

**Sanction Decision by Ofcom**

**Sanction: to be imposed on Revolution Radio Limited**

**For failure to provide a service in accordance with ‘Key Commitments’<sup>1</sup>**

**Ofcom’s Decision**

**of Sanction against:** Revolution Radio Limited (“Revolution” or the “Licensee”) in respect of its Community Radio licence (the “Licence”) for the service Revolution Radio (the “Licensed Service”) (CR103405)

**For:** Breaches of Conditions 2(1) and 2(4) in Part 2 of the Schedule to Revolution’s Licence. These state:

“2(1) The Licensee...shall provide the service specified in Part I (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 I (b) of the Annex so as to maintain the character of the Licensed Service throughout the licence period”.

**Decision:** To impose a financial penalty (payable to HM Paymaster General) of **£400**

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<sup>1</sup> See [Ofcom’s Decision](#) which was published in issue 459 of the Broadcast and On Demand Bulletin on 10 October 2022.

## Overview

1. Revolution Radio is a community radio service for the diverse ethnic communities of Northampton, which is provided by Revolution Radio Limited (“Revolution” 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. Revolution is licensed to broadcast the Licensed Service on 96.1 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 Revolution’s licence).
4. Key Commitments form part of each community radio station’s licence and set out how the service will serve its target community.<sup>2</sup> When Ofcom assesses compliance with Key Commitments (or compliance with other licence conditions relating to broadcast material), the Licensee is requested to supply recordings to Ofcom for assessment. This can be following receipt of a complaint or on Ofcom’s own initiative.
5. Following complaints that Revolution was not broadcasting a service for the diverse ethnic communities of Northampton, Ofcom found Revolution in breach of its Key Commitments for failing to maintain the character of the Licensed Service. That decision was published on 22 November 2021 and made clear that Ofcom would monitor the service and consider the imposition of a statutory sanction if further breaches were identified.
6. Ofcom subsequently received two further complaints and carried out additional monitoring of the Licensed Service in March 2022. On 10 October 2022, Ofcom again found that Revolution had failed to comply with the character of service set out in its Key Commitments. Given the serious, and repeated, nature of the breaches identified in this decision, we explained that we were minded to consider those breaches for the imposition of a statutory sanction.
7. Taking into account the relevant factors discussed below, this document sets out our Decision that a financial penalty of £400 is an appropriate and proportionate sanction for the breaches of Licence Conditions 2(1) and 2(4) identified in our decision of 10 October 2022.
8. This penalty would have been higher had the Licensee not taken various additional steps to ensure compliance with its Key Commitments from mid-2022. In light of those additional steps, we do not currently have concerns that Revolution remains non-compliant. If however, Ofcom finds further breaches of the Licensee’s Key Commitments in the future, we will consider imposing a further sanction which may, for example, include licence revocation.

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<sup>2</sup> [Revolution Radio’s Key Commitments](#).

## Background

9. The Licence was awarded to Revolution in July 2020 and the station launched in June 2021.

### 2021 Breach Decision

10. Shortly after it launched, Ofcom received four complaints that Revolution was not broadcasting the Licensed Service described in its Key Commitments. In particular, the complaints stated that Revolution was not complying with its Key Commitments on music, original output and locally-produced output, and was not serving its specified target community.
11. Ofcom carried out an investigation, including monitoring the Licensed Service on 12 and 13 June and 6 and 12 August 2021 and reviewing a full programme schedule. Ofcom found Revolution was not providing sufficient music, information or entertainment for the diverse ethnic communities of Northampton (the target community) and was failing to meet its original output requirement to broadcast original output for a minimum of 126 hours per week as required by its Licence.
12. As a result, we found Revolution in breach of Licence Conditions 2(1) and 2(4) for a failure to comply with the Key Commitments set out in the Licence, specifically in relation to the amount of original output and the character of service. This decision was dated 22 November 2021 (the "[2021 Breach Decision](#)").<sup>3</sup> The decision made clear that Ofcom would monitor the service and should further breaches of Licence Conditions 2(1) and 2(4) be recorded, that Ofcom would consider the imposition of a statutory sanction.

