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Clarifications on the operating licence

Dear Siobhan,

I am writing in response to Tom Walker's email of 2 July 2019. We are satisfied with your proposed measures relating to compliance with the operating licence, that is to take no further action regarding BBC Radio 2 and to amend certain conditions regarding BBC Radio nan Gàidheal. We consider this is a proportionate response. We can also confirm that Ofcom's proposal for a 40% speech quota in core hours for Radio nan Gàidheal is consistent with past and current performance.

We would like to take this opportunity to clarify some points of detail in the operating licence. As part of our annual assessment of compliance with the operating licence, this year we noted several instances where the wording could be clearer, in order to be more transparent and to better reflect the intent of the conditions. We set out these points below, and in some cases, we have made suggestions as to how conditions could be amended.

Radio 3 Out of London

In measuring Radio 3's relevant expenditure in relation to condition 2.66, the condition states the BBC should include "Radio 3's allocation of the central orchestras' subsidy". This language is taken from the station's BBC Trust service licence, and originally came from an equivalent obligation under the Board of Governors. This wording no longer accurately reflects how Radio 3 and the Performing Groups¹ are funded, and has not done so for several years.

¹ The Performing Groups consist of the BBC Symphony Orchestra, the BBC Concert Orchestra, the BBC Singers (all based in London), the BBC Philharmonic Orchestra (based in Salford), the BBC National Orchestra of Wales and the BBC Scottish Symphony Orchestra.

When the original obligation was imposed in the 1990s, the Performing Groups were funded directly through Radio 3, but since then, our internal accounting has changed to the extent that the Performing Groups are now funded separately. When we have historically reported the proportion of Radio 3's expenditure outside of London, we have referred to the same centrally funded expenditure, i.e. the proportion of expenditure by Radio 3 and the BBC's Performing Groups outside of London. This year, we reported compliance with 2.64 and 2.66 using this methodology. Our delivery against the requirement is now inconsistent with the wording of the condition, since there is no longer a central orchestras' subsidy as was previously the case, and we suggest Ofcom makes a clarification.

One option is for Ofcom to confirm it is satisfied with the current arrangement and wording of the conditions. Alternatively, Ofcom could clarify that expenditure on the Performing Groups is included in conditions 2.64 and 2.66, although we note that the Performing Groups are not a UK Public Service. Another approach would be to correct the conditions so they clearly apply only to Radio 3 and exclude the centrally funded Performing Groups. We would ask any such amendment reflect the historic delivery of Radio 3's expenditure out of London, rather than drive operational change. For example, in 2018/19, the proportion of Radio 3's relevant expenditure incurred outside of London was 31% excluding the Performing Groups, compared with 46% using the current methodology.

Should Ofcom amend the condition in such a way, we are willing to provide a voluntary commitment through our Annual Plans throughout the rest of the Charter period to the effect of the current condition, i.e. that 40% of relevant expenditure across Radio 3 and the Performing Groups will be incurred outside of London.

Workforce diversity

In complying with condition 2.50.2, we currently publish data on the diversity of the BBC's workforce by salary band in our Annual Report and Accounts. The categories listed by Ofcom in the condition (e.g. senior managers, middle/junior managers) do not easily correspond to the pay hierarchy of the BBC, but we agreed with Ofcom that we would suggest how our salary bands could be mapped onto these categories. We consider this is misleading, however, given the wide variety of management roles at different levels of the organisation, and suggest the condition is amended for clarity and transparency.

Given that Ofcom appears to be satisfied that our provision of the information in its current form is transparent and fulfils the spirit of the condition, we suggest that Ofcom amend this condition to reflect how the BBC currently publishes the relevant information, e.g. "the job level of such staff by salary band". We also note that "Board



members and non-executives” will always be too small a category against which to report data, and suggest removing this group from the scope of the condition.

BBC 6 Music

Condition 2.30 currently states that BBC 6 Music must broadcast “in each week, on average across each Financial Year, at least 10 hours” of speech-based features, documentaries and essays. This is unnecessarily complicated and does not align with the language elsewhere in the operating licence. We suggest this condition is reworded to require 520 hours of such content each Financial Year.

BBC 6 Music

There is an error in the number of condition 2.53, i.e. there are two conditions 2.53.1 and condition 2.53.2 is the third of that list. While this does not present any particular difficulty for the BBC, it would be neater for it to be corrected whilst other amendments are being made.

We welcome further discussion as required.

Yours sincerely,

Chris Rowsell,

Head of Regulation, BBC Policy