

The Future of Media Plurality in the UK

Including Ofcom's consultation on the Media
Ownership Rules Review

[The Future of Media Plurality in the UK](#) – Welsh overview

CONSULTATION:

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1. Overview

Media plurality is the cornerstone of a well-functioning democratic society in which citizens are exposed to a wide range of viewpoints from a variety of different sources, and where any one media owner, or voice, does not have too much influence over public opinion and the political agenda.

Ofcom's statutory duties in this area include securing and maintaining a sufficient plurality of providers of different TV and radio services. We also have a duty to review the operation of the media ownership rules listed under section 391 of the Communications Act 2003.¹ Since these duties were introduced in 2003, the way that people access news and information has changed significantly. The importance of online news sources has grown dramatically, driving changes in our consumption habits – particularly among younger people – while social media, search engines and news aggregators are increasingly acting as intermediaries between news content and consumers.

Existing media ownership rules – which focus on ownership of traditional forms of media – have not evolved to take account of these changes. So, we are launching a new programme of work – starting with a Call for Evidence – to understand what media plurality means in the 21st century, looking beyond existing media ownership rules. This will examine the nature of plurality concerns in the current news media landscape and consider whether there is a need for new interventions.

In discharging our duties to review, every three years, the existing media ownership rules put in place by Parliament², we have provisionally concluded that they continue, in part, to support the policy goal of ensuring the media operates in the public interest. However, we are recommending some changes to the rules to ensure they better reflect the supply and consumption of news in today's market.

What we are proposing – in brief

The future of Media Plurality in the UK: Call for Evidence

To inform our next steps on media plurality in the UK, we are seeking views on three specific areas:

- the role of **online intermediaries** and the **use of algorithms** to surface news to UK consumers, both of which challenge our ability to measure media plurality and identify potential concerns;
- **market changes** outside the context of a media merger, such as cumulative market exit or organic growth in market share, and whether or how changes to the wider market context may have increased the need to consider plurality concerns outside the context of a specific media merger; and
- **any other features of the UK news media landscape** that may have implications for news consumption in the UK or which may raise potential concerns for plurality.

Media Ownership Rules Review: Consultation

We are seeking views from affected or interested parties on the following recommendations:

¹ Section 3(2)(d) of the Communications Act 2003.

² Section 391 of the Communications Act 2003.

Rules relating to Channel 3: Cross-Media Ownership and Appointed News Provider rules

- We are proposing that the Secretary of State **retains**, for now, the **Cross-Media Ownership Rule** and the **Appointed News Provider Rule**.
- We consider that the national cross-media ownership rule still plays an important role in protecting plurality within the current framework and limits the potential for a consolidated entity to exert undue influence. Similarly, the appointed news provider rule guarantees a degree of plurality in wholesale news provision – ensuring that the appointed news provider of Channel 3 is of sufficient scale to compete and preventing a large newspaper group from acting as the Channel 3 appointed provider.

The Media Public Interest Test

- We recommend that the Secretary of State should **broaden the scope** of the existing **Media Public Interest Test framework**, and we suggest ways of how this might be achieved.
- We consider that the media public interest test continues to play an important backstop role in securing media plurality. However, the current scope of the rule only covers public interest concerns in mergers involving a broadcaster and/or a print newspaper enterprise. We consider that public interest grounds that capture a broader range of “news creators” would be more reflective of the way in which people access and consume news. We propose expanding the scope of certain public interest considerations in the Media PIT to allow intervention by the Secretary of State in relation to any media merger (beyond print newspapers and broadcasters) involving “news creators” that meet the jurisdictional thresholds.

The Disqualified Persons Restrictions

- We recommend that the Secretary of State should remove the **discretionary prohibition for religious bodies**, the **prohibition on advertising agencies**, the **prohibition on publicly-funded bodies** and the **general disqualification on the ground of undue influence for publicly-funded bodies**. We consider that market developments and protections provided by other parts of the regulatory framework mean that these restrictions are no longer required.
- We recommend that the Secretary of State should **retain the other restrictions** on who can hold certain broadcast licences, including the **non-discretionary prohibition for religious bodies**, the **prohibitions for political bodies and local authorities**, the **prohibitions for the BBC, S4C and Channel 4 Corporation**, the **general disqualification on grounds of undue influence for political bodies and local authorities** and the **restrictions on analogue community radio licences**.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

The rules we are looking at through this review are fundamentally defensive in nature; designed to prevent actions taking place which would reduce media plurality. We will also soon be publishing our statement on how to secure the future of public service media (“PSM”)³ for the benefit of audiences, including the promotion of media plurality in an online world.

³ Ofcom: *Small Screen: Big Debate Consultation: The Future of Public Service Media*:
<https://www.smallscreenbigdebate.co.uk/consultation>

2. How the market context for news has changed

- 2.1 The market for news has changed significantly since Ofcom was established in 2003 and was given duties in relation to media plurality, including the statutory duty to regularly review the operation of the media ownership rules framework. This section provides an overview of the key changes to the market for news in the UK over the years, and the challenges arising as a result – both within the UK and the wider international context.
- 2.2 While here we focus on the changes to the news market that have taken place, our other publications provide a more detailed picture of the current news landscape, including our annual [News Consumption Survey](#), [Media Nations Report](#) and [Online Nation Report](#) which also takes an in-depth look at news and misinformation in the UK.⁴

There have been changes to who provides news

The growth of online news has driven much of this change

- 2.3 The key market change over recent years has been the large increase in the amount of news available online, which has increased consumer choice in terms of what news is available to consume, and how consumers can access it.
- 2.4 Traditional news sources, such as broadcasters and print newspapers have established and then expanded their online news offerings. In addition, since the early 2000s we have seen the establishment and, in some cases, subsequent withdrawal of online-only news sources in the UK, such as BuzzFeed, Vice and HuffPost UK.⁵
- 2.5 In addition to the new provision of news online, we have seen the development of online platforms as intermediaries between consumers and news providers. Intermediaries include social media platforms like Facebook, search engines like Google and news aggregators like Apple News, all of whom display the news content of both online-only and traditional news sources. As highlighted in the 2019 Cairncross Review, intermediaries tend

⁴ Ofcom's annual News Consumption Survey provides research into news consumption across television, radio, print, social media, other internet sources and magazines to inform understanding of news consumption across the UK and within each UK nation. This includes the sources and platforms used, the perceived importance of different outlets for news, attitudes towards individual news sources, and local news use. It is conducted on a yearly basis over two waves, with the 2020 survey conducted in November-December 2019, and February-March 2020. 2,510 online interviews and 2,066 face-to-face interviews were carried out with adults aged 16+, with the vast majority of the interviews achieved before the UK was impacted by the Covid-19 pandemic.

⁵ While all three digital media companies were originally established in the US around two decades ago, Vice has had a UK presence since 2002, HuffPost created a UK-specific site in 2011 and BuzzFeed News launched a UK edition in 2013. However, all three digital media companies have announced redundancies since early 2019, including reducing or closing UK-based news operations.

to show snippets or single articles in their feeds or search results, as well as bringing together articles from different news sources into one product.⁶

- 2.6 The growth of social media has also provided a platform to individuals, including high-profile individuals such as professional journalists and public figures, as well as citizen journalists and experts in various fields, to deliver news content directly to their followers, bypassing both traditional and online-only news sources.
- 2.7 The growth in online news provision has disrupted the traditional news market, which has seen a trend toward consolidation, such as the merger between Reach plc and Northern & Shell.
- 2.8 As well as consolidation, the news market has also seen numerous examples of exit, especially at the local level. According to analysis by the Press Gazette, at least 265 local newspapers closed in the UK between 2005 and August 2020.⁷
- 2.9 The pressure has extended to news journalism more broadly, including online providers. For example, BuzzFeed closed its UK newsroom in May 2020 and following its acquisition of HuffPost, announced cuts to HuffPost UK editorial staff.⁸

The ways in which people consume news have also changed

Online news accounts for a growing proportion of overall news consumption

- 2.10 Although news consumption habits differ by age, overall, online news consumption has increased at the expense of traditional forms of news consumption, namely broadcasters and newspapers. The proportion of UK adults using the internet for news in 2013 was 32%. By 2020, 65% of UK adults used online sources to access news and about one in ten (12%) only used online sources for news.⁹
- 2.11 While traditional news sources remain important and influential platforms for news as exemplified throughout the Covid-19 pandemic¹⁰, they are more likely to be used by older consumers. In 2020¹¹, TV was used to access news by nine in ten of those aged 55+, but by just half of 16-24s. Similarly, the use of print newspapers peaked among those aged 75+

⁶ *The Cairncross Review: A sustainable future for journalism*, DCMS, February 2019:

<https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism>

⁷ Press Gazette, [UK local newspaper closures: At least 265 titles gone since 2005, but the pace of decline has slowed](#), August 2020

⁸ The Guardian, [HuffPost UK staff face redundancy as national news operation closes down](#), 12 March 2021. BBC, [BuzzFeed closing UK and Australian news operations](#), 13 May 2020.

⁹ The 2013-16 and 2018-20 Ofcom News Consumption Surveys are not directly comparable due to methodology changes, but the difference between 2013 and 2020 is indicative of growth over the period.

¹⁰ BARB data shows that the reach of news viewing on broadcast TV increased and appeared to remain elevated throughout most of 2020.

¹¹ Figures are pre-pandemic

but they were used by just a fifth of 16-24s,¹² and print circulations have long been in decline.¹³

Figure 1: Use of main platforms for news nowadays 2020 – by age

Platform	Total	16-24	25-34	35-44	45-54	55-64	65-74	75+
Television	75%	49%	64%	70%	83%	89%	91%	93%
Internet*	65%	79%	77%	72%	65%	57%	47%	40%
Social media	45%	71%	63%	53%	44%	31%	19%	16%
Radio	42%	24%	38%	42%	49%	53%	48%	47%
Newspapers (print)	35%	20%	23%	31%	31%	41%	50%	62%

Source: Ofcom News Consumption Survey 2020. Question: C1. Which of the following platforms do you use for news nowadays? Base: All Adults 16+ 2020 - Total=4576, 16-24=726, 25-34=727, 35-44=831, 45-54=766, 55-64=615, 65-74=542, 75+=369

*Internet figures include use of social media, podcasts and all other websites/apps accessed via any device.

2.12 Meanwhile, a significant proportion of consumers, particularly younger people, are more likely to use the internet and social media for news, making their role in the news media landscape more important. Given the differences in news consumption between older and younger audiences, the long-term picture for traditional ways to access news may become one of overall decline.

2.13 These changes in the market context at the platform level are also reflected at the individual news source level. When the BBC News website first launched in 1997, there were fewer than ten million people online in the UK.¹⁴ In the twelve months to March 2021, an average of over 19 million adults a week used BBC News Online.¹⁵ According to our research, in 2020, 23% of all UK adults used the BBC News website and app – a figure that has remained stable over recent years in contrast to declining use of BBC TV channels for news.¹⁶

2.14 Print newspaper titles' own websites and apps have been used by a growing number of people as their print circulations have faltered. While the Daily Mail's circulation figures fell from 1.4m to just over 984,000 between March 2017 and March 2021¹⁷, the proportion of online UK adults accessing The Mail Online/The Daily Mail online increased from 70% in March 2017 to 83% in March 2021. This makes it the print newspaper title with the highest online reach in the UK. Despite its paywall, The Times was accessed by 35% of UK online adults in March 2021, more than double the 15% that accessed it in March 2017 – although

¹² Ofcom, News Consumption Survey, 2020.

