

**Ofcom's Decision**

**Sanction: to be imposed on Afro Caribbean Millennium Centre**

---

**For failure to provide annual finance reports in accordance with its Licence Condition<sup>1</sup>.**

**Ofcom's Decision**

**of Sanction against:**

Afro Caribbean Millennium Centre ("ACMC" or "the Licensee") in respect of its Community Radio licence ("the Licence") for the service New Style Radio (the "Licensed Service") (CR000037).

**For:**

Breaches of Condition 9(1) in Part 2 of the Schedule to the Community Radio licence, which states:

"The Licensee shall maintain records of and furnish to Ofcom in such manner and at such times 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 and in particular [...]

- a) such information as Ofcom may reasonably require for the purposes of determining whether the Licensee is complying with the requirements of the Community Radio Order 2004 for each year of the Licensed Service;
- b) such information as Ofcom may reasonably require for the purposes of determining the extent to which the Licensee is providing the Licensed Service to meet the objectives and commitments specified in the Community Radio Order 2004; and
- c) the provision of information under this section may be provided to Ofcom in the form of an annual report which is to be made accessible to the general public."

**Decision:**

To impose a financial penalty (payable to HM Paymaster General) of **£2,000**.

---

<sup>1</sup> See Ofcom's Decision which was published in issue 380 of the Broadcast and On Demand Bulletin on 10 June 2019: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/151922/issue-380-broadcast-and-on-demand-bulletin.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/151922/issue-380-broadcast-and-on-demand-bulletin.pdf) (pages 9 to 11).

## Introduction

1. New Style Radio is a community radio station licensed to provide a service for the people in the Winson Green area of Birmingham. The licence is held by Afro Caribbean Millennium Centre.
2. Community radio stations provide local radio services primarily for the good of members of the public or of particular communities.
3. Community radio services are required to be run on a not-for-profit basis. Any profit that is made from the service must be used for securing or improving the service or for the delivery of the station's social objectives. In conjunction with this requirement, there are statutory restrictions on the funding of community radio stations, which limit the amount of revenues that the station can generate from advertising and sponsorship.<sup>2</sup> The restrictions are reflected in Conditions 6(2) and 6(4) of APMC's licence.
4. Under Condition 9(1) of their licences, Ofcom requires community radio licensees to provide a finance report on an annual basis so that it can monitor compliance with these funding restrictions and other regulatory obligations.
5. On 10 June 2019, the Licensee was found in breach of Condition 9(1) after it failed to provide Ofcom with its annual finance report for the calendar year 2018 by the due date. On 29 April 2020, Ofcom wrote to the Licensee with its Preliminary View that the appropriate sanction in this case was revocation of the licence. APMC subsequently provided its annual finance report on 1 June 2020, bringing itself into compliance with Licence Condition 9(1).
6. However, Ofcom considers that a statutory sanction for the breach is merited, given the seriousness and repeated nature of the breach that has been recorded.

## Ofcom's Breach Decision

7. Ofcom did not receive an annual finance report from APMC for the calendar year 2018 by the deadline we set.<sup>3</sup> [Ofcom's Decision](#) was that the Licensee breached Licence Condition 9(1) of its Community Radio licence.<sup>4</sup> This was the [second breach finding](#) against the Licensee under Licence Condition 9(1).<sup>5</sup>
8. Ofcom considered that the breach was serious and repeated, and so warranted consideration for the imposition of a statutory sanction.

---

<sup>2</sup> Section 105(6) of the Broadcasting Act 1990, as modified by the Community Radio Order 2004.

<sup>3</sup> The Licensee was sent a formal information request under Condition 9(1) of its Licence on 7 February 2019, requiring the provision of its annual finance report by 20 March 2019.