### 2022 Breach Decision

13. Prior to carrying out any further monitoring, Ofcom received another two complaints in December 2021 and January 2022 which stated that Revolution was not serving its specified target community.
14. Ofcom requested recordings for the week commencing 7 March 2022, as well as a full programme schedule and information from the Licensee about how it was complying with its Key Commitments to provide a service for the diverse ethnic communities of Northampton and to broadcast 126 hours of original output per week. Ofcom's monitoring showed that Revolution had met its original output requirement but was again not providing a service for its target community.
15. Ofcom considered that this raised potential issues warranting investigation under Conditions 2(1) and 2(4) of Revolution's Licence. These provide, respectively:  
  
"2(1) The Licensee...shall provide the service specified in Part I (b) of the Annex for the remainder of the licence period" and

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<sup>3</sup> The [2021 Breach Decision](#) which was published in issue 439 of the Broadcast and On Demand Bulletin on 22 November 2021.

“2(4) 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”.

16. Ofcom subsequently again found Revolution in breach of Conditions 2(1) and 2(4) of its Licence for failing to comply with the character of service set out in its Key Commitments, specifically to provide a service for the diverse ethnic communities of Northampton. This Decision was dated 10 October 2022 (the “[2022 Breach Decision](#)”).
17. Given the serious, and now repeated, nature of the breaches contained in the 2022 Breach Decision, Ofcom put the Licensee on notice that it was minded to consider those breaches for the imposition of a statutory sanction.
18. This document sets out our decision on what sanction is considered appropriate for the breaches identified in the 2022 Breach Decision.

#### Request to change Key Commitments

19. Prior to the launch of the service, the Licensee sought to change its Key Commitments to serve under-35s in Northampton, which Ofcom refused, as Ofcom does not allow licensees to change their Key Commitments prior to launch, or within the first year of broadcast.
20. [~~CONFIDENTIAL~~]
21. [~~CONFIDENTIAL~~]
22. [~~CONFIDENTIAL~~]
23. [~~CONFIDENTIAL~~]

#### **Legal Framework**

##### Ofcom’s regulatory duties and functions

24. 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).
25. 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”).

26. 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).
27. 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.
28. 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).

#### Licensing and enforcement

29. 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.
30. 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.
31. 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.
32. 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

33. 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”.
34. 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”.

**Preliminary View on the imposition of a statutory sanction**

35. 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 19 July 2023 and gave the Licensee the opportunity to provide written and oral representations on it.
36. The Licensee provided written representations on the Sanction Preliminary View on 8 August 2023 and provided oral representations in an oral hearing on 4 September 2023. These representations are summarised below.
37. The Community Media Association (“CMA”), a sector body for community radio, also provided representations on behalf of Revolution Radio. These representations are also summarised below.

The Licensee’s representations

38. The Licensee’s representations focused on five main areas: the steps it took to comply with its Key Commitments; the circumstances of its licence award and the difference in its approach to programming compared to other community radio stations; the subjective nature of Ofcom’s decision; the relevance of the precedent sanctions cases that Ofcom had considered; and the proposed sanction.

Additional steps that Revolution took to comply with its Key Commitments

39. Regarding the additional steps that Revolution took to comply with its Key Commitments, it set out eleven changes that it has made since June 2022. Two of these related to information on its website and podcasts, but the other nine related to on-air content and off-air social gain activities. These nine steps were:
  - a) broadcasting a recorded announcement which sets out Revolution’s character of service every hour;
  - b) providing hourly news bulletins for diverse communities every weekday;
  - c) broadcasting an hourly community spotlight feature which highlights a “different specific community” each day;
  - d) mandating one link per hour with specific content for diverse communities;
  - e) introducing a new playlist category which includes songs specifically for diverse communities, “on rotation at least hourly”;
  - f) introducing additional specialist music shows;

