

# **Ofcom's Public Service Broadcasting Review Phase 2: preparing for the digital future**

## **ULTACH TRUST SUBMISSION**

### **Issues relating to Irish language broadcasting**

#### **1. ULTACH TRUST**

ULTACH Trust supports the right of viewers in Northern Ireland and those interested in Irish culture to have access to Irish language television programmes made and broadcast within the United Kingdom. It also argues for the necessity of an appropriate support structure for the production of television programmes in the Irish language. The Trust believes that these two issues are essential elements of public service broadcasting in Northern Ireland.

As the online web form for responses had no question under which these issues could be raised, this submission concentrates exclusively on the issue of Irish language broadcasting in Northern Ireland. It will argue that, at this stage in the consultative process, it will be necessary for Ofcom to make firm proposals relating to Irish language broadcasting based on the legislative context and a clear and unequivocal public response. Our main focus will be on recommendations that will underpin and sustain the Irish Language Broadcasting Fund.

#### **2. OFCOM'S REVIEW TO DATE**

2.1 In Phase Two of its Review of Public Service Broadcasting, Ofcom accepts ULTACH Trust's core position on the importance of Irish language programming. We regret, however, that Ofcom has not followed the logic of the evidence in the Review. It is clear from the Review that the lack of an appropriate structure to ensure the continuation of a reasonable level of Irish language programming will contribute to a large and insupportable gap in the UK's public service television landscape. In the light of Ofcom's statutory role "to make recommendations on how [PSB] quality can be maintained and strengthened" (1.1), we suggest that it will be appropriate for Ofcom to make firm recommendations on this issue. We believe that such a response is a matter of urgency.

2.2 The Executive Summary of the Review confirms the importance of high quality UK-originated content to public service broadcasting. Section 1.2 states: "Our comprehensive research in Phase 1 showed the importance audiences place on the continued availability of high quality, original UK content that meets public service purposes ...". Section 1.5 adds: "The importance to viewers of public service broadcasting and UK originated content was widely accepted by respondents to our consultation."

2.3 Section 5.77 confirms the important place of indigenous languages in the UK's broadcasting ecology: "Indigenous language broadcasting forms an important part of the

public service broadcasting ecology of the nations of the UK, reflecting aspects of our cultural heritage unique to these islands.”

2.4 Section 5.80 recognises that: “Indigenous language broadcasting is one of the few forms of public service broadcasting which receives funding directly from government. ... although broadcasting is a reserved matter, in the case of indigenous languages the devolved administrations sometimes play a role.”

2.5 The Review also reflects widespread concern at the lack of secure funding for Irish language broadcasting, and a lack of equity with other indigenous minority languages. Article 5.88 notes: “The Irish Language Broadcasting Fund received additional funding of £6m in June from the UK Government, but only for a further two years until 2011. This was a matter of concern for many correspondents who pointed to a lack of equity in the funding arrangements for the broadcasting of Irish in Northern Ireland ...”. And again in 5.90: “public funding for Irish language programming in Northern Ireland remains uncertain in the long term.”

2.6 Given such a clear acceptance by Ofcom of the importance of Irish language programming and its acceptance of the lack of funding and certainty of continued funding, Ofcom’s conclusion (5.94) is tame and disappointing: “there is perceived [*sic*] concern at the lack of consistency and equity, and sometimes certainty, in the current arrangements for funding delivery which are in place in different parts of the UK.

2.7 The term “perceived concern” above suggests that the concern expressed may have no basis in reality. It is clear from the evidence compiled and collated by Ofcom itself that there are legitimate grounds for concern. It is equally clear from the “many correspondents” who were involved in this Review, as well as in previous consultations, that this concern is widespread.

2.8 ULTACH Trust urges Ofcom to review its somewhat lame verdict, clarify its position and recommendations, and base them on the clear evidence which it has been given.