<sup>4</sup> See [Ofcom Broadcast and On Demand Bulletin, Issue 380](#)

<sup>5</sup> See [Ofcom Broadcast and On Demand Bulletin, Issue 370](#)

### Ofcom's Sanction Decision

9. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences (the "[Sanctions Procedures](#)")<sup>6</sup>, Ofcom considered whether the breach was serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee.
10. In this case, Ofcom issued a Preliminary View that Ofcom was minded to impose a statutory sanction in the form of a financial penalty to the Licensee on 17 December 2020.
11. The Licensee provided written and oral representations which are summarised in paragraphs 23 to 31 below.
12. Having taken into account the Licensee's representations, Ofcom has reached a Decision that a sanction is warranted for the reasons set out in paragraphs 32 to 42 below.
13. Ofcom's Decision is to impose a financial penalty of £2,000. The reasons for Ofcom's Decision, taking into account all the relevant information in this case, including the Licensee's representations and Ofcom's Penalty Guidelines (the "[Penalty Guidelines](#)")<sup>7</sup> are set out in paragraphs 48 to 75 below.

### Legal Framework

#### Ofcom's regulatory duties and functions

14. Ofcom's principal duty is set out in section 3 of the Communications Act 2003 ("2003 Act"). In carrying out its functions, it is required to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In addition, in carrying out its functions, it is required to secure certain outcomes, including: 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). In carrying out its principal duties, Ofcom must have regard to the matters specified in section 3(4) of the 2003 Act to the extent relevant. These include the different interests of persons in different parts of the UK, of the different ethnic communities and of persons living in rural and urban areas.

#### Licence obligations and enforcement

15. Community radio services are licensed under the Broadcasting Act 1990, as modified by the Community Radio Order 2004. Community radio services must have the characteristics specified in Article 3 of the 2004 Order. These include that:
  - they are local radio services provided primarily for the good of members of the public or of particular communities and in order to deliver social gain, rather than for commercial purposes or to profit those running the service.<sup>8</sup> Social gain is defined as the achievement of certain objectives in relation to the local community that the service is intended to serve,

---

<sup>6</sup> See [Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences](#)

<sup>7</sup> See [Ofcom's Penalty Guidelines](#)

<sup>8</sup> Article 3(1) Community Radio Order 2004

including the provision of radio services to individuals who are otherwise under-served by such services and the provision of education or training;<sup>9</sup>

- any profit produced in the provision of the service is used wholly and exclusively for securing or improving the future provision of the service, or for the social gain to members of the public or the community that the service is intended to serve;<sup>10</sup> and
- the licensee of the community radio service makes himself accountable to the community that the service is intended to serve.<sup>11</sup>

16. Ofcom must impose such conditions in a community radio licence as it considers appropriate in order to ensure that the licensee provides the service described in its application in accordance with these requirements.<sup>12</sup> These are reflected as a set of key commitments which form part of each licence, describing the character of the service and setting out how it will serve its target community.

17. Ofcom is also required to impose conditions in the licence for a community radio service which limit the amount of revenue that may be generated from advertising and sponsorship in a financial year.<sup>13</sup> These restrictions are set out in Conditions 6(2) and 6(4) of ACOMC's licence.

18. 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 complete an annual finance return in respect of their revenues and funding.

19. Ofcom's powers to take enforcement action when a licensee fails to comply with the conditions of a community radio licence are set out in sections 109 to 111B Broadcasting Act 2006. These include: the power to impose a financial penalty up to £250,000;<sup>14</sup> the power to suspend the licence for up to six months or to shorten the licence by up to two years;<sup>15</sup> and the power to revoke the licence.<sup>16</sup>

### **Ofcom's Decision to impose a statutory sanction**

20. As set out in paragraph 1.13 of the [Sanctions Procedures](#), the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.

---

<sup>9</sup> Article 2(2) Community Radio Order 2004

<sup>10</sup> Article 3(3) Community Radio Order 2004

<sup>11</sup> Article 3(5) Community Radio Order 2004

<sup>12</sup> Section 106 Broadcasting Act 1990 as modified by paragraph 6(2), Schedule 1 to the Community Radio Order 2004

<sup>13</sup> Section 105 Broadcasting Act 1990 as modified by paragraphs 5(4) – (6), Schedule 1 to the Community Radio Order 2004

<sup>14</sup> Section 110(1)(a) and (3) Broadcasting Act 1990

<sup>15</sup> Section 110(1)(b) and (c) Broadcasting Act 1990

<sup>16</sup> Section 111 Broadcasting Act 1990

21. In this case, Ofcom issued a Preliminary View that Ofcom was minded to impose a statutory sanction in the form of a financial penalty. Ofcom sent a copy to the Licensee on 17 December 2020, at the same time giving the Licensee the opportunity to provide written and oral representations on the Preliminary View. The Licensee provided its written representations on 15 January 2021 and its oral representations via videoconference on 22 February 2021. The Licensee had also previously provided written representations to Ofcom's initial Preliminary View sent to the licensee on 29 April 2020 proposing revocation of the licence (see paragraph 5 above).