- g) introducing new daytime shows with presenters from diverse communities;
  - h) introducing a daily 'thought for the day' for the "Evangelical Christian Community who are predominantly Black British"; and
  - i) building relationships with community groups off-air, including becoming a member of the Northampton Diverse Communities Forum.
40. Revolution explained that it had received various positive feedback from listeners after making these additional changes, in particular from Polish listeners.
41. The representations suggested that Ofcom was either not aware of all of these steps it had taken or had not taken them all into account in reaching its Sanctions Preliminary View.
42. Revolution explained that it has struggled to find more Asian and Eastern European presenters and that it is challenging to find presenters that are available during the day, so most of its presenters from non-white backgrounds broadcast during the evenings and weekends.

*The circumstances of Revolution's licence award and the difference in its approach to programming compared to other community radio stations*

43. [REDACTED CONFIDENTIAL]
44. Revolution also set out that it had submitted a request to change its Key Commitments before the station launched because it did not want to overlap with Inspiration FM but still wanted to include the diverse communities of Northampton within its target audience. It explained that it therefore requested "a change of emphasis" to its character of service so that "rather than catering for the diverse communities with crossover appeal to a mainstream audience [it] asked if [it] could be... a station for a mainstream audience with crossover appeal to diverse communities". The Licensee disagreed that this was evidence that it was not committed to its Key Commitments from the outset or that it had been wilfully ignoring its Key Commitments.
45. In support of this explanation, the CMA set out that proposed Key Commitments in Revolution's licence application included the "Black and Afro-Caribbean population of Northampton" which Revolution had considered may otherwise no longer be served. The CMA explained that when Inspiration FM was re-awarded a licence, Revolution asked to change the emphasis of its Key Commitments to become "a mainstream station with crossover appeal to diverse communities" so that it would not be in competition with Inspiration FM.
46. In relation to the Licensee's approach to programming, Revolution explained that it is intended to build bridges between diverse communities rather than just focus on one community with marginalised programming which it found that other stations were doing. It suggested that this may have resulted in some programming sounding mainstream. The Licensee elaborated, setting out it had originally broadcast daytime output with universal appeal and specialist programmes in the evenings and weekends which target particular audiences. The Licensee was clear that it did not want to "pigeonhole" diverse audiences with specific programming and wanted to bring together the community without "segregating" it. It explained that its audience research has shown that its target community does "not want to listen to stereotypical music for that community all day".

The subjective nature of Ofcom's decision

47. Revolution referred to a meeting that it had requested with Ofcom representatives in February 2022 (i.e. after the 2021 Breach Decision), during which Revolution had asked for “specific measurable details of what Ofcom would consider compliant”. The Licensee explained that the reason for seeking guidance from Ofcom about complying with its character of service was because it is a subjective description of the sound of the whole radio station and does not include quotas for minutes of diverse content per hour. The Licensee said that Ofcom “was unable to provide this information” and that “without a clear definition of what [it] was supposed to be doing, it was impossible to know whether [it] was compliant”. Revolution said that despite the lack of guidance from Ofcom it “worked hard to increase the amount of content on the station for diverse communities in the period before [the 2022 Breach Decision]”. The Licensee set out a range of changes it had made to its programming after the 2021 Breach Decision, which included:

- a) Recruiting new presenters from its target communities to present programmes and introducing several new specialist music shows targeted at specific communities with crossover appeal to a mainstream audience (e.g. Urban/R’n’B; Afrobeats; Offbeat Reggae; Motown, Ska and Northern Soul) which were broadcast on evenings and weekends between 20:00 and 02:00.
- b) Broadcasting an hourly ‘Community Noticeboard’ feature which included “information of use to diverse communities in the Northampton area”.
- c) Adopting a new positioning statement for the radio station, "Bringing Northampton Together" which presenters were asked to use in their links to ensure the objectives of the station are clearly identified regularly on air. Revolution said it also asked its presenters to “prioritise subject matter which is relatable to diverse communities locally”.

