiple occasions including:
- i) in response to our original request for information;
 - ii) after we pointed out that the Licensee had used an incorrect email address to contact Ofcom;
 - iii) after opening an investigation including for a breach of Licence Condition 9(1) (provision of information to Ofcom) and requesting representations; and
 - iv) in response to our preliminary view that the Licensee was in breach of Condition 9(1).

61. Ofcom decided therefore that it remained appropriate and proportionate to consider the breach of Licence Condition 9(1) for the imposition of a statutory sanction.

Ofcom's Decision to impose a statutory sanction

Serious and repeated nature of the breaches

62. As set out in paragraph 1.13 of the Procedures for the consideration of statutory sanctions in breaches of broadcast licences ("[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, repeatedly¹⁰ or recklessly breached a relevant requirement. As part of that process, Ofcom therefore considers:
- a) whether the breaches are so serious as to warrant the imposition of a statutory sanction; and
 - b) if so, the appropriate and proportionate sanction and, if it is decided that a financial penalty is the appropriate and proportionate sanction, the amount of that penalty.
63. Having taken into account all the relevant information in this case, our Decision is that the breaches recorded in the 2023 Breach Decision are serious and repeated and so warrant the imposition of a statutory sanction. The reasons are set out below.
64. 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 a fundamental purpose for which the Licence was originally granted to Big City. A Licensee can subsequently submit a request for change(s) to Key Commitments for Ofcom's consideration. As described above, Big City did this in 2019 and we approved the requested changes in September 2020. From that point, the revised Key Commitments have been in place.

¹⁰ Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences explains the factors which may lead Ofcom to impose a sanction. It specifies that a repeated breach of a relevant requirement, would include, for example: a repeat of the breach of the same requirement as has already been recorded; repetition of the same or similar conduct as that which earlier contravened a requirement; or multiple breaches of other requirements.

65. Through the provision of a Licensed Service, community radio services fulfil the requirement 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. In failing to meet its Key Commitments, the Licensee failed to reflect the characteristics of a community radio station as it was not being provided for the good of the particular community it is required to serve.
66. Requiring the Licensee to observe the Key Commitments also facilitates Ofcom in carrying out its duty to secure the availability throughout the UK of a wide range of radio services which (taken as a whole) are both of high quality and appeal to a variety of tastes and interests. 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 or is repeated.
67. Where a licensed service is not being provided in accordance with Key Commitments, there is a potential disadvantage to listeners in the area served by the community radio service and choice of services aimed at the target community is reduced. In this case, the Licensee did not provide a service for the communities of Aston with a particular focus on the area's ethnic communities, as described in its Key Commitments.
68. A failure to comply with Key Commitments also undermines or adversely impacts our obligation to:
 - a) have regard to the different interests of persons in the different parts of the United Kingdom and the different ethnic communities within the United Kingdom when performing our duties (section 3(4)(l) of the 2003 Act); and
 - b) have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not (section 149(1) of the Equality Act 2010).
69. In addition, a licensee's failure to comply with its regulatory obligations, including the Licence Condition to provide information to Ofcom when requested undermines the integrity of the regulatory regime which applies to community radio services
70. For all these reasons, the Licensee's failure to comply with its Key Commitments and its failure to comply with the Licence Condition to provide information is a serious matter. Ofcom also considers these breaches to be particularly serious because of their repeated nature.
71. Three previous breach decisions and the imposition of a statutory sanction have not been a sufficient deterrent to incentivise the Licensee to change its behaviour to ensure it complies with its Key Commitments. Further the Key Commitment change agreed in September 2020 which halved the amount of original and locally-produced output Big City is required to broadcast has not had a positive effect in ensuring the Licensee can comply with its Key Commitments.
72. Similarly, the 2019 Breach Decision in relation to non-provision of information has not been a sufficient deterrent to incentivise the Licensee to change its behaviour to ensure it complies with requests for information under Licence Condition 9(1).