22. The Licensee's representations are summarised in paragraphs 23 to 31 below.

### **The Licensee's representations**

23. The Licensee acknowledged the licence breach and apologised for its failure to provide the annual finance report on time.

24. The Licensee said that it is one of the few Afro-Caribbean community organisations in Birmingham and the West Midlands and that it is seen as a "significant and important organisation representing the interests of not only individuals who are disadvantaged racially but all disadvantaged and poorly served communities".

25. APMC set out its work with the Community Radio Association, other community organisations and its contributions to the local community. It stated that New Style Radio is popular in Birmingham and has an extensive reach beyond the UK, making reference to a prize won in Switzerland for best reggae station in Europe and the service's audience in Ukraine.

26. The Licensee stated that the impact of austerity on community organisations has meant that historic access to funding and grants was no longer available, resulting in it being reliant on its own resources and income-generating capacity. APMC stated that its day-to-day operational and management efforts were directed toward keeping the organisation financially viable, as well as focusing on the broadcast output of the station. It explained that as a result of this focus, there had been a lack of attention towards meeting the administrative obligations set out in its licence and, in particular, the submission of an accurate annual finance report by the deadline set.

27. The Licensee said that the impact of the Coronavirus pandemic and associated lockdown had meant its attention had been focused on "day-to-day pressing matters" such as ensuring the organisation remained financially viable, furloughing staff and ensuring the health and safety of staff and volunteers, which resulted in "an example of overlooking licence obligations as opposed to day to day matters". It stated that employees having to shield at home and home schooling of dependents further added to the delay in submitting the finance report to Ofcom.

28. APMC explained its plans to upgrade its broadcasting equipment and referred to its unsuccessful application for emergency cash funding from the Community Radio Fund.<sup>17</sup> APMC said that a

---

<sup>17</sup> Ofcom administers a Community Radio Fund on behalf of the Department for Digital, Culture, Media and Sport (DCMS). DCMS provides a sum of money each year for the Fund and grants are awarded to Ofcom-licensed community radio stations to fund the core costs of running Ofcom-licensed community radio stations. For 2020-21, grants have been provided as emergency cash funding to support stations facing severe financial difficulty due to the coronavirus outbreak.

£2,000 penalty would have a very significant impact on the running of the organisation and would adversely affect its planned improvements to its broadcasting equipment.

29. The Licensee stated that, together with the financial impact of the Coronavirus pandemic, the imposition of a financial penalty would not be appropriate or proportionate at a time when it was committing time and energy to ensuring that it remained viable financially.
30. In relation to ongoing compliance, ACMC said that it does not believe any practical steps need to be taken, as the organisation has now understood the seriousness of submission of its annual financial report.
31. ACMC stated that there was a “lack of attentiveness, lack of awareness of the significance of submitting our financial report”, but that it had “learned a lesson”. The Licensee said that there would be no repetition of the failure to provide an annual finance report by the deadline set.

**Ofcom’s Decision to impose a statutory sanction**

32. We set out below Ofcom’s reasons for considering that it is appropriate to impose a statutory sanction, and as to the type and level of sanction Ofcom considers should be imposed on the Licensee, taking into account all the relevant material, including the Licensee’s representations, and Ofcom’s [Penalty Guidelines](#).
33. We first considered whether the breaches were serious, deliberate, reckless or repeated.