¹³ The circulation of national daily print newspapers has fallen from around 10 million (2010) on average per day to less than 5 million (2019) - ABC/Ofcom analysis

¹⁴ BBC News, [How the BBC News website has changed over the past 20 years](#), November 2017. ONS, [Dataset: Internet access – households and individuals, 1998-2004](#)

¹⁵ BBC, [Annual Plan 2021/22](#), March 2021

¹⁶ Ofcom, News Consumption Survey, 2020. Figures are pre-pandemic.

¹⁷ Press Gazette, [National press ABCs: Reach Sunday circulations lower than in April 2020 lockdown](#), May 2021.

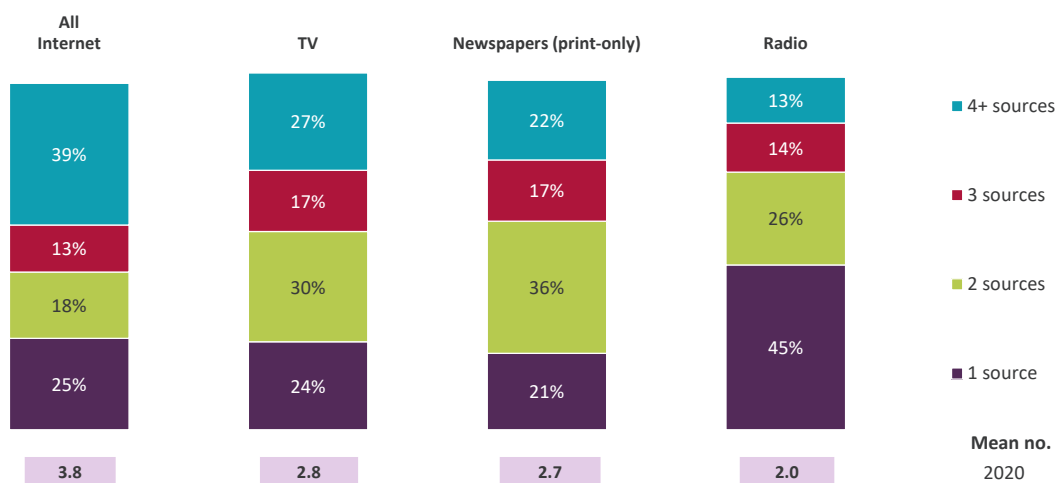
not all who clicked to access the site will have been able to read the content on it. Some online-only news titles have also seen growth in recent years; reach to The Independent grew from 41% of online adults in April 2017 to 55% by March 2021.¹⁸

The ways in which people access and engage with news has also changed

2.15 It’s not just where people are getting their news from that has changed, but also how they get it. From our research, we know that the way people find and consume news online is different from the way they might do it when watching TV news or reading a print newspaper.

2.16 Firstly, people who use the internet for news are more likely to use a larger number of different news sources (multi-source) than those who use other platforms. In 2020 nearly four in ten (39%) of those who used the internet for news used four or more online sources, compared to the 27% of those who used TV for news using four or more TV sources.¹⁹

Figure 2: Number of individual sources used 2020 - by platform



Source: Ofcom News Consumption Survey 2020. Question: D2a-D8a. Thinking specifically about <platform>, which of the following do you use for news nowadays? Base: All using each platform for news 2020 All internet=2949, TV=3456, Newspapers=1594, Radio=1975 Note: Columns do not sum to 100% as some respondents did not name specific sources within a platform (zero sources)

2.17 Secondly, the introduction and use of intermediaries has changed how people both find and engage with news. These services help people navigate the wealth of information available online, often using algorithms to select content that may be relevant to users based on what they know about that user. Social media platforms, search engines and news aggregators now play an important role within the news consumption journey. In

¹⁸ Comscore MMX Multi-platform, age 18+, Mar & April 2017 & Mar 2021, UK. Note: March 2017 data on The Independent is unavailable.

¹⁹ Ofcom, News Consumption Survey, 2020

2020, 45% of UK adults said they used some form of social media for news. A third of UK adults said they use Facebook for news, while 15% reported that they use Google search for news. In addition, almost all smartphones now have a news aggregator pre-installed on them, such as Apple News on iPhones, Uday on Samsung devices and Google News on some other Android devices. News aggregators such as these were used by more than one in ten UK adults (13%) in 2020.²⁰

- 2.18 Our data shows that intermediaries have become a common route to news consumption. In addition, those who consume news on social media reported that they were more likely to mostly get their online news from ‘posts’ (42%) than mostly direct from news organisations’ websites or apps (29%), reflecting the growing influence of social media on what and how news is consumed.²¹
- 2.19 Finally, we have seen in our qualitative research on news consumption that consumer engagement with news content online, particularly on smartphones, tends to be passive. On social media, news may be consumed incidentally as part of a broader feed, and our research indicates that people tend to skim-read news headlines online, rather than clicking on articles to read them in full.²²

These changes present new challenges to ensuring media plurality

- 2.20 These changes to what news is provided, what news is consumed and how people access and engage with it have brought potential benefits, such as providing opportunities for online news sources to reach new audiences, and providing alternative portals through which consumers can easily access news content that is relevant to them. But they also present a range of challenges to the existing regulatory framework for media plurality.

The growth of online news challenges our ability to consider media plurality

- 2.21 The ability to identify and assess changes to media plurality is critical to Ofcom’s duties and responsibilities with respect to media plurality. But the introduction of online intermediaries, and the lack of transparency as to the algorithms they use to serve news, has made this role much harder by challenging our ability to measure accurately what news people are consuming, and to understand the significance and influence of different news sources.
- 2.22 Industry metrics (such as Comscore, BARB, RAJAR) allow us to measure the consumption of news sources when they are accessed directly via the original source. News accessed via intermediaries cannot be measured or captured in the same way. Market research studies also allow us to measure the consumption of news sources through respondents self-reporting their news consumption habits. But our research suggests that when people consume news incidentally on social media or news aggregators, they are less aware of the

²⁰ Ofcom, News Consumption Survey, 2020

²¹ Ofcom, News Consumption Survey, 2020

²² Revealing Reality for Ofcom, [BBC News and Current Affairs review: Observing real news and behaviours](#), October 2019

original source of the news story they read or watch, potentially making it difficult for research respondents to accurately recall and report the news sources they engage with online.²³ We therefore face new challenges in tracking and attributing the use and significance of different sources of news.

- 2.23 In addition, we also face a challenge in understanding who or what influences the news content that is surfaced to consumers via intermediaries, and on what basis. Given that algorithms control much, but not necessarily all, of the online news to which consumers are exposed via intermediaries, the use of algorithms presents a particularly significant challenge to understanding media plurality.
- 2.24 Not only has the shift online made it more difficult to measure and to assess plurality, but it has also potentially created new plurality concerns, or exacerbated existing ones – which makes it even more important to address our reduced ability to assess plurality accurately. Below we set out how the challenges to news sustainability and the transparency challenges consumers face online may both lead to potential plurality concerns that increase the need for accurate measurement and assessment.

Challenges to news sustainability raise the importance of measuring plurality

- 2.25 The shift in advertising spend from traditional media to online has created sustainability challenges for news providers. Substantial revenues from classified advertising, for example, have diminished with little offsetting reduction in cost. News providers have updated their business models in various ways in response, for example through digital subscriptions or donation models, but have not been able to close the revenue gap. This issue was well covered in the Cairncross Review.²⁴
- 2.26 As news providers' ability to earn revenue by selling a bundle of news in the form of print newspapers has declined, they have grown increasingly reliant on selling advertising space alongside news articles online, or online subscriptions. Given the wealth of alternative content sources online, news providers have found it more challenging to attract advertising spend. In addition, intermediaries have facilitated the spread of consumer attention across a wide range of news sources, making it harder for news providers to build brand loyalty and increasing their reliance on earning revenue from visits to individual articles on their website. The Reuters Institute's 2020 Digital News Report indicates that only 7% of UK online adults pay for online news, while 50% of those who don't pay say that there is nothing that would persuade them to do so.²⁵
- 2.27 The shift towards online advertising has also created new opportunities to use data to target advertisements more effectively at consumers. This may further exacerbate news

²³ Revealing Reality for Ofcom, [BBC News and Current Affairs review: Observing real news behaviours](#), 24 October 2019. For more on news brand attribution online, please see: Kalogeropoulos A, Fletcher R, Nielsen RK. [News brand attribution in distributed environments: Do people know where they get their news?](#) *New Media & Society*. 2019;21(3):583-601.

²⁴ *The Cairncross Review: A sustainable future for journalism*, DCMS, February 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DC_MS_Cairncross_Review.pdf See in particular chapter 3, p.39.

²⁵ Reuters Institute, [Digital News Report 2020](#), June 2020.

providers' ability to raise advertising revenue, particularly where they do not have access to sufficient data to target users as effectively as other online content providers. For example, they may lack transparency over how consumers interact with their content when it is consumed on other platforms. When their content is consumed via an intermediary, it is the intermediary that collects the user data in the first instance. News providers are then reliant on the amount of user data that the intermediary chooses to share with them. If this information is not shared in full, news providers may be prevented from gaining the insights they might need in order to engage and to maintain audiences, to target advertising on their own websites or to understand the value of their product.

Challenges faced by consumers add to the importance of measuring plurality

- 2.28 The shift to online news provision and consumption may have increased exposure to inaccurate and untrustworthy news and created a more significant challenge for consumers in terms of discerning accuracy, trustworthiness, and impartiality. Both developments could cause plurality concerns if the impact of inaccurate and untrustworthy news becomes disproportionate.
- 2.29 While disinformation and misinformation are not new problems, the internet has accelerated how fast and far false information can spread, which increases the likelihood that consumers will be exposed to inaccurate and untrustworthy news.
- 2.30 While most people think critically about the information they see online, therefore mitigating the risks of this exposure, our research shows that as many as one third of adult internet users said they believed that all or most of the information they found online was truthful.²⁶ We also found that when people consumed news incidentally online – when scrolling through social media or news aggregators for instance – they focused primarily on the headline and paid less attention to the source of the news story.²⁷ These findings could present implications for media literacy, as identifying a news source is important in making judgments about partiality, accuracy and reliability, while also raising the risk that exposure to false information online could present concerns about the impact and influence of inaccurate and untrustworthy news.
- 2.31 The ways in which consumers access news may also raise concerns about impact and influence. When accessing news through intermediaries, it may be difficult for some consumers to understand why they see the news stories they do, particularly when the content is surfaced by algorithms, and the basis on which certain stories or sources are given prominence is not clear. This lack of transparency may have implications for how consumers consider or trust different sources. In addition, where algorithms look to engage users by serving like-minded content, reducing the variety of opinions to which consumers are exposed may raise further concerns about the relative impact and influence of different news sources.

