

Community Radio Order – Consultation Report

1. The consultation period for the draft Community Radio Order finished on 20 April. The responses have now been considered, and the Order has now been laid before Parliament. A copy of the order and the responses to the consultation exercise are on the DCMS website.

2. The consultation showed that there is a fair degree of agreement on the draft Order and also a degree of agreement as to what changes would be desirable. The following is a subject-by-subject breakdown of the Department's thinking.

Advertising and sponsorship

3. The draft Order allowed Ofcom to place a limit on the amount of advertising and sponsorship a community radio service can take (the Ofcom draft guidance proposed 50% of income). It also placed Ofcom under a duty to "have regard to" the impact of a community radio service on the existing commercial stations when deciding whether to grant a licence for such a service in the first place.

4. Ofcom's draft guidance proposed that community radio applicants should provide Ofcom with information on the effect of their proposed service on "the economic viability of any local radio service" and that commercial stations, if concerned, should provide "specific and quantifiable evidence that the licensing of a community radio service would have a material impact on the economic viability of the commercial radio station".

5. Respondents disliked this approach. The Community Media Association (CMA) argued that community radio applicants will have difficulty assessing the impact that their activities will have on the commercial sector, and was concerned that the commercial sector might object to every proposal for a community radio licence. CRCA (the Commercial Radio Companies Association), on the other hand, claimed this placed the onus on the

commercial sector to “prove” that their businesses would be damaged, and was concerned that small commercial stations would not have the resources to provide Ofcom with the level of detailed information it appeared to want.

6. The commercial sector therefore wanted the community radio sector to be prevented from taking any advertising or sponsorship. Failing that, they believed that there should be restrictions on licensing community radio stations in the same area as small scale existing commercial radios stations. They proposed that there should be no community radio stations overlapping with commercial radio stations with a measured coverage area (MCA) of 100,000 adults or less, and that community radio stations should be prevented from taking advertising if they overlapped with commercial stations with an MCA of 200,000 adults or less. In all other areas, stations would be limited to receiving a maximum of 50% of their income from commercial sources.

7. The community media sector, on the other hand, has argued that it is wrong in principle to place any restrictions on the amount of commercial income they receive, though in practice they believe a mixed funding model is best. The CMA subsequently proposed:

- (a) there should be no community radio stations licensed which overlap with commercial stations with MCAs of 40,000 adults or less;
- (b) where commercial stations have an MCA of 40,000 – 100,000, the onus should be on the commercial stations to "demonstrate jeopardy to survival and not simply impact on profitability";
- (c) beyond 100,000, there should be a 50% limit on advertising and no limits on sponsorship income.

8. Having considered all the arguments, we considered it right to place some limits on the amount of income that a community radio station can receive

from commercial sources. There is otherwise an element of unfair competition as community stations may be in receipt of government and other grants and therefore able to undercut commercial advertising rates. We also do not want to damage the existing commercial stations.

9. The CMA proposal provided less certainty of outcome and also retained the onus of proof on the commercial sector, which we believe has practical difficulties as outlined above. We therefore decided to adopt an approach along the lines proposed by CRCA, but with different limits. These are:

- no community radio stations licensed which overlap with a commercial radio station with a measured coverage area (MCA) of 50,000 adults or less;
- a community radio station will not be allowed to take any advertising or sponsorship if it overlaps with a commercial station whose MCA includes 150,000 adults or less; and,
- where advertising and sponsorship is allowed, there will be an upper limit of 50% of total income from these sources.

[**Note:** “overlap” is defined as where one station’s MCA contains 50% or more of the MCA of another station.]

“Sunset” and similar provisions

10. CMA suggested that the Order could be drafted so that some or all of the protections for the commercial sector could automatically lapse after two years. Ministers considered this but concluded that Ofcom should be asked to conduct a review of the sector after 2 years. If the restrictions set out in the Order appeared to be too severe, they will be modified or removed by a further Order.

Characteristics of a community radio service

11. The draft Order required that a community radio service must deliver social gain and defined social gain as one or more of a number of objectives. CRCA argued that “one or more” is too loose and would mean that pseudo commercial stations with very little in the way of social gain could be licensed. The CMA and Bradford Community Broadcasting also believe that the definition should be tightened. The Order has been redrafted so that 4 social objectives should be mandatory. There are 7 other examples of objectives which qualify as examples of social gain, but which we are not mandatory. We believe that the four mandatory objectives are sufficient to ensure that community radio stations are distinctive and deliver real social gain. Too tight a definition could rule out otherwise worthwhile services. It should be left to Ofcom to determine on the basis of specific applications whether there is sufficient social gain to justify a licence.

12. We also agreed with CRCA and the CMA that the characteristics of the station must have arrangements for being and remaining accountable to the community they serve.

Definition of social gain

13. The CMA has suggested a new list of examples of social gain. In most, though not all, cases we have adopted CMA’s suggestion words as they introduced some new and worthwhile elements to the definition of social gain. community.

14. The main exception concerns the reference to local authorities in the examples of social gain. CMA has argued that this should not be included as an example of social gain as this risks making community radio a mouthpiece for local government. We agree that it is important for community radio stations to be independent from undue influence, from any quarter. We do not agree, however, that we should remove the reference to local authorities from the Order. There are already many examples of the effectiveness of community radio in getting information about services to groups or

communities who are difficult to reach by more traditional means. This is one of the great strengths of community radio, and we want to encourage it. In any case, this is simply an example of social gain; stations are not forced to do this.