Serious and repeated nature of the breaches

34. Having taken into account all the relevant information in this case Ofcom considered that this breach was serious and repeated and so warranted the imposition of a statutory sanction.
35. The Licensee was required by a formal information request under Condition 9(1) of its Licence to provide its annual finance report for the calendar year 2018 by 20 March 2019. The information that the Licensee was required to provide included details of its income and expenditure, an explanation of how it had used any cash surplus and certain data about the fulfilment of its key commitments. The Licensee failed to provide its annual finance report by the due date.
36. Ofcom wrote to the Licensee on 10 April 2019, extending the deadline for submission to 15 April 2019 but the Licensee failed to provide its annual finance report by the revised deadline. Following [Ofcom’s breach decision of 10 June 2019](#)<sup>18</sup>, the Licensee submitted its finance report on 1 June 2020.
37. Community radio services have specific statutory purposes, namely that they are local radio services provided primarily for the good of the communities which they serve and the delivery of social gain. In order to ensure that these objectives are achieved, the statutory scheme requires that any profits are used for the benefit of the community radio service or for the delivery of social gain. It also imposes restrictions on the amount of revenues that can be generated from advertising and sponsorship.
38. Ofcom requires every community radio licensee to provide an annual finance report so that it is able to monitor that the statutory purposes are being met and that the licensee is complying

with the regulatory rules that apply to their finances. The Licensee has said that the breach was not harmful. However, we regard the failure to provide the annual finance report on time as a significant breach of the Licensee's regulatory obligations. It hampered Ofcom's ability to carry out its regulatory functions in relation to the Licensed Service and could have prejudiced the achievement of the statutory purposes of the service, including the delivery of social gain. These objectives, which include the provision of radio services for audiences that would otherwise be underserved by such services and the provision of education and training, are intended to benefit the community served by the Licensed Service and citizens and consumers generally. The breach therefore had the potential to harm citizens and consumers since it delayed Ofcom determining whether the statutory purposes of the Licensed Service have been fulfilled.

39. Further, the failure to provide the information required by Ofcom prejudiced the extent to which the Licensee is accountable to the local community it serves. Lack of accountability undermines trust in the service by the community and thereby harms those that the service is intended to benefit.
40. More generally, the Licensee's failure to comply with its regulatory obligations on time undermines the integrity of the regulatory regime which applies to community radio services.
41. This was the second consecutive year that the Licensee had failed to provide the information required by Ofcom under Condition 9(1) by the given deadline.<sup>19</sup> [Ofcom recorded a breach of Licence Condition 9\(1\)](#) for failure to provide its annual finance report for the 2017 calendar year.<sup>20</sup>
42. For all these reasons, Ofcom regards the breach as serious and repeated, and warranting the imposition of a statutory sanction.

#### Imposition of sanction

43. In view of the factors set out above, Ofcom considered that the breach was serious and so warranted the imposition of a statutory sanction in accordance with our procedures. The following paragraphs set out the enforcement action we have considered and the sanction we have decided to impose.

#### Imposition of sanctions other than a financial penalty

44. We did not consider that this breach warranted the suspension, shortening or revocation of the Licence. These sanctions would restrict the freedom of expression of the Licensee and of the audience for its community radio service and are not justified, given that the Licensee has now provided its annual finance report and another sanction for the breach is available – a financial penalty – which should provide an effective deterrent in terms of ensuring that the Licensee provides its finance report on time from now on.

---

<sup>19</sup> See [Ofcom Broadcast and On Demand Bulletin, Issue 380](#)

<sup>20</sup> See [Ofcom Broadcast and On Demand Bulletin, Issue 370](#)

Imposition of a financial penalty

45. Ofcom's Decision is that this breach warrants a financial penalty, which incentivises the Licensee to comply with its obligations under Condition 9(1), as well as the wider industry.

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

46. 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.

47. In reaching its Decision on the amount of the appropriate penalty in this case, Ofcom has had regard to its [Penalty Guidelines](#). These state (in paragraph 11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty".

The seriousness and duration of the contravention

48. Ofcom regards the breach to be serious for the reasons set out in paragraphs 34 to 42.

49. The Licensee was sent a formal information request under Condition 9(1) of its Licence on 7 February 2019, requiring the provision of its annual finance report by 20 March 2019. APMC provided its 2018 annual financial report on 1 June 2020 – more than a year after the original deadline.

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

50. The Licensee's failure to provide its annual finance return when required undermined Ofcom's ability to carry out its regulatory functions in relation to community radio services and thereby prejudiced the achievement of the social gain objectives of these services. These objectives, which include the provision of radio services for audiences that would otherwise be underserved by such services and the provision of education and training, are intended to benefit citizens and consumers. The breach therefore had the potential to harm citizens and consumers since it prevented Ofcom detecting whether these objectives had been fulfilled.