²⁶ Ofcom, Adults Media Literacy Tracker, 2020/21

²⁷ Revealing Reality for Ofcom, [BBC News and Current Affairs review: Observing real news and behaviours](#), October 2019

The wider context presents a timely opportunity to consider the challenges we face in assessing media plurality

- 2.32 The overview above sets out the changes that have taken place that require us to explore where there are potential concerns for plurality that cannot be addressed by the existing regulatory framework. In addition to these changes, the wider context provides further reasons as to why it is beneficial to re-examine the existing regulatory landscape.
- 2.33 The 2019 Cairncross Review into press sustainability made a number of recommendations with implications for Ofcom's approach to media plurality. Included within these was a recommendation that codes of conduct between online platforms and news publishers were developed. Ofcom is now working with the newly-created Digital Markets Unit (DMU) to consider how a code of conduct could govern the relationships between platforms and content providers, such as news publishers, including considering whether these relationships are as fair and reasonable as possible.
- 2.34 Beyond the UK context, the global nature of these companies and their impacts means that many others are also considering similar challenges to those we have highlighted above. In 2018, the Council of Europe produced a set of recommendations on media plurality which encouraged member states to re-examine existing approaches to media plurality, given the challenges presented by the growth in online news, and among other things, to work to build a comprehensive picture of how intermediaries affect media pluralism.
- 2.35 Since then, a range of governments and regulatory bodies have taken steps to rethink approaches to media plurality and the news market. In some cases, these examples are considering the balance of payments between platforms and publishers, such as the Australian News Media Bargaining Code, and the French transposition of the EU Copyright Directive. In other cases, developments have focused on expanding the regulatory framework to bring intermediaries into scope, such as in the case of Germany's Interstate Media Treaty.
- 2.36 The developments taking place elsewhere may offer learnings for our own next steps on media plurality within the UK. In addition, while other countries are in the process of developing their own approaches to future regulation of media plurality, we note that this provides us with a key opportunity to continue to shape the international conversation around media plurality, and to identify approaches that will work to the benefit of plurality and democracy within the UK.

Equality Impact Assessment

- 2.37 The objective of a plural media sector is to ensure that citizens are able to access a wide range of views in order to make informed decisions. It would be counterproductive if some aspect of the media ownership rules unfairly restricted the access of certain citizens, or groups of citizens, to varied, high quality media.
- 2.38 Where our research has shown differences in news consumption habits, for example between older and younger audiences, we have taken this into account in the analysis that

follows. Furthermore, the media ownership rules themselves contain provisions to ensure plurality is considered in terms of the individual nations and regions of the UK, and the regional Channel 3 licences.

- 2.39 There are also provisions relating to religious bodies, which we have considered in the light of our duties.
- 2.40 Our recommendations seek to secure an appropriate level of plurality, which tends to reduce inequality in the representation of perspectives between different groups by securing the provision of television and radio services catering for a range of views. Therefore, we do not consider that our proposals will have a negative impact on any groups with protected characteristics, and may indeed promote equality.
- 2.41 We invite stakeholder views on whether any additional equality or inclusivity issues arise which we should take into account.

3. Call for Evidence on the issues raised by the market context

The purpose of this Call for Evidence

- 3.1 Ofcom is required, in carrying out its principal duty²⁸, to secure various ends including the maintenance of a sufficient plurality of providers of TV and radio services, and the provision of a wide range of TV and radio services that are of high quality and calculated to appeal to a wide variety of tastes and interests.²⁹ Ofcom also has a general power to do anything which appears to us to be incidental or conducive to the carrying out of our functions.³⁰
- 3.2 In light of our general duties in relation to media plurality, and given the importance of media plurality to a well-functioning democracy, we consider that it is necessary for Ofcom to explore whether the changes to the market context outlined above may create potential concerns for plurality that cannot be addressed by the existing regulatory framework. The purpose of our Call for Evidence is therefore to enable us to:
- understand better the key features of the news media landscape and news consumption within the UK, including their potential impact on plurality; and
 - consider whether updates to the media plurality regulatory framework should be recommended to Government.

The focus of this Call for Evidence

- 3.3 To inform our thinking on the next steps for media plurality in the UK, we are seeking views on three specific features of the news media landscape. We have identified the first two areas on the basis that they are key to our ability to measure news consumption and to identify potential plurality concerns. We have identified a third area on the basis that changes to the wider market context may have increased the need to consider plurality concerns outside the context of a specific media merger.

1) Online intermediaries

- 3.4 Search engines, social media and news aggregator apps or websites often play an important role as intermediaries between consumers and news content creators. They can help people navigate through the vast amount of content available online in one place, drawing from a wide set of news sources that the user may not otherwise be aware of.

²⁸ Pursuant to section 3(1) of the Communications Act 2003, Ofcom's principal duty is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

²⁹ Section 3(2)(c) & (d) of the Communications Act 2003.

³⁰ Section 1(3) of the Communications Act 2003.

Enabling access to a range of different news sources may be seen as positive for media plurality.

- 3.5 However, this role presents several potential media plurality concerns. First, intermediaries pose a challenge to the business models of traditional media, with implications for their financial sustainability, and which in turn could lead to increased consolidation and market exit. Secondly, intermediaries control consumer exposure to news creators' content on their platform, potentially limiting user access to (and consumption of) diverse viewpoints and news content. It may not be clear to the consumer on what basis the content they are served is curated and prioritised. Consolidation between intermediaries could exacerbate this concern. Finally, intermediaries challenge our ability to measure media consumption and therefore media plurality. The questions below aim to seek views and information on these and any other areas of potential plurality concern relating to online intermediaries.

We are seeking views and information on:

- The role and impact of online intermediaries on the news consumption journey of UK consumers and the UK news media landscape.
- Whether the role and impact of online intermediaries gives rise to new media plurality concerns; and, if so, how the regulatory framework might be updated to mitigate such concerns.

2) Algorithms

- 3.6 Online news providers and intermediaries often use algorithms, some of which draw inferences from user behaviour, to surface and recommend news content to their users. This means that content recommendations can be tailored according to the user, potentially making it easier for the user to find content they are interested in.
- 3.7 However, where these algorithms are designed to maximise user engagement, this may not always be conducive to supporting plurality. As such, while they can offer convenience to users, algorithms may also limit the diversity of views that consumers are exposed to, which may present plurality concerns if it affects the consumption of quality and accurate news. This impact on news consumption may also have implications for the sustainability of some news media. Finally, the lack of transparency as to the basis on which different algorithms give prominence to different news sources and providers challenges our ability to assess the influence and impact of different news sources. The questions below aim to seek views and information on these and any other areas of potential plurality concern relating to algorithms.

We are seeking views and information on:

- How the algorithms used to recommend news content to UK consumers work in determining the prominence given to different news providers.
- The role and impact of algorithms on the news consumption journey of UK consumers and the UK news media landscape.
- Whether the role and impact of algorithms gives rise to new media plurality concerns and if so, how the regulatory framework might be updated to mitigate such concerns.

3) Market changes

3.8 Under the current regulatory framework, there is no mechanism to assess media plurality issues outside of a merger situation. However, we note that changes to the market, outside the context of a merger, such as market exits, organic growth in market share, or changes to technology or consumers more broadly, can impact media plurality by altering the respective ability of different players to influence audiences and the wider news agenda. The questions below aim to seek views and information on these and any other areas of potential plurality concern relating to market change outside the context of a merger.

We are seeking views and information on:

- The role and impact of market change, outside the context of a merger, on the news consumption journey of UK consumers and the UK news media landscape.
- Whether the role and impact of market change, outside the context of a merger, gives rise to new media plurality concerns, and if so, how the regulatory framework might be updated to mitigate such concerns.

4) Other areas to consider

3.9 In addition to the three specific features set out above, we are also seeking views on:

- Whether there are other features of the UK news media landscape whose role and impact on the news consumption journey of UK consumers and the UK news media landscape we should consider.
- Whether there are other features which give rise to new media plurality concerns and if so, how the regulatory framework might be updated to mitigate these concerns.

Our next steps

3.10 The purpose of our Call for Evidence is to explore the impact of changes to the market on media plurality in the UK, and to support our general media plurality duties. Depending on the evidence and views provided by stakeholders, we may use the findings in a range of ways, including sharing our findings with industry and with stakeholders, and/or recommending changes to the media plurality regulatory framework for consultation.

- 3.11 We will co-ordinate our next steps following the Call for Evidence with other areas of Ofcom's work and duties as appropriate. For example, we recognise that some of the issues that stakeholders may raise as part of this process may be more appropriately addressed by other areas of our work such as our regulation of harmful online content, our media literacy duties or our work with the CMA/non-statutory DMU.
- 3.12 We will also work to ensure that we take a consistent approach to media plurality across the relevant parts of our work, including the next steps following this Call for Evidence, our recommended updates to the Media Ownership Rules, and our work on the DMU.

4. Our Review of the Media Ownership Rules

Legislative Background

- 4.1 As outlined above, Ofcom has a statutory duty under section 391 of the Communications Act 2003 to carry out regular reviews of the operation of the media ownership rules and to report on each review to the Secretary of State.
- 4.2 Ofcom is required to review the following rules that Parliament has put in place:
- 1) the **National Cross-Media Ownership Rule**³¹, which prohibits a newspaper operator with 20% or more of the national market share for print newspapers from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%. The holder of a Channel 3 licence is also prohibited from holding an interest of 20% or more in a large national newspaper operator (i.e. an operator with national market share of 20% or more).
 - The Secretary of State has a broad power to amend or repeal this rule.
 - 2) the **Channel 3 Appointed News Provider Rule**³², which requires the regional Channel 3 licensees to appoint a single news provider among them. Individuals or organisations disqualified from holding a Channel 3 licence are also disqualified from being the Channel 3 appointed news provider.
 - The Secretary of State has the power to amend or modify this rule. He may also create an equivalent rule for Channel 5 if he is satisfied that the audience share for Channel 5 is “broadly equivalent” to that of Channel 3.³³
 - 3) the **Media Public Interest Test**³⁴, which allows the Secretary of State to intervene in a merger involving a broadcaster and/or a print newspaper enterprise if certain conditions are met.³⁵ The Secretary of State may decide to issue an intervention notice that identifies a relevant media public interest consideration³⁶, and which triggers a review of whether the merger might result in harm to the public interest, in which Ofcom has a first instance advisory role.
 - In relation to this rule, the Secretary of State has narrow powers to³⁷: redefine “broadcasting” or “newspaper”; add new media public interest considerations or modify the existing ones; and/or redefine the conditions for a “special merger

³¹ [Schedule 14](#) of the Communications Act 2003.

³² [Section 280](#) of the Communications Act 2003.

³³ [Section 283](#) of the Communications Act 2003.

³⁴ [Part 3](#) of the Enterprise Act 2002.

³⁵ A merger will meet these conditions if it creates a “relevant merger situation” or “special merger situation” in accordance with sections 23 and 59(3) of the Enterprise Act 2002.

³⁶ The existing media public interest considerations are set out in section 58 of the Enterprise Act 2002 and include, among others, the need for a “sufficient plurality” of views in print newspapers, and of persons with control of broadcasting and print newspaper enterprises. The Secretary of State may however intervene in a merger on grounds not yet set out in section 58, as long as he lays legislation before Parliament to add the new consideration.

³⁷ See sections 44(11), 58(3) and 59(6A) of the Enterprise Act 2002.

situation”, which allows mergers that are too small to trigger competition merger control assessment to still be looked at for public interest purposes. The Secretary of State may also make orders amending other aspects of the media public interest test framework, but Ofcom does not have a duty to advise on this.