48. The CMA stated that Revolution was “accused of putting in place its suggested ethnic cover reduction contrary to Ofcom’s instruction” and that when Revolution asked Ofcom to explain where it was “underperforming”, Ofcom explained that this was the station’s responsibility. The CMA went on to say that Revolution was in a situation where it does not know what it should change and has a “lack of clarity”, which could be problematic for other community radio stations in the future. The CMA felt that the directors of Revolution had done what could reasonably be expected to comply and requested that Ofcom cease its consideration of a statutory sanction.

The relevance of the precedent sanctions cases

49. Revolution argued that the sanctions cases that Ofcom had identified as precedents were not relevant to this sanctions case because in those cases the licensees “would have been well aware that they were not being compliant” whereas Revolution is “unable to know whether [it is] compliant as [it has] not been given specific quantifiable conditions for compliance” and therefore it was “not knowingly broadcasting in contravention of [its] key commitments” and had taken steps after the 2021 Breach Decision to attempt to come into compliance.

The proposed sanction

50. Revolution submitted that it would not be necessary to incentivise it to be compliant because it was not wilfully breaching the conditions of its Licence, and that a sanction would not clarify what constitutes compliance or make compliance more likely in the future. It also considered it unfair to be punished as a deterrent to other radio stations.
51. The Licensee explained that it had not made any financial gain from not complying with its Key Commitments. It also explained that the station relies on investment from the directors of the Licensee company, so any financial penalty imposed by Ofcom would be paid by the directors.

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

Serious and repeated nature of the breaches

52. 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, repeatedly or recklessly breached a relevant requirement. This Decision therefore considers:
  - a) whether Ofcom considers the breaches 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.
53. Having taken into account all the relevant information in this case, our Decision is that the breaches recorded in the 2022 Breach Decision are serious and repeated and so warrant the imposition of a statutory sanction. The reasons are set out below.
54. 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 Revolution. 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 the service as a whole was not being provided for the good of the particular community it is required to serve. The Licensee was also failing to provide the service it made assurances it would provide and which was a significant factor in Ofcom's decision to award the Licence to the Licensee.
55. 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. Where a licensed service is not being provided in accordance with Key Commitments, there is a potential disadvantage to listeners within the target community 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 diverse ethnic communities of Northampton as described in its Key Commitments.

56. 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 its 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).
57. For all these reasons, the Licensee's failure to comply with its Key Commitments is a serious matter.
58. Ofcom also considers these breaches to be particularly serious because of their repeated nature. While the Licensee had changed its output between the 2021 Breach Decision and the 2022 Breach Decision, Ofcom considered that the changes were not sufficient to meet the requirements in its Key Commitments. The breaches recorded in the 2022 Breach Decision were therefore the Licensee's second recorded breaches of Licence Conditions 2(1) and 2(4) within 18 months of it commencing broadcasting.
59. Despite previous complaints and the 2021 Breach Decision, we received further complaints about Revolution and again found the Licensee in breach of its Key Commitments in the 2022 Breach Decision. The 2021 Breach Decision does not therefore appear to have been a sufficient deterrent to incentivise the Licensee to changing its behaviour sufficiently to ensure it served the diverse ethnic communities of Northampton as required by its Key Commitments.
60. In view of the factors set out above, our Decision is that these breaches identified in the 2022 Breach Decision are sufficiently serious and repeated and therefore warrant the imposition of a statutory sanction.

### **Consideration of the appropriate sanction**

#### Directions

61. We consider that a direction under section 109 of the 1990 Act would not be an appropriate sanction in this case. Where we issue a direction, this is usually to direct the broadcaster not to repeat the content that was found in breach. It is therefore unlikely that there would be an opportunity for the Licensee to 'repeat' the breaches in terms of programming in the same way as a case involving, for example, breaches of broadcast standards. We also consider that directing the Licensee to broadcast a statement of our findings would not be effective in deterring further breaches of this nature by either this or another licensee.