73. In view of the factors set out above, our Decision is that these breaches identified in the 2023 Breach Decision are sufficiently serious and repeated and therefore warrant the imposition of a statutory sanction.

Consideration of the appropriate sanction

Directions

74. We consider that a direction under section 109 of the 1990 Act would not be an appropriate sanction in this case as a deterrent to this or another licensee from breaching Licence Conditions 2(1), 2(4) and 9(1). Where we issue a direction, this is usually to direct the broadcaster not to repeat the content that was found in breach. In this case, rather than being found in breach of its Licence for content that *has* been broadcast, the Licensee has been found in breach of its Licence for *not* broadcasting the types of content it is required to broadcast (and not providing information on request). Therefore, such a direction would be ineffective. More broadly, we do not generally consider issuing a direction to be appropriate where we have monitored content during a specific period and found that content as a whole breached a community radio licence. In this scenario, it is unlikely there would be an opportunity for a licensee to ‘repeat’ the breaches in terms of programming in the same way as a case involving, for example, breaches of broadcast standards relating to specific programming.

Licence revocation, suspension or shortening

75. The optimal outcome for Big City’s target audience is for the Licensee to remedy the breaches of Licence Conditions 2(1) and 2(4) by meeting the obligations set out in its Key Commitments. Given that the Licensee has repeatedly failed to comply with its Key Commitments to provide specified speech content and original output, as well as the requirement to provide information to Ofcom on request, there is an open question over whether the Licensee is committed to complying with its requirements in the future. Therefore, the revocation of the Licence was considered.
76. However, before issuing a revocation notice to the Licensee, Ofcom would need to satisfy itself that it was in the public interest to revoke the Licence. Revocation would result in the reduction of community radio services being available in the area and would remove the potential for the Licensee to take steps to improve its compliance going forward. On balance, Ofcom considers that it is generally in the interests of listeners to receive the community radio service for the full licence period and to give the Licensee a further opportunity to ensure compliance with its Licence Conditions, including its Key Commitments. As such, revocation is not Ofcom’s preferred form of penalty at this stage.
77. If the Licensee fails to bring itself back into compliance with its Licence Conditions following the financial penalty imposed in this case, and Ofcom finds further breaches of the Licence, we will reconsider revocation of the Licence.
78. Ofcom also considers shortening the Licence by a specified period not exceeding two years or suspending the Licence for a specified period not exceeding six months. However, as noted above, Ofcom considers that it is in the interests of listeners to give the Licensee a further opportunity to ensure compliance. As such, shortening or suspending the Licence are not Ofcom’s preferred forms of sanction at this stage.

Financial penalty

79. The primary purpose of imposing a financial penalty is deterrence, both in terms of discouraging the Licensee from committing further breaches of its Licence Conditions including its Key Commitments, and discouraging other licensees from committing similar breaches. Ofcom has considered whether it is appropriate to impose a financial penalty taking into account the circumstances of the case.
80. In this case, Ofcom's Decision is that the imposition of a financial penalty is the most effective, reflecting the serious and repeated nature of the breaches recorded against the Licensee in the 2023 Breach Decision, as well as act as an effective deterrent against breaches of licence conditions including Key Commitments – both for Big City and other licensees.
81. Notwithstanding the fact that we have previously imposed a financial penalty on the Licensee which has not had a deterrent effect, Ofcom's Decision is that the imposition of a financial penalty most effectively reflects the seriousness and repeated nature of the breaches and this has been taken into account in setting the amount of the penalty as set out below.

Amount of penalty

82. Under section 110 of the 1990 Act, the maximum level of financial penalty that can be imposed on the holder of a community radio licence in respect of each breach of the licence is £250,000 or 5% of the qualifying revenue for the licensee's last complete accounting period, whichever is greater.
83. Ofcom has also published [Penalty Guidelines](#) which set out some potentially relevant factors to take into account when determining the amount of the penalty. In accordance with section 392(6) of the 2003 Act, we have had regard to the Penalty Guidelines and have set out below the factors which we consider to be relevant to this case.

