

Meeting of the Ofcom Advisory Committee for Scotland held at the Ofcom Scotland Offices, 125 Princes Street, Edinburgh

Wednesday, 12 April 2017

Present:

Laura Alexander – Chair ACS
Ian McKay – ACS
Liz Leonard - ACS
John Trower – ACS
Peter Peacock – ACS
Amanda Bryan - ACS
Philip Schlesinger – ACS (Content Board Member for Scotland)

Glenn Preston – Ofcom
Alan Stewart – Ofcom
Jonathan Ruff – Ofcom
John Jackson – Ofcom

Action

1. Welcome and apologies

1.1 There were no apologies from ACS members.

2. Minutes of the previous meeting of 8 February 2017

2.2 Various amendments were made and subject to these, the minutes were approved.

3. Matters arising

3.1 It was confirmed that any fines incurred by the BBC related to breaches of the Broadcasting Code were paid to the Treasury.

3.2 It was confirmed the Royal Mail retained its traditional responsibility for the delivery and vetting of election leaflets.

3.3 ACS was updated on the 700MHz clearance trial.

4. Director's Report

4.1 GP discussed some of the important highlights from the Director's report. This included:

- meetings with key stakeholders, including the Scottish Government, UKCTA and the Clerks to Rural Economy and Connectivity and Culture, Tourism, Europe and External Relations Committees;
- a summary of the key points from the Scottish Government's Digital Strategy paper;
- an update on Ofcom involvement in the Scottish Government's Nuisance Calls Commission;

and update on the development of the Edinburgh policy hub at 125 Princes Street.

4.2 Members also briefly discussed the Scottish Government's proposed Consumer Taskforce and its Call for Evidence letter. PP indicated that he could provide the Ofcom Scotland team with some views to include in its response to the Scottish Government. ACS members broadly welcomed the proposal and agreed that the Consumer Taskforce could have implications for Ofcom's policy development.

4.3 There was a short discussion about the recent announcement on BT's willingness to agree to voluntary legal separation. JR and JT agreed to discuss the implications for the Scottish Futures Trust in more detail later.

5. General Policy and Political Update

5.1 MS provided ACS members with an update on key UK Government and Parliamentary developments since the last Advisory Committee meeting, this included:

- Digital Economy Bill – MS noted that the Bill contains several measures relating to Ofcom's responsibilities, including a new, broad, information sharing power, appeals reform, the broadband USO, confirmation of our powers to set rules on switching and auto-compensation, regulation of the BBC, Ofcom NI board member, retention of spectrum fees and charging for satellite filings.
- Parliamentary scrutiny - Steve Unger appeared at the House of Lords EU Internal Market Sub-Committee on 2 February, where he answered questions from the Committee on the EU Telecoms Framework.
- Separation of BT and Openreach – MS noted that the voluntary agreement reached on 10 March was broadly welcomed by parliamentarians. ACS members discussed some of the ways in which Ofcom might be able to monitor the effectiveness of arrangements.
- UK Government Budget - The UK Government published its Budget on 8 March, along with its 5G Strategy.
- BBC - Ofcom took over regulatory responsibility for the BBC from 3 April, and a set of statements and consultations on editorial standards and competition aspects of our role were published in the week of 27 March.

5.2 MS also advised ACS members of some key milestones:

- House of Commons rose on 30 March and returns on 18 April
- House of Lords rose on 6 April and returns on 24 April
- Digital Economy Bill went to the House of Lords report stage on 29 March with a Third Reading on 5 April with Royal Assent expected in April.

6. Competition and Markets Authority (CMA) Presentation

- 6.1 Sheila Scobie (Head of Devolved Nations, CMA) provided ACS members with a short presentation that covered:
- Background to the CMA and its functions
 - Its role in respect of Scotland
 - New competition (and consumer) powers devolved to the Scottish Parliament via the Scotland Act 2016
 - An update on Scottish Government activity and future developments
 - CMA and Ofcom touchpoints
- 6.2 SS explained that the CMA's primary statutory duty is to 'promote competition, both within and outside the UK, for the benefit of consumers. It has five strategic goals, including:
- Deliver effective enforcement
 - Extend competition frontiers
 - Refocus consumer protection
 - Achieve professional excellence
 - Develop integrated performance
- 6.3 SS also explained that the CMA has started to work more closely with other regulators, including Ofcom, Ofgem, Ofwat in applying competition law more proactively in regulated sectors. The CMA also has the power to decide which body should lead on a case. SS subsequently explained the complex Market Investigation process as well as the various tools available to the CMA.
- 6.4 There was a short discussion about Ofcom's core remit to promote competition as a way of improving outcomes for consumers. PP asked SS how the CMA decides the 'right level' of intervention, whether this be at national or local level. ACS members also discussed whether the Scotland Act 2016 paved the way for a separate competition policy to evolve in Scotland.

7. MG Alba

- 7.1 Donald Campbell presented to ACS on the respective positions of MG Alba, the BBC and Ofcom in the context of Ofcom's new duties. He then advised what the latest audience research trends were for BBC Alba and explained why, in his view, there was a need to refresh content. DC suggested that Ofcom should set a more stretching target for the channel and raised the possibility of it having a first run origination quota.
- 7.2 ACS discussed the potential impact on Gaelic broadcasting of the BBC announcement of a new channel for Scotland. It would have a positive impact on the creative sector generally but could be viewed as a competition to BBC Alba. GP advised ACS the proposals would have to go through a three-stage approval process with different options for the outcome. ACS also sought clarity on the costs of producing more short-form, online content.