Licence revocation, suspension or shortening

62. The optimal outcome for Revolution's target audience is for the Licensee to remedy the breaches by meeting the obligations set out in its Key Commitments. Any repeated failure to comply with Key Commitments to serve its target community, indicates a Licensee may not be committed to complying with its requirements in the future. Therefore, the revocation of the Licence could be considered.
63. 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, which it had already started to do at the time of the 2022 Breach Decision. 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. We noted the Licensee's representations that since June 2022 it had made significant changes to its output and we do not currently have concerns that the Licensee remains non-compliant with its Key Commitments. As such, revocation is not Ofcom's preferred form of penalty at this stage.
64. Ofcom could also consider 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 penalty at this stage.

Financial penalty

65. Ofcom could consider the imposition of a financial penalty. The primary purpose of imposing a penalty is deterrence, both in terms of discouraging the Licensee from committing further breaches of its Key Commitments and discouraging other licensees from committing similar breaches. Ofcom would need to consider whether it is appropriate to impose a financial penalty taking into account the circumstances of the case.
66. In this case, Ofcom's Decision is that the imposition of a financial penalty would most effectively reflect the serious and repeated nature of the breaches recorded against the Licensee in the 2022 Breach Decision, as well as act as an effective deterrent against breaches of Key Commitments – both for Revolution and other licensees.

Amount of penalty

67. 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.
68. 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

69. 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 avoid further breaches in the future. It is also important that the penalty imposed deters the wider industry from contravening licensing and regulatory requirements.
70. Any penalty we set should therefore be sufficiently high to discourage poor compliance and incentivise Revolution to comply with its Key Commitments. It should also incentivise Revolution to comply with the other terms and conditions of its community radio licence, as well as other licensing and regulatory requirements Revolution is subject to.
71. We acknowledged Revolution's submission that it would not be necessary to incentivise it to be compliant because it was not wilfully breaching the conditions of its licence, and that a sanction would not clarify what constitutes compliance or make compliance more likely in the future. However, for the reasons set out in paragraphs 88 and 89, at the time of the recordings we requested from March 2022, we considered that the Licensee ought to have known it was not complying with the Key Commitments of its licence.
72. As noted above, we do not currently have any concerns that Revolution remains non-compliant with its Key Commitments although it is important it is incentivised to remain compliant in the future.
73. Revolution Radio also considered it unfair to be punished as a deterrent to other radio stations. As set out in paragraph 1.4 of our Penalties Guidelines, 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

74. As explained above, a failure to comply with Key Commitments is inherently serious. Ofcom considers that the Licensee's failure to provide the service for its target community that is set out in its Key Commitments essentially meant that the Licensee did not provide one of the fundamental characteristics of a community radio service.
75. The 2022 Breach Decision found that the Licensee did not serve the diverse ethnic communities of Northampton, as described in its Key Commitments, during the week 7 to 13 March 2022.
76. 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.

77. The Licensee also failed to adhere to the commitments it made to Ofcom and that were a significant factor in the Licensee being awarded the licence.
78. We have no evidence to suggest that the Licensee made any financial or other gain from the breaches identified in the 2022 Breach Decision.
79. For the reasons set out in more detail below, our Decision is that the breaches identified in the 2022 Breach Decision are particularly serious because:
  - a) the Licensee failed to take appropriate steps to prevent the breaches and the Licensee's senior management should have known that the breaches were occurring;
  - b) the breaches are repeated in that this is the second time we have found the Licensee in breach of its Key Commitments; and
  - c) at the time of the breaches identified in the 2022 Breach Decision, we had previously imposed four 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*

