

Ofcom's Decision

Sanction: to be imposed on Ujima Radio CIC

For failure to provide annual finance reports in accordance with its Licence Condition¹.

Ofcom's Decision

of Sanction against:

Ujima Radio CIC ("Ujima" or "the Licensee") in respect of its Community Radio licence ("the Licence") for the service Ujima Radio (the "Licensed Service") (CR000116).

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 **£300**.

¹ 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 (pages 9 to 11).

Introduction

1. Ujima Radio is a community radio station licensed to provide a service for the people in the St Paul's and Easton areas of Bristol. The licence is held by Ujima, which also holds a Digital Sound Programme Service licence, DP101168.
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.² The restrictions are reflected in Conditions 6(2) and 6(4) of Ujima'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. Ujima eventually provided its annual finance report on 21 August 2019.
6. We considered that this breach was serious and repeated. It was the second time that the Licensee had been found in breach of this Condition. We therefore considered that the breach warranted consideration of the imposition of a statutory sanction.

Ofcom's Breach Decision

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

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](#)")⁶, Ofcom considered whether the breach was

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

³ 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.

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

⁵ See [Ofcom Broadcast and On Demand Bulletin, Issue 354](#)

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

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. Ofcom sent a copy to the Licensee on 22 April 2020, at the same time giving the Licensee the opportunity to provide written and oral representations (“the Licensee’s Representations”) on the Preliminary View. The Licensee provided its written representations to Ofcom on 11 May 2020 and oral representations via videoconference on 26 October 2020.
11. The Licensee’s Representations are summarised in paragraphs 23 to 26 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 29 to 38 below.
13. Ofcom’s Decision is to impose a financial penalty of £300. This paper sets out the basis 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](#)”)⁷.

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.⁸ Social gain is defined as the achievement of certain objectives in relation to the local community that the service is intended to serve,

⁷ See [Ofcom’s Penalty Guidelines](#)

⁸ 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;⁹

- 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;¹⁰ and
- the licensee of the community radio service makes himself accountable to the community that the service is intended to serve.¹¹

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.¹² 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.¹³ These restrictions are set out in Conditions 6(2) and 6(4) of Ujima'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;¹⁴ the power to suspend the licence for up to six months or to shorten the licence by up to two years;¹⁵ and the power to revoke the licence.¹⁶

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.

⁹ Article 2(2) Community Radio Order 2004

¹⁰ Article 3(3) Community Radio Order 2004

¹¹ Article 3(5) Community Radio Order 2004

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

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

¹⁴ Section 110(1)(a) and (3) Broadcasting Act 1990

¹⁵ Section 110(1)(b) and (c) Broadcasting Act 1990

¹⁶ 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 22 April 2020, at the same time giving the Licensee the opportunity to provide written and oral representations (“the Representations”) on the Preliminary View. The Licensee provided its written representations to Ofcom on 11 April 2020 and oral representations via videoconference on 26 October 2020.
22. The Representations are summarised in paragraphs 23 to 26 below.

The Licensee’s representations

23. The Licensee acknowledged the breach and its severity. It said that the breach had not been deliberate or reckless but the result of poor administration. Ujima explained that between 2015 and 2019, it “was not administratively fit-for-purpose”. It said that there had been a series of changes to the Board of Directors and administration since December 2019, which resulted in the provision of the outstanding finance report to Ofcom. It said that under its new leadership, it had been taking action to address its previous weaknesses.
24. The Licensee said that no harm had resulted from the breach and it had not made a financial gain. It said that the publication of the breach finding had caused reputational damage which had a negative impact on securing future funding for the service. It added that there had already been a significant reduction [§<] in its advertising revenue as a result of the COVID-19 pandemic. In the circumstances, it submitted that a more appropriate fine would be a similar to its deficit of around £300.
25. The Licensee set out a number of steps it said it has taken to implement processes and procedures to prevent similar contraventions occurring in the future. These included:
 - a designated email address for correspondence from Ofcom which will ensure that this is automatically forwarded to senior members of the organisation;
 - governance training as part of the induction process for senior staff and Board Directors;
 - joining national support bodies (Locality and National Council for Voluntary Organisations) to gain access to training, governance and other support services;
 - working with the Community Media Association to develop and embed strategies to mitigate the risk of future breaches;
 - proposals to conduct regular, ongoing and annual internal reviews of all policies and procedures and the establishment of a task group to assist the Board’s management of these issues; and
 - maintaining a calendar of key dates for corporate and regulatory returns which is shared by all board members to ensure that these dates are not missed in the event of staff changes.
26. The Licensee said that its new leadership team had not been aware that there had been a breakdown of communications with Ofcom at the time of the breach and suggested that Ofcom could have taken additional action to alert it. However, it acknowledged that it, rather than Ofcom, was responsible for compliance with the conditions of its licence and reiterated that it had taken steps to improve its administrative processes in order to ensure that it fulfilled its obligations.

Ofcom's Decision to impose a statutory sanction

27. 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](#).

28. We first considered whether the breaches were serious, deliberate, reckless or repeated.

Serious and repeated nature of the breaches

29. 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.

30. 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.

31. 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](#)¹⁷, the Licensee submitted its finance report on 21 August 2019.

32. 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.

33. 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.