Deterrence

84. As set out in the Penalty Guidelines, the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient, having regard to the licensee's qualifying revenue, to have a material impact on the licensee so that it is incentivised to bring itself into compliance and avoid further breaches in the future. It is also important that the penalty imposed deters the wider industry from contravening licensing and regulatory requirements.
85. Any penalty we set should therefore be sufficiently high to discourage poor compliance and incentivise Big City to comply with its Key Commitments and the requirement to provide information to Ofcom on request. It should also incentivise Big City to comply with the other terms and conditions of its community radio licence, as well as other licensing and regulatory requirements it is subject to.
86. As stated above, the previous financial penalty of £500 imposed on the Licensee in relation to the 2019 Breach Decision was not a sufficient deterrent to prevent it from breaching its requirements again. Deterrence is particularly important in this case, and we have taken into account the previous penalty when setting the level of the penalty in relation to the 2023 Breach Decision.

87. As a general matter, we are of the view that there is a particular need for any penalty to deter other community radio licensees from contravening their Key Commitments. We have found licensees in breach of Key Commitments on multiple occasions and compliance with those Commitments is fundamental to ensuring there are wide range of radio services in the UK which appeal to a variety of tastes and interests and serve particular communities. It is also important that licensees are aware of the seriousness of failing to provide a service they have committed to provide.

Seriousness, culpability and harm

88. As explained above, a failure to comply with Key Commitments is inherently serious. Ofcom considers that the Licensee's failure to comply with its character of service essentially meant that the Licensee did not provide one of the fundamental characteristics of a community radio service which is to provide a service for its target community.

89. The 2023 Breach Decision found that the Licensee did not provide the speech output and original output, as described in its Key Commitments, during the week 10 to 16 November 2022.

90. The seriousness of the breaches was exacerbated by their repeated nature. The Licensee has been found in breach for failing to comply with its Key Commitments on three occasions within the last five years, and four occasions since the licence was awarded, and had a previous statutory sanction imposed upon it in February 2020.

91. Where a Licensed Service is not being provided in accordance with Key Commitments there is potential disadvantage to the target community, and in addition, choice for the target community is reduced. There is therefore inherent harm in failing to broadcast a service which complies with the character of service set out in Key Commitments.

92. The Licensee's failure to provide the programme schedule and associated information that Ofcom requested is also serious because it prevented Ofcom from assessing the recordings of the broadcast output in a timely manner and therefore undermined Ofcom's ability to carry out its regulatory functions in relation to community radio services. The seriousness of this breach of Licence Condition 9(1) was exacerbated because it is the second such breach within four years.

93. We have no evidence to suggest that the Licensee made any financial or other gain from the breaches identified in the 2023 Breach Decision. However, there are costs involved in complying with Licence Conditions and Key Commitments (e.g. the expenses incurred by volunteers when they present shows) which the Licensee may have avoided by not complying with its Key Commitments.

94. For the reasons set out in more detail below, our Decision is that the breaches identified in the 2023 Breach Decision are particularly serious because:

- a) the Licensee failed to take appropriate steps to prevent the breaches (notwithstanding the reduction in hours for original and locally-produced output) and the Licensee's senior management should have known that the breaches were occurring;

- b) we have been provided with limited detail or specific information on what steps the Licensee has taken to ensure compliance with its Key Commitments after being notified of the potential breaches in January 2023. Further, the Licensee took no steps to ensure compliance with Licence Condition 9(1) despite being provided with multiple opportunities to provide the requested information;
- c) the breaches are repeated – this is the fourth time we have found the Licensee in breach of its Key Commitments and the second time in breach of the Licence Condition relating to provision of information; and
- d) at the time of the breaches that were the subject of the 2023 Breach Decision, we had imposed a financial penalty on the Licensee and also previously imposed a number of financial penalties on other licensees for breaches of Key Commitments, none of which appear to have had a sufficient deterrent effect on the Licensee.