80. The Licence was awarded to the Licensee in July 2020 and the Licensee has therefore had a significant amount of time to ensure compliance with its Key Commitments.
81. We first made the Licensee aware of potential breaches of its Key Commitments in 2021 following complaints we had received. This investigation resulted in the 2021 Breach Decision which found the Licensee in breach of Licence Conditions 2(1) and 2(4) and therefore made the Licensee aware that steps were required to ensure it met its Key Commitments. We said that we would monitor the service to ensure it was compliant.
82. Ofcom's monitoring coincided with the receipt of further complaints, and in June 2022 we notified the Licensee of our preliminary view that it was again in breach of its Key Commitments. During the investigation into the breaches identified in the 2022 Breach Decision, the Licensee provided representations<sup>4</sup> setting out the steps it had taken to comply with its Key Commitments. These are summarised below.
83. Revolution submitted that there had been an increase in content targeting the "marginalised communities" following the 2021 Breach Decision. The Licensee highlighted a number of programmes and features which it felt demonstrated its commitment to provide content for its target community and included information about specific programmes that included guests from the target community and groups related to those communities.
84. The Licensee told us that further programming had been added since the week monitored in March 2022 and also stated, in relation to its off-air activities, that "We recognise that there is

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<sup>4</sup> For the Licensee's full representations, see the [2022 Breach Decision](#).

still work to do with building direct relationships with our local communities so we can encourage them to approach us more formally and proactively with content and see us as a regular outlet for their messages”.

85. The Licensee explained that in order to identify content that appeals to its target community:
- a) presenters choose content to appeal to their own communities;
  - b) it runs an ongoing survey to measure the appeal of programmes to its target community; and
  - c) it seeks feedback from listeners via events and messages to the studio.
86. However, we found that at the time of monitoring in March 2022, there was insufficient content to distinguish the service from a service primarily targeting the general population of Northampton. The 2022 Breach Decision again found the Licensee to be in breach of Licence Conditions 2(1) and 2(4) for not providing a service for the specified target community set out in its Key Commitments.
87. From being awarded a licence in July 2020 to the time of monitoring in March 2022, the Licensee had approximately 18 months to ensure it complied with its Key Commitments. The Licensee had previously been found in breach of its Key Commitments in 2021.
88. We noted Revolution’s submission that it was “impossible to know whether [it] was compliant” because of a lack of “specific measurable details” or “specific quantifiable conditions for compliance” from Ofcom. However, Ofcom noted that the character of service set out in the Key Commitments of the Licence states that: “Revolution Radio will provide music, information and entertainment for the diverse ethnic communities of Northampton, including the Black British, Asian, mixed ethnic and non-British white communities. It provides a service that is accessible to build bridges between the marginalised communities it serves and a wider mainstream audience”. Ofcom considers that this section of the Licensee’s Key Commitments makes clear that the station serves “marginalised communities”, and builds bridges between those communities and a mainstream audience, rather than a mainstream service which could also appeal to the “diverse ethnic communities of Northampton”.
89. Ofcom considered that the Licensee ought to have known that broadcasting the majority of their specialist shows for their target audience between 20:00 and 02:00 did not meet the character of service, with the majority of the content broadcast during daytime aimed at the general population of Northampton rather than the “diverse ethnic communities” and the “marginalised communities” of Northampton. This point was made clear in Ofcom’s 2021 Breach Decision, so Ofcom considers that the Licensee ought to have known what was required to make its station compliant following that decision and failed to take the appropriate steps to do so.
90. We acknowledged that Revolution made changes to its programming following the 2021 Breach Decision (including those set out in paragraph 47), which involved increasing the amount of content on the station for diverse communities. However, as stated in the 2022 Breach Decision, Ofcom considered the changes insufficient to comply with the Licensee’s Key Commitments.