- 4) the **Disqualified Persons Restrictions**³⁸, which are a series of restrictions on certain entities holding broadcasting licences and that we consider are primarily to prevent undue influence over broadcasting services:
 - (a) Religious bodies are prohibited outright from holding licences for Channel 3, Channel 5, national sound broadcasting and multiplexes. For other licence types, Ofcom is given discretion³⁹ to determine if it is appropriate for a religious body to hold a licence.
 - (b) Advertising agencies are prohibited from holding any broadcast licences.
 - (c) Political bodies, such as political parties or issue-groups, are prohibited from holding any broadcast licences.
 - (d) Local authorities are disqualified from holding broadcast licences except to operate a broadcast service solely to provide information on their functions and services within their area.
 - (e) Bodies which receive more than 50% of their funding from UK public funds (examples include government agencies or advisory bodies and some museums) are disqualified from holding most radio licences but are permitted to hold all types of TV licences.
 - (f) The BBC, Channel 4 Corporation and S4C are prohibited from holding Channel 3 and Channel 5 licences.
 - (g) General disqualification on grounds of undue influence.
 - (h) Analogue community radio licences⁴⁰ may only be held by bodies corporate and cannot be held by those holding certain other kinds of broadcast licence.
- The Secretary of State has a power to modify or repeal both the outright prohibition on religious bodies and the requirement for Ofcom to exercise discretion in relation to religious bodies. He also has the power to amend the provisions specific to analogue community radio licences.

4.3 Taken together, the media ownership rules are intended to protect the public interest by promoting plurality and preventing undue influence by any one, or certain types of, media owner.

4.4 The rules focus heavily on plurality as delivered to UK consumers by newspapers and broadcasters, and the ownership of those means of content distribution. There is a

³⁸ [Schedule 2 of the Broadcasting Act 1990](#).

³⁹ [Schedule 14, Part 4 of the Communications Act 2003](#).

⁴⁰ The [Community Radio Order 2004](#) (SI 2004/1944).

particular focus on Channel 3, which at the time that the framework was devised was by far the most important provider of national television news after the BBC.

- 4.5 The media ownership rules were put in place incrementally through a series of different pieces of legislation⁴¹, and the current framework was set out in the Communications Act 2003. At the time of setting the current framework, the Government acknowledged the fast-moving nature of communications markets and that the need for ownership rules may reduce over time; the Government therefore indicated that it was “determined to be as deregulatory as possible” and introduced Ofcom’s statutory duty to review, at least every three years, the operation of these rules and report to the Secretary of State on its conclusions⁴². This duty includes making recommendations as to whether the Secretary of State should use any of his specific powers to change them.
- 4.6 Following the publication of our most recent review of the media ownership rules published in November 2018 (the “2018 Review”)⁴³, Ofcom is now publishing this consultation document in connection with the discharge of its duty to conduct a further review in 2021.

The 2021 review of the rules

- 4.7 In the 2018 Review, we highlighted that the existing rules had not evolved to take account of the growth of online platforms either in terms of providing access to news and current affairs, or in terms of the media plurality concerns that could arise in relation to online platforms.
- 4.8 Given the policy and regulatory uncertainty at the time of our last review, we considered that it was not an appropriate time to recommend significant changes to the media ownership rules, although we noted our view that the media ownership regime will need to be “fundamentally reviewed” once the shape of any Government intervention was clearer.⁴⁴
- 4.9 Having undertaken a new review of the current media ownership framework, we now provisionally conclude that it is appropriate to recommend changes to some of the existing rules to broaden the scope of that which is captured within the existing media public interest test framework, and to remove certain restrictions on holding broadcast licences that no longer seem necessary, including the discretionary prohibition for religious bodies, the prohibition on advertising agencies and the prohibition on publicly-funded bodies. We are seeking views on these proposed recommendations from stakeholders.

⁴¹ The first rule to be introduced was the advertising agency restriction in the Television Act 1954.

⁴² See Section 9 of [The Draft Communications Bill – The Policy](#).

⁴³ *The operation of the media ownership rules listed under Section 391 of the Communications Act 2003*, Ofcom’s Report to the Secretary of State, November 2018: https://www.ofcom.org.uk/data/assets/pdf_file/0030/127929/Media-ownership-rules-report-2018.pdf

⁴⁴ See paragraphs 1.12 and 3.14 of the [2018 Review](#). At the time of our 2018 Review, the Government had not yet published the [Online Harms White Paper](#) setting out its plans to tackle harmful and illegal content, or the [Cairncross Review](#) considering the relationship between online platforms and news publishers, and whether Government intervention was needed to ensure the sustainability of high-quality journalism.

- 4.10 At this stage, however, we provisionally consider that, whilst there are certain limitations, the national cross-media ownership and appointed news provider rules still play an important role within the current framework in securing a certain level of plurality and scale beyond the BBC, and in limiting the potential for a significant newspaper entity to exert undue influence. We also provisionally consider that the restrictions relating to the non-discretionary prohibition for religious bodies, the prohibitions for political bodies and local authorities, and the BBC, S4C and Channel 4 Corporation should remain.

We consider that the current rules relating to Channel 3 and newspapers continue to support the public interest by promoting plurality and helping to prevent undue influence

- 4.11 When the national cross-media ownership rule and the Channel 3 appointed news provider rule were first introduced in their current form in the 1990s⁴⁵, television and newspapers were the most influential and widely consumed types of media, and news providers were also limited in number. At the time, Channel 3 was by far the most important provider of television news after the BBC. Parliament’s intention in putting in place these rule was to secure a level of plurality in the news market beyond the BBC, and to prevent the potential for a consolidated news entity exerting undue influence over Channel 3 (and in the news market generally).

National cross-media ownership rule

- 4.12 The national cross-media ownership rule prevents large newspaper groups with at least 20% of the national market share⁴⁶ from owning a stake in Channel 3 that is greater than 20% (including outright control). It also prevents the holder of a Channel 3 licence from holding an interest of 20% or more in a large newspaper group.
- 4.13 The rule focuses on Channel 3 providers and print newspaper proprietors but, as presently formulated, does not take account of the use of online news sources by consumers. Given the changes in consumption of news in the UK that we have described in section 2, we have considered whether restrictions on Channel 3 licensees and newspapers are still needed, and whether there is merit in recommending changes to the cross-media ownership rules relating to Channel 3 at this stage.
- 4.14 Although the reach of television news services and print newspapers has declined over time, they remain important sources in terms of their ability to reach and influence a wide audience across the UK. In 2020 TV remained the most-used platform overall for news reaching 75% of the population (rising to 77% when TV news viewed online was considered).⁴⁷ TV remained the most common platform for accessing local news, with 58% of adults who follow news using TV sources to access local news. TV was also the most

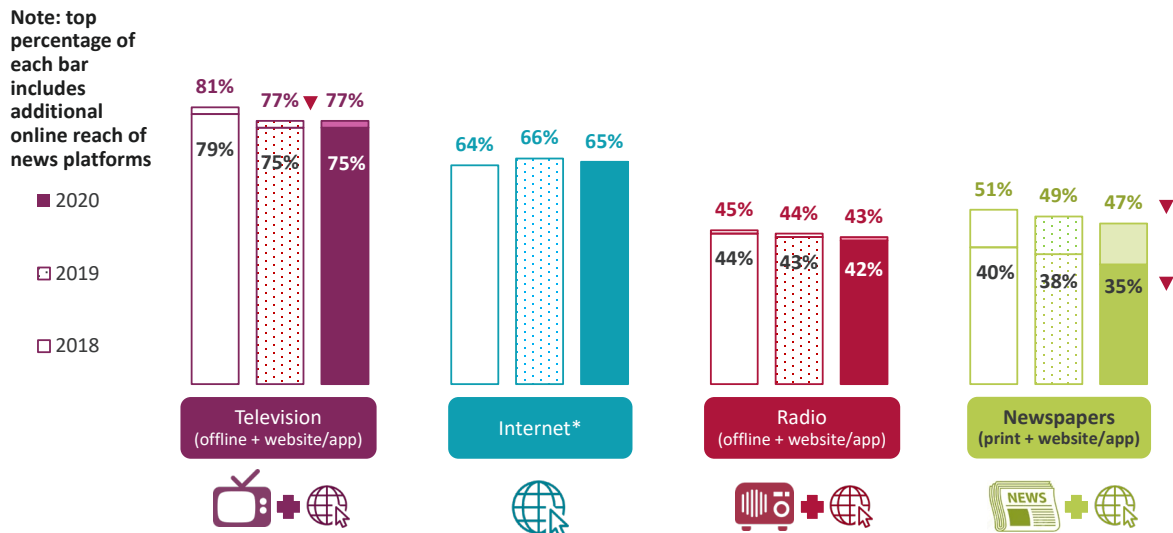
⁴⁵ The precursor to the appointed news provider rule dates back to the Broadcasting Act 1981.

⁴⁶ It appears to us that in 2020 only DMGT and News UK had shares of print news consumption greater than 20%.

⁴⁷ There are some exceptions by demographic: 16-24s are more likely to use the internet for news than TV (79% vs. 49%), as are minority ethnic groups (74% vs. 65%). By contrast, those aged 65+ remain more likely to use more traditional platforms for news, including TV, radio and print newspapers.

common platform for adults in Scotland, Wales and Northern Ireland to access news about their own nations.

Figure 3: Main platforms used for news nowadays



Source: Ofcom News Consumption Survey 2020

Red triangles indicate statistically significant differences since 2018

Question: C1. Which of the following platforms do you use for news nowadays?

Base: All Adults 16+ - 2020=4576, 2019=4691, 2018=4618

*Internet figures include use of social media, podcasts and all other websites/apps accessed via any device

(NB: A question on podcasts was included for the first time in the 2020 research)

4.15 Within this overall context, the Channel 3 licences remain important in terms of their ability to reach and influence a wide audience across the UK. The news services provided by the holders of the Channel 3 licences, ITV and STV, remain important TV news services; on average they reached 34% of UK adults each week in 2020.⁴⁸ For many it is an important source of local news and news in the nations; 32% of adults who follow news used regional or local broadcasts on ITV, ITV Wales, STV or UTV for local news in 2020.⁴⁹ In Scotland, STV was the joint most popular news source, as was UTV in Northern Ireland (both alongside BBC One) while in England and Wales, ITV and ITV Wales respectively were the second most popular news sources (behind BBC One). ITV was seen as a highly trustworthy and accurate source by 71% of its regular users for news.

4.16 At the same time, despite the rise of online news consumption and the consequential decline in print circulation, we do not believe that the wider influence of the largest

⁴⁸ BARB, Network. Network programming based on 4+ area filter. Genre = national/international news. Channel includes +1 variant. Reach criteria = 3 consecutive minutes. Full weeks used for the correct calculations of weekly averages.

⁴⁹ Ofcom, News Consumption Survey, 2020.

newspaper groups has materially reduced, particularly amongst those that have also established the most significant online presences. These include those newspaper groups of scale that Parliament was concerned about when the rule was first introduced. We also consider that the ability of newspapers to influence which issues are considered important by the public and which are not, and to influence which issues the wider media focuses on, extends their influence beyond their immediate readers.