Whether the Licensee took appropriate steps to prevent the breaches and whether senior management should have been aware

- 95. The breaches of Licence Conditions 2(1) and 2(4) recorded in the 2023 Breach Decision were the third breaches of those licence conditions within the last five years and the fourth breach of Licence Condition 2(4) recorded since the Licence was issued. A statutory sanction in the form of a financial penalty was imposed in 2020 for the serious and repeated failures that occurred prior to that date so senior management were aware how seriously Ofcom viewed non-compliance with Key Commitments.
- 96. During the sanctions process in 2020, Big City's director submitted a request to change to its Key Commitments which Ofcom approved in September 2020. The change resulted in the Licensee's original and locally-produced output requirements each being reduced from 24 hours per day to 12 hours per day. The Licensee was therefore aware of the importance of ensuring that the requirements it committed to were achievable. As the Licensee has continued to demonstrate that it is not fulfilling its reduced Key Commitment obligations, our Decision is that senior management did not take appropriate steps to improve its performance in this area and prevent further breaches of its Key Commitments.
- 97. During the 2023 Breach Decision investigation, the Licensee stated that every show broadcast was original output. Ofcom was concerned that the Licensee had misinterpreted the definition of original output and had included in its calculation syndicated programming which had not been first produced for and transmitted by the Licensed Service. The Licensee's Key Commitments state that 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". Therefore, our Decision is that senior management should have been aware what constitutes original output.
- 98. In the case of provision of information, this is the second time Ofcom has recorded a breach for provision of the same type of information – programme schedules and associated information (the first occasion was the 2019 Breach Decision). Senior management was aware that it was breaching its licence requirements on both occasions by not providing a programme schedule and associated information because it was made clear to the Licensee that provision of the information was a licence requirement.

99. Further, during the assessment and investigation that led to the 2023 Breach Decision, we were corresponding with the sole director of Big City Radio CIC and it was made clear to them on numerous occasions that the requested information had not been received before the breach of Licence Condition 9(1) was recorded (see paragraph 60 above).
100. During the oral hearing, the Licensee stated “...I have changed – I am now in charge of the station again properly...”. Big City Radio CIC’s sole director held that position at the time of the breaches in October 2022 that we recorded in the 2023 Breach Decision. Ofcom was therefore concerned that the Licensee appeared to be stating that it did not have control over the service at the time of the breaches. Licensees are responsible for having general control over their licensed services and for having editorial control over the output of the licensed services. It is therefore concerning that the Licensee suggested that this was not the case in the past. Nevertheless, the Licensee ought to have known the breaches were occurring.
101. For all these reasons, our Decision is that senior management knew, or at least ought to have known, that the breaches identified in the 2023 Breach Decision were occurring.

Whether the Licensee took timely and effective steps to ensure compliance once it became aware of the potential breaches

102. We notified Big City of our investigation into its compliance with its Key Commitments in January 2023, at which point we informed the Licensee that we had concerns about its compliance with its character of service and its requirement to provide a programme schedule and associated information to Ofcom on request.
103. In its representations provided in response to our preliminary view that the Licensee was in breach of Conditions 2(1), 2(4) and 9(1) of its Licence, the Licensee stated that it understood “the serious breach”. It apologised and said that it is “doing [its] utmost to not only remedy the situation but to make sure it does not happen again”.
104. Big City did not provide any response regarding the ongoing failure to provide a programme schedule and associated information until it provided written representations on our Sanction Preliminary View. As part of those representations, it provided evidence that it had attempted to send to Ofcom the programme schedule (but not the associated information requested). However, it was clear from the email that the Licensee had used an incorrect spelling of our email address (see paragraph 54 above). The Licensee provided no evidence that it had resent the email containing the requested information to the correct email address once we had alerted it to the error (paragraph 60 above).
105. In relation to meeting the station’s Key Commitments, in its oral representations the Licensee explained that since the 2023 Breach Decision was recorded “...We now have local news on the half hour read by a professional. We have obviously [got] the national news. We give out weather. We give out – everything that we’re accused of doing wrong, we don’t do anymore...”
106. The Licensee also said “... we are [complying with our Key Commitments]...It says our music policy must appeal to the ethnic minorities and local people and it does do that...” and “...It’s a very good station now, delivering more local [content] to the area than any other station, including the major stations...”