91. Our Decision therefore, is that the Licensee failed to take appropriate steps to prevent the breaches identified in the 2022 Breach Decision.<sup>5</sup>
92. For the same reasons as set out above, our Decision is that senior management knew, or at least ought to have known, that the breaches identified in the 2022 Breach Decision were occurring.
93. We also note that:
- a) The Key Commitments for the Licensee were agreed with a Director of the Licensee prior to the launch of the service. Senior management were therefore aware of the Key Commitments.
  - b) Shortly before it launched its service and subsequently shortly before we issued the 2022 Breach Decision, the Licensee asked Ofcom to change its target community in its Key Commitments. As Revolution itself set out in its representations, before the station launched it had requested “a change of emphasis” to its character of service so that “rather than catering for the diverse communities with crossover appeal to a mainstream audience [it] asked if [it] could be... a station for a mainstream audience with crossover appeal to diverse communities”. These requests suggest the Licensee knew, or at least ought to have known, that broadcasting a service that had little content to distinguish the service from a service targeting the general population of Northampton during the majority of its daytime content and broadcasting the majority of its content targeting diverse communities late at night would be a breach of the Licence.
94. We acknowledged the points made by the Licensee in its oral and written representations about the circumstances of its licence award and why it therefore requested to change its Key Commitments to avoid being in competition with Inspiration FM. While we recognise that there is some similarity between Inspiration FM and Revolution, Ofcom notes that the stations have different coverage areas, particularly where the signal is protected from interference, and different target communities set out in the character of service and therefore we do not consider the stations serve the same target communities.

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

95. We notified Revolution of our investigation into its compliance with its Key Commitments in June 2022, at which point we informed the Licensee that we had concerns about its compliance with its character of service.
96. In its representations provided in response to our preliminary view that the Licensee was in breach of conditions 2(1) and 2(4) of its Licence, the Licensee stated that further programming for the “marginalised communities” had been introduced between March 2022 and August 2022.

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<sup>5</sup> We discuss the additional changes the Licensee has made to its content since June 2022 below.

97. We acknowledged the Licensee's assertion that Ofcom's decisions regarding Revolution's character of service are subjective and that it had sought guidance from Ofcom on how to comply. However, it is not the role of Ofcom to prescribe what any licensee broadcasts because this is a creative editorial decision for the broadcaster, consistent with freedom of expression. Further, to provide prescriptive advice would fetter Ofcom's discretion when regulating a licensee's output. As set out in the 2022 Breach Decision, Ofcom's assessment of the recordings found there was insufficient content to distinguish the service from a service primarily targeting the general population of Northampton.
98. We acknowledged the steps that the Licensee took after June 2022 to serve its target community, as set out in its written and oral representations (see paragraph 39) including adding specific programming to its schedule and making an effort to recruit presenters from the diverse ethnic communities of Northampton. We also recognised the difficulty Revolution has faced in recruiting presenters, particularly those from the diverse ethnic communities of Northampton, for its daytime programming. While having presenters from the target community is desirable, we recognise that this is not always possible and welcome the steps that Revolution has taken to ensure that this programming appeals to its target community and reflects its character of service.
99. Our Decision therefore is that the Licensee did take a number of steps to end the potential breaches after Ofcom notified it of its investigation in June 2022. As noted above, we do not currently have concerns Revolution remains non-compliant with its Key Commitments and have taken that into account considering an appropriate level of penalty in this case.

Whether the Licensee has a history of contraventions

100. As outlined above, the 2021 Breach Decision previously found the Licensee in breach of Licence Conditions 2(1) and 2(4) on four separate dates in June and August 2021. The 2022 Breach Decision found breaches of the same licence conditions we found were breached in the 2021 Breach Decision.
101. The 2021 Breach Decision did not therefore appear to have been a sufficient deterrent to incentivise the Licensee to change its behaviour and ensure it served the diverse ethnic communities of Northampton as described in its Key Commitments.
102. We acknowledge that Revolution increased the amount of content targeting diverse and marginalised communities following the 2021 Breach Decision. We also acknowledge that Revolution considered it was "impossible to know whether [it] was compliant" because of a lack of "specific measurable details" or "specific quantifiable conditions for compliance" from Ofcom. However, as set out in paragraphs 88 and 89, Ofcom considered that the Licensee ought to have known that the service it was providing did not contain sufficient content to serve the diverse and marginalised communities of Northampton as set out in its Key Commitments.
103. Our Decision is that this repeated breach is a serious failing which should be reflected in the level of penalty required to deter subsequent breaches by the Licensee.