- 4.17 Although print readership has declined, with only 35% of UK adults getting their news from print newspapers in 2020, most have an online presence now, and when combined with their online readership, newspaper titles reached around half (47%) of UK adults⁵⁰. The largest Newspaper groups such as News UK and DMGT have established a significant online presence and remain significant voices. Whilst this remains the case, and the largest providers continue to operate both print and online operations, in the absence of an agreed metric for online consumption, we consider that share of print still captures most of the potential risk of consolidation between Channel 3 and a large newspaper group.
- 4.18 Any consolidation between the largest commercial news providers in the UK (such as ITV, and newspaper groups with over 20% market share, such as News UK and DMGT) would result in a combined entity with a far greater share of news consumption than any of its commercial rivals, increasing the risk that it could exert undue influence and the implications that this would have for plurality in the news market.
- 4.19 For these reasons, we think there is still a good case for securing that Channel 3 remains a distinct voice through some form of cross media ownership rule which should remain an important safeguard to plurality and the position of Channel 3 in the market.
- 4.20 As noted above, Parliament’s intention in putting in place this rule was to secure a level of plurality in the news market beyond the BBC, and to prevent the potential for a consolidated news entity exerting undue influence over Channel 3 (and in the news market generally). We consider that any cross-media ownership rule should continue to balance two policy aims in protecting plurality: ensuring a range and diversity of viewpoints are available in the most prominent sources of news media; and the continued sustainability of Channel 3. The first is important for democracy because it helps encourage healthy debate. The second benefits citizens by helping the market thrive and deliver higher quality news content.
- 4.21 However, as we have pointed out in previous reviews⁵¹, there are limitations regarding the current scope of the cross-media ownership rule. For example, we acknowledge that:
- i) the focus on ownership by print newspaper groups alone does not capture potential ownership of Channel 3 by other news creators which might also present plurality concerns, such as online news providers;

⁵⁰ Ofcom, News Consumption Survey, 2020.

⁵¹ For example, see *Report to the Secretary of State on the operation of the media ownership rules listed under Section 391 of the Communications Act 2003*, November 2015 (paragraph 3.29):

https://www.ofcom.org.uk/_data/assets/pdf_file/0027/51867/morr_2015.pdf p.17

- ii) the 20% market share threshold does not allow consideration of qualitative factors, such as sustainability of Channel 3, quality and innovation, that may also be relevant when considering a proposed acquisition; and
- iii) the possibility that any of the large newspaper groups that are currently caught by the rule might one day close their print operations, at which point the current rule would cease to function effectively.

4.22 We have therefore considered carefully whether the formulation of the current rule remains appropriate today. Given the increase in online consumption of news, in particular, we have considered whether the rule should be broadened to capture news creators including online news providers, that may also present plurality concerns if they were to acquire shares in Channel 3. This would be particularly relevant were certain online providers to become an important influence not also captured by the share in print media (either because they are online only, or because the print presence is small relative to online presence). We consider that any change of this sort would most likely also require an adjustment to the 20% national market share threshold.

4.23 However, as we have outlined in sections 2 and 3, news consumption online is currently difficult to quantify with precision, due to the role of online intermediaries and algorithms in news consumption. Unlike with traditional forms of news delivery, there are currently no accepted industry metrics for online consumption of news content that is not accessed directly from the original sources. Beyond simple measurement, there are also challenges in understanding how consumers interact with content accessed via online intermediaries and the impact of that engagement.

4.24 We expect that the additional evidence that we are seeking on broader plurality concerns in this document should provide us with further insight that would be necessary to inform any future comprehensive update of the cross-media ownership rule. Until this further clarity is achieved, we consider that the media public interest test (both in its current form and with our recommended changes), continues to operate as an important backstop that would likely capture proposed acquisitions of Channel 3 by media entities other than the print newspapers currently captured by the rule.

Recommendation

4.25 We propose to recommend the retention of the national cross media ownership rule for now. However, we consider that the factors outlined above mean that the longer-term justification for retaining this rule in its current form may become less evident, which mean that it may be necessary to update the rule in the future.

Q1. We are seeking views and supporting evidence on our recommendation that the national cross-media ownership rule should be retained in its current form.

The Channel 3 appointed news provider rule

- 4.26 The appointed news provider rule was introduced by Parliament with a view to furthering plurality in news provision by preventing the individual Channel 3 licensees from appointing individual providers. The requirement for all the Channel 3 licensees to appoint a single provider ensures that news provision by Channel 3 licensees has the scale needed to provide a high-quality service which can compete with the BBC. At the time the rule was introduced, Channel 3 was the largest commercial TV channel in the UK, and therefore had an important role to play in ensuring plurality of news provision. At the time the rule was introduced, the holding of the Channel 3 licences was significantly more fragmented than it is now.
- 4.27 As outlined above, Channel 3 remains an important provider of news as the average weekly reach of ITV News remains significant at 34%, and, as such, it remains a powerful alternative news provider to the BBC.⁵² Absent a requirement collectively to appoint an independent provider, it is possible that one of the Channel 3 licensees would choose to use an alternative provider.
- 4.28 Although overall PSB network spend on first-run news programming increased, in real terms, by 6% in the period from 2017-2019, the economics of broadcast news look likely to come under increasing pressure. For the commercial PSBs, declining broadcast viewing as audiences shift online affects revenues from advertising that cross-subsidise the costs of their news obligations. Regional news bulletins could be more difficult to sustain given the high fixed costs and limited revenue generation compared with national news bulletins.
- 4.29 The current news provider for Channel 3, ITN, is a major wholesale provider of news to public service broadcasters and provides competition to the BBC, Sky and newspaper groups. Since our last review, we have approved the proposed terms of appointment of ITN as the Channel 3 news provider for the period to 2024.⁵³ We considered that the terms of the contract appeared appropriate for securing that ITN's finances will be adequate, throughout the period of its appointment, to ensure that the Channel 3 news obligations are capable of being met.⁵⁴
- 4.30 Our view is that the appointed news provider rule still works to guarantee a degree of plurality in wholesale news provision at scale. Any reduction in wholesale provision at scale, which could be a consequence of removing the rule, would diminish an alternative broadcast voice to the BBC and reduce the range and diversity of voices in the UK news media landscape. Eroding wholesale provision at scale which is independent of the BBC may also have wider implications in securing quality news for Channel 4 and Channel 5, who currently are also served by ITN.

⁵² BARB, Network. Network programming based on 4+ area filter. Genre = national/international news. Channel includes +1 variant. Reach criteria = 3 consecutive minutes. Full weeks used for the correct calculations of weekly averages.

⁵³ <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/tv/c3-news-provider>

⁵⁴ Channel 3's news obligations are set out in sections 279 and 280 of the Communications Act 2003.

Recommendation

- 4.31 We propose to recommend the retention of the appointed news provider rule for now. As with the cross-media ownership rule, if the consumption and influence of print newspapers and TV broadcast news continues to decline, we consider that the longer-term justification for retaining this rule in its current form may become less evident.
- 4.32 We are also required to consider whether an appointed news provider rule should be introduced for Channel 5. The Secretary of State has a power to create a similar regime for Channel 5, if he is satisfied that the audience share of Channel 5 is broadly equivalent to that of Channel 3 services. Based on analysis of average weekly share, Channel 5's audience share of TV viewing remains much smaller than that of Channel 3 services⁵⁵, and therefore we do not propose to recommend that this power is exercised at this time.

Q2. We are seeking views and supporting evidence on our recommendation that the appointed news provider rule should be retained in its current form.

The Media Public Interest Test

We consider that the Media Public Interest Test continues to act as an important backstop but that its scope should now be expanded

- 4.33 The Media Public Interest Test (PIT)⁵⁶ allows intervention by the Secretary of State, at his discretion, in certain qualifying media mergers.⁵⁷ He may intervene on “existing” public interest grounds that are currently specified in legislation, but also has the power to specify new grounds, or remove or amend existing grounds (including after a merger has taken place). Any new grounds must be confirmed by Parliament. The existing grounds cover mergers involving newspaper (print only) and/or broadcast enterprises.⁵⁸ An intervention triggers a review to consider whether there is any adverse effect on the public interest.

⁵⁵ BARB 2020 share of broadcast viewing on the TV set (excluding +1 channels): Channel 3 = 16%, Channel 5 = 4%

⁵⁶ The Media PIT in its current form was introduced by the Enterprise Act 2000 and was based on an earlier iteration in the Monopolies and Mergers Act 1965 which allowed only for ex ante scrutiny of mergers on “public interest” grounds.

⁵⁷ A merger will meet these conditions if it creates a “relevant merger situation” or “special merger situation” in accordance with sections 23 and 59(3) of the Enterprise Act 2002. In summary, a merger creates a “relevant merger situation” if: two or more enterprises have ceased or are proposed to cease to be distinct and where either the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test); and / or the merger would result in the creation or enhancement of at least a 25% share of supply of goods or services of any description in the UK or in a substantial part of the UK (the share of supply test). In a “special merger situation”, the Secretary of State may intervene where two or more enterprises have ceased or are proposed to cease to be distinct and one of the merging parties has an existing 25% or more share of the supply of newspapers of any description or broadcasting of any description in the UK or in a substantial part of the UK.

⁵⁸ Our review of the media ownership rules must consider this regime so far as it relates to such interventions “in connection with newspapers or other media enterprises”. An enterprise is a “media enterprise” if it “consists in or involves broadcasting” (section 58A(1) of the Enterprise Act 2002, with “broadcasting” defined in section 44(9) as covering both television and radio). A “newspaper enterprise” is defined as an enterprise consisting in or involving the supply of newspapers, which is a “daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the UK or in a part of the UK” (section 44(10)).

- 4.34 The existing media public interest grounds for referral under section 58 of the Enterprise Act 2002 include:
- i) **sub-section (2A)(a) & (b):** The need for accurate presentation of news and free expression of opinion in newspapers.
 - ii) **sub-section (2B):** The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the UK (or a part of the UK).
 - iii) **sub-section (2C)(a):** The need, in relation to every different audience in the UK (or in a particular area or locality), for there to be a sufficient plurality of persons with control of the media enterprises serving that audience.
 - iv) **sub-section (2C)(b):** The need for the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests.
 - v) **sub-section (2C)(c):** The need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.
- 4.35 Since our last review, the Secretary of State has referred to Ofcom the acquisition by International Media Company of shares in Lebedev Holdings Ltd and International Digital News and Media,⁵⁹ and the acquisition by the Daily Mail and General Trust of JPI Media Publications Limited including the 'i' newspaper.⁶⁰
- 4.36 The rationale for the Media PIT has not changed since our last review. We consider that the Media PIT continues to play an important backstop role in securing media plurality. In addition to helping to secure plurality, it also helps to prevent undue influence and ensure that media enterprises operate in the public interest more broadly. It allows the Secretary of State to intervene in media mergers without negatively impacting the relevant industries through specific restrictions and allows him to take into account factors other than competition issues which may be relevant to the merger, such as the maintenance of quality, accuracy and free expression of opinion in the UK news media.
- 4.37 However, the way in which the Media PIT is currently formulated only covers mergers involving broadcasters or print newspaper enterprises. It does not currently set out grounds of public interest concerns that could arise through transactions involving news providers that do not meet the statutory definitions of broadcasters or print newspapers. For example, a transaction involving two traditional print or broadcast news providers

⁵⁹ *Public interest test on the completed acquisitions by International Media Company of shares in Lebedev Holdings Limited and by Scalable Inc of shares in Independent Digital News and Media Limited*, Ofcom's advice to the Secretary of State, August 2019: <https://www.gov.uk/government/publications/ofcom-report-to-dcms-lhm-and-idnm-21-august-2019>

⁶⁰ *Public interest test on the completed acquisition by Daily Mail and General Trust plc of JPI Media Publications Limited and thus the 'i' newspaper*, Ofcom's advice to the Secretary of State, March 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/959571/20200324_Ofcom_advice_FINAL_to_SoS_Redacted_V2.pdf

could be considered under the existing considerations, but any remedies would need to be linked to the concern identified in relation to their print and broadcast activities, and may not be able properly to address any issues arising in relation to online services of the same providers.

