



Changes to signing arrangements for relevant domestic TV channels

Statement

Publication date:

13 May 2015

About this document

This document sets out revised arrangements for signing on domestic TV channels with an audience share between 0.05% and 1% ('relevant TV channels'). Ofcom's decisions take account of responses to a consultation published in July last year. The revised arrangements will start from 1 January 2016.

In brief, broadcasters will be required to increase the amount of sign-presented programming shown on relevant TV channels over time, starting at 30 minutes a month from the first anniversary of the relevant date to 75 minutes from the tenth anniversary. The relevant date for the purpose of access services obligations is the later of the date the channel started broadcasting or 29 December 2003.

As an alternative, relevant channels may participate in alternative arrangements to provide sign-presented programming, provided that these have been approved by Ofcom, in the light of the Guidance it has published. In this case, the minimum contribution they must make will rise over time, and will be adjusted for inflation.

Most channels providing access services have been established for several years. Without transitional arrangements, they would face a steep increase in obligations from 1 January 2016. To avoid this, channels that have already reached the fourth anniversary of their relevant date by 1 January 2016 will be subject to more gradual increases, rising to the same maximum obligations over a number of years.

There is a plain English guide to Ofcom's decisions at Annex 1.

Contents

Section		Page
1	Ofcom's decisions	1
2	Background	5
3	Summary of consultation submissions and Ofcom's response	11
Annex		Page
1	Changes to signing arrangements for relevant domestic TV channels: a plain English guide	34
2	Section 303, Communications Act 2003	38
3	Revisions to Ofcom's Code on Television Access Services and related Guidance	40
4	Analysis of financial impact on broadcasters	52

Section 1

Ofcom's decisions

Introduction

- 1.1 In July last year, Ofcom consulted on possible changes to the way channels with an audience share between 0.05% and 1% ('relevant channels') meet their regulatory obligations to help deaf people who rely upon sign language to understand and enjoy television.¹
- 1.2 Having carefully considered the views of consultees, and taken into account the more up to date information on 2013 broadcasting revenues that is now available, Ofcom has made the decisions summarised below, and has amended the Code on Television Access Services ('the Code') and the related Guidance (see Annex 3).
- 1.3 There is a plain English guide to Ofcom's decisions at Annex 1, and a summary in British Sign Language (BSL), which can be seen via Ofcom's website.²

Ofcom's decisions

Sign language obligations on relevant domestic TV channels or contributions to alternative arrangements

- 1.4 From 1 January 2016, relevant channels must provide at least the minimum amounts of sign-presented programming shown in Table 1, or make a contribution to alternative arrangements (approved by Ofcom in line with the Guidance at Annex 3 of the Code on Television Access Services).

Table 1: Signing obligations for relevant channels
(from 1 January 2016)

Signing obligation for relevant channels (Relevant channels should show at least the amount of sign-presented content shown below unless Ofcom has approved alternative arrangements)		
Anniversary of relevant date	Sign-presented content (monthly)	Minimum annual contribution towards alternative arrangements ³
First	30 minutes	£24,500
Second	30 minutes	£24,500
Third	30 minutes	£24,500

¹ Review of signing arrangements for relevant TV channels, Ofcom, July 2014 ('2014 Consultation') (<http://stakeholders.ofcom.org.uk/consultations/review-signing-arrangements-tv/>)

² See: Changes to signing arrangements for relevant domestic TV channels (BSL Summary) <http://youtu.be/fELP8yZC27c>

³ The minimum annual contribution levels shown in this table are expressed in 2014 money; from 2016 onwards, Ofcom will publish inflation-adjusted minimum contribution levels for the following year at the same time it publishes the annual list of channels required to provide television access services in the following year.

Fourth	30 minutes	£24,500
Fifth	45 minutes	£36,800
Sixth	45 minutes	£36,800
Seventh	60 minutes	£49,100
Eighth	60 minutes	£49,100
Ninth	60 minutes	£49,100
Tenth	75 minutes	£61,400

1.5 However, most channels will benefit from transitional arrangements if they have reached the fourth (or later) anniversary of their relevant date⁴ by 1 January 2016. The monthly signing obligations or minimum annual contributions that apply to these channels are shown in Table 2.

Table 2: Transitional arrangements
(for relevant channels that have reached the fourth (or later) anniversary of their relevant date)

Year	2016	2017 ⁵	2018	2019	2020	2021	2022
Minimum monthly sign-presentation obligations	30 minutes	35 minutes	45 minutes	50 minutes	60 minutes	65 minutes	75 minutes
Minimum annual contributions to approved alternative arrangements	£24.5k	£28.6k	£36.8k	£40.9k	£49.1k	£53.2k	£61.4k

1.6 Ofcom will make annual inflation adjustments to minimum contributions, based on the Consumer Prices Index, and rounded to the nearest £100. The adjustment in relation to 2016 will reflect changes in the index between the end of 2007 (when the current contribution level was set) and the end of 2014 (the latest full-year for which CPI data is available). Thereafter, Ofcom will publish inflation-adjusted minimum contributions for the following year alongside the list of channels required to provide television access services in the following year.

1.7 Channels that participate in alternative arrangements already approved by Ofcom may continue to do so, subject to contributing at least the amount specified in the Guidance. Ofcom will consider any other alternatives proposed by broadcasters in line with the Guidance.

⁴ The relevant date for non-PSB channels is the date the channel started broadcasting, or 29 December 2003, whichever is the later. Access service obligations start on the first anniversary of the relevant date.