107. The Licensee did not specifically refer to whether it was broadcasting the required amount of original output per day. However, during the oral hearing, Ofcom asked the Licensee if it was now comfortable with the definition of original output. The Licensee indicated that it was and said "...very much. And our programming is only for BRMB..." , Ofcom went further by asking if the Licensee fully understood and reiterated that, "...for instance, original programming doesn't include syndicated programming from third parties..." The Licensee stated that "...we don't [take any syndicated programming]. We take a Top 40 but we don't take any other syndicated programme."
108. We consider that while the Licensee made some general comments around how it is currently complying with its Key Commitments, which suggest the Licensee may have taken steps more recently to ensure compliance with its Key Commitments, we have been provided with limited detail or specific information on what those steps may be. The Licensee also took no steps to ensure compliance with Licence Condition 9(1) despite being provided with multiple opportunities to provide the requested information.

Whether the Licensee has a history of contraventions

109. As outlined above, the Licensee has repeatedly breached Licence Conditions 2(1), 2(4) (breaches were recorded in 2015, 2018, 2019 and 2023) and Licence Condition 9(1) in (breaches were recorded in 2019 and 2023) and Ofcom imposed a financial penalty in 2020 for the breaches of Licence Conditions 2(1) and 2(4) which were recorded in 2019. It is the repeated breaches of these Licence Conditions as well as the inherent seriousness of significantly underdelivering its requirements under its Key Commitments (which were reduced at Big City's request in September 2020) that have led to the consideration of this sanction.
110. In addition to these breaches, Ofcom recorded a breach of Licence Conditions 3(1) and 3(2) in November 2015 and of Licence Condition 3(2) in November 2016 in relation to late payment of annual licence fees.¹¹ Ofcom did not impose a statutory sanction on the Licensee for the breaches of Licence Conditions 3(1) or 3(2).
111. In October 2018, Ofcom also found Big City in breach of Rules 1.14 and 2.3 of the Broadcasting Code for broadcasting an example of the most offensive language at a time when children were particularly likely to be listening. In addition, we considered that the broadcast of the word was not justified by the context.¹² Ofcom did not impose a statutory sanction.
112. In the 2023 Breach Decision, in addition to the breaches which are being considered for sanction in this case, Ofcom recorded a breach of Licence Conditions 8(1) and (2)(a) and (b) for failure to provide recordings of the Licensed Service's broadcast output for the dates requested. We not proposing to impose a sanction at this time for the breaches of Licence Conditions 8(1) and (2)(a) and (b).
113. These breaches do however demonstrate a wider pattern of non-compliance by the Licensee.

¹¹ [Issue 292 of Ofcom's Broadcast Bulletin](#) published on 9 November 2015 (page 52) and [issue 316 of Ofcom's Broadcast and On Demand Bulletin](#) published on 7 November 2016 (page 17).

¹² [Issue 363 of Ofcom's Broadcast and On Demand Bulletin](#) published on 8 October 2018 (pages 6 to 7).

Precedent cases

114. The Penalty Guidelines provide that Ofcom will have regard to any relevant precedents set by previous cases. We have previously issued six penalties for breaches of Conditions 2(1) and 2(4) of community radio licences and two penalties for breaches of Condition 9(1), as summarised below¹³.

Precedent cases – Key Commitments

115. **September 2023, Revolution Radio Limited**¹⁴ – Ofcom imposed a penalty of £400 on Revolution Radio Limited in respect of its community radio service “Revolution 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.

116. Revolution Radio failed to provide a service for its target community as set out in its character of service. This was the second time that Revolution Radio had been found in breach of these conditions of its licence.

117. This penalty would have been higher had Revolution not taken various additional steps to ensure compliance with its Key Commitments from mid-2022. In light of those additional steps, we did not have concerns that Revolution remained non-compliant.