- 4.38 Considering this, we have considered whether there may be justification for expanding the Media PIT to capture a broader range of news creators.
- 4.39 We have outlined above that 65% of UK adults consumed news online in 2020. As we have noted in recent public interest tests that we have undertaken⁶¹ we are concerned that a narrow assessment of plurality in the context of mergers involving print newspapers and broadcasters no longer reflects the reality of the way in which citizens access and consume news.
- 4.40 We are also of the view that, as well as including online news providers, there are reasons for extending the grounds to cover wholesale news providers (such as ITN) as they currently fall out of scope for referral. As the news value chain is becoming more complex, we think that provisions should be put in place to capture news providers up-stream of retail news provision and their potential exercise of editorial control over content and consumers. We also propose that these grounds should encompass magazines, with a news and current affairs focus, both print and online, that meet the jurisdictional thresholds as we consider that they are an important voice in providing a wider plurality of views in news and current affairs, and in content and editorial position can perform a similar function to newspapers.
- 4.41 We note that the question of whether the Media PIT should be expanded to capture mergers involving online news platforms generally was also raised through the Digital Markets Taskforce, which concluded in its advice to Government⁶² that such mergers “may also give rise to concerns that may not be capable of being addressed within the existing bases for public interest interventions in merger cases”; and that “more work [was] needed to establish whether such concerns are better addressed by updating the media plurality framework, or as part of the Strategic Market Status⁶³ (SMS) merger control regime”. As set out above, we are of the view that given that we can already identify a broad set of online news creators that might present plurality concerns if involved in certain transactions, this media ownership rules review presents an opportunity to consider changes to the existing PIT grounds.

⁶¹ For example, see paragraph 1.7 of Ofcom’s advice to the Secretary of State on the *Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited*, May 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717994/Ofcom_PIT_TMNS_31052018_redacted.pdf.

⁶² See paragraphs 4.156-4.159 and Appendix F pages F34-F38 of *A new pro-competition regime for digital markets*, Advice of the Digital Markets Taskforce, December 2020: <https://www.gov.uk/cma-cases/digital-markets-taskforce>

⁶³ In its advice to Government, the CMA led Digital Markets Taskforce defined SMS as meaning online platforms with substantial, entrenched market power and where the effects of that market power are particularly widespread or significant.

Recommendation

- 4.42 We propose to recommend expanding the scope of certain of the public interest considerations in the Media PIT to allow intervention by the Secretary of State in relation to media mergers involving “news creators” that meet the jurisdictional thresholds, rather than just those involving print newspapers and broadcasters. We consider that public interest grounds that capture a broader range of “news creators” is more reflective of the way in which consumers access and consume news, in line with our observations in Section 2 of this document, and therefore more likely to address the range of media plurality concerns we might have from mergers or acquisitions involving media enterprises other than broadcasters and print newspapers. As we have highlighted above, we also think that wholesale news providers and magazines that have a news or current affairs focus should be captured.
- 4.43 We consider that significant thought will be needed to determine how best to implement this broadening of the scope of the Media PIT within the existing public interest considerations specified in section 58 of the Enterprise Act 2002 (as extracted above at paragraph 4.34). We would welcome views from stakeholders on the initial suggestions we have set out below.

We are consulting on recommending the introduction of a new term: “news creators”, for certain of the public interest grounds.

- 4.44 We believe that a new term is required to replace “newspaper” and “media enterprise” in certain of the public interest grounds, as outlined below. In our view, such a term should be broad enough to encompass all entities who have editorial control over the creation and publishing of news material by journalists, irrespective of platform. This term should continue to capture television and radio broadcasting and print newspapers but should also now capture online news providers. By online news providers, we mean online-only news providers including new providers such as Vice, and traditional sources that have withdrawn from print such as the Independent, as well as the online versions of existing print sources, for example the Daily Mail or Guardian websites. As explained above, we also think that this term should capture wholesale news providers and magazines with a news or current affairs focus, whose activities also consist in, or involve the creation of news.
- 4.45 We think that the term “news creator” is sufficient to capture all these types of news provision, but we welcome stakeholder input on this.
- 4.46 We do not recommend at this stage that online intermediaries (such as Facebook or Twitter) should fall within the scope of this new term. We consider that, were an online intermediary to acquire a large newspaper publisher or significant UK broadcaster, then the transaction would be likely to be a “relevant merger” and the Secretary of State would have jurisdiction to intervene on public interest grounds⁶⁴. We also consider that, should

⁶⁴ Section 23 of the Enterprise Act 2002.

our recommendations be accepted, the acquisition by an online intermediary of a “news creator” would also be caught by the Media PIT if it meets the jurisdictional thresholds. Any further changes to bring online intermediaries more broadly within the scope of the Media PIT should be considered in future media ownership rules reviews.

Q3. We are seeking views on our proposed scope of the term “news creator” and in particular, whether the categories that we have identified as being important to be captured within this new definition are the right ones.

We are consulting on recommending the modification of certain existing public interest considerations to extend these to capture “news creators”.

- 4.47 We consider that an appropriate approach to implementing an expansion of the scope of the Media PIT would be to extend certain of the existing public interest considerations specified in section 58 of the Enterprise Act 2002 to capture this new definition of “news creators”.
- 4.48 We first considered sub-section (2A), which specifies as a public interest consideration the “need for (a) accurate presentation of news; and (b) free expression of opinion; in newspapers”. We suggest that it would be appropriate to:
- i) extend sub-section (2A)(a) to specify “the need for accurate presentation of news **by news creators**”, rather than in newspapers alone. This is because we still consider that accurate presentation of news is an appropriate ground for intervention but, as we have identified above, the definition of newspaper is now too narrow to capture all of the types of entity about which we would have concerns in the case of a merger.
 - ii) remove sub-section (2A)(b), which specifies “the need for free expression of opinion” in newspapers. We consider that any concerns about free expression of opinion can be examined through the lens of internal plurality through the public interest consideration specified in sub-section (2B), which we address below.
- 4.49 We next considered sub-sections (2B) and (2C)(a), which specify public interest considerations specifically relating to the need to maintain sufficient plurality of “views in newspapers in each market for newspapers” and of “persons with control of media enterprises” respectively.
- 4.50 We think that both of these considerations should be retained as they differentiate between “internal plurality” (sub-section (2B)), which covers the range of information and views that are provided within individual news organisations, and, “external plurality” (sub-section (2C)(a)) denoting the number of persons in control of media enterprises. We think that it remains important to continue to be clear that public interest concerns can arise on the basis of internal plurality alone, in cases where a transaction did not necessarily give rise to a change in levels of external plurality. We suggest that it would be appropriate to

extend both of these considerations to capture enterprises falling within our proposed definition of “news creators”, as follows.⁶⁵

- i) extend sub-section (2B) to specify “the need for, to the extent that it is reasonable and practicable, a sufficient plurality of views ~~in~~ **created by** news creators on each of their ~~market~~ **platforms** for ~~newspapers~~ **news** in the UK (or a part of the UK).”
- ii) extend sub-section (2C)(a) to specify “the need, in relation to every different audience in the UK (or in a particular area or locality), for there to be a sufficient plurality of persons with control of the **news creators** ~~servicing that audience on~~ **each of their platforms for news in the UK (or a part of the UK), or across different platforms for news in the UK (or a part of the UK).**”

4.51 Extending these public considerations in this way would enable the Secretary of State to refer mergers on plurality grounds relating to online news provision, as well as for print newspapers and broadcasting. We consider that both considerations should enable Ofcom to examine public interest grounds on a sector by sector as well as an overall level. We suggest replacing “market” with “platform” to make this separation clearer. In the case of section (2B) don’t think it should be tied to competition law market definitions. In the case of (2C)(a) we think that this should cover the cross-platform nature of many of the most significant news creators

4.52 Finally, we recommend that the public interest considerations specified in sub-sections (2C)(b) and 2(C)(c) should remain in their current form. These considerations specify:

- i) “the need for the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests”; and
- ii) “the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003”.

4.53 This is because we consider that the specific references to Ofcom’s general duties in relation to availability and standards in broadcasting⁶⁶ remain relevant and an appropriate ground for intervention.

Q4. We are seeking views on our proposed modifications to the existing public interest considerations specified in section 58 of the Enterprise Act 2002 to extend these considerations to “news creators”.

⁶⁵ The words marked in underlined bold text indicate the suggested insertions, while the words marked in strike-through indicate the suggested deletions

⁶⁶ Section 3(2)(c)-(e) of the Communications Act 2003.

The Disqualified Persons Restrictions

We consider that certain of the restrictions on holding broadcast licences should now be removed

- 4.54 Parliament has put in place a number of specific restrictions, which prevent certain types of bodies from holding some or all broadcast licence types:
- i) Religious bodies⁶⁷ are prohibited outright from holding licences for Channel 3, Channel 5, national sound broadcasting and multiplexes. For other licence types, such as digital television programme services, community radio, digital sound programme services or digital additional sound services, Ofcom is given discretion to determine if it is appropriate for that body to hold a licence.
 - ii) Advertising agencies⁶⁸ and political bodies⁶⁹, such as political parties or issue groups, are prohibited from any holding broadcast licences.
 - iii) Local authorities⁷⁰ are disqualified from holding broadcast licences except to operate a broadcast service solely to provide information on their functions and services within their area.
 - iv) Bodies which receive more than 50% of their funding from UK public funds, such as some universities or museums, are disqualified from holding most radio licences but are permitted to hold all types of TV licences.
 - v) The BBC, Channel 4 Corporation and S4C are prohibited from holding Channel 3 and Channel 5 licences.
 - vi) General disqualification on grounds of undue influence.
 - vii) Analogue community radio services can only be held by corporate bodies, and cannot be held by those holding certain other kinds of broadcast licence.⁷¹
- 4.55 The bodies restricted are generally those which might be expected to have a singular aim or point-of-view on matters of public policy or public controversy, such as political bodies, local authorities, and religious bodies. Such bodies appear to have been viewed by Parliament as either more likely to fail to comply with the expected standards than others or more able to exert undue influence over programming content, particularly in the

⁶⁷A “religious body” includes a body whose objects are wholly or mainly of a religious nature, or certain bodies or individuals affiliated with or controlled by such bodies, as specified in Schedule 2 of the Broadcasting Act 1990.

⁶⁸An “advertising agent” is defined as a person who “carries on business involving the selection and purchase of [Broadcast] advertising time or space for persons wishing to advertise” (section 202(7) of the Broadcasting Act 1990).

⁶⁹A “political body” includes any “body whose objects are wholly or mainly of a political nature”. Section 321(3) of the Communications Act 2003 defines “objects of a political nature” as including objects aimed at influencing or bringing about a change in laws, elections, policies or decisions in the United Kingdom or elsewhere.

⁷⁰A “local authority” includes: in England, the council of a county district or London borough, the Common Council of the City of London and the Council of the Isles of Scilly; in Wales, a county council or county borough council; in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and in Northern Ireland, a district council (Schedule 2 of the Broadcasting Act 1990).