### **3. SUMMARY OF ULTACH TRUST’S POSITION**

3.1 ULTACH Trust is disappointed that Ofcom’s has not, to date, come to any firm conclusion on the question of Irish language broadcasting, or taken a position on the issue of ensuring well-funded and secure programme creation and broadcasting in the Irish language.

3.2 Nor does Ofcom’s Review address the need to ensure support for programme production in the Irish language by Northern Ireland companies and broadcasters, or the need to ensure that a significant portion of such programmes be broadcast on UK public channels.

3.3 The Review does not reflect the depth of feeling expressed during the consultation; a depth of feeling made clear at the consequent forum organised by Ofcom in Belfast on 13 November 2008.

3.4 The Review also fails to recognise that a treaty obligation of the UK government to fund Irish language television and film production needs to be reflected in Ofcom's recommendations (this theme is expanded at 4 below).

3.5 Ofcom needs to make specific proposals to government for measures to support, strengthen and sustain the Irish Language Broadcasting Fund (ILBF) as the most effective means of creating and supporting programming in the Irish language. The ILBF needs secure, long-term guarantees of sufficient continuing funding to fill a serious gap in the public television service in Northern Ireland.

3.6 Funding for the ILBF and for Irish language programming needs to be at a higher level than is currently available to successfully fulfil this remit. While the present financial crisis may make this difficult to achieve in the short term, we would welcome a recommendation from Ofcom that whatever funding level is decided on for any particular period should be inflation-linked.

3.7 While Ofcom acknowledges the severe imbalance in provision, it has not as yet addressed the issue with any practical solutions or proposals. Ofcom needs to make recommendations on the parameters of a fair relationship between provision for the indigenous languages of the UK and their access to funding for programme production. This would take into account the fact that, unlike speakers of Welsh and Gaelic, many Irish speaking viewers can avail of a service in another state. We propose that the fund be subject to periodic revision with a view to incrementally increasing its level to narrow the gap with provision for Welsh and Scottish Gaelic over the long term.

3.8 Ofcom needs to propose clear principles on which the broadcasting of Irish language programmes can be incorporated into the UK's broadcasting system, rather than provided mainly by external channels, such as TG4.

## **4. DETAILED RESPONSES**

### **4.1 UK's treaty obligation for the provision of Irish language programmes cannot be ignored**

As the Government's regulator, Ofcom, in its final determination, must be bound by the Westminster Government's statutory and legal imperative to fund Irish language television. It must take cognisance of the fact that the UK has entered into a treaty obligation which needs to be honoured in full.

In section 5.79, Ofcom admits general obligations under the Communications Act 2003 and adds: "the Belfast/Good Friday Agreement of 1998 includes broadcasting commitments concerning ... support for Irish language film and television production in Northern Ireland."

Such commitments are at a different level from other commitments made through, say, the Government's commitments under the European Charter for Regional and Minority Languages (which will, incidentally, be breached if the Irish Language Broadcasting Fund is

allowed to lapse). The Commitments under the Belfast/Good Friday Agreement of 1998 have the force of an international treaty, and are thus an integral part of British law. As the commitment to fund Irish language television production is incorporated into a long series of sub-clauses,<sup>1</sup> it may be useful to relate the relevant clause to the main verb. The main verb is “will”.

**The British Government will**

in particular in relation to the Irish language

where appropriate and where people so desire it ...

seek more effective ways to encourage

and

**provide financial support for**

Irish language film and television production in Northern Ireland

Under direct rule, the Westminster Government’s response to this statutory imperative was to set up the Irish Language Broadcasting Fund. This is specifically acknowledged in a press statement issued in 2004 by the Northern Ireland Office on behalf of Paul Murphy MP, the then Secretary of State:

Government support for Irish language film and television production in Northern Ireland stems directly from commitments in the Good Friday Agreement 1998 and the Joint Declaration between the UK and Irish governments in April 2003.<sup>2</sup>

While it has been meticulous in monitoring compliance with other statutory requirements, Ofcom has failed to give sufficient weight to the legal obligation on the Westminster Government to fund Irish language television production.