118. **June 2023, Retrocadia Limited**¹⁵ – Ofcom imposed a penalty of £400 on Retrocadia Limited in respect of its community radio service “Shoreline FM” 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.

119. Retrocadia Limited failed to broadcast any original output on the service, was not broadcasting from a studio within the licensed coverage area, and 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.

120. Ofcom took account that the breaches occurred under the previous management of the Licensee and that the new management brought the station into compliance and had made a significant investment in the station in terms of time and money in order to provide a community radio service to the target community. The breaches were the first breaches recorded against the Retrocadia Limited.

121. **February 2020, Big City Radio CIC**¹⁶ – As referenced above, 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

¹³ Paragraph 1.14 of the [Penalty Guidelines](#).

¹⁴ [Decision by Ofcom – Revolution Radio](#).

¹⁵ [Decision by Ofcom – Retrocadia Limited](#).

¹⁶ [Decision by Ofcom – Big City Radio](#).

licensee to provide the licensed service and maintain the character of the licensed service throughout the licensed period.

122. 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.
123. 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 (see 2018 Breach Decision and 2019 Breach Decision above) and had also been found in breach of these conditions in 2015 (see 2015 Breach Decision above), so had been aware for some time that steps were required to ensure it could consistently meet its Key Commitments.
124. **December 2011, BBA Media Limited**¹⁷ – 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.
125. 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.
126. **December 2011, Neath Port Talbot Broadcasting CIC**¹⁸ – 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.
127. 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.

¹⁷ [Decision by Ofcom – BBA Media Ltd.](#)

¹⁸ [Decision by Ofcom – Neath Port Talbot Broadcasting CIC.](#)

128. **August 2011, Voice of Africa Radio Limited**¹⁹ – Ofcom imposed a penalty of £1,000 on Voice of Africa Radio Limited in respect of its community radio service “Voice of Africa Radio” for breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the 1990 Act licence, which sets out the conditions requiring Voice of Africa Radio Limited (Voice of Africa Radio) to provide the licensed service and maintain the character of the licensed service throughout the licence period.

129. 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.

Precedent cases – provision of information

130. **March 2021, Afro Caribbean Millennium Centre**²⁰ – Ofcom imposed a penalty of £2,000 on Afro Caribbean Millennium Centre in respect of its community radio service “New Style Radio” for breaches of Licence Condition 9(1) in Part 2 of the Schedule to the 1990 Act licence regarding provision of information to Ofcom.

131. Ofcom did not receive an annual finance report from the Afro Caribbean Millennium Centre for the calendar year 2018 by the deadline given. This was Afro Caribbean Millennium Centre’s second breach of Licence Condition 9(1) for failing to provide its finance report within two years.

132. **December 2020, Ujima Radio CIC**²¹ – Ofcom imposed a penalty of £300 on Ujima Radio CIC in respect of its community radio service “Ujima Radio” for a breach of Licence Condition 9(1) in Part 2 of the Schedule to the 1990 Act licence regarding provision of information to Ofcom. Ofcom did not receive an annual finance report from Ujima Radio CIC for the calendar year 2018 by the deadline given. This was Ujima Radio CIC’s second breach of Licence Condition 9(1) for failing to provide its finance report.

133. 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.

134. We also note that some of the previous penalties identified above were issued before Ofcom updated its Penalty Guidelines in September 2017 to provide it with the flexibility to impose higher penalties in appropriate cases in order for a deterrent effect to be achieved.

135. At the time of the breaches that were the subject of the 2023 Breach Decision, we had previously imposed four financial penalties on licensees for breaches of Key Commitments (one of which was imposed on the Licensee), and two financial penalties on other licensees for

¹⁹ [Decision by the Ofcom Broadcasting Sanctions Committee – Voice of Africa Radio.](#)

²⁰ [Decision by Ofcom – Afro Caribbean Millennium Centre.](#)

²¹ [Decision by Ofcom – Ujima Radio CIC.](#)

failing to provide information to Ofcom on request, none of which appear to have had a sufficient deterrent effect on the Licensee.