7.3 LL wished to record the significance of MG Alba as a commissioner of content within the economy of the Scottish independent production sector. GP agreed to circulate DC's presentation. **GP**

8. Creative Scotland – Robbie Allen

8.1 Robbie Allen presented to ACS on a range of initiatives including upcoming projects and the imminent refreshing of the 2014 Screen Strategy. RA briefed on what funding was available to help network drama production from Scotland. Funding priority was given to film but there was a crossover into TV. He also referred to the recent Scottish Screen Leadership Group report and the setting up of a dedicated screen unit which was in process, and which he agreed needed to have a clear mandate. RA also covered the debate around the desirability of a new film studio. Creative Scotland supported the Pentlands proposals but also an enhancement of facilities at Wardpark, Cumbernauld.

8.2 JT referred to the need of producers for technical facilities; there is an enormous support infrastructure around a studio which provides opportunities Scotland is currently missing out on. There is also considerable potential arising from cross-over with the games industry. LL raised the issue around the existence of a multiplicity of bodies with no one organisation having a clear mandate to provide leverage. PS said it was up to the Scottish Government to bring about the necessary changes. He also welcomed Creative Scotland's position on the studio, but commented that if one studio dominated that would be injurious. PS asked about the impact of Brexit on Creative Scotland's strategy. RA advised that most co-production treaties would not be affected. What would be affected was the money from the European Media Programme. UK tax credit was a big issue for co-production. Creative Scotland had been working with the BFI and British Screen to respond to EU issues so that when the full impacts are apparent they can be addressed.

8.3 AB asked about the prospect of getting more network drama commissioned. RA advised there have been more concentrated and co-operative efforts in this area recently but there were some factors which mitigated against Scottish producers and some evidence of "lift and shift". ACS also discussed the need for a shared strategy for the sector and asked RA to keep in touch.

9. BBC Performance Regulation

9.1 AS summarised the key points from the consultation, highlighting the requirements applying specifically to Scotland in the operating framework and the licence conditions for BBC Alba. He also spoke about the good contact Ofcom have had with the various stakeholders and the plans for further consultation.

9.2 The ACS felt that, generally, the suggested operating framework was positive. However, one of the main concerns is that 'lift and shift' would still be allowed under the new operating framework. There was a feeling that the framework did not adequately address the long-

standing issue of where commissioning decisions are made, rather it focused on where the programming was made. It was felt that allowing 'lift and shift' would not fulfil the purpose of the BBC, nor would it help develop the production industry in Scotland.

- 9.3 There was then a general discussion about ways to improve the suggested framework including investigative journalism requirements and distinctiveness requirements for BBC Scotland.
- 9.4 It was agreed that further discussion with the Ofcom team leading the consultation would be helpful and that time should be put aside at the June meeting of the ACS to allow for this.

10. Commercial Radio Deregulation

- 10.1 The team gave a brief background into the DCMS commercial radio deregulation consultation. GP also provided some thoughts from his recent meetings with Bauer and New Wave where there had been interest in Ofcom's responsibilities for BBC regulation and in the announcement of the new BBC Channel for Scotland.
- 10.2 PS and PP highlighted the importance of local content for communities (across the UK not just in Scotland) and its need to be protected. The licensing team reminded them that DCMS are currently proposing to keep local news in the nations' requirements. There was a consensus that local news, traffic and weather (able to be inserted at a relevant time, not just top of the hour) was the most important aspect of local content.
- 10.3 The team gave a summary of the localness guidelines – that historically, location has been a broad indicator of localness, but we are finding that being locally relevant (irrespective of where it is produced) is more important than broadcasting from the licensed area. This was generally agreed with by the ACS.
- 10.4 IM felt that Q7 and Q11 in the DCMS consultation were the correct approach, but was not sure about the mechanics. A general discussion about the drivers behind the deregulation and how it would affect the different sized networks followed.
- 10.5 CT then gave an overview of the Small-Scale DAB project. It was noted that the DCMS consultation did not take SS DAB into account.

11. Communications Market Report 2016

- 11.1 The team outlined the key aspects which included:
- the changes the project team is making to the CMR UK and the Scotland CMR reports this year;
 - the timeline for publication of this year's report;
 - the bespoke research that will feature in the Market in Context section;
 - the key stories in this year's Scotland CMR

11.2 The CMR will provide context to the work that Ofcom does furthering the interests of consumers and citizens in the markets they regulate. Ofcom are also scoping the production of a consumer facing interactive mini-site linked to the findings of the bespoke research in the report, which will provide consumer information by linking to guides on the Ofcom website. The data on this mini-site will be able to be cut by each nation of the UK.

11.3 ACS members were invited to suggest ideas for potential stories in the 'key development sections' and agreed to provide suggestions via the Ofcom Scotland team.

12. Content Board – Philip Schlesinger

12.1 PS outlined the agenda from the recent Content Board meeting - BBC, Local TV, Editorial Standards, Channel 4.

13. Consumer Panel/ACOD update

13.1 ACS were provided with a brief update on the work of the Consumer Panel and ACOD.

14. Nations Committee update

14.1 LA briefed ACS on the main items discussed: STV2, BT, nuisance calls and the future of the Nations Committee.