

BECTU response to the consultation on Ofcom Diversity and Inclusion Programme 2018-2022

The Broadcasting Entertainment Communications & Theatre Union, a sector of Prospect, has approximately 45,000 members which include staff, freelance and self-employed workers across the broadcasting industry.

Question 1: What are your views on Ofcom's Diversity and Inclusion Programme?

BECTU welcomes the substantial change in Ofcom's approach to diversity that has taken place since the arrival of the new chief executive. In particular we welcome Ofcom's new commitment to transparency and accountability.

BECTU further welcomes Ofcom's internal diversity plan which, through equality monitoring, setting targets, reporting against them, proposing ethnicity as well as gender pay audits and holding mandatory unconscious bias training for all hiring managers, people managers, team leaders and the senior leadership team, could be seen as setting an example to the industries they regulate.

Question 2: To what extent do you believe that our approach will promote diversity and inclusion within Ofcom and in the sectors we regulate?

BECTU believes that Ofcom's approach will promote diversity and inclusion within Ofcom and in the sectors Ofcom regulates, particularly as a result of the regulator's decision to take enforcement action against licence holders that fail to comply with their licence requirements in this regard. However we believe the diversity and inclusion plan could have a greater impact if the changes were made to the diversity and inclusion plan as set out below.

Question 3: Are there any additional objectives that you feel Ofcom should include in its Diversity and Inclusion Programme?

BECTU urges Ofcom to make the following changes when publishing its second report on the UK TV industry, and its first report on radio.

1. In order to gain the most accurate picture, equality monitoring data should be published not merely by broadcaster but by licence. We welcome the fact that at the stakeholders' event on January 10th 2018, Tony Close said that Ofcom would try to do this.

Ofcom's first report shows a concentration of licences among a small number of large operators. One major issue raised for many years by BAME broadcasting professionals is their pigeonholing, or ghettoising, into areas that are focussed on minority ethnic communities or issues, and underrepresentation within 'mainstream' licences. If Ofcom's equality monitoring data is published licence by



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licence such practices can be identified and addressed. If it is only published by broadcaster then licences in which BAME workers are concentrated may be pooled with licences that have gross under-representation and consequently provide a distorted picture of BAME representation. This would prevent the industry from addressing the issue raised by BAME professionals.

In commercial radio, Global for example has the lion's share of licences including both of London's two flagship commercial radio stations LBC and Capital. Global also holds the licence for what used to be the black community's favourite radio station, Choice FM (now known as Capital Xtra), which had a substantial BAME staff. To date London's 40% BAME population has not been permitted to know the diversity of LBC and Capital, nor for that matter Capital Xtra. Were Ofcom's first radio report to aggregate the data across Global's many licences, the public would still not be permitted to have this information. BECTU believes that as all broadcasting licences have been awarded by the regulator on behalf of the public, the public has the right to know to what extent these radio stations reflect the diversity of those they serve. And Ofcom should recognise that in London, and other cities where there are large BAME populations, there is a very substantial public interest in this data being public, and presented with sufficient detail to give the picture for individual radio stations.

BECTU recognises that some radio licences individually are too small to reach Ofcom's reporting threshold of 20+ staff. Nevertheless where licences do cross this threshold there is no reason why Ofcom should not report on those by name in the same way that the Arts Council of England compiles a list of data for all of its qualifying clients, in addition to data collected more widely including the smaller clients. Ofcom does not regulate by broadcaster, it regulates by licence, and so it is logical that their reporting regime mirror its licencing regime. It is also likely that the different licences within the same broadcasting company may make their own hiring decisions, so individual licence reporting would make sense and be more relevant in pinpointing where action needs to be taken.

BECTU also recognises the argument put by broadcasters that many of their staff work across more than one licence. Nevertheless it is not beyond the capability of a highly sophisticated industry with revenue of around £20-billion to find a way to resolve this, such as by having a category of 'cross-licence' in addition to licence-specific staffing, or by allocating a portion of staff time to each relevant licence.

BECTU also urges that the next report covers all qualifying broadcasters rather than merely covering the five largest. Many professionals cut their teeth working for the smaller broadcasters before moving to the top five. Publishing data across the board might also enable broadcasters to identify sources of BAME talent that they had not to date considered, and perhaps form new relationships with those running small licences.

2. BECTU urges Ofcom to include in its diversity and inclusion plan the objective of taking firm action with regard to freelancers. According to Creative Skillset, over half of all workers in the independent production sector are freelancers. The regulator's own report indicated that nearly 40% of the broadcasting workforce are freelance – 28,442.

BECTU believes that the freelance sector is lagging furthest behind and this is borne out by Ofcom's own statement that just 4% of freelancers are from a BAME background. As CEO Sharon White says, "among freelancers working for broadcasters, half remain unmonitored and those who are monitored are overwhelmingly male, white and don't self-define as disabled". Failure to focus on freelancers therefore will leave a gaping hole in any strategy for equal opportunities.

Section 27 of the Communications Act states that it is Ofcom's duty "to take all such steps as they consider appropriate for promoting equality of opportunity in relation to... employment by those providing television and radio services." We welcome Ofcom's commitment in their first report *Diversity and equal opportunities in television*, September 2017, that: "We will shortly be updating our guidance on how broadcasters can better promote equal opportunities and monitor their progress for freelancers." Requiring broadcasters to monitor freelancers is an essential step.