Cooperation with Ofcom's investigation

136. Our Decision is that the Licensee has shown a lack of cooperation as detailed in the 2023 Breach Decision. While Big City did engage on matters concerning the provision of recordings during that investigation, it did not provide a programme schedule and associated information upon request, even after we alerted it to the fact that the emails were not received due to an incorrectly spelled email address.

137. The Licensee failed to provide a satisfactory response to our request for its qualifying revenue for its last accounting period. This was despite further correspondence with the Licensee to clarify our request. Ofcom required the information to determine the maximum level of financial penalty that can be imposed on it in respect of each breach of the licence. In addition, the Licensee failed to provide its profit and loss accounts for the same period. Instead, the Licensee's accountant wrote to us 5 December, stating that the running costs of the Licensee for the last financial year were settled by [REDACTED].

Size and turnover of regulated body

138. As noted above, under section 110 of the 1990 Act, the maximum level of financial penalty that can be imposed on the holder of a community radio licence in respect of each breach of the licence is £250,000 or 5% of the qualifying revenue for the licensee's last complete accounting period, whichever is greater.

139. As stated above, the Licensee did not inform us of its qualifying revenue for its last accounting period. However, separately to this sanctions process, it had provided its finance report for the calendar year 2022 which stated that it had [REDACTED] of advertising revenue which counts towards qualifying revenue. When asked, the Licensee did not raise any objection to us using this data to assist us in determining its qualifying revenue. Therefore, we have considered this information and determined that the maximum penalty that can be imposed on the Licensee is therefore £250,000 for each breach of the Licence.

140. The Licensee's finance report for the calendar year 2022 – which the Licensee had submitted to Ofcom separately from the sanctions process – stated that it received [REDACTED] in advertising income and had expenses of [REDACTED]. The letter from the Licensee's accountant stated the running costs for the Licensee for the last financial year were settled by [REDACTED].

141. In addition to the above information, we have 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 have carefully considered the potential impact of a financial penalty on the Licensee's ability to operate the service.

Decision on sanction to be imposed

142. Considering all the above factors in the round, our Decision is to impose a financial penalty on the Licensee (payable to HM Paymaster General) of £1,200.

143. Our Decision is that this level of financial penalty is an appropriate and proportionate sanction for the breaches of Licence Conditions 2(1), 2(4), and 9(1) taking into account:

- a) the serious and repeated nature of the breaches in this case, in particular:
 - i) The repeated failure to provide aspects of the Licensed Service specified in the Key Commitments (i.e. original output and speech output which are intended to ensure that the target community is served and is one of the fundamental characteristics of a community radio service).
 - ii) The repeated failure to provide the service the Licensee made assurances it would provide and which was a significant factor in Ofcom's decision to both award the Licence to the Licensee and to agree to its request to reduce the amount of original and locally-produced output required by the Key Commitments.
 - iii) The repeated failure to provide information to Ofcom on request in compliance with Licence Condition 9(1).
- b) the Licensee's size and turnover; and
- c) the need to secure an appropriate deterrent effect on the Licensee, and other licensees, from further breaches of community radio licences.

144. It is important for the Licensee to ensure it has the appropriate resources and support to help with the management and day-to-day running of the station to ensure compliance with its Licence. We remind the Licensee that it is ultimately responsible for ensuring it complies with all the terms and conditions of its Licence.

145. Given the repeated failure to comply with the Key Commitments and the Licensee's uncertainty around definition of original output, we consider it appropriate to engage with the Licensee further to discuss how to ensure compliance with its Key Commitments and licence conditions.

146. The Licensee should be aware that following the imposition of this statutory sanction and our further planned engagement regarding compliance with Key Commitments and licence conditions, if Ofcom records further licence condition breaches, we will consider the imposition of a further statutory sanction and would consider the full range of sanctions available to us.

Ofcom
March 2024