15. We also agreed with CRCA 's suggestion that the Order should be amended to make it clear that training opportunities must not just be limited to station employees, but be extended to others in the community.

Charitable status

16. The draft Order proposed that community radio stations should be not-for-profit or not profit distributing. The CRCA argued that stations should be required to be established as charities. The Charity Commission for England & Wales and the Radio Foundation also suggested that community radio stations may benefit from charitable status and Lincs FM Group Limited said that charitable status should be a requirement to hold a community radio licence. While many stations may well be set up as charities, we do not consider this should be mandatory as this could be unnecessarily burdensome for many some small groups, such as community groups. In view of these concerns, however, we have amended the Order to make it clearer that stations cannot be run for the private gain of individuals. Ofcom will be able to revoke a licence where there was evidence of abuse.

Licence Period

17. The draft Order proposed a 5-year licence period. COI would like this to be 8-10 and CMA proposed 8 years. There are arguments on both sides. A shorter period could make it difficult to raise capital investment. On the other hand, demand is likely to be high and a shorter licence period allows more opportunities for groups to get on air. Anthony Everitt's report recommended that five years "would provide sufficient security of tenure for a licence holder both for delivering social gain and for fundraising, while at the same time creating adequate opportunity for new [community] radio entrants". We have

therefore retained a five-year licence period. This could be extended in future (by a new Order) if greater experience of the sector suggested that the length should be increased.

Public Funding

18. The draft Order would have prevented any community radio service from getting more than 50% of its funding from public funds. CMA and others pointed out that many potential applicants would be ruled out by this provision. We believe that it is important that bodies are not over-dependent on one source of funding, but agree that the proposed restriction was too tight. We have therefore modified the restriction so that a community radio licence holder should not receive more than 50% of its funding from any one person.

Ownership Restrictions

19. The draft Order stated that no one person should hold more than five licences. CMA and others have suggested that this should be reduced to one as demand will be high in the initial period. Some respondents, such as Takeover radio, believed that the limit should be five or more. The COI were concerned that the Army should be able to hold more than one licence and the BFBS (British Forces Broadcasting Service) sought special considerations for “forces families”. We were not convinced by their arguments and think that the Order would not necessarily prevent them from doing so; it depends to some extent how the Army applicants are organised and the degree to which they are all “connected” to the Army.

20. We think that the essence and strength of community radio is that it is a grass roots, bottom up medium, and it would suffer if central models were parachuted in from outside. The loss of quality control argument is weak and we have set the limit in the Order at one licence per body.

21. The draft Order prevented the holders of national and local radio licences from holding a community radio licence. We will now extend this to TV licence holders (apart from community TV licences) and all multiplexes operators. Cable and satellite broadcasters, on the other hand, will be able to hold community radio licences. This is mainly because there are some community groups whom currently broadcast on cable and satellite and may want to apply for community licences. Similarly, we would not want to prevent community radio operators from making their service available via satellite if they wished.

Disqualified persons

22. Bradford Community Broadcasting said that community radio licences should not be given to student groups, who can already obtain specific licences, nor to religious organisations whose objective is to broadcast solely religious material. We do not agree that it is necessary to disqualify these groups.

Costs of regulation

24. The CRCA said that the costs of regulating community radio should be met by the Government. The UKRD also raised the question of covering the costs of licence application and on-going regulation. This is not strictly a matter for the Order. There will be some costs associated with administering the licensing regime for community radio. It will be for Ofcom to determine how they should be allocated.

Training and Equal Opportunities

25. The draft removed from community radio stations the requirements regarding equal opportunities and training in section 337 of the Communications Act. We had thought that this may be too onerous for the

sector but the CMA has argued that this section should apply to community radio stations. We have amended the Order so that it does apply.

Financial viability

26. We agree with CRCA and UKRD that, when assessing applications, Ofcom must have regard to the ability of applicants to establish and maintain the proposed service throughout the period of the licence, and the Order has been amended accordingly to reflect this.

Definition of community

27. CMA suggested that the definition in the draft Order be widened to include not just persons who live, work or are educated or trained in the area but also persons who “have an interest” in the area, for example people with family connections. We had difficulty in seeing how a radio station could meaningfully provide a service for people not in its coverage area and the definition remains as it is.

Characteristics of community radio services

28. We agree with CMA that members of the community should be given opportunities to participate in “the operation *and management* of the station”, and have made this change in the Order.

29. Bradford Community Broadcasting suggested that the draft Order be amended to refer to stations serving community or “communities” as a station could serve two distinct communities as happens with some of the pilots already. We agree and the Order reflects this.

Applications for licences

30. The draft Order provided that an application for a community radio licence must include information on how the proposed service would “broaden the range of local services provided in the coverage area of the service and be distinct from other sound broadcasting services provided in the area”. We have accepted the CMA’s proposed change so that the Order requires the proposed service to be distinct from other local sound broadcasting services.

Sponsorship

31. CMA has suggested that the reference to sponsorship should be the same as the language used in the Act and we accept this and have made a minor change to the Order.

Issues not for the Order/for Ofcom

32. A number of issues were raised which we consider do not need to be included in the Order but should be addressed by that should be left to Ofcom’s licensing process. These are:

- (a) community radios services should be required to adhere to formats that are clearly distinct from local commercial radio stations;
- (b) stations should serve a community of interests rather than a geographical community;
- (c) community radios services should carry clear on-air identification about the nature of the station and the opportunities for local people to be involved; and

(d) there should be a simplified renewal process where stations have performed well and where there are no competing expressions of interest.

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