Precedent cases

104. The Penalty Guidelines provide that Ofcom will have regard to any relevant precedents set by previous cases. We acknowledge that this is the first time that Ofcom has issued a penalty for failure to serve its target community and deliver the character of service set out in the Key Commitments. We also acknowledge Revolution's representations that the precedent cases below are for non-subjective breaches of a community radio licence. However, it remains that this current case relates to a breach of Conditions 2(1) and 2(4) of the licence and therefore Ofcom considers that these precedent cases which involved breaches of Conditions 2(1) and 2(4) are, to a certain extent, relevant to the current case.
105. We have previously issued five penalties for breaches of Conditions 2(1) and 2(4) of community radio licences, as summarised below.<sup>6</sup>
106. **June 2023, Retrocadia Limited**<sup>7</sup> – 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.
107. Retrocadia 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.
108. 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.
109. **February 2020, Big City Radio CIC**<sup>8</sup> – 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 licensee to provide the licensed service and maintain the character of the licensed service throughout the licensed period.
110. 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.

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<sup>6</sup> Paragraph 1.14 of the [Penalty Guidelines](#).

<sup>7</sup> [Decision by Ofcom Retrocadia Limited](#).

<sup>8</sup> [Decision by Ofcom Big City Radio](#).

111. 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 so had been aware for some time that steps were required to ensure it could consistently meet its Key Commitments.
112. **December 2011, BBA Media Limited<sup>9</sup>** – 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.
113. 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.
114. **December 2011, Neath Port Talbot Broadcasting CIC<sup>10</sup>** – 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.
115. 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.
116. **August 2011, Voice of Africa Radio Limited<sup>11</sup>** – 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.
117. 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

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<sup>9</sup> [Decision by Ofcom – BBA Media Ltd.](#)

<sup>10</sup> [Decision by Ofcom – Neath Port Talbot Broadcasting CIC.](#)

<sup>11</sup> [Decision by the Ofcom Broadcasting Sanctions Committee – Voice of Africa Radio.](#)

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.

118. 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.

119. 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.

120. At the time of the breaches identified in the 2022 Breach Decision, we had previously imposed four financial penalties on other licensees for breaches of Key Commitments, none of which appear to have had a sufficient deterrent effect on the Licensee.

#### Cooperation with Ofcom's investigation

121. Our Decision is that the Licensee has been co-operative over the course of the investigation. The Licensee provided us with all of the written and recorded material and representations we requested.

#### Size and turnover of the regulated body

122. 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.

123. The Licensee informed us that its qualifying revenue for its last accounting period was [~~CONFIDENTIAL~~] The maximum penalty that can be imposed on the Licensee is therefore £250,000 for each breach of the Licence.

124. [~~CONFIDENTIAL~~]

125. We have however 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 noted the Licensee's submission that it had not made any financial gain from not complying with its Key Commitments and that the station relies on investment from the directors of the Licensee company, so any financial penalty imposed by Ofcom would be paid by the directors.

126. 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**

127. Considering all of the above factors in the round, our Decision is to impose a financial penalty on the Licensee (payable to HM Paymaster General) of £400.

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

- a) the serious and repeated nature of the breaches in this case, in particular:
  - ii) the repeated failure to provide a service for the target community which is one of the fundamental characteristics of a community radio service; and
  - iii) 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 award the Licence to the Licensee;
- 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.

129. This penalty would have been higher had the Licensee not taken various additional steps to ensure compliance with its Key Commitments from mid-2022.

130. The Licensee should be aware that following the imposition of this statutory sanction, if Ofcom records further breaches of Licence Conditions 2(1) and 2(4) in the future, Ofcom will consider the imposition of a further statutory sanction.

**Ofcom**

**20 September 2023**