3. BECTU urges Ofcom to introduce contract compliance to the broadcasters. Broadcasters determined to adopt active diversity strategies including publishing their own monitoring data, setting targets and reviewing hiring practices to increase the employment of under-represented groups, should use their commercial power in the market to require their contractors, the independent production companies, to follow suit. The Oliver & Ohlbaum study for Ofcom *Trends in TV Production* highlights the importance of this: it states that in 2014 59% of public service broadcasters' commissioning spend was external.¹

4. In furtherance of this BECTU urges Ofcom to insist that Project Diamond monitoring data is published at qualifying programme level. Three national trade unions are currently boycotting Project Diamond because in its current form the unions do not believe that it will achieve positive change. If data on programmes with greater than 50 in the workforce was published it would enable the industry to learn from those productions succeeding in employing a diverse workforce, and take those lessons to those where further action needs to be taken.

Historically there has been very little pressure on independent production companies to embrace modern, fair, employment practices. We have seen from Ofcom's lost decade (since the regulator's decision in 2006, now reversed, to make compliance with equality monitoring reporting requirements effectively optional) how leaving employers to voluntarily embrace diversity resulted in 57

¹ excluding sport, news and feature film. *Trends in TV Production*, Oliver & Ohlbaum, December 2015

broadcasters breaching their licence conditions by failing even to provide mandatory data on gender, racial group and disability, a net loss of thousands of BAME professionals from the industry plus blighted careers of those who remained. There is no reason to conclude that leaving the independent sector to its own devices will produce any different result.

We note that one of the three aims of the UK Independent Production Quota is to “Promote cultural diversity and open up the production system to new energies and voices”. The lesson of the last decade is that the opposite has happened. As regulator, it is Ofcom’s duty to reverse this trend, and this can only be done by taking an active role in monitoring the employment of freelancers. Project Diamond has the potential to do this, but only if it publishes programme level data.

5. BECTU further urges Ofcom in its discussions with broadcasters to insist that action is taken to enable the large group of mature, experienced BAME professionals to progress in their careers. In its report *Diversity and equal opportunities in television – Steps taken by broadcasters to promote equal opportunities* Ofcom noted the lack of initiatives with regard to BAME workers. Of the few they reported there was an overwhelming focus on apprenticeships and internships. BECTU has seen over many years that short-term initiatives have had the tendency to be a revolving door with young professionals coming in for a spell under the initiative, then departing, leaving the organisation unchanged. The initiatives that should be developed are those aimed at changing the way workers are hired, adopting best practice including setting targets, and improving management of programme commissioning to give productions sufficient time to crew up instead of being forced into last-minute scrambles.

Finally, we welcome Ofcom's decision to focus its first BBC thematic review on the BBC’s public purpose to reflect and represent the diverse communities of the UK’s nations and regions. As the UK's biggest broadcaster including in terms of the number it employs, progress at the BBC inevitably ripples across the industry. As the BBC is itself a public broadcaster then it should be the first to embrace contract compliance with regard to the many independent production companies that it employs.

Commercial radio

Ofcom states that it will "consider the impact of our proposed policies on diverse groups as part of our policy development" by setting up governance mechanisms to challenge policy proposals on equality issues, and conduct and monitor equality impact assessments for all policy projects.

In section 3.1.6 *Strengthening diversity and inclusion in broadcasting* Ofcom states that it will continue to license a range of restricted services and invite applications for community radio to ensure services continue to serve diverse audiences. We note that Ofcom's diversity and inclusion plan is silent over

actions in relation to diversity of commercial radio services.

Clause 4 (l) of the Communications Act 2003 states that Ofcom must have regard, in performing its duties, to the different interests of persons in the different parts of the United Kingdom, "of the different ethnic communities within the United Kingdom."

We believe that exclusion of commercial radio provision from the diversity and inclusion plan to be a retrograde step that will result in a reduction in choice for BAME audiences.

BECTU is aware of government plans for deregulation of commercial radio, however this legislation has yet to come forward and in the meantime BECTU urges Ofcom that until any such legislation takes effect that the regulator should continue to include commercial radio in its diversity and inclusion plans to ensure that commercial radio serves diverse audiences. We believe that the suggestion that BAME audiences can turn to the internet when there is no choice on licenced commercial stations is the antithesis of the diversity and inclusion agenda. We also note concerns expressed by respondents to the government's deregulation consultation that ending Ofcom's current statutory role to ensure a range of choice of national and local radio services and to set music in radio format requirements are also likely to have an adverse impact on the breadth and diversity of the commercial music industry and opportunities for emerging music artists in less mainstream genres (such as reggae) to gain mainstream exposure. There is concern that Asian stations could be at risk of being acquired and their services changed to non-Asian mainstream services.

The government has stated that it is open to and would support any moves by Ofcom to consider, in the light of the consultation responses received, whether there is scope to changes to its rules and guidance in lieu of longer-term reform. We expect any work by Ofcom in this regard, including around access to DAB platforms, to fully embrace the aims and objectives of Ofcom's diversity and inclusion plan.