⁷¹Any broadcast licence other than the following: a community radio service; a digital sound programme service; a restricted service; a radio licensable content service; a restricted television service; and a television licensable content service.

context of spectrum scarcity. The restrictions on the BBC, Channel 4 Corporation and S4C are intended to secure plurality in ownership of the public service broadcasters (“PSB”) in the UK.

- 4.56 These restrictions originated in the era of analogue broadcast technology when there were fewer services and consumer choice was limited. Scarcity of spectrum meant limited choice and high levels of consumption of the small number of services that existed at the time. Consequently, the degree of influence that could be exerted through such broadcast services was deemed sufficient to warrant the restrictions that Parliament put in place. When Parliament introduced these rules, different restrictions were placed on different bodies, based on Parliament’s judgement about the types of organisations that might cause concern, such as political parties and religious bodies.
- 4.57 We consider that significantly increased consumer choice and wider availability of spectrum, as well as protections provided by other parts of the regulatory framework mean that we can now recommend the removal of certain of these restrictions. Since these restrictions were introduced, the number of TV and radio services has increased significantly, and most services are now available via digital platforms, such as digital TV, Video-on-Demand and DAB. The greater take-up of these digital platforms has increased consumer choice. Despite the significant increase in choice, our view is that certain categories of “disqualified person” subject to the restrictions on holding broadcast licences, for the reasons set out below, still offer the potential to exert undue influence and should be retained at present.

Recommendations

Religious Bodies: We are consulting on recommending the removal of the discretionary prohibition, and on retaining the non-discretionary prohibition for religious bodies

- 4.58 Religious bodies are currently restricted from holding licences for Channel 3, Channel 5, national sound broadcasting and multiplexes (“non-discretionary prohibition”). For other licence types, Ofcom is given the discretion to determine if it is appropriate for a religious body to hold such a licence (“discretionary prohibition”).
- 4.59 Ofcom understands that the restriction on religious bodies holding broadcast licences dates back to the now repealed Cable and Broadcasting Act 1984 and was retained in Broadcasting Act 1990.⁷² Prior to maintaining these restrictions in the Communications Act 2003, Government sought views on whether the religious bodies restriction should be relaxed, particularly in view of the potential for increased spectrum availability in the future.⁷³ Based on representations it received, Government retained the non-discretionary prohibition for certain types of licence but relaxed the types of licences which religious

⁷² See paragraph 6.49 of *Broadcasting in the '90s: Competition, Choice and Quality: The Government's Plans for Broadcasting Legislation*, Home Office, November 1988 (Cm 517).

⁷³ See paragraph 4.9.2 of *A New Future for Communications: White Paper on the Communications Bill (Cm 5010)*.

bodies were able to hold, subject to Ofcom's approval pursuant to the discretionary prohibition.⁷⁴

4.60 We believe that there is a continued justification for maintaining the non-discretionary prohibition on religious bodies holding the licence types captured by the legislation:

- i) **Channel 3 and Channel 5 licences:** We believe that the scarcity and value of these licences types remains an important justification for the disqualification. The Channel 3 and Channel 5 licences, including associated commercial (non-PSB) portfolio channels, continue to account for a large proportion of linear TV viewing. Audiences trust these services and consume their news programmes in large volumes. Given the scale of consumption and impact they deliver, it is important that these services be, and be seen as being, for everyone.
- ii) **Multiplex licences:** We consider that Multiplex operators have the potential to be important gatekeepers for services wanting to access the DTT or DAB platform, because they have some control over which services they choose to make available to consumers. There are a relatively small number of DTT multiplexes and only two DAB multiplexes at a UK-wide level.⁷⁵ Such control means the potential to exert or be perceived to exert influence. While there are other ways in which the risk of influence can be controlled, for example through the non-discrimination clauses in multiplex licences⁷⁶, Ofcom acknowledges that there is continued merit in the Government's decision to include a specific statutory restriction on the holding of multiplex licences by religious bodies.
- iii) **National sound broadcasting licences:** The restriction on national sound broadcasting licences applies to the three national analogue radio licences, which are currently held by Classic FM, Absolute Radio and Talk Sport. The first two of these have recently been renewed for a further ten years⁷⁷, and the third is eligible to be renewed from the start of next year provided the licensee accepts the financial terms. Although these licences are limited in number, we recognise that there are now other licences available to religious bodies and other applicants to broadcast nationally, for example, through DAB and online radio.⁷⁸ We therefore consider that whilst it could be appropriate for the Secretary of State to consider the case for the removal of the non-discretionary prohibition for national sound broadcasting licences, this would be better done at a stage when the Government's overall position on the future of radio and audio is clearer, or at a point closer to the expiry of these licences.

⁷⁴ See paragraph 9.3.3 of [The Draft Communications Bill – The Policy](#).

⁷⁵ Although there are around 60 radio multiplex licences in total, there is generally only one in each local area

⁷⁶ For example, see condition 11(2) of the Multiplex 2 Licence held by Digital 3 and 4 Limited:

https://www.ofcom.org.uk/data/assets/pdf_file/0039/189678/licence-mux-2.pdf

⁷⁷ [Radio broadcast update April 2021 - Ofcom](#).

⁷⁸ We note that there are now over 40 national radio services on DAB, including those provided by religious bodies (e.g. Premier Christian Radio, United Christian Broadcasters Radio).

- 4.61 We therefore do not propose to recommend the removal of the non-discretionary prohibition for religious bodies at this stage.
- 4.62 Ofcom has also considered the discretionary prohibition on religious bodies holding any licence type (other than those caught by the non-discretionary prohibition). We are not aware that Ofcom has ever used this discretion to refuse a licence to any religious body. There are also a number of religious services provided by non-religious bodies not prohibited from holding a broadcast licence e.g. Sanskar repTV (a TV channel aimed at a Hindu audience) and Karbala TV (a TV channel aimed at an Islamic audience). Further, we are concerned that in practice we may not now in any event be able lawfully to exercise this discretion to refuse any religious body a licence, as doing so would appear to conflict with our duties under the Equality Act 2010, which prohibits discrimination on the basis of religion.⁷⁹
- 4.63 We believe that we have appropriate protections in place that would address any perceived risks, for example of undue influence or harm, associated with religious bodies holding a broadcast licence as a result of this recommendation, including the Ofcom Broadcasting Code and the “fit and proper” requirement that applies to all broadcast licensees, including those religious bodies that already hold broadcast licences. We also note that a wide range of religious channels already exist which are broadcast by both religious and non-religious bodies, and which are subject to these measures.
- 4.64 We propose to recommend the removal of the discretionary prohibition in relation to religious bodies.

Q4. We are seeking views and supporting evidence on our proposed recommendation that the non-discretionary prohibition for religious bodies should be retained, but the discretionary prohibition should be removed.

Advertising Agencies: We are consulting on recommending the removal of the restriction on advertising agencies holding any broadcasting licences.

- 4.65 Advertising agencies are currently restricted from any kind of broadcast licence in the UK.
- 4.66 Ofcom understands that this restriction was initially concerned with risk of unfair commercial advantage in, and distortion of, the advertising market and undue influence of programming content at a point at which broadcast advertising used to form a more substantial part of the overall UK advertising market.⁸⁰ Whilst the draft Communications Bill initially proposed to remove the advertising agency restriction on the grounds that “the new competition regime will ensure fair competition in the advertising market”, it was

⁷⁹ Section 10(1) of the Equality Act 2010 defines “religion” as “any religion” and includes “a lack of religion”.

⁸⁰ This restriction dates back to the Television Act 1954.

ultimately maintained on the advice of the Joint Committee on the Draft Communications Bill in order to ensure fair competition in the advertising market.⁸¹

- 4.67 For the purposes of this disqualification, an “advertising agent” is defined in statute as a person who “carries on business involving the selection and purchase of [Broadcast] advertising time or space for persons wishing to advertise”. It therefore doesn’t capture advertising arms of broadcasters (i.e. sale of ad space) or creative agencies. It also only applies to the purchase of broadcast advertising so doesn’t capture any digital advertising.
- 4.68 There have been several changes to the advertising market over the past decade. The major trends include the growth in online advertising and the corresponding fall in the value of print and direct mail advertising, as well as the stagnation of the traditional linear TV advertising market, and the rapid increase in recent years in online video advertising.⁸² Revenue from online advertising in the UK has more than tripled in real terms since 2010 from around £5bn to £15.7bn in 2019, increasing from around 25% of UK advertising in 2010 to 62% in 2019. Broadcast advertising revenue has declined over the same period from £5.2bn in 2010 to £4.5bn in 2019, a decrease from 27% of UK advertising in 2010 to 18% in 2019. Although revenues from traditional linear television advertising were broadly resilient during the first half of the last decade (increasing by 6% in real terms between 2010 and 2015), since 2015 TV ad revenues have contracted by £1bn in real terms (or - 18.4%).⁸³
- 4.69 Although TV advertising can still offer advertisers mass reach at a single point in time, broadcast advertising is now significantly smaller as a proportion of the UK advertising market than was the case in 2003 when Parliament decided to maintain the disqualification of advertising agents from holding a broadcast licence. We therefore consider that the competition concerns at the time, relating the distortion of the broadcast advertising market should an advertising agent hold a broadcast licence, are now of less relevance. Given proportional changes in the advertising market from broadcast to digital advertising, we consider that there is unlikely to be any risk of unfair commercial advantage in the advertising market by removing this restriction.
- 4.70 We also consider that concerns in relation to undue influence over programming content and any fundamental conflict of interest between an advertising agency holding a broadcast licence would be appropriately addressed through the operation of other protections that Ofcom has put in place since the Communications Act 2003 was introduced. These include Section 9 of the Broadcasting Code, introduced in 2005, which imposes rules in relation to the use of commercial references on TV, and the Code on Prevention of Undue Discrimination between Broadcast Advertisers which is designed to address risks of self-preferencing of advertising space and came into effect in February

⁸¹ The [Joint Committee on Draft Communications Bill Report](#) (paragraph 229) cited “an unquestionable conflict of interest between ownership of an advertising agency and of a commercial broadcast licence”. See also *A New Future for Communications: White Paper on the Communications Bill* (paragraph 4.9.4) and [The Draft Communications Bill – The Policy](#) (paragraph 9.3.2).

⁸² Ofcom: [Media Nations 2020](#): UK report p.90

⁸³ [Media Nations 2020](#): UK report

2012.⁸⁴ In addition, we consider that the fair and effective competition condition included in broadcast licenses operates as a further layer of protection.⁸⁵

- 4.71 We consider that there is also a practical reason for recommending the removal. Since the legislation was put in place, the term “advertising agency” is generally understood more broadly than was intended to be captured at the time, and we therefore spend time establishing the exact nature of the business of entities that were never intended to be prohibited. For example, although the current existence of the restriction means that we don’t get applications directly from advertising agencies, we do sometimes receive applications for licences where a director of an applicant is also a director of an advertising agency or there is an advertising agency in the applicant’s corporate structure. In these cases, we are currently unable to issue licences due to this prohibition and we think greater clarity for applicants should result from its removal.
- 4.72 More often, we receive applications for licences from companies who are described as advertising agencies on the Companies House register when they are actually sellers of advertising space or creative agencies. These applications are delayed while we assess whether or not the applicant meets the definition of an advertising agency, usually finding that it does not.
- 4.73 We therefore propose to recommend removing the disqualification of advertising agencies from holding any licence.

