

## Response to Ofcom's consultation *Small Screen: Big Debate*

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### Introduction

1. I am submitting this response as an independent academic and commentator on communications policy at the University of Westminster. I have been involved in research and policy analysis on public service broadcasting for 35 years since first submitting evidence to the Peacock inquiry (and appearing in front of the Home Affairs Select Committee) in 1986. I have directed a number of relevant research projects, and have authored books, book chapters and articles on PSB and other related areas. I have acted as specialist adviser to the House of Lords select committee on Communications for five inquiries, most recently for their 2019 inquiry *Public service broadcasting: as vital as ever*<sup>1</sup>.
2. My response is in three parts: part 1 is a statement of guiding principles and covers chapters 2-4 of Ofcom's consultation; part 2 addresses a fundamental issue at the heart of Ofcom's approach - redefining PSB as PSM – and the inherent problems of such an approach; Part 3 covers chapters 5-7 and includes my responses specifically to the consultation questions.

### Part 1: chapters 2-4

3. Chapter 2 lays out the huge economic and cultural contribution that the PSB framework makes to the UK. It draws attention to the proliferation of media opportunities and new content but illustrates how the PSB framework remains at the heart of the UK's audiovisual sector through its contribution to first-run UK content; to original and trustworthy news and information; to investment in independent production; and to creative investment in the nations and regions. Ofcom notes that “the PSBs’ funding of content on public service channels is more substantial and spread across a broader range of genres than those of other broadcasters”.
4. These economic, cultural and democratic contributions are just as relevant, if not more so, as they were when ITV first joined the BBC as a public service broadcaster in 1955. In economic terms, the PSBs provide investment in UK talent across the board, from original drama, natural history programmes and current affairs to new musical talent, actors and production staff. In cultural terms, they ensure that UK audiences throughout the nations and regions have access to high-quality UK content that is relevant to them. And in democratic terms, they guarantee easily accessible high-quality, trusted and impartial news and information across all platforms, at national and regional level.
5. The Covid pandemic has also underlined the vital importance and continuing relevance of PSBs. At a time of national crisis, they collectively provided reliable news and information as well as offering educational support for children of all ages. Ofcom's tracking data showed that net trust figures for the PSBs - and particularly for Channel 4, BBC radio and BBC online - consistently exceeded 70% and were well above the figures for the printed

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<sup>1</sup> <https://publications.parliament.uk/pa/ld201919/ldselect/ldcomuni/16/16.pdf>

press and online media.<sup>2</sup> Their free and universal availability have been instrumental in informing and reassuring the public at a time of huge anxiety.

6. As the Ofcom report demonstrates, new streaming services have brought major benefits: investment to the UK creative economy (especially through co-productions), a huge increase in viewing choices for consumers, high quality production values, particular appeal to younger and more ethnic audiences, and new training opportunities. In some respects, therefore, streaming services can themselves fulfil certain public service criteria in boosting independent production, driving innovation, and investing in the UK's creative economy.
7. While welcoming these additional services and investment, however, we should also remember their significant downsides in contrast to the PSBs. Their material, even highly acclaimed series featuring British accents and UK locations such as *Sex Education*, are not designed for UK audiences but for a global market, and do not reflect UK culture<sup>3</sup>; range of content is limited; investment, while currently very high, is unpredictable, particularly as more streaming services emerge; they control distribution and access to consumer data, and we have minimal knowledge of audience size or demographics; and, of course, the vast majority are subscription based.
8. These drawbacks highlight the importance and continuing relevance of PSBs and the philosophy of universality, range and cultural representation that they embrace. They are free to access (apart from the cost of a TV licence fee) for those unable or unwilling to pay subscriptions which may rise exponentially; peak-time news programmes, regulated for impartiality, command trust in an increasingly fractious "post-truth" world; programmes are designed to reflect local and regional UK culture aimed solely at UK audiences; they encompass a broad range of material for UK consumption, including children's programmes, current affairs, comedy and arts/music programmes; and they guarantee continuing investment in the creative industries, even if the US-based giants fold or consolidate or change their commissioning policy to provide less support for UK-based content. In other words, they offer economic future-proofing to the UK creative industry.
9. As the government itself wrote in its written evidence to the 2019 Lords' select committee inquiry: "Public service broadcasting provides immense cultural, economic and democratic value to the UK. It is free at the point of use and works for the public benefit to foster shared experiences, stimulate learning, and inspire change".<sup>4</sup> In the post Covid world, it is more important than ever that we safeguard the continuing contribution of the PSB framework and the regulatory framework and resources that sustain it, and that in the process of updating it for the digital age we do not compromise or dilute its continuing strength. In particular, it is vital that measures are taken to ensure that PSB content is easily discoverable and that PSB players themselves can control the way in which their programmes are consumed even when hosted on competitor platforms.

