

This submission is on behalf of Better Media, which is a members-based organisation, campaigning for openness and transparency in media policy, pluralism in media ownership, and access to media platforms as a civic right. <https://bettermedia.uk/>

Question 1: *Given changes to audience consumption patterns and wider market developments, is there any aspect of Ofcom's Guidance on commissioning of independent productions which Ofcom should update to ensure it remains fit-for-purpose?*

First, it must be noted that the consultation document circulated by Ofcom, *Small Screen: Big Debate Consultation*, has no reference to community media or community radio. This document therefore lacks significant data which would otherwise inform the development and implementation of Public Service Media policy. Community media and community radio are the principal vehicles by which people from minority and protected characteristic communities can engage with, and gain access to, mass media communications platforms. In failing to include these types of community engagement media, Ofcom is failing to undertake its duties as required by the Equalities Act 2010. The Public Sector Equality Duty requires all public authorities to evaluate and demonstrate the impact of their public services provision and regulation, in relation to the terms of the Equalities Act, and as they affect social groups that qualify for protected characteristic status.

The *Small Screen: Big Debate Consultation* research, therefore, does not represent a comprehensive picture of the media ecology in the UK. With the exclusion of community media the report fails to offer insight and analysis, based on verified data and experiential testimony, of the needs and challenges that people from minority groups and protected characteristic groups face when seeking access to, and a voice in, regulated forms of public service media. Because of this lack of data, Ofcom is failing to identify how people from protected characteristic groups are disproportionately affected by planning and resource allocation decisions.

Ofcom has an obligation to consult on and report what its equality objectives are. Ofcom must use its consultative and investigative powers to identify how its processes and practices of media economic regulation, platform management, media skills and literacies development, and content regulation, impact differentially between groups that are most effected by discrimination and marginalisation. The duty for all public services in reporting their equalities impact data is to advance "equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it." Better Media regards the exclusion of community media practices and platform access in Ofcom's planning and research, such as those demonstrated in the operation of community radio, is a failure of this duty.

In addition, while the terms on which the BBC and other public service broadcasters operate are established in UK statute, and are supervised by Ofcom, the opportunity for citizens to engage in any scrutiny and development of BBC or other public service media services, management and governance, is limited and remote. Better Media recommends that any further development of the guidance for the commissioning of public service media content and services must be subject to frequent review using citizen engagement, participation and consultation principles, such as citizens panels and juries.

Better Media recommends that Ofcom's guidance for the commissioning of public service content should be determined within a regulatory framework that prioritises citizen engagement, consultation and deliberation. This should include both in the regulation of content, the governance

of public service producers, and the commissioning process used to identify programming and platform priorities. The aim of these mechanisms must be to bring together different views, experiences and opinions of citizens across the UK, in a way that is representative of the different citizen traditions and cultural expectations across the whole of UK society. This must be undertaken in a way that ensures that they are widely dispersed away from the present London-centric institutional provision.

Furthermore, these deliberation principles must have the primary aim of drawing together differing views from individual citizens and civic society groups, public authorities, public services, faith groups, and independent pressure groups, in order to ensure that there is an accessible and inclusive regulatory platform for non-majority, and non-traditional opinions to be expressed and advanced. Future guidance for the commissioning principle for public service content should explicitly acknowledge that citizens are able, and well qualified, to express their own opinions and accounts of their social experiences. Citizens are also well qualified to talk about their own social needs, as they themselves perceive and experience them, and not as mediated by producers or policy managers who tend to account for audiences as passive consumers within an unregulated commercial context.

Better Media recommends that civic and social sector organisations, including charities and mutual aid groups, not-for-private-profit groups, cooperatives, and so on, are actively prioritised and supported in this process of deliberation and co-development. The civic sector should be empowered to set the terms and scope that is applied in the commissioning of public service content. These groups must be empowered and enabled to assist setting the terms of the forms of civic deliberation that will inform both the policy and the practice of public service media content development, especially in relation to the issues and social problems that citizens groups may wish to address.

This process of deliberation must report frequently and widely by providing updates to stakeholders and the public, both on the function of the process of engagement, and the outcomes of this engagement in terms of changes in the focus of public service media content output. These updates must indicate how the findings of these deliberations will be incorporated into the policy principles and development practices of Ofcom and the public service media providers, as well as the governing principles of not-for-private-profit public service media organisations.

In addition, Better Media recommends that these consultation processes must demonstrate clear separation between the stakeholders and the competing media organisations seeking commissions, especially commercial and corporate interest groups, private lobby groups, and trade associations. All consultation must be undertaken using arms-length and transparent representation principles, with any professional and corporate lobby groups required to openly declare their interests and report the terms of their engagement with DCMS, Ofcom and any commissioned public service content providers, while simultaneously being subject to the aforementioned public and citizen scrutiny process.