Q5. We are seeking views and supporting evidence on our recommendation that the restriction on advertising agencies holding any broadcasting licences should be removed.

Publicly-funded bodies: we are consulting on recommending the removal of the restriction on publicly-funded bodies.

- 4.74 Publicly-funded bodies (i.e. those receiving more than 50% of their income from public funds, such as government agencies, advisory bodies or museums) are currently restricted from holding a radio licence. It is not clear to us what Parliament’s intent for the restriction for radio licences but not TV licence for this category was, given that all broadcast spectrum was scarce at the time (which is no longer the case).
- 4.75 We consider that any other foreseeable concerns associated with a publicly-funded body holding a radio licence, such as political influence or impartiality, is sufficiently addressed by our other rules in this area, such as the Broadcasting Code. We also consider that there could be public value in allowing publicly-funded bodies, such as museums and galleries, to hold radio licences.

⁸⁴ Code on the Prevention of Undue Discrimination between Broadcast Advertisers: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/code-on-the-prevention-of-undue-discrimination-between-broadcast-advertisers>

⁸⁵ For example, see Section 316 of the Communications Act 2003 and condition 14 of the TLCs Standard Form Licence: https://www.ofcom.org.uk/_data/assets/pdf_file/0032/96926/tlcs-licence.pdf

4.76 We therefore propose to recommend removing the disqualification of publicly-funded bodies from holding a radio licence.

Q6. We are seeking views and supporting evidence on our recommendation that the restriction on publicly-funded bodies holding radio licences should be removed.

We are consulting on recommending the retention of the restriction on political bodies and local authorities, and the BBC, Channel 4 Corporation and S4C, holding certain broadcasting licences.

4.77 **Political Bodies and Local Authorities:** Political bodies⁸⁶ are currently prohibited from holding any form of broadcast licence, and local authorities are prohibited from holding any broadcast licence except to operate a service providing information about their functions and services. We consider that as local authorities are controlled by political parties, we should treat them in the same manner as political bodies. In introducing these restrictions, Parliament was concerned about the undue influence which political bodies⁸⁷ and local authorities (subject to the exception above)⁸⁸ might have on the editorial content and agenda of broadcasts if they held a broadcast licence.

4.78 We consider that these disqualifications continue to work effectively alongside other measures that safeguard democratic debate, including the due impartiality rules in the Broadcasting Code, statutory prohibitions on political advertising and strict rules on party political/party election broadcasts.⁸⁹ Ofcom considers that broadcast news is still an important counterweight to more partial news sources, such as print, and there is still a fundamental need to maintain a distinction between politics and the media.

4.79 We do not propose to recommend any changes to the restrictions on political bodies or local authorities holding broadcasting licences at this stage.

Q7. We are seeking views and supporting evidence on our recommendation that the restriction on political bodies and local authorities holding all licences should be retained in their current form.

4.80 **BBC, Channel 4 Corporation, S4C:** The rationale for prohibiting BBC and Channel 4 Corporation and S4C from holding the licences for Channel 3 and Channel 5 is to maintain plurality. We consider that this rationale is still sound. The public service broadcasters provide plurality in news and the competitive dynamic between them continues to support

⁸⁶ A “political body” includes any “body whose objects are wholly or mainly of a political nature”. Section 321(3) of the Communications Act 2003 defines “objects of a political nature” as including objects aimed at influencing or bringing about a change in laws, elections, policies or decisions in the United Kingdom or elsewhere.

⁸⁷In [The Draft Communications Bill: The Policy](#) (paragraph 9.3.2), Government indicated that “[t]he prohibition on the ownership of any licence by a political party will be retained, since we are not satisfied that a political organisation could run a broadcasting company with the necessary impartiality”. This position was endorsed in the [Joint Committee on the Draft Communications Bill Report](#) (paragraph 227).

⁸⁸ We have not awarded a radio licence to a local authority under this exception.

⁸⁹ Sections 321(2) and 333 of the Communications Act 2003.

significant investment in a range of original and diverse content, including in news and current affairs, appealing to a broad range of audiences across the UK.

- 4.81 We do not propose to recommend any changes to the restriction on the BBC, Channel 4 Corporation and S4C holding the Channel 3 or Channel 5 licences.

Q8. We are seeking views and supporting evidence on our recommendation that the restriction on the BBC, Channel 4 Corporation and S4C holding Channel 3 or Channel 5 licences should be retained in their current form.

Undue Influence: we are consulting on recommending the retention of the general restriction on undue influence as it applies to political bodies and local authorities and removing it for publicly-funded bodies.

- 4.82 There is currently a general disqualification on the holding of a broadcast licence⁹⁰ in relation to persons who, in the opinion of Ofcom, are subject to undue influence by specified disqualified persons such as to act against the public interest. For both television and radio licences, this captures undue influence of political bodies and local authorities (or certain specified connected individuals or bodies), and in the case of radio licences alone, this also captures the undue influence of publicly-funded bodies.
- 4.83 In relation to the undue influence of political bodies and local authorities, as we have set out at 4.79 that we consider that the rationale for retaining the overall restriction on political bodies and local authorities in holding broadcasting licences still holds. By extension, we do not think that it is appropriate to remove the general disqualification on grounds of undue influence of political bodies and local authorities as we consider that this restriction remains an important backstop.
- 4.84 We are therefore not proposing any changes to the general disqualification on grounds of undue influence of political bodies and local authorities.
- 4.85 In relation to the undue influence of publicly-funded bodies, in line with the arguments around our recommendation to remove of the restriction on publicly-funded bodies holding radio licences, we consider that there is consequential need to remove the general disqualification on grounds of undue influence of publicly-funded bodies.
- 4.86 We therefore recommend also removing the general disqualification on grounds of undue influence of publicly-funded bodies on persons that hold a radio licence.

⁹⁰ In this context, a broadcast licence refers to licences granted under the Broadcasting Act 1990 or Broadcasting Act 1996 for independent television services, independent radio service, digital terrestrial television broadcasting and digital terrestrial sound broadcasting.

Q9. We are seeking views and supporting evidence on our recommendation that the general disqualification on grounds of undue influence of political bodies and local authorities should be retained, but the general disqualification on grounds of undue influence of publicly-funded bodies should be removed.

Analogue community radio licences: We are consulting on recommending the retention of the restrictions on ownership of analogue community radio licences.

- 4.87 There are specific rules set out in the Community Radio Order 2004⁹¹ which impose restrictions on the ownership of community radio licences. These rules prevent the holders of other specified broadcast licences from also holding a community radio licence, and prevent any one person from holding more than one community radio licence.
- 4.88 These rules are primarily designed to preserve the essential characteristics of community radio. For example, the first rule seeks to ensure that community radio licences are set up to be not-for-profit, or non-profit distributing⁹², by preventing commercial radio companies from becoming involved in community radio. The second rule seeks to preserve the purpose of community radio stations as serving specific local communities in local areas by preventing the development of networks of community radio stations under common ownership.⁹³
- 4.89 We consider that nothing has changed in this sector to undermine the rationale behind the restrictions and that the potential consolidation in this sector that could follow their removal would not deliver good outcomes to consumers.

Q10. We are seeking views and supporting evidence on our recommendation that the restrictions on analogue community radio licences should be retained.

⁹¹ [Community Radio Order 2004](#) (SI 2004/1944).

⁹² That is, any profits acquired through the licence-holding company must be reinvested into the company to further advance or improve the service, or to deliver social gain to the community it serves or to other members of the public. See paragraph 15 of the [Explanatory Memorandum to the draft Community Radio Order 2004](#).

⁹³ HL deb 16 July 2004, vol 663, col 1520-1521: <https://hansard.parliament.uk/Lords/2004-07-16/debates/0d3f7e9d-8730-4dc5-ba04-7a1b21268345/CommunityRadioOrder2004>

A1. Responding to this call for evidence and consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 10 August 2021.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/future-media-plurality-uk>. You can return this by email.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to MediaOwnershipReview@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet. This email address is for this consultation and Call for Evidence only.
- A1.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- A1.5 Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
- A1.6 Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.7 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.8 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.9 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.10 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex A4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.11 If you want to discuss the issues and questions raised in this consultation, please contact the project team by email to MediaOwnershipReview@ofcom.org.uk.

Confidentiality

- A1.12 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of

transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A1.13 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.14 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.16 The purpose of our Call for Evidence is to explore the impact of changes to the market on media plurality in the UK, and to support our general media plurality duties. Depending on the evidence and views provided by stakeholders, we may use the findings in a range of ways, including sharing our findings with industry and with stakeholders, and/or recommending changes to the media plurality regulatory framework for consultation.
- A1.17 Following this consultation period, Ofcom plans to publish a statement in November 2021 on recommendations for the media ownership rules.
- A1.18 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.19 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex A2.
- A1.20 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.21 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A4. Call for evidence and consultation questions

Call for evidence

We are seeking views and information on:

Online intermediaries

1. The role and impact of online intermediaries on the news consumption journey of UK consumers and the UK news media landscape.
2. Whether the role and impact of online intermediaries gives rise to new media plurality concerns; and, if so, how the regulatory framework might be updated to mitigate such concerns.

Algorithms

1. How the algorithms used to recommend news content to UK consumers work in determining the prominence given to different news providers.
2. The role and impact of algorithms on the news consumption journey of UK consumers and the UK news media landscape.
3. Whether the role and impact of algorithms gives rise to new media plurality concerns and if so, how the regulatory framework might be updated to mitigate such concerns.

Market changes

1. The role and impact of market change, outside the context of a merger, on the news consumption journey of UK consumers and the UK news media landscape.
2. Whether the role and impact of market change, outside the context of a merger, gives rise to new media plurality concerns, and if so, how the regulatory framework might be updated to mitigate such concerns.

Other areas to consider

1. Whether there are other features of the UK news media landscape whose role and impact on the news consumption journey of UK consumers and the UK news media landscape we should consider.
2. Whether there are other features which give rise to new media plurality concerns and if so, how the regulatory framework might be updated to mitigate these concerns.

Consultation questions

1. We are seeking views and supporting evidence on our recommendation that the national cross-media ownership rule should be retained in its current form.
2. We are seeking views and supporting evidence on our recommendation that the appointed news provider rule should be retained in its current form.
3. We are seeking views on our proposed scope of the term “news creator” and in particular, whether the categories that we have identified as being important to be captured within this new definition are the right ones.
4. We are seeking views on our proposed modifications to the existing public interest considerations specified in section 58 of the Enterprise Act 2002 to extend these considerations to “news creators”.
5. We are seeking views and supporting evidence on our recommendation that the restriction on advertising agencies holding any broadcasting licences should be removed.
6. We are seeking views and supporting evidence on our recommendation that the restriction on publicly-funded bodies holding radio licences should be removed.
7. We are seeking views and supporting evidence on our recommendation that the restriction on political bodies and local authorities holding all licences should be retained in their current form.
8. We are seeking views and supporting evidence on our recommendation that the restriction on the BBC, Channel 4 Corporation and S4C holding Channel 3 or Channel 5 licences should be retained in their current form.
9. We are seeking views and supporting evidence on our recommendation that the general disqualification on grounds of undue influence of political bodies and local authorities should be retained, but the general disqualification on grounds of undue influence of publicly-funded bodies should be removed.
10. We are seeking views and supporting evidence on our recommendation that the restrictions on analogue community radio licences should be retained.