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<sup>2</sup> <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/news-media/coronavirus-news-consumption-attitudes-behaviour/interactive-data>

<sup>3</sup> An excellent analysis of the cultural limitations of this content featured in a recent report from Enders Analysis:

<sup>4</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/communications-and-digital-committee/public-service-broadcasting-in-the-age-of-video-on-demand/written/101410.pdf>

## Part 2: PSB v PSM

10. At the heart of Ofcom's approach is an assumption that major changes in technology and audience behaviour require a shift from a framework of Public Service Broadcasting to Public Service Media. Certainly, there needs to be recognition within the regulatory system that PSB delivery has moved beyond broadcast transmission to online and even social media, and that any revised framework should embrace new technologies including smart TVs, subscription platforms, and voice-activated delivery.
11. There is, however, a huge danger of confusion arising with this redefinition. It is fundamental to the survival of the PSB system and the contributions it makes to British culture and democracy that the statutory and regulatory framework is centred around institutions and not content. Unfortunately, it is not clear that Ofcom shares this view. While the consultation document talks about a "PSM framework" and a "PSM system" - both of which might be centred around institutional providers - it also talks about "the delivery of Public Service Media", "how PSM is made", "PSM delivery", and crucially "PSM content". This elision of meaning may not be deliberate, but it represents a potentially lethal threat to the survival of the very system that Ofcom is responsible for maintaining and strengthening.
12. Public service broadcasting is not simply a legacy system. It is a set of values and a philosophy that has been enshrined in statute for decades, is supported by Parliament and audiences, and is manifested through a set of institutions with complementary obligations, constitutional arrangements, and means of funding. Its enduring contribution to British life is well captured in chapter 3 of Ofcom's report.
13. Any shift towards the notion of public service content would instantly undermine the whole PSB concept. Such a redefinition inevitably places undue emphasis on content and market-gap arguments, and tends to be exploited by those who believe that public service media should simply be filling spaces that the market avoids (such as elite arts programming, high-risk drama or obscure writing).
14. The notion that there is a particular type of programme, content or material that can be classified as "public service" raises both definitional and agency questions that would defy sensible resolution. How does one differentiate between a "public service" drama or "public service" music and their non-public service equivalents? Are all documentaries or arts programmes automatically classed as "public service"? The contributions that are made to news, arts and documentaries, for example, by non-public service commercial providers such as Sky, Discovery or Netflix are very welcome; but they are made and offered for commercial reasons, as part of their competitive offer. Any shift towards a system that attempts to classify content as "public service" will simply divert resources to fully commercial operators - most of which are not free to view - and will dilute the ability of existing providers to serve all citizens with a range of primarily UK-based content.
15. **For that reason, I do not believe it is either helpful or necessary to move from a PSB framework to a PSM framework.** It is perfectly possible to redesign or enhance the current system to embrace all forms of delivery without undermining the basic philosophical and institutional foundation of PSB or compromising its values. If Ofcom insists on a redefinition, it must be unambiguous in arguing for an institution- rather than content-based approach which captures the range, quality, universality, innovation, and wide geographic appeal that characterises the PSB framework today.