51. The failure to provide the information required by Ofcom by the due date also prejudiced the extent to which the Licensee is accountable to the community to which it serves. Lack of accountability undermines trust in the service by the community and thereby harms those that the service is intended to benefit.

52. More generally, the Licensee's failure to provide the information required by Ofcom in compliance with its regulatory obligations undermines the integrity of the regulatory regime which applies to radio services.

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

53. We have no evidence that the Licensee made any financial or other gain from the breach.



Whether in all the circumstances appropriate steps had been taken by the regulated body to prevent the contravention

54. Ofcom requires community radio licensees to provide a finance report on an annual basis so that it can monitor compliance with the statutory requirement to ensure that any profit that is made from a community radio service is used for securing or improving the service or for the delivery of the station's social objectives, and that the limits on the amount of revenues that the station can generate from advertising and sponsorship are not exceeded.<sup>21</sup>
55. As noted in paragraphs 7 and 41, the Licensee was previously found in breach of Condition 9(1) after it failed to submit its finance report for the calendar year 2017.
56. ACMC failed to take steps to provide its annual finance report for 2018 by the initial due date of 20 March 2019. It also failed to respond to a reminder by the extended due date of 15 April 2019. The Licensee eventually provided its annual finance report for the 2018 calendar year on 1 June 2020, after Ofcom recorded its finding of breach under Condition 9(1) and after receipt of Ofcom's first Sanctions Preliminary View proposing revocation of the Licence if the annual report for 2018 was not provided.
57. In its representations, the Licensee stated that there had been a lack of attention towards meeting the administrative obligations set out in its licence and, in particular, the submission of an annual finance report by the deadline set. It explained that it had placed its focus on its broadcast content.
58. ACMC's licence requires it to ensure compliance with all of its regulatory obligations, not just broadcast content standards. Ofcom expects licensees to have appropriate measures in place to ensure accurate and timely submissions of information in compliance with their regulatory obligations, in the same way that we expect licensees to have processes and procedures in place to ensure compliance with the Broadcasting Code and other relevant content standards codes.
59. ACMC did not have appropriate measures in place to provide its annual finance report by the deadline set. On its own admission, it failed to take action to prevent the contravention.

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

60. Although the breach has come to an end, the Licensee did not act in a timely manner since the Licensee failed to respond to a reminder with an extended deadline. Further, even after Ofcom's breach finding, the contravention continued for almost a year. The breach only came to an end after Ofcom issued the Licensee with its first Sanctions Preliminary View proposing the revocation of ACMC's licence.
61. The Licensee stated in its representations that the administrative obligations of its licence had not been given due attention, as its focus was on its broadcast content and ensuring the future viability of the service.
62. The Licensee also made reference to the impact of the Coronavirus pandemic as part of the reason for the delay in providing the finance report. Ofcom acknowledges that the pandemic may have caused delays from the end of March 2020. However, Ofcom noted that the deadline

---

<sup>21</sup> Section 105(6) of the Broadcasting Act 1990, as modified by the Community Radio Order 2004.

for providing the 2018 finance report to Ofcom was 20 March 2019, a year before the UK went into its first lockdown on 23 March 2020. Further, Ofcom's breach finding was made on 10 June 2019, nine months before the lockdown.

63. Accordingly, Ofcom considered that the Licensee failed to take sufficient timely steps to bring the breach to an end.

Steps taken by the regulated body to remedy the consequences of the breach

64. In its representations, the Licensee stated that it understands the seriousness of its administrative obligations set out in its Licence and that going through the process of Ofcom's consideration of a statutory sanction it now realises how seriously Ofcom takes breaches of administrative requirements.

65. ACMC assured Ofcom that there would be no repetition of the failure to provide an annual finance report by the deadline set. The Licensee did not identify any specific practical steps taken to prevent or mitigate the risk of similar failures occurring in the future.

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

66. The Licensee has a poor compliance history. This is the second breach of Condition 9(1) recorded against it and it has been found in breach on a number of occasions of other regulatory obligations, as set out in the paragraphs below.

