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Siobhan Walsh
Director of Content Policy

14 August 2020

Dear Chris,

Proposed amendments to Ofcom's Operating Licence for the BBC's Public Services

I am writing in response to the BBC Operating Licence ("Licence") changes requested by the BBC in your letter of 26 July 2019. We also set out below how we propose to amend condition 2.50.3 in the Licence.

Thank you for your patience in awaiting our response to your letter. As you know, we delayed considering your requested Licence changes until we had completed work on Ofcom's BBC Annual Report last year. We then de-prioritised this work as part of our approach to regulation during the coronavirus pandemic, which included putting on hold new consultations, decisions and information requests. This was to ensure stakeholders could focus their time and effort on business-critical matters.

As per the Agreement¹ and the Procedures for setting and amending the operating licence ("the Procedures"),² Ofcom may amend the Licence but must consult the BBC and any person we consider appropriate. Having regard to the nature and significance of these proposals, we do not consider it is appropriate to consult publicly in this case.

Amendments requested by the BBC

We agree to the BBC's request to amend the Licence as set out in your letter of 26 July 2019, with one exception as discussed below. How we propose to amend the Licence in response to your requested changes is also explained below.

Proposal one

*2.66 In respect of **Radio 3**, the BBC must ensure that in each Financial Year at least ~~40%~~ **30%** of relevant expenditure is incurred outside the M25 Area. ~~For the purpose of this requirement "relevant expenditure" means expenditure on programme production (not including~~*

¹ Clauses 13(5) and 80.

² https://www.ofcom.org.uk/data/assets/pdf_file/0025/107089/procedures-bbc-operating-licence.pdf

~~expenditure on centrally funded costs) and Radio 3's allocation of the central orchestras' subsidy.~~

We accept the BBC's explanation of the change in funding of the Performing Groups, namely that this condition was carried over from the historic BBC Trust service licence and the central orchestras subsidy no longer exists. It is clear that this condition does not reflect how the Performing Groups are now funded and therefore Radio 3's expenditure outside of London. We consider the best way to address this is to amend the level of expenditure in the condition so it only applies to Radio 3's expenditure and excludes the centrally funded Performing Groups, which will not result in any changes in practice to the amount Radio 3 spends on programme production outside of London. This would be consistent with how we have defined 'relevant expenditure' in relation to the other conditions in this section of the Licence, so we would no longer need to define this term for the purposes of condition 2.66 and therefore propose removing this text.

In your letter you stated that the BBC was willing to provide a voluntary commitment in your Annual Plan that 40% of relevant expenditure across Radio 3 and the Performing Groups will be incurred outside of London. In light of our proposed amendments to this condition, we do not consider such a voluntary commitment would be necessary.

Proposal two

2.50.2 the job level of such staff by the following categories: ~~Board members and non-executives~~; senior managers (including those employed at Board level); middle/junior managers; and non-management;

We accept the BBC's position that, for data protection reasons, 'Board members and non-executives' is too small a category against which to report data. We propose to include staff employed at Board level within the 'senior managers' category already contained in the condition. We note that this change would also make condition 2.50.2 consistent with the information request issued to other broadcasters for the purposes of Ofcom's industry wide diversity in broadcasting monitoring programme.

We note the BBC has agreed to provide data in respect of the above job level categories for the purposes of Ofcom's BBC Annual Report 2020.

We are not minded to accept the BBC's request to amend this condition by removing the current job level categories and replacing them with "the job level of such staff by salary band". This is because we consider these job levels provide a level of specificity to industry and the public about what this reporting will involve that "salary bands", without any further detail, does not. We believe the BBC's current practice of mapping its salary bands to these job level categories is satisfactory.

Proposal three

*2.30 In respect of **BBC 6 Music**, the BBC must ensure that ~~in each week, on average across each Financial Year, at least 10 hours~~ in each Financial Year, at least 520 hours are allocated to one or more of the following: speech-based features, documentaries and essays. For*

illustration only, speech-based features, documentaries and essays could include programmes to help audiences develop their understanding of the music, for instance through exploration of music and social trends across the years, and features on different artists and musical movements.

We consider the BBC's request to amend the weekly quota to an annual quota is straightforward and propose to make this change.

Proposal four

2.28.3 it commissions at least 25 new musical works ~~(excluding repeats)~~; and

We agree with the BBC's submission that given this condition refers to commissioning activity, rather than broadcast output, the exclusion of repeats is not relevant and therefore we propose to remove the phrase 'excluding repeats'.

You also pointed out that there is a typographical error in the numbering of condition 2.53 – there are two conditions 2.53.1 and condition 2.53.2 is the third condition in the list. We intend to correct this error when we next publish an update to the licence.

Amendment proposed by Ofcom

Proposal five

*2.50.3 the job type of such staff by the following categories: **broadcast management; programming; commissioning; organisational - technical/engineering/data analytics; sales/marketing; creative and content production; journalism; on-screen talent; and business management and support functions/administrative; and other;***

In addition to the BBC's requested amendment in respect of condition 2.50.2 as discussed above, we propose to amend condition 2.50.3 by aligning the categories of job type with those used in the information request for Ofcom's diversity in broadcasting programme. We believe this will help avoid duplication of workforce diversity data for the BBC, and still provides sufficient granularity of the data by job type.

We note the BBC has agreed to provide data in respect of the above job type categories for the purposes of Ofcom's BBC Annual Report 2020.

Next steps

We now invite your views on the proposed amendments to the Licence conditions as set out above. Please provide your comments by **11 September 2020**.

We will then make a decision on the amendments to the Licence taking account of your views and any other information you supply. To implement the changes, we will issue a Notice of Variation to the BBC and also send you a hard copy of the amended Licence. We will publish the amended Licence on our website.

In the interests of transparency and in accordance with Ofcom's consultation principles, we also intend to publish the correspondence relating to this Licence amendment on our website. This correspondence will include your letter of 26 July 2019, this letter, your response to this letter and any other relevant correspondence. Please inform us by the above date if you consider any aspects of your correspondence are confidential and explain why, and provide us with a non-confidential version of the correspondence for publication.

In terms of when the amendments would come into force, subject to your views we propose that these amendments would come into force for the next Financial Year i.e. 2020/21. Therefore, the reporting obligations (i.e. conditions 2.50.2 and 2.50.3) would apply to the BBC's reporting on Financial Year 2020/21. We also invite your views on this proposed timing.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Siobhan Walsh', with a small dot at the end.

Siobhan Walsh