### Part 3: chapter 5-7 and responses to consultation questions

16. *Consultation Question 1: Do you agree that a new regulatory framework for PSM delivery should support a more flexible ‘service neutral’ delivery approach that is more outcomes focused?* Ofcom is right to identify scale, scope, reach and resources as the key features of a future-proofed PSB system. It is also right to identify reach as a major regulatory issue in ensuring that neither universality nor accessibility to PSB content are compromised. However, it is not at all clear what exactly is envisaged by a “service neutral” approach nor how a shift away from quantitative evaluation to a purely qualitative approach would work.
17. Without more detail of what an “outcomes focused” approach means in practice it is difficult to answer this. Clearly, there needs to be flexibility in the system which encourages PSBs to adapt to new or evolving patterns of distribution and consumption. However, this question can be interpreted as a shift towards a content-based framework, which should be rejected for the reasons given above. Success or failure of the PSB framework should be assessed, as it has been to date, on the range, quality, originality and diverse representation of its content as well as levels of investment in UK material and the extent to which PSBs reflect the nations, regions and demography of the UK.
18. *Consultation Question 2: Do you agree with our proposals for a clear accountability framework?* While it is true that quantitative requirements designed for broadcast schedules do not necessarily translate well to the online world, it is not clear why this should entail a wholesale shift towards a “qualitative” approach to measurement, nor what that would entail. It may well be desirable to reduce the number of quantitative indicators (particularly in the BBC’s Operating Framework), but it is difficult to comment without a clear idea of how this new accountability system would work in practice. At the very least, it will be necessary to preserve some of the current indicators in order to reassure audiences and Parliament that the PSB framework is delivering against its obligations.
19. Ofcom is right to emphasise the importance of prominence, access and discoverability of PSB content as routes to that content proliferate. The regulatory regime needs to be updated to ensure that PSB-originated content is easily accessible and discoverable across all platforms and delivery mechanisms, including smart TVs, firesticks and voice activated devices. Rules governing negotiation with platforms should be weighted, within reason, towards prioritising the needs of PSBs which are charged with furthering the public interest and are held accountable for the regulatory advantages they receive. In particular, commercial PSBs should receive fair value from platforms for content in which they have invested and which drives traffic to those platforms.
20. *Consultation Question 3: What do you think should be included in the PSM ‘offer’?* There is a danger here of indulging in an unrealistic wish-list of content quotas. However, as long as the “compact” of proper resources and valuable regulatory privileges are made available, there is no reason why the PSBs should not continue to guarantee the range of content that lie at the heart of their value to audiences and their contribution to the UK’s economic, democratic and cultural welfare. This should include: appropriate quotas of first run UK content, with a proportion guaranteed to be produced outside London (and explicitly in the nations); at least 25% commissioned from independent producers, with an additional target for small indies in the nations and regions; national news in peak-time (for broadcast),

promoted on social media; regional news in peak-time; current affairs and documentaries addressing both UK and global issues of contemporary relevance; education; children's programmes; an emphasis on innovation, particularly in music radio (for the BBC) and drama; more coverage of minority sports (particularly women's); and an assumption that between them the PSBs will be expected to cover all major national events of celebration, sport and remembrance. The listed events regime, which is not mentioned, should remain and serious consideration given to updating it.

21. *Consultation Question 4: What options do you think we should consider on the terms of PSM availability?* It is important that PSB service providers retain control over how their content is used and the consumer data derived from it. Subject to PSB content obligations being met – to be established and interpreted by Ofcom – PSB players should be carried, be easily discoverable across all platforms, and should retain control over how they are used (i.e. not disaggregated by platforms for their own purposes without prior permission). This will ensure that the PSBs have control over content curation, personalisation of their own players, and attribution of programme origin. Essentially, the on-demand regulatory regime should be designed to mirror the broadcast regime, where broadcasters have obligations for news in peak-time, UK content, range, innovation, independent production etc. in return for privileges. That appears to be the basis of the joint PSB submission, which also allows some opportunity for the commercial PSBs to enter into further negotiation with platforms to offer enhanced services on a commercial basis. Given its statutory duty to further the interests of consumers *and* citizens, this is the route that Ofcom should follow.
22. *Consultation Question 5: What are the options for future funding of PSM and are there lessons we can learn from other countries' approaches?* Almost uniquely in the developed world, the UK has developed over time a PSB system that is both publicly and commercially funded. Ofcom is right to observe that this mixed funding ecology is “unusual”, and it is precisely this approach that has enabled the UK to punch well above its weight in the audiovisual sector for decades. This mixed funding approach within public and commercially funded institutions has brought enormous benefits to Britain and its economy, and with appropriate regulatory protection – and political will – can continue to do so.
23. Given the manifest economic and cultural benefits of a mixed system, the UK should be looking at the experiences of other countries for insights into creative ways of generating revenue that can be reinvested for the public good. Industry levies on telecoms companies in France and Spain, as well as the levies on streaming services in France and Germany, are potential models worth exploring. These are designed to ensure that, just as with the new proposals in Canada and Australia, highly profitable streaming services based in the US are required to make financial contributions to support local content, and there is no reason why the UK should not be considering similar schemes. A substantial fund could be created – perhaps to be administered by Ofcom – that could be used to enhance PSB content objectives, and to compensate commercial PSBs for their lost advertising revenue.
24. Longer term funding options for the BBC beyond 2027 should certainly be considered, and there are interesting developments in both Scandinavia and Europe that should be examined in more detail. However, any such analysis must be premised on clear principles about the continuing role and contribution of the BBC as an institution. Given the BBC's enduring influence and reputation – significantly enhanced during the pandemic – and its vital role as an investment vehicle for the UK's creative industries, any funding solution must guarantee the BBC's continued strength, scale, range of output, and its universal availability.