67. The Licensee was found in breach of Condition 9(1) on 14 January 2019 when it failed to provide its annual report by the initial due date for the 2017 calendar year.

68. In Ofcom's Breach Decision published in Issue 370 of Ofcom's Broadcast and On Demand Bulletin<sup>22</sup>, Ofcom specified that we expected the Licensee to provide Ofcom with an accurate finance report by the initial deadline we set when we requested the annual report from it in 2019.

69. The Licensee has been found in breach of Condition 3(1) and (2) on four occasions for late payment of the annual licence fee. The breaches were recorded on 9 July 2012; 7 March 2016; 3 April 2017; and 28 May 2019.

70. In a Decision published on 29 June 2015, a breach of Licence Condition 2(4) was recorded for failure to comply with the 'Key Commitments' set out in the Licence.<sup>23</sup>

71. The Licensee has also been found in breach of Ofcom's Broadcasting Code on three occasions in relation to content which it has broadcast. In a decision published on 17 August 2015, a breach of Rule 6.4 of the Broadcasting Code (discussion of election issues must end when polls are open) was recorded against the Licensee; on 25 September 2017, a breach of Rule 1.14 was recorded following the broadcast of an unedited version of a 'In Da Club' by 50 Cent with repeated instances of the words "fuck", "fucking", "motherfucker", and "nigger"; and in a

---

<sup>22</sup> See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/133188/Issue-370-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/133188/Issue-370-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf)

<sup>23</sup> The breaches in question related to: failures to provide training courses; a failure to have an advisory panel; and a failure to undertake market research at least once a year. These are no longer requirements of ACMC's 'Key Commitments'.

Decision published on 20 November 2017, breaches of Rules 1.3, 1.5 and 1.10 were recorded following the broadcast of a song which appeared to condone cannabis use.

### Deterrence

72. As set out in our [Penalty Guidelines](#), the central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. In particular, the level of the penalty must be sufficiently high to have the appropriate impact on the regulated body at an organisational level. It should incentivise the management (which is ultimately responsible for the conduct and culture of the regulated body) to change the conduct of the regulated body as a whole and bring it into compliance, achieving this, where necessary, by changing the conduct at different levels within the organisation.
73. In considering what financial penalty is proportionate and will have a deterrent effect, we have taken into account the financial data provided by the Licensee in its 2019 finance report. [X]
74. We have had regard to the Licensee's representations that: it has experienced a reduction in income as a result of the Covid-19 pandemic and the current financial year continues to be challenging, as it is for other broadcasters; and the proposed financial penalty would have a detrimental impact on the running of the organisation and specifically, investment in new equipment.

### Precedent

75. Ofcom has also had regard to relevant precedents set by previous cases where we have taken enforcement action.
- i. **11 December 2020: Ujima Radio CIC<sup>24</sup>** - a sanction was imposed following the Licensee's failure to provide its annual finance report for 2018 by the deadline given, resulting in a breach of Licence Condition 9(1). This was the second consecutive year that the Licensee had failed to provide the information required by Ofcom under Condition 9(1) of its licence. Ofcom considered this to be a serious and repeated breach and so warranted the imposition of a statutory sanction. Ofcom's decision was that an appropriate and proportionate sanction would be to impose a financial penalty of £300.
  - ii. **1 February 2016: Leith Community Mediaworks Limited<sup>25</sup>** – a sanction was imposed after the licensee's failure to retain and provide recordings in breach of Licence Conditions 8(2)(a) and (b). Ofcom reached the decision that a sanction was merited in this case since the breaches were serious and repeated. They were repeated because it was the fourth occasion on which the licensee breached the requirements to retain and produce recordings. The breaches were serious because failures to retain and produce recordings significantly undermine Ofcom's ability to assess compliance with licence conditions on broadcast content. Ofcom's decision was that an appropriate and proportionate sanction would be to impose a financial penalty of £850.

---

<sup>24</sup> See <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/content-sanctions-adjudications/decision-ujimaradio>

<sup>25</sup> See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/61653/castle\\_fm\\_010216.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/61653/castle_fm_010216.pdf)

**Decision**

76. Taking all the factors referred to above in the round, Ofcom has decided to impose a financial penalty (payable to HM Paymaster General) of £2,000.

**Ofcom**

**12 March 2021**