

Providing a service in accordance with ‘Key Commitments’, retention and production of recordings and provision of information, Big City Radio CIC

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| Type of case | Broadcast Licensing Conditions |
| Outcome | In Breach |
| Service | Big City Radio |
| Date & time | October/November 2022 |
| Category | Key Commitments Retention and production of recordings Provision of information |

Summary The Licensee failed to fulfil the requirements specified in its Key Commitments with regard to speech and original output. Breaches of Licence Conditions 2(1) and 2(4).

The Licensee also failed to provide recordings and associated information to Ofcom for the purpose of assessing the content. Breaches of Licence Conditions 8 and 9.

Introduction

Big City Radio is a community radio station based in Aston, Birmingham that serves all the communities of Aston with a particular focus on the area’s ethnic communities. The licence for Big City Radio is held by Big City Radio CIC (“Big City” or “the Licensee”).

Like all other community radio stations, Big City Radio CIC is required to deliver ‘[Key Commitments](http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000038.pdf)’ (<http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000038.pdf>), which

form part of its licence. These set out how the station will serve its target community and deliver social gain (community benefits), and also include a description of the on-air programme service.

Ofcom received a complaint about the Licensee's compliance with its Key Commitments. The complaint stated that the service was not complying with its Key Commitments to broadcast speech output containing local news, travel, community and 'what's on' information, weather, and local sport and additionally failing to broadcast at least 12 hours per day of original output.

Ofcom requested recordings of the output of the service from Monday 10 October to Sunday 16 October 2022, however the licensee provided recordings of the output from the service from Thursday 10 November to Wednesday 16 November. Ofcom considered that this raised potential issues under Licence Conditions 8(1) and 8(2)(a) and (b), which state that:

"8(1) the Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings of the Licensed Service's broadcast output"; and

"8(2) In particular, the Licensee shall:

(a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service...

(b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination..."

Ofcom also requested a full programme schedule, and information from the Licensee on how it was meeting its Key Commitments. The Licensee did provide a response about how it was meeting its Key Commitments but did not provide a programme schedule. Ofcom considered that this raised potential issues under Licence Condition 9(1), which states:

"9(1) 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..."

Having assessed the recordings of the days provided, it appeared that Big City was not delivering the following Key Commitments:

- The service provides original output for a minimum of 12 hours per day
- Speech. The main types of speech output broadcast over the course of each week are: news (international and local), travel, community information and what's ons, weather, national and local sport.

Ofcom considered that this raised potential issues under Licence Conditions 2(1) and 2(4). These state, 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
- “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”.

Ofcom requested comments from the Licensee on how it was complying with all the conditions listed above.

Response

Big City stated that it understands “the serious breach”. It apologised and said that it is “doing [its] utmost to not only remedy the situation but to make sure it does not happen again”.

Retention and production of recordings and provision of information

Big City stated that links to the recordings for the period requested had been sent to Ofcom but had expired before Ofcom had downloaded the content, and that another copy had “got lost at Ofcom”. The Licensee explained that the reason the incorrect recordings were subsequently submitted was that the recording software used to record and monitor the service had started to overwrite the dates requested. The Licensee explained it had attempted to obtain the recordings from a presenter who had taken copies home but was unable to find the correct week.

In response to Ofcom’s Preliminary View, the Licensee stated that it has always retained its recordings and would “notify Ofcom immediately” if its recorder malfunctioned, acknowledging the problems may occur with its well-maintained equipment.

Big City did not provide any response regarding the failure to provide a programme schedule

Speech

The Licensee stated that local and national news is broadcast during the breakfast and drive time show, and community information is communicated by the live presenters. Big City acknowledged that the recordings it sent were “sadly lacking in local information”.

The Licensee explained that the individual responsible for producing the news during the period monitored had to return to other responsibilities outside of the service. It added that during this period some of the people responsible for monitoring the service were working on other community projects and stated “Whilst [they] monitor the station as [they] have been working, two [individuals] did not notice the drop in local news”.