Question 2: *Is there any change to the independent production quota which Ofcom should recommend to Government as part of its 'Small Screen Big Debate' programme?*

Better Media anticipates that with proper regulatory framework, effective separation of commercial and public service content must be maintained. If a commercial broadcaster or media producer wishes to preserve their freedom to operate in the commercial marketplace, they should be denied access to both direct and indirect state subsidies, as provided in the form of support for public sector content. A social value and social gain test, as defined in the Social Value Act 2012, should be incorporated into the commissioning principles of public sector media. This test must be used to determine that public subsidy must only go to not-for-profit, cooperative and mutual organisations which are constituted with the express purpose of serving the public good.

Commercial organisations should not benefit from public subsidy, either directly or indirectly. Public subsidy should be directed to cooperative and mutual not-for-private-profit producers and platform providers. The Audio Content Fund, and the BBC Local Democracy Reporters Scheme, are instances where commercial media providers gain public subsidy that is not available to emergent, alternative and independent media and news providers. Many who seek to serve the public good in alternative and non-traditional ways are often excluded from full participation in the media economy because there is a structural bias to corporate legacy providers who dominate a narrow mindset of what is legitimate programme making. Better Media suggests that the focus on social value and social gain better anticipates the ongoing decentralising of the production and distribution process for media content, and believes that Social Value is a public authority procurement model that can be incorporated into public service media procurement practices following the Social Value Act 2012.

Moreover, the principle of public support for media content should be focussed only on organisations that are committed to defined social gain priorities, such as citizen education, civic deliberation and the fostering of civic media literacies. Ofcom's role as the principal platform regulator, economy regulator and content regulator must therefore be reviewed. Better Media recommends that an independent, arms-length public media regulator is commissioned and put in place, separating this role from the present structure within Ofcom. Better Media recommends that this new independent regulator of public service media content should be established expressly to serve the needs of civic society, separate from Ofcom's economic and platform regulation role, and should be responsible for all public service and community media regulation, as determined through the process of citizen deliberative and mutual public engagement and development identified previously.

Question 3: *Do you have any recommendations for potential changes to the definitions of 'qualifying programmes' or 'independent production' which Ofcom should recommend to Government as part of its 'Small Screen Big Debate' programme?*

Ofcom and DCMS should not seek to determine the choices and programming decisions of producers and content providers, either by quota or by decree. However, Better Media believes that support for emerging and independent, cooperative, and not-for-profit producers should be guided and supported as part of a wider programme of inclusive social gain programming, based on the identification of specific social needs. The Covid-19 pandemic has demonstrated the lack of civic capacity for responsive and relevant community-focussed communications. Provision must be made to support public service media operators who are able to adapt to localised needs, and which can be rooted in the different cultural expectations of communities across the UK. Ofcom's failure to adapt to the Covid-19 lockdown by supporting community media and alternative forms of community-communications, is an illustration of the limitations of the present regime. Better Media recommends that the commissioning policies for public service media must therefore be directed towards addressing structural inequity in all its forms, such as poverty, racism and a lack of representation in civic life, across all communities in the UK.

The priorities of the public service media should be identified and articulated in a similar manner to those in Nesta's 2030 strategy, which aims to support public good and actively improve lives in the UK. Better Media recommends that public service media in the UK must be given a defined and specific social mission which goes beyond consumerist and passive models of audience engagement, international competition, and the curation of legacy archives, and treats people, instead, as active citizens in values-driven communities.

Better Media recommends, therefore, that the regulatory process for the commissioning of public service content should only support content that is designed to serve an explicit and well-defined public need. Public sector content should only be commissioned by either the BBC or other media agencies if it is able to address inequality, social exclusion and discrimination, as these factors are

manifest in multiple forms and structural relationships across all parts of the UK. The identification of these social development and renewal requirements must be determined locally for each nation, region and community, in a process of regulated subsidiarity, devolution, citizen participation and accountability. All funding must therefore be structurally guaranteed at the lowest level of operation as defined by social need.

The lack of diversity and inclusion in the UK media production sectors, the low level of representation in media content, and the absence of engagement by communities, differs widely according to rural or urban location, north or south, and often even within specific localities and neighbourhoods. Presently public service content is too often generalising and universalising, being designed to serve broad expectations of national life, and not the specific needs of citizens living in places with different histories, concerns or capacity for social renewal. Better Media believes that a process of active investment by an *independent federated agency for public service content* should determine which media content is commissioned, produced and distributed, according to publicly discussed local needs and preferences.

Furthermore, Better Media believes that this federated agency for public service content should explicitly address structural inequality and bias as historically demonstrated in the legacy commissioning and institutional governance process. The opening up of the public service media content non-established media providers is essential for ensuring the UK has a pluralistic public and commercial media system with a diversity of content supply to balance the monopolistic and corporate institutional providers.