Ofcom does, however, note in section 5.80 that “although broadcasting is a reserved matter, in the case of indigenous minority languages the devolved administrations sometimes play a role”. This may be a reflection of the fact that the legislative basis for funding broadcasting for Welsh, Irish and Gaelic varies considerably (there is no legislative basis for direct Westminster funding for any of the UK’s other indigenous minority languages). Ofcom does, however, appear to misunderstand what exactly is involved in the legislative basis for funding Irish language broadcasting.

The legal imperative on Westminster to fund Welsh language television<sup>3</sup> is reflected in the Review. The case of Scottish Gaelic is different. While it receives a level of protection under the BBC Charter, there is no legal imperative on central government to fund Scottish Gaelic television, which in the Broadcasting Acts of 1990 and 1996, was funded through a series of

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<sup>1</sup> see *The Agreement*, “Rights, Safeguards and Equality of Opportunity: economic, social and cultural issues, Par 4.

<sup>2</sup> Northern Ireland Office, Press Statement, 1 July 2004.

<sup>3</sup> Andy Burnham (Secretary of State for Culture, Media and Sport): “S4C has a statutory, calendar year grant entitlement under section 61 of the Broadcasting Act 1990 (as amended)”. *Hansard*, 25 Apr 2008 : Column 2319W, Written Answers. The BBC has further obligations with relation to Welsh through the BBC Charter.

a specific (ring-fenced) grants, essentially on a grace and favour basis. Because of the absence of a legal imperative to directly fund Gaelic broadcasting, the Westminster government, after devolution, was able to amalgamate the broadcasting grant into the block grant to Scotland and let the Scots decide if Gaelic broadcasting was a priority.

Government appears to have adopted a similar approach in relation to Irish. In spite of the fact that the broadcasting commitments in the Belfast/Good Friday Agreement were made by the British Government, and only the British Government, the Northern Ireland Assembly appears to have been informed that responsibility for the continued funding of the Irish Language Broadcasting Fund had been devolved. In Northern Ireland, all legislation requires balanced voting between the nationalist and unionist blocks, language is a politically contentious issue, and the unionist parties have indicated their hostility to Irish. In fact the current First Minister has announced a “cultural war”, and his party has consistently targeted expenditure on the Irish language. Inevitably, the Assembly decided to cut funding for the ILBF from April 2009. While funding for the ILBF has been restored by the Prime Minister, from Westminster sources, this extended funding will run out in 2011.

A related issue is that the original funding for the ILBF does not appear to have been sourced in the appropriate department, the Department of Culture, Media and Sport, but in the Westminster Executive. The two year extension, which was agreed by the Prime Minister rather than the DCMS Secretary of State, also appears to come from the same source. It is important, in terms of planning and continuity, that funding be mainstreamed in the appropriate department in the future.

As noted above, the legal imperative to fund Irish language television and film rests firmly, and exclusively, with the UK government. Ofcom needs to reflect this and build it into the new structures. We suggest that Ofcom recommends that the funding be streamed in the long term through DCMS, and, even if it is eventually administered by a Northern Ireland department, it should be clearly ring-fenced. This funding should never be left to the vagaries of the Northern Ireland political process.

#### **4.2 Ofcom’s role**

Ofcom acknowledges that “public funding for Irish language programming in Northern Ireland remains uncertain in the long term” (5.90). ULTACH Trust believes that, if Ofcom has the duty to make recommendations for establishing of a firm and lasting framework for UK public broadcasting, it has an integral duty to show how indigenous language broadcasting will be funded. Ofcom does after all recognise this as an “important” part of a public service (5.77). To leave the question of its future funding hanging will constitute a failure of duty and a large and unnecessary gap in the broadcasting landscape Ofcom seeks to create.

#### **4.3 The lack of equity between indigenous languages needs action**

Ofcom recognises “a lack of equity in the funding arrangements for the broadcasting of Irish in Northern Ireland” (5.88). Ofcom needs to address this issue in the next stage of the consultation process.