Big City went on to explain that, to remedy the problem it is “doing a deal with a local newspaper to provide the local news for [the service]” and stated that it hopes “to be up to full local news in the next few days”.

Big City also explained that speech content varies depending on local events, with greater speech output during coverage of the Commonwealth Games. It stated that presenters interview relevant people for their shows such as local councillors, artists and musicians.

In response to Ofcom’s Preliminary View, the Licensee explained that it has been working on a project to provide breakfast for children and therefore the director has “not given the attention to the day to day running of Big City that [he] normally [would]”.

Additionally, Big City explained that local news is available for presenters to read, but the presenters preferred to play music, and confirmed that this has now been remedied. It went on to explain the steps taken to rectify the issues raised in our Preliminary View, stating that it is raising funds to employ a part-time news reader to source and record local news to ensure that the service “will always have local news irrespective of the presenters who just enjoy presenting”.

Original Output

With regards to original output, Big City stated that “every show [it] broadcast[s] is classed as original”.

Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licensees are required to provide the licensed service specified in their Key Commitments. This is a fundamental purpose for which a community licence is granted.

Retention and production of recordings and provision of information

In each broadcaster’s licence there are conditions requiring the licensee to retain recordings for a specific number of days after broadcast, and to comply with any request by Ofcom to produce recordings of programmes as broadcast. For community radio licensees, this is reflected in Licence Conditions 8(1) and 8(2)(a) and (b). Licensees are also required to provide information that Ofcom reasonably requires to exercise its functions and to do so in a timely manner. For community radio licensees, this is reflected in Licence Condition 9.

The requirement for Licensees to retain recordings of their broadcast output is significant for Ofcom’s ability to carry out its statutory duties in regulating broadcast content, because a failure to retain recordings and produce them to Ofcom upon request prevents us from assessing the output of the service. This is a key part of the enforcement process for cases about compliance with both Licence Conditions (under the General Procedures) and the Broadcasting Code.

The Licensee said that links to the recordings for the period requested had been sent to Ofcom but had expired before Ofcom had downloaded the content, and that another copy had “got lost at Ofcom”. Ofcom requested recordings to assess the complaint in relation to this case and a separate recording to assess a complaint relating to content standards. It was the link for the recording in relation to the content standards complaint that expired before the content was downloaded, not the recording in relation to the licensing complaint that is the subject of this Preliminary View. The Licensee provided evidence that the recordings of the content broadcast between 10 and 16 November had originally been sent to an incorrect email address which is why Ofcom had not received them when the Licensee had first sent them. The Licensee did not provide evidence that it had sent the recordings of the content broadcast between 10 and 16 October 2022 to Ofcom

Although Big City did provide recordings of the broadcast output of the service for a different period, it could not provide recordings of the Licensed Service’s broadcast output for the dates requested. Ofcom was concerned that the Licensee’s recording equipment had overwritten the October

recordings before the retention period for retaining recordings of broadcast content (as specified in the licence) had passed. Additionally, the Licensee did not explain the recordings sent for assessment were from a different period than requested, and only provided an explanation when Ofcom queried the discrepancy. This raises concerns that either the Licensee was unaware that it sent the incorrect recordings, which brings into question how its recordings are made and retained, or that the Licensee was aware and decided to not to provide an explanation until this was requested by Ofcom.

Big City also did not provide a schedule of planned programmes for the period requested or for period of the recordings sent and made no representations for why this information was not provided to Ofcom when requested. The failure of the Licensee to provide the requested recordings and programme schedule prevented Ofcom from assessing the content referred to by the complainant and prevented a timely assessment of the content that was provided.

Speech

During Ofcom's assessment, we note that Big City did broadcast national news frequently throughout the day, including during syndicated programming. National travel, sport and weather was also broadcast, although less frequently. However no local news, travel, weather, community information, or sport was broadcast on the days assessed. We recognise the Licensee has acknowledged the failure to broadcast local news and has taken steps to rectify this issue going forward, although it made no specific reference to how it is rectifying the failure to broadcast other aspects of speech content. Nevertheless, it remains the case that this requirement was not met during the days assessed.