25. For this reason, a subscription model would be wholly inappropriate, and it is unclear why Ofcom should choose to pay particular attention to it. By definition, turning the BBC into a subscription service would immediately undermine the abiding principle of availability to all and free at the point of use. Even if introduced on a partial or non-commercial basis, it would be serving the interests of its subscribers rather than the broader public interest. It would also, of course, not resolve the conundrum of public service radio, and would compromise the major role that the BBC play in audio news, drama, current affairs, and launching new British talent in popular and classical music.
26. As Ofcom rightly says, “public funding for the longer term is also under pressure. The licence fee has been used to fund more activities”. It is important to recognise that the squeeze on BBC funding and the imposition of onerous responsibilities beyond core BBC activities have been deliberate political choices rather than any natural evolution or the consequence of technological change. This can therefore be remedied if there is the political will to sustain a strong, well-resourced public broadcaster. No further demands should be placed on the BBC, and a genuinely independent and non-partisan commission should be established to determine the most appropriate level and means of funding for the BBC from 2028, based on the core PSB principles of scale (large enough to be a major national presence), scope (investing in UK talent across all content genres), universal availability and sufficient resources to maintain high quality output across all areas and platforms.
27. *Consultation Question 6: What do you think about the opportunities for collaboration we have referred to? Are there other opportunities or barriers we haven't identified.* There are clearly potential benefits in collaboration both in PSB players and in content production. Aggregation of on-demand PSB content could benefit both audiences and content producers, as could collaboration on new technological approaches. In all cases, it will be important to ensure that the core purposes and resources of individual PSBs are not diluted in the process. Partnerships with external bodies, especially those equally committed to serving the public interest in the arts and creative industries, could help to maximise reach and impact. Any such collaboration, particularly involving the BBC, would need to ensure that the PSB's own core purposes are not compromised and that the interests of the public are prioritised over those of commercial partners. The Local Democracy Reporter Scheme is a good example of a BBC partnership that has fundamentally important democratic objectives, but required significant reorientation to ensure that financial benefits were not monopolised by highly profitable publishing conglomerates.<sup>5</sup>
28. *Consultation Question 7: What are your views on the opportunities for new providers of PSM?* Efforts to develop new streams of funding are necessary and welcome, but there is a very real danger that “opportunities for new providers” could be interpreted as opportunities for redistribution of existing funds, more specifically the BBC's licence fee revenue. The examples given for Canada, Australia and France – as mentioned above – demonstrate how levies might be introduced to secure additional funding. By contrast, the examples from Ireland and New Zealand represent competition for existing funds, which would inevitably dilute the ability of the BBC to deliver against its current remit. A new reserve fund to which both existing PSBs and new providers could apply could certainly increase the volume of certain kinds of material such as local news and information, content designed for young

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<sup>5</sup> Steven Barnett and Roy Greenslade, “Not the way to use our money” in *British Journalism Review*: <https://journals.sagepub.com/doi/full/10.1177/0956474820931404>; internal BBC Review: <http://downloads.bbc.co.uk/aboutthebbc/reports/reports/lnp-review-2020.pdf>

children or teenagers, or content designed to counter disinformation. These would need to be set against transparent public service criteria – in particular, that content should be universally available and free to access – with a clear understanding that existing provision on commercial providers should not be subsidised.

29. It is vital to retain the level and integrity of licence fee revenue that flows to the BBC, and any suggestion that this should be top-sliced or siphoned off for contestable funding purposes should be resisted. If we are to retain the manifest economic, cultural and democratic benefits of the PSB system outlined by Ofcom in this consultation, it is imperative that the BBC – as the cornerstone of this framework – is not subjected to further damaging and quite possibly terminal funding cuts.