Ofcom's own table (figure 30) sets out this "lack of equity" clearly. It is regrettable that Ofcom did not comment on this disparity except to speak in its conclusion of "perceived concern". Again, the next stage of the consultation process will require proposals to address this situation.

The advisory forum meeting in Belfast in November 2008 made it clear that this imbalance between Scotland and Wales on the one hand and Northern Ireland on the other is resented by programme makers and broadcasters and is a disservice to viewers in Northern Ireland.

ULTACH Trust recommends that Ofcom should state clearly that equity is an essential part of a balanced public service delivery and should ensure that the funding of public service broadcasting includes such equity.

#### **4.4 The Irish Language Broadcast Fund: Efficient, respected and deserving of Ofcom's support**

ULTACH Trust believes that full support for the ILBF is the primary mechanism through which Irish language programming should be fostered and it calls on Ofcom to be clear and decisive in its support for the fund.

There was a wide consensus at Ofcom's Belfast Review meeting that the ILBF has done a good job with very limited funding, a view that was reinforced by an Evaluation Report carried out by Deloitte MCS and published in August 2007. The ILBF is a mechanism which works well, at a low administrative cost and with wide industry support. It should be the cornerstone of Ofcom's mechanism for ensuring quality Irish language programming.

#### **4.5 The BBC Licence Fee can only provide part of the programming needed**

ULTACH Trust does not believe that the commitment to Irish language programming can be left to the BBC because this does not offer safeguards in the long-term.

The BBC has made a commitment to an incremental increase in Irish language television provision. Between 2009 and 2011, the licence fee will provide £950,000 a year for its services on radio, television and online. About half of that will be spent on television.

However, the licence fee will provide less than one third of the BBC's planned Irish language television production. The programming is only achieved by an annual injection of £1.2m from the Irish Language Broadcasting Fund. The BBC will be unable to achieve its planned incremental increase, indeed it may not be able to maintain its 2008 levels, without secure funding. Secure funding means a continuation of the ILBF supplement.

#### **4.6 Help from TG4 and RTE is no substitute for a UK public service**

Ofcom refers (5.88) to the role of TG4 in supplying Irish language programming to Irish speakers in Northern Ireland: "The Government is committed to making TG4 available on DTT in Northern Ireland at DSO in 2012."

Ofcom also points out (figure 30) that RTÉ provides 365 hours of Irish language broadcasting to TG4 in the Republic of Ireland.

ULTACH Trust believes it is inadequate to rely on a non-UK broadcaster to provide an essential part of the UK's public service television. Granting TG4 spectrum in DTT is a welcome development, but it cannot form the core of a UK Irish language service. A UK public service needs to be created within the UK and transmitted by a UK-based broadcaster.

It is also relevant that TG4 will be available on DTT only from 2012, and the current funding for the ILBF runs out in 2011. We believe that developments relating to TG4 should not be viewed in isolation from the issue of continuity of funding within the Northern Ireland context, as such a one-sided development could endanger public service broadcasting within the UK.

### **4.3 Conclusion**

The most important part of this submission relates to securing sustainable funding for Irish language television broadcasting in Northern Ireland. It is highly unlikely that such funding will come from the Northern Ireland Assembly. There is, however, a legal imperative on the British Government through the Belfast/Good Friday Agreement to provide such funding. In that context, it is incumbent on the Westminster Government to provide it, or ensure its provision from another government source. The Irish Language Broadcasting Fund appears to be the most effective mechanism for delivering such funding; it was established by the Westminster Government, was funded by the Westminster Government, and has proved itself to be highly effective and cost-efficient in disbursing public monies.

Ofcom has a statutory role to make recommendations to government on how PSB quality can be maintained and strengthened. Irish language broadcasting is acknowledged by Ofcom to be an essential part of the UK's public service broadcasting ecology. There are precedents for direct government funding for indigenous minority languages. We submit that Ofcom has a right, and a duty, to make recommendations on the issue of Irish language broadcasting, and we propose the above measures for your consideration.