Original Output

Ofcom's assessment of the recordings provided by the Licensee demonstrated that the service was not meeting its Key Commitment to broadcast a minimum of 12 hours per day of original output. Contrary to Big City's statement in its response that every show broadcast is original output, during Ofcom's assessment it appeared that many of the shows broadcast were syndicated programming not originally produced for the service. We are concerned at the Licensee's misunderstanding of what constitutes original output, particularly because it has previously been found in breach of its Key Commitments for failing to provide sufficient original output.

Original output is described as:

“output that is first produced for and transmitted by the service, and excludes output that was transmitted elsewhere before. Original output can be live or voice-tracked. Repeat broadcasts of original output do not count towards the minimum requirement”

As much of the programming was syndicated and during our assessment it was deemed to not be first produced for and transmitted by the service, we would not consider this programming to be original output. As such we noted at most six hours of original output was broadcast on 12 November, five hours on 13 November, and two hours on 15 November, less that the required 12 hours of original output per day required by its Key Commitments.

Conclusion

Ofcom's Decision is that Big City Radio CIC is in breach of Licence Conditions 2(1) and 2(4) for failing to comply with the following Key Commitments:

- Speech. The main types of speech output broadcast over the course of each week are: news (international and local), travel, community information and what's ons, weather, national and local sport.
- The service provides original output for a minimum of 12 hours per day

Our Decision is that the Licensee is also in breach of Licence Condition 8(1) and (2)(a) and (b) and 9(1) for failing to retain and produce recordings and information to Ofcom on request.

This is the third time Big City has been found in breach of licence conditions 2(1) and 2(4) for failing to comply with its Key Commitments within the last five years. In [issue 354 of Ofcom's Broadcast on Demand Bulletin](https://www.ofcom.org.uk/data/assets/pdf_file/0011/114104/issue-354-broadcast-on-demand-bulletin.pdf) (https://www.ofcom.org.uk/data/assets/pdf_file/0011/114104/issue-354-broadcast-on-demand-bulletin.pdf) published in May 2018, the Licensee was found in breach of licence conditions 2(1) and 2(4) for failing to deliver its locally-produced output and original output requirements. In [issue 371 of Ofcom's Broadcast on Demand Bulletin](https://www.ofcom.org.uk/data/assets/pdf_file/0025/134755/Issue-371-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf) (https://www.ofcom.org.uk/data/assets/pdf_file/0025/134755/Issue-371-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf) published in January 2019, the Licensee was found in breach of licence conditions 2(1) and 2(4) for failing to deliver its speech and original output requirements and not providing content in accordance with its 'character of service'. In addition, Licensee was also found in breach for failing to meet its Key Commitments in June 2015.

Given the serious and repeated nature of the breaches recorded between 2015 and 2019, in February 2020, Ofcom [imposed a statutory sanction](https://www.ofcom.org.uk/data/assets/pdf_file/0023/191462/sanction-decision-big-city-radio.pdf) (https://www.ofcom.org.uk/data/assets/pdf_file/0023/191462/sanction-decision-big-city-radio.pdf) in the form of a financial penalty on the Licensee.¹ We are therefore extremely concerned that the Licensee is again not complying with its Key Commitments in this area.

In addition, in January 2019 Ofcom recorded a breach of Licence Condition 9(1) because the Licensee failed to provide full programme schedules that Ofcom had requested. We are therefore concerned by this repeated failure to provide information to Ofcom on request.

In relation to the breaches of conditions 8(1) and 8(2)(a) and (b) for failure to provide recordings on request, Ofcom will monitor this service to ensure that Big City is complying with these licence conditions.

Given the serious and repeated nature of these breaches of licence conditions 2(1), 2(4) and 9(1), Ofcom is putting the Licensee on notice that we are minded to consider these new breaches for the imposition of a statutory sanction.

Breach of Licence Conditions 2(1) and (4), 8(1) and (2)(a) and (b) and 9(1).

¹ In September 2020, Ofcom approved a reduction in the number of hours of original output it was required to broadcast from 24 hours per day to a minimum of 12 hours per day.