¹⁷ See [Ofcom Broadcast and On Demand Bulletin, Issue 380](#)

34. 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.
35. 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.
36. 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. [Ofcom recorded a breach of Licence Condition 9\(1\)](#) for failure to provide its annual finance report for the 2017 calendar year.¹⁸
37. For all these reasons, Ofcom regards the breach as serious and repeated, and warranting the imposition of a statutory sanction.

Imposition of sanction

38. 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

39. 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.

Imposition of a financial penalty

40. 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

41. 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.
42. 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,

¹⁸ See [Ofcom Broadcast and On Demand Bulletin, Issue 354](#)

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

43. Ofcom regards the breach to be serious for the reasons set out in paragraphs 29 to 38.
44. 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. Ujima provided its 2018 annual financial report on 21 August 2019 – five months 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

45. For the reasons set out in paragraphs 33 to 36, we do not agree with the Licensee’s assessment that the breach was not harmful. 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.
46. 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.
47. 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

48. The Licensee said that it did not make a gain from the breach, which we accepted.

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

49. As noted in paragraphs 6 and 36, the Licensee was previously found in breach of Condition 9(1) after it failed to submit its finance report for the calendar year 2017.
50. As the Licensee has acknowledged, Ujima failed to take steps to provide its annual finance report for 2018 by the initial due date of 20 March 2019, as a result of poor administration of a previous Board. 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 21 August 2019, after Ofcom recorded its finding of a second breach under Condition 9(1).
51. Accordingly, the Licensee did not take sufficient steps 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

52. We acknowledged the change of leadership at the Licensee, which led to Ofcom being provided with the outstanding finance report in August 2019, bringing the latest breach to an end.
53. The Licensee argued in its representations that Ofcom could have done more to alert it to its own failure to provide its finance report by the due date and the subsequent extension. However, as the Licensee acknowledged in its oral representations, it is the responsibility of the Licensee, rather than Ofcom, to have in place functioning compliance processes to ensure that it identifies, escalates and responds appropriately to correspondence from Ofcom, and is in a position to meet its regulatory obligations. This includes informing Ofcom of any change to its contact information.
54. 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

55. We have taken into account the action that the Licensee told us it has taken to identify its administrative weaknesses and address these to improve its compliance processes and ensure that there is no recurrence of the contravention. In addition, we note the Licensee is continuing to work with third parties, including the Community Media Association, to develop and embed strategies to mitigate the risk of future breaches. These include:
- a “transition folder” to be shared with all new Board members; and
 - the creation of shared inboxes to disseminate regulatory requests between all Board members.

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

56. As set out in paragraph 7, the Licensee was found in breach of Condition 9(1) on 21 May 2018 when it failed to provide a report by the initial due date.
57. The Licensee has been found in breach of Condition 3(2) on two occasions for late payment of the annual licence fee, one being in relation to the small-scale DAB trial and licence DP101168. The breaches were recorded on 28 May 2019.¹⁹
58. A breach of Licence Condition 9(1) was recorded against the Licensee on 9 April 2018²⁰ for failure to provide the requested diversity data by the deadline given.²¹

¹⁹ See [Ofcom Broadcast and On Demand Bulletin, Issue 379](#)

²⁰ See [Ofcom Broadcast and On Demand Bulletin, Issue 351](#)

²¹ A breach of Licence Condition 8(1) was recorded against the Licensee on the same date for failing to provide the requested diversity data relating to its DP101168 licence.

59. A breach of Licence Condition 2(4) was also recorded on 29 June 2015 as the Licensee failed to meet one of its Key Commitments to broadcast French or Portuguese programming during 2013.²² This particular obligation is no longer one of the Licensee's Key Commitments.
60. On 9 November 2015 a breach of Rule 1.14 (most offensive language must not be broadcast when children are particularly likely to be listening) of the Broadcasting Code was recorded against Ujima.

Deterrence

61. 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.
62. 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. [§<]
63. We have had regard to the fact that the Licensee has experienced a significant reduction in advertising revenue as a result of the Covid-19 pandemic and the current financial year continues to be challenging, as it is for other broadcasters.
64. Further, in assessing the level of the financial penalty that will act as an effective incentive to compliance, we have taken into account the Licensee's representations that the breach finding has already had an impact on its reputation and ability to attract funding, and the measures set out at paragraphs 23 to 25 and paragraph 55 that it has implemented to change its conduct at an organisational level to bring itself into compliance.

Precedent

65. Ofcom has also had regard to relevant precedents set by previous cases where we have taken enforcement action.
66. While Ofcom has in no previous case imposed a statutory sanction on a community radio licensee for failure to submit an annual finance report, we considered the following precedent to be relevant:
- i. **1 February 2016: Leith Community Mediaworks Limited** – this sanction concerned the licensee's failure to retain and provide recordings; a breach of Licence Conditions 8(2)(a) and (b). Ofcom imposed a sanction in this case because the breaches were serious and repeated. They were repeated because this 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

²² See [Ofcom Broadcast Bulletin, Issue 282](#)

an appropriate and proportionate sanction would be to impose a financial penalty of £850.²³

Decision

67. Taking all the factors referred to above in the round, Ofcom's Decision is that an appropriate and proportionate sanction would be to impose a financial penalty (payable to HM Paymaster General) of £300.

Ofcom

11 December 2020

²³ See: [Sanction \(102\)15 Leith Community Mediaworks Limited](#)