⁵ From 2016 onwards, Ofcom will publish inflation-adjusted minimum contribution levels for the following year at the same time it publishes the annual list of channels required to provide television access services in the following year.

- 1.8 There is no change to the arrangements for channels with an audience share of 1% or more. They will continue to have to provide signing on a proportion of their programmes, rising over ten years from a minimum of 1% to 5%.

Next steps

Changes to the Code

- 1.9 The decisions outlined above have been reflected in a revised version of the Code (Annex 3)⁶, and will take effect from 1 January 2016. For ease of reference, additions to the Code previously in force are underlined; deletions are scored through.

Midpoint review

- 1.10 Ofcom intends to carry out a review of the arrangements in 2019, the halfway point between 2016 (the first year when new obligations will start being phased in) and 2022 (the point at which most relevant channels will be subject to the maximum obligations). The review will enable Ofcom to consider whether regulation is delivering the expected benefits to sign language users, and whether, as anticipated, the costs to most broadcasters remain a very small proportion of relevant turnover.

Non-domestic TV channels

- 1.11 As explained in its October 2012 statement,⁷ Ofcom will be consulting separately on the signing arrangements for TV channels licensed by Ofcom primarily intended for reception in Member States of the EU other than the UK ('non-domestic channels'). This consultation will take account of the revised arrangements for domestic TV channels. As it has taken longer than expected to finalise these, we will publish the consultation on non-domestic TV channels somewhat later than we anticipated. Accordingly, we are minded to propose in our forthcoming consultation an extension to the interim signing arrangements for non-domestic TV channels⁸ until 31 December 2016, to allow sufficient time for interested parties to comment on our proposals, and for broadcasters to put in place the necessary arrangements.

This document

- 1.12 The document is available on Ofcom's website in a version (Portable Document Format) which is compatible with most screen-readers. In addition to the plain English summary provided at Annex 1, we have produced a BSL summary of our decision which can be found on Ofcom's website⁹.
- 1.13 If you would like the document in an alternative format or another language, you can call our Advisory Team on weekdays between 09:00 and 17:00 on 020 7981 3040 or

⁶ The revised version of Ofcom's Code on Television Access Services is also available at the following link: (<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2015/>)

⁷ *Access services on non-domestic channels*, Ofcom, October 2012 (http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/statement/Non_dom_access_services.pdf)

⁸ Ofcom, *Access services on non-domestic channels*, 1 October 2012 (<http://stakeholders.ofcom.org.uk/consultations/access-services-non-domestic/statement/>); paragraphs 1.15-1.16.

⁹ See: *Changes to signing arrangements for relevant domestic TV channels (BSL Summary)* <http://youtu.be/fELP8yZC27c>

Changes to signing arrangements for relevant domestic TV channels

0300 123 3333. If you are deaf or speech-impaired, you can use our textphone numbers, which are 020 7981 3043 or 0300 123 2024. We will consider all reasonable requests.

Section 2

Background

Introduction

- 2.1 In this section, we summarise the background to Ofcom's consultation, including:
- a) the statutory basis for Ofcom's regulation of access services;
 - b) the current arrangements for signing in respect of relevant channels, and their origin in the 2006 review;
 - c) the reasons for the 2014 review; and
 - d) Ofcom's consultation proposals.

Statutory basis for regulation of access services

- 2.2 Under the Communications Act ('the Act'), Ofcom's duties are to further the interests of citizens in relation to communications matters and consumers in relevant markets (section 3(1)). In performing its duties, Ofcom must have regard to the needs of persons with disabilities (section 3 (4)).
- 2.3 Under section 303 of the Act (reproduced in Annex 2), Ofcom has a specific duty to draw up, and from time to time review and revise, a code¹⁰ giving guidance as to the extent to which broadcasters should promote the understanding and enjoyment of television by the deaf or hard of hearing, the blind or partially sighted and those with a dual sensory impairment; and as to the means of promoting such understanding and enjoyment. Access to television programmes is to be provided by means of subtitling, signing and audio description (described collectively as 'access services').
- 2.4 The Act requires that all non-exempt TV channels should sign 5% of their content by the tenth anniversary of the date they qualify to provide access services ('the relevant date')¹¹. The statute also allows Ofcom to exclude services from these requirements, if warranted by reference to criteria in the Act, and the discretion to impose separate arrangements for those services¹².
- 2.5 In July 2004, in accordance with its obligations under section 303 of the Act, Ofcom published a Code on Television Access Services ('the Code'). This requires channels with an audience share of at least 0.05% to provide access services, as long as they would spend no more than 1% of their relevant turnover on the cost (as assessed by Ofcom) of meeting their access service targets.
- 2.6 In publishing the Code¹³, Ofcom explained its view that it was not appropriate for it to assess Parliament's decisions in relation to access services on a cost-benefit basis.

¹⁰ *Ofcom's Code on Television Access Services*, May 2015

(<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2015/>)

¹¹ Section 303(5) of the Act (see Annex 2).

¹² Section 303(9) of the Act (see Annex 2).

¹³ *Code on Television Access Services: statement by Ofcom*, July 2004, Ofcom

(http://stakeholders.ofcom.org.uk/binaries/consultations/tv_access_services/statement/statement.pdf).

In setting signing obligations, Parliament was aware that there was only a small population of BSL users but still imposed increasing sign interpretation requirements. Ofcom's task was to give effect to the legislation in ways that avoided disproportionate burdens on broadcasters.

Origin of the current signing arrangements

- 2.7 There are two approaches to signing on television in the United Kingdom:
- a) sign-interpreted programmes are those originally produced without signing, on which a signer has been superimposed, usually in the corner of the screen. Some of the most popular TV programmes are offered with sign-interpreted versions, such as *Holby City*, *Coronation Street* and *Hollyoaks*; and
 - b) sign-presented programmes are presented in sign language, and are often dubbed in English and accompanied by subtitles. Examples include the BBC's *See Hear* programme, and programmes shown in the BSL zones on the Community Channel and Film4, such as *The Hub* and *Punk Chef*.
- 2.8 In 2005, Ofcom commissioned research to help inform its first review of the Code. Our objectives, established after discussion with disability groups, broadcasters and access service providers, were to establish how many people stood to benefit from the different access services, to look at usage and barriers to use, and to understand the needs and preferences of users and potential users.
- 2.9 In March 2006, we published this research alongside a review of the Code¹⁴. One of the findings was that about 66,000 people had a reasonable understanding of sign language. In qualitative case studies, two thirds of hearing-impaired people with the strongest signing skills expressed a preference for subtitling over signing. We suggested that there was a distinct possibility, therefore, that the number of people actually relying upon signing to watch television is significantly smaller than the number of people who said they understood signing well enough to use it to watch television. Moreover, the number of people likely to be using signing to watch programmes on relevant channels was likely to be very small indeed.
- 2.10 Under the arrangements set out in section 303(5) of the Act, broadcasters have a choice of whether to meet their targets with sign-interpreted or sign-presented programmes. They invariably used sign-interpreted programmes, which are much cheaper to produce than sign-presented programmes. In our discussions with deaf groups, they told us that, in preference to sign-interpreted programmes on relevant channels, they would prefer to see the resources directed towards making more sign-presented programmes available.
- 2.11 Ofcom then began a process of exploring whether there were alternatives to the arrangements that currently applied to relevant channels that might better meet the needs of sign language users. In the course of this, a proposal was made by Sky and the Community Channel that broadcasters contribute to the costs of a sign zone on the Community Channel (in lieu of signing on their own channels). This attracted interest from both broadcasters and deaf groups.
- 2.12 Ofcom invited a Sign Language Working Group, largely comprised of deaf people and groups, to consider this proposal and to make recommendations within the

¹⁴ *Provision of Access Services*, Ofcom, March 2006 (<http://stakeholders.ofcom.org.uk/binaries/consultations/accessservs/annexes/provision.pdf>).

framework of current legislation. The working group recommended that the Sky / Community Channel proposal be pursued, and that funds contributed by broadcasters be administered by a Trust on which deaf people were strongly represented.

- 2.13 Following a consultation in 2007¹⁵, Ofcom decided¹⁶, with effect from 1 January 2009:
- a) to exclude channels with an audience share of between 0.05% and 1% other than public service channels from obligations to meet the signing targets for sign-interpreted programmes set out in the Code on Television Access Services;
 - b) to require these excluded channels to transmit a minimum of 30 minutes of sign-presented programming each month between 7am and 11pm. This amount would be kept under review;
 - c) to apply (a) and (b) flexibly in the light of criteria set out in section 303(8) of the Act, which enable it to take account of matters such as the benefits to deaf people. For instance, this would enable Ofcom to require a news channel with an audience share of just less than 1% to continue providing sign-interpretation if it was satisfied this would be better for deaf people using sign language. Equally, it would enable Ofcom to require a film channel with an audience share just above 1% to discontinue providing sign-interpretation if it was satisfied that deaf people would benefit more from sign-presented programmes on the channel; and
 - d) not to impose the requirements in (b) if it is satisfied that alternative arrangements proposed by individual broadcasters or groups of broadcasters would be likely to provide better assistance for deaf people using sign language, such that the requirements under (b) need not be imposed. Ofcom set out guidance for broadcasters on the matters it would take account in determining whether alternative arrangements are acceptable (see Annex 3). Among other things, these require a minimum annual contribution per channel of £20k (an amount which we said would be subject to review from time to time).
- 2.14 Most relevant channels elected to contribute to the British Sign Language Broadcasting Trust (BSLBT), established in cooperation between broadcasters and deaf groups. BSLBT funds sign-presented content shown on the Community Channel and Film 4, and available from the BSLBT website. However, there is no bar to broadcasters meeting their obligations by providing sign-presented programmes on their own channel, or by devising other alternative arrangements, provided that these are approved by Ofcom.
- 2.15 Expenditure (as assessed by Ofcom) by the relevant channels on access services requirements (including signing arrangements) will remain capped at 1% of relevant turnover¹⁷. Ofcom considers that the cap will continue to protect broadcasters from incurring disproportionate costs in meeting their access service obligations.

¹⁵ *Signing on television*, Ofcom, 10 May 2007 ('the 2007 Consultation')

(<http://stakeholders.ofcom.org.uk/consultations/signing/?a=0>)

¹⁶ *Signing on television - Statement*, Ofcom, 4 December 2007 ('the 2007 Statement')

(<http://stakeholders.ofcom.org.uk/binaries/consultations/signing/statement/statement.pdf>)

¹⁷ See paragraphs 25-28 of Ofcom's Code on Television Access Services.

Reasons for Ofcom's 2014 review

- 2.16 The Code and associated Guidance make clear that the arrangements are subject to review from time to time.
- 2.17 When Ofcom last reviewed the requirements for all access services in 2010, we concluded that the arrangements for signing in respect of relevant channels continued to meet the criteria in Annex 3 to the Code. Given the “continuing adverse economic conditions” at the time, Ofcom did not propose any changes either to the amount of sign-presented content, or to the minimum contribution to alternative arrangements.¹⁸
- 2.18 In 2014, Ofcom concluded that it was appropriate to review the current requirements for two main reasons. First, inflation has eroded the value of the minimum contribution to alternative arrangements (£20,000) since it was set in December 2007. On the most commonly used measure of inflation (the Consumer Price Index), the value of this contribution has fallen by about 20% since the end of 2007.
- 2.19 Against this background, we considered that it was likely that the real value of the contributions by broadcasters to alternative signing arrangements had fallen, and that in consequence, the resources available for funding the production and distribution of sign-presented programmes to BSL users were likely to have shrunk, with detrimental effects to the range and/or quality of first run sign-presented programming available to sign language users. This proposition is supported by data from the BSLBT, which shows that the number of new commissions has gone down from 33 to 19 between 2009 and 2013, while the repeat rate has increased by 50%.
- 2.20 Therefore, Ofcom considered that it would be appropriate to adjust the minimum level of contributions to restore their value, and to make annual adjustments for inflation thereafter. We felt that it would make sense to determine a means of updating the minimum contribution periodically, without the need for repeated reviews. This would help to avoid the burden both to Ofcom and to broadcasters of repeated consultations, whilst maintaining the benefits to BSL users of the alternative signing arrangements over time.
- 2.21 Second, the growth in revenues changed the judgement Ofcom made in 2007, which was that rising obligations for signing would make the provision of access services unaffordable for some channels. In 2007, Ofcom had suggested that the obligations for sign-presented programming could rise from 30 minutes a month to 60 minutes,¹⁹ similar to those that apply to subtitling and audio description and to signing on high audience channels. However, following consultation, this proposal was discarded because of concerns that rising obligations might push expenditure by several broadcasters above the regulatory threshold of 1% of relevant turnover²⁰. Ofcom was concerned that, were this to happen, the likely effect would be for a number of broadcasters to be exempted from the provision of access services, making television less accessible for people with sensory impairments.
- 2.22 Broadcasters supply Ofcom with confidential data on their revenues, which Ofcom uses to determine which channels should provide access services in any given year. These data show that average revenues for relevant channels grew by over 112%

¹⁸ *Television Access Services Review*. Ofcom, June 2010 (http://stakeholders.ofcom.org.uk/consultations/access_services/statement).

¹⁹ 2007 Consultation; paragraph 3.26

²⁰ 2007 Statement; paragraph 4.41.

from the beginning of 2008 to the end of 2012. Therefore, Ofcom decided that it would be appropriate to look again at whether their signing obligations (and corresponding contributions to alternative arrangements) should rise over time, and if so, what the impact would be on the overall provision of access services.

- 2.23 We also noted that an inconsistency in the regulation of signing on TV.²¹ Although signing obligations on channels with an audience share of 1% or more have risen over ten years from 350 minutes to 1,752 minutes a month²² (though this can be met by cheaper sign-interpreted programming), relevant channels retain a fixed obligation of 30 minutes a month.

Consultation proposals

Minimum annual contribution to alternative arrangements

- 2.24 In the consultation, Ofcom suggested that it would make sense to determine a means of updating this contribution periodically, without the need for repeated reviews of the amount of the minimum contribution.
- 2.25 In brief, we proposed that the minimum contribution towards alternative arrangements should be adjusted annually in line with inflation using the Consumer Prices Index, backdated to December 2007. This would mean that relevant channels would pay £24,100 in 2015²³, instead of £20,000 now. This would then rise each year in line with inflation.
- 2.26 We also sought views on whether annual contributions should:
- a) remain fixed thereafter (subject to adjustments for inflation to maintain their value); or
 - b) rise by more than inflation over a ten-year period from £20,000 to a maximum of £50,000 (in 2007 money). We proposed that minimum contributions should be rebased to reflect inflation from the end of 2007 and then adjusted annually for inflation. The ten year period would start from the date that channels qualified to provide access services; and
 - c) be subject to transitional arrangements (which would apply to almost all channels), in order to avoid sudden large percentage increases in costs.

Rising obligations

- 2.27 Ofcom said that we believed that rising revenues meant that it was timely to reconsider whether a fixed obligation of 30 minutes of sign-presented programming remains appropriate.
- 2.28 In the consultation, we sought views on whether the minimum amount of sign-presented programming required to be shown by relevant channels should remain fixed at 30 minutes a month (as at present), or increase from that level to 75 minutes

²¹ Paragraph 4.7, 2014 Consultation

²² Calculated on a base of 24 hours a day, excluding maximum amount of advertising permitted for a commercial channel.

²³ As the new signing arrangements will enter into force in 2016 rather than 2015 as proposed in the consultation, we have updated this figure elsewhere in the document to account for 2014 inflation. Hence, the contribution level for 2016 will be £24,500.

a month. We also proposed transitional arrangements from which most channels would benefit.

2.29 We assessed the impact on the broadcasters of the various proposals, taking into account transitional arrangements (that would mean only modest changes in 2015). We have updated this in the light of more up to date revenue data (2013 revenues are now available for all relevant channels), and to reflect the decisions set out in section 1. We have updated our analysis of the financial impact of our proposals on broadcasters (see Annex 4).

2.30 No changes were proposed to:

- a) the mechanism by which we protect broadcasters from disproportionate costs (a cap on estimated expenditure on access services costs of 1% of relevant turnover);
- b) signing obligations on channels with audience shares of 1% or more.

Section 3

Summary of consultation submissions and Ofcom's response

Respondents

- 3.1 Ofcom received over 30 responses from individuals, many of whom identified themselves as sign language users. We also received responses from various groups mainly representing the interests of sign language users, including the Association of British Sign Language Teachers & Assessors (ABSLTA), the British Deaf Association (BDA), Deafinitequality (DEQ), Healthy Deaf Minds Forum (HDM), and Heart of Deafness (HoD). Other respondents included Action on Hearing Loss (AHL), which represents a large number of hearing-impaired people who do not use sign language, as well as some who do, and two independent advisory groups to Ofcom, the Communications Consumer Panel (CCP) and the Advisory Committee for Older and Disabled People.
- 3.2 In addition, we received responses from groups and individuals that benefit financially from expenditure on signed programmes, including the British Sign Language Broadcasting Trust (BSLBT), and independent producers Louis Neethling, Charlie Swinburne of the Limping Chicken (LC) website, Remark! (RM) and Becoming Visible (BV). All of them are also Deaf BSL users. Remark! submitted both a written and a BSL response.²⁴
- 3.3 To facilitate feedback from sign language users, Ofcom published a BSL version of the Executive Summary of the consultation on its website, invited responses in writing or BSL, and convened two meetings with members of Deaf organisations to gather their views. National and community organisations represented at these meetings included AHL, BDA, the Scottish Council on Deafness, the Greater London Deaf Association, the Coventry Deaf Club, Newcastle upon Tyne Deaf Club, and St. John's Deaf Community Centre. Others attending included representatives of the ABSLTA, the HDM forum, and the Fingersmiths Theatre Company. Individuals included an academic, Louis Neethling (an independent film producer), a film-maker requesting confidentiality, and Ringkoo Barpaga (a performer and film-maker). A summary of points made at these meetings has been posted on Ofcom's website.
- 3.4 We received responses on behalf of seven broadcasters (including Channel 4 Corporation (C4C) and Viacom, which owns Channel 5, and other broadcasters who requested confidentiality). In addition, the Commercial Broadcasters' Association (COBA), which represents commercial multichannel broadcasters²⁵, provided a response.

²⁴ See https://www.youtube.com/watch?v=812-kW_uECE&list=UU9x2yEAU0Yp1qmhgky4cfKA

²⁵ The members of the Commercial Broadcasters' Association (COBA) are A+E, Chinese Channel, Discovery, NBC Universal, QVC, Scripps, Sky, Sony, Turner, Viacom and Walt Disney.

- 3.5 Except where respondents requested confidentiality, we have posted these responses on our website.²⁶ We summarise the responses below, including points made in confidential submissions, together with Ofcom's observations.

Summary of responses

- 3.6 In general, sign language users and groups representing their interests agreed that it would be appropriate for broadcasters to show progressively more sign-presented content on their own channels, and make correspondingly larger contributions to alternative arrangements. However, they argued that, not only was existing provision inadequate, but Ofcom's proposals were also too modest. Several respondents (BDA, HoD, an academic, some individuals) wanted the maximum proposed by Ofcom (75 minutes a week) to be increased to 120 minutes or more, and for contributions to alternative arrangements to rise commensurately.
- 3.7 They also argued that resourcing for BSL programming was unfair by comparison with that made available for Welsh and Gaelic speakers through S4C and BBC Alba, and for subtitle users. The latter group had benefited from a substantial increase in accessible content, while sign-presented provision for BSL users had remained unchanged (Limping Chicken, Remark!, an academic, and several individuals). AHL said that raising minimum signing requirements progressively would bring them in line with the requirements for subtitles and audio description, as well as the requirements for signing on channels with an audience share of greater than 1%.
- 3.8 Most broadcasters were not opposed to adjusting minimum contributions to alternative arrangements for inflation, though they wanted these adjustments to run from a current date, rather than be backdated to the end of 2007. Most were opposed to proposals for a substantive increase in obligations, whether these related to the minimum amount of signing on their own channels, or minimum contributions to alternative arrangements. They raised a number of general objections to Ofcom's proposals, and referred to these in response to several of the consultation questions.
- 3.9 For this reason, we deal first with these general objections (and relevant points made by other stakeholders), before summarising responses to specific consultation questions.

General comments by broadcasters

- 3.10 Several broadcasters challenged the basis for Ofcom's proposals, asserting that:
- a) the proposals lacked an evidence basis;
 - b) absent this and a robust cost-benefit analysis, Ofcom could not justify the proposals. The costs were (or were likely to be) disproportionate to the benefits; and
 - c) Ofcom should take a more strategic and holistic approach, which took account of what broadcasters were doing to improve accessibility to their content, both broadcast and on-demand.
- 3.11 We deal with each of these issues in turn.

²⁶ Responses to *Review of signing arrangements for relevant TV channels* (<http://stakeholders.ofcom.org.uk/consultations/review-signing-arrangements-tv/?showResponses=true>)

Lack of an evidence base

Broadcasters' comments

- 3.12 Most broadcasters felt that, absent analysis of a wider range of factors (referred to below), Ofcom's proposals lacked an evidence base and were disproportionate. In particular:
- a) a broadcaster said that none of the arguments made for the review were based on the premise that provision of signed programming is currently deficient, and no evidence had been presented which suggested this;
 - b) the same broadcaster and some other broadcasters said that any proposals should be informed by a better understanding of audience demand including current levels of consumption, and the preferences of the BSL users;
 - c) one broadcaster said that it believed that sign language users had been very well served by BSLBT in terms of the range and scope of programme content, but that it might be timely to seek viewers' opinions on whether these arrangements continued to meet their needs, given the scope to serve them through on-demand services. COBA also suggested that on-demand services offered new opportunities; and
 - d) COBA asked whether the number of first-run hours had fallen, and what was the nature of the supply market – had it shrunk so that BSLBT was commissioning from a smaller number of suppliers, what proportion were new suppliers to the Trust, and were there weaknesses in terms of the range and/or volume of companies with the necessary specialist skills? It suggested that simply increasing commissioning budgets might not be the answer, and that stimulating competition by offering longer term tenders might help.

Ofcom's response

- 3.13 We address each of these points below.

Reasons for the review

- 3.14 As regards paragraph 3.12(a) above, Ofcom notes that the broadcaster appears to be referring to the reasons why Ofcom considered it timely to carry out a review, rather than the substantive reasons for the proposals:
- a) in explaining the timing of the review, we noted that concerns about revenues, which led to earlier proposals for rising obligations being dropped, and a decision in the 2010 review to continue the freeze on obligations, had been lessened by rising revenues. We also noted that inflation had eroded the value of the minimum contribution since it was set in December 2007. It was these changes in circumstances that led us to say in paragraph 2.15 of the 2014 consultation document that 'it is now appropriate to review the current requirements'; and
 - b) the main arguments for rising obligations were set out in paragraph 4.7 of the 2014 consultation document. In particular, we pointed out in paragraph 4.7(a) that, unlike other access service users, viewers using sign language had not benefited from increasing provision over time. It is clear from the legislation that Parliament intended that assistance for people with hearing and / or visual impairments should rise over time; as explained in Section 2 above, Ofcom had

initially proposed this in 2007. The reason why Ofcom desisted from doing so was concern that increasing obligations might reduce assistance for all people with hearing and / or visual impairments (paragraphs 2.16 and 4.7(c) of the 2014 consultation document). Rising revenues have changed this calculus, as Ofcom pointed out in paragraph 4.7(c).

Audience demand, preferences and current levels of consumption, including on-demand services

- 3.15 Ofcom started from the assessment of the 2010 access services review²⁷, which is that sign language users highly value the sign-presented programming of BSLBT. Responses to the 2014 consultation process (including two meetings we had with deaf groups such as the British Deaf Association and the Scottish Council on Deafness, as well as submissions from representative groups and individuals) confirmed our understanding of the preferences of sign language users and shed light on their views on the current and proposed levels of provision.
- 3.16 In particular, responses:
- a) indicated a clear preference for sign-presented programming, as opposed to sign-interpreted programming (some individuals, BV, LC). Some felt that deaf people faced cultural barriers to understanding and enjoying sign-interpreted programmes. An academic noted that BSL users faced practical barriers too: the academic noted that, unlike subtitle users, who can access anything in print that they wish, members of the BSL community can have great difficulty accessing English due to the poor state of deaf education. Ofcom should bear in mind that many BSL users were effectively mono-lingual;
 - b) praised the contribution made by BSLBT programmes such as *Secret Lab*, *History of Deaf Education*, *Let's Go Wild*, *Who Cares?*, *Snapshots* etc. to informing and educating both adults and children (HDM, a teaching assistant at a school for the deaf);
 - c) expressed concern that the level of funding for BSLBT was beginning to jeopardise the quality and range of the programming available to BSL users. Several complained about the frequency of repeats (which the BSLBT response acknowledged), and the reduction in choice. One respondent asked why deaf people had to put up both with limited amounts of sign-presented programming, as well as the poor quality programming resulting from diminishing budgets; and
 - d) asked for a greater variety of sign-presented programming; some asked for more news, children's and documentary programmes. A BSL teaching assistant said that having only one programme a month was not ideal, given the range of topics to be covered for Deaf people. BSLBT said that despite requests from the deaf community for more programming, there were now fewer new commissions than when BSLBT started.
- 3.17 Analysis of the level and pattern of viewing of BSLBT programmes sheds some light on whether they are popular, and the extent to which viewers have engaged with the new options for consuming content:

²⁷ Section 4, *Television Access Services Review – Statement*, Ofcom, June 2010 (http://stakeholders.ofcom.org.uk/binaries/consultations/access_services/statement/review.pdf)

- a) the small size of the target audience means that BARB data are particularly subject to volatility. With that important caveat, data on reach suggests that the average monthly reach²⁸ for the most popular of the four slots – the one on Film4 – was 22,200 viewers between September 2010 (when the slot was instated) and December 2013. The average monthly reach peaked at 70,000 viewers in August 2012, corresponding to the 2012 Summer Paralympics. The second most popular slot – the one on the Community Channel on Saturdays – attracted on average 6,900 viewers²⁹; and
- b) viewing to broadcast slots dipped around the time that BSLBT started to make programmes available through a video player (the *Sign Zone*) on its website in July 2012.³⁰ Since then, the number of half-yearly unique visitors to BSLBT's website more than tripled in the following eighteen months, from 21,000 to almost 69,000³¹.

3.18 In the light of this, Ofcom considers that:

- a) responses from BSL users and representative groups support and amplify the assessment of the 2010 review. They suggest that BSL users would like to see more new BSL programming across a range of genres, and that they want it to be presented in BSL, not interpreted from English;
- b) a combination of viewing figures and traffic to BSLBT's website suggests that its sign-presented content is popular with sign language users (even though much of it is repeated);
- c) the decline in viewing measured by BARB after July 2012, and particularly in 2013 when the repeat rates rose, may also be partly explained by the higher level of repeats shown in the BSL Zones; and
- d) given the growth in traffic to BSLBT's website, it is clear that many sign language users already make use of the scope offered by technology to view programmes on-demand. Hence, we consider that there is no further need for a study to establish whether this is so.

3.19 Ofcom notes that alternative arrangements proposed by broadcasters to Ofcom should continue to meet the criteria set out in its Guidance at Annex 3 to the Code on Television Access Services.³² One of these criteria requires that alternative arrangements 'incorporate effective mechanisms for taking account of the views of deaf groups about the preferences of deaf people for programming'.

3.20 Ofcom's understanding is that BSLBT's arrangements do enable this, through a combination of direct viewer feedback, social media, and outreach work. However, if participating broadcasters are not satisfied that this criterion is being met, Ofcom would expect them to make appropriate representations to BSLBT, and if these do not result in satisfactory remedial action, to end their participation in these arrangements.

3.21 Ofcom is satisfied, for the reasons explained above, that:

²⁸ Source: BARB, all adults +4. Reach criteria: 5 consecutive minutes

²⁹ *ibid*

³⁰ <http://www.bslzone.co.uk/watch/>

³¹ Source: BSLBT.

³² Ofcom, *Television Access Services: Final Report on 2013*, 30 April 2014

(<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2013.pdf>)

- a) there is a clear demand for more sign-presented programming amongst sign language users and, indeed, responses to this consultation (see paragraphs 3.57 to 3.59 below) suggest that this demand is likely to exceed the provision proposed by Ofcom in its consultation paper;
- b) sign language users would like to see a wider range of sign-presented programming; and
- c) on-demand services are used by a significant proportion of viewers to sign-presented content.

3.22 Accordingly, Ofcom does not consider that separate reviews of audience demand, preferences or the propensity of sign language users to make use of on-demand services are necessary.

Commissioning and the supply market

3.23 As regards COBA's point (paragraph 3.12(d) above), Ofcom's consultation paper addressed the issue of first-run programming. It explained that, because of inflation since December 2007, 'the resources available for funding the production and distribution of sign-presented programmes to BSL users are likely to have shrunk, with detrimental effects on viewers to the range and/or quality of first run sign-presented programming'. We pointed out that the number of new commissions by BSLBT had dropped between 2009 and 2013, while the repeat rate had increased by 50%.³³

3.24 As regards COBA's questions about the supply market, the points about commissioning and the supply market made by BSLBT in its response to the consultation are relevant. In particular, BSLBT said that:

- a) there is a very small pool of expertise and resources are very tight; BSL programmes are made by a limited number of small, Deaf-led production companies struggling to survive at all;
- b) in BSLBT's early years, budgets were often unreasonably and unrealistically low, but BSLBT benefited from goodwill and subsidies from producers; this was not a sustainable basis going forward; and
- c) different kinds of programmes have different costs, and calculating averages over a small range that is distorted by restricted funding would not be meaningful or fair.

3.25 Clearly, the supply market is very small by comparison with that for English-language programmes. This is not surprising, as it is conditioned largely by the demand for programmes from BSLBT. The BBC has an in-house production team for *See Hear*, and ITV has commissioned sign-presented programming for CITV from its subsidiary, ITV Signpost. Ofcom understands that, at present, only three channels plan to meet their regulatory obligations by including sign-presented content in their schedules, two using previously broadcast material for this purpose.

3.26 That being the case, the issue is whether BSL production companies could supply the increased demand for programming from BSLBT if Ofcom's proposals were implemented, and if so, whether that would lead to a significant increase in prices.

³³ Paragraph 3.4, 2014 consultation. See also Figure 13 in Annex 3 to the 2014 consultation.

Ofcom considers that a separate analysis of the market to examine these issues is unnecessary, because:

- a) first, although the supply market is small, it has demonstrated a sustained ability to produce programmes across a broad range of genres. As we noted in the consultation paper, BSLBT has commissioned programmes from a wide variety of genres, averaging just over six a year;³⁴
- b) second, as COBA suggested, it would be open to BSLBT to commission longer runs of programming in the genres where the market has demonstrable expertise. This should help to meet the demand for additional content from sign language users, while managing costs and the impact of any constraints on supply;
- c) third, a regulatory decision about the level of contributions to alternative arrangements would provide greater transparency than currently exists, signalling to the market the growing business opportunities that may repay investment in new talent;
- d) fourth, both deaf and hearing personnel are already employed on these productions, and there is scope for employing more hearing personnel to help plug any interim gaps in expertise;
- e) fifth, for the reasons explained above, BSLBT has an effective monopsony on the commissioning of sign-presented programmes. This should mean that its leverage in price negotiations is considerable; and
- f) sixth, in its consultation proposals, Ofcom suggested gradual increases in contributions to alternative arrangements. After considering consultation responses Ofcom has decided that it would make sense to spread the increases in costs over a longer period. If most broadcasters opt to continue contributing to alternative arrangements, this longer period will make increases in spend more gradual than initially proposed. This should further mitigate the risk that more rapid increases in expenditure would merely serve to push up prices.

3.27 Ofcom considers that, taken together, these factors suggest that both the nature of the supply market and the commissioning practices that BSLBT could adopt would enable it to commission more new programmes, while managing the impact upon the market and on prices.

3.28 That said, it is not for Ofcom to determine how BSLBT should manage its affairs or to guarantee a particular outcome. Ofcom does not regulate the BSLBT, nor does it require that broadcasters contribute to it. BSLBT was created at the suggestion of, and with participation from, broadcasters. Ofcom agreed that broadcasters could propose alternatives to regulation that would contribute funding towards making sign-presented programmes available to sign language users³⁵. Participation in alternative arrangements remains entirely voluntary, and it also remains open to broadcasters to propose different alternative arrangements.

³⁴ See paragraphs A3.8-A3.9, Annex 3, 2014 Consultation.

³⁵ The default regulatory arrangements are that broadcasters should include 30 minutes of sign-presented content in their schedules each month between 7am and 11pm.

- 3.29 For the reasons outlined above, Ofcom does not agree that its proposals are unsupported by evidence, nor does it agree that further analysis is required on the lines suggested by some broadcasters.

Absence of a cost benefit analysis demonstrating proportionality

Broadcasters' comments

- 3.30 Some broadcasters cast doubt on the necessity and/or proportionality of the proposals. Broadcasters argued variously that:
- a) Ofcom's arguments are unconnected with its specific proposals, and fail to demonstrate how a three-fold increase in fees and almost three-fold increase in the minimum level of sign-presented programming is warranted;
 - b) it was not clear what the benefit would be to the audience, noting that it was generally reckoned that the number of sign language users was less than 100,000, of whom a very large number were able to follow subtitles;
 - c) given the limited number of broadcasting hours available to it, the extra benefit may not be capable of justifying the additional costs;
 - d) absent any up-to-date estimates on production costs for this type of programming, Ofcom cannot have sufficient information to enable it to implement such a significant regulatory measure; and
 - e) Ofcom had not complied with its obligations to ensure that its regulatory activities are 'transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed'. In the light of the arguments it made, one broadcaster said that Ofcom's proposals appeared arbitrary, disproportionate and excessive.

Ofcom's response

- 3.31 Ofcom:
- a) considers that there are three main reasons³⁶ why the case for raising minimum content requirements over time is connected to its specific proposals. In our consultation document we said that:
 - unlike users of subtitling and audio description, sign language users had not benefited from increasing provision from relevant channels over time. This had contributed to a very wide gap between programming that is accessible on those channels to sign language users, and that available to subtitle and audio description users. Ofcom's proposals seek to ameliorate this position;
 - there is an inconsistency in the regulation of signing on TV, in that the signing obligations on larger channels had risen over ten years from 350 minutes a month to 1,752 minutes a month³⁷, while relevant channels had

³⁶ Paragraph 4.7, 2014 consultation.

³⁷ This calculation is based on a commercial channel broadcasting for 24 hours a day that has reached the maximum 5% target for signed content, excluding the maximum amount of advertising permitted.

retained a fixed obligation of 30 minutes a month. Ofcom's proposals address this inconsistency; and

- the rising revenues of broadcasters make it timely to review the position, because they mitigate the risk that increases in provision for signing users could only come at the expense of other access service users or, indeed, a reduction in the provision of access services overall. Ofcom's proposals were designed with this risk in mind;
- b) notes the legislation provides for access service targets to be set that rise over time and considers that the proposals are consistent with the spirit of these, and consistent with the way in which Ofcom regulates the provision of subtitling and audio description on relevant channels, and all access services on other channels required to provide them;
- c) notes that its consultation made clear the benefits for sign language users of its proposals. In the short term, they would remedy the detrimental effects on the range and / or quality of first-run sign-presented programming of the current freeze in contributions to alternative arrangements (paragraph 3.4 of the 2014 consultation). In the medium to long term, they would allow sign language users to benefit from increasing provision of sign-presented programming, in the same way that other access service users benefit from increases in subtitling and audio description on relevant channels (paragraph 4.7(a) and (b) of the 2014 consultation);
- d) does not consider that the limited number of broadcasting slots available to BSLBT (Figure 11, Annex 3 to the consultation) is likely to restrict the benefit to viewers of a greater choice of programming. At present, only one sign-presented programme is shown in BSLBT's weekly slots on the Community Channel and Film 4. Shortage of funds for first-run programming means that this is often a repeat. If BSLBT was able to afford to make more programmes, it could accommodate them by cutting back on repeats. If necessary, BSLBT could schedule more than one programme a week, instead of repeating the same programme in each of the weekly slots. Finally, it would be open to BSLBT to seek additional broadcasting slots, or to make some first-run or repeated content available through its on-demand service, as some broadcasters do already;
- e) notes that the broadcaster asserting that Ofcom needed up-to-date estimates on production costs did not explain why this was a pre-requisite for proposing increased obligations. Ofcom explained why it is not feasible to assess average costs for sign-presented programmes on the basis of the data that was either available or could be obtained (paragraphs 3.7 to 3.11 of the 2014 consultation), and the broadcaster concerned did not dispute this;
- f) does not agree that it has failed 'to have regard ... to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed' (the requirements laid upon Ofcom by section 3(3)(a) of the Act):
- Ofcom's proposals and the reasons for them were clearly set out and explained in the consultation document (see summary in Section 2 of this document);

- Ofcom's proposals for signing arrangements on relevant channels improve consistency as they are more in line with the (increasing) signing obligations on other channels; and
 - Ofcom's proposals are targeted only at relevant channels, as we see no need to propose changes to signing arrangements in respect of other channels.
- g) Finally, the proposals are proportionate, as broadcasters continue to be protected from having to spend more than 1% of a relevant channel's turnover on the assessed cost of providing access services. This is consistent with Ofcom's conclusions on this point in the 2007 Statement which established the current arrangements for signing on low audience channels³⁸.

*[...] Ofcom has said it will take account of the assessed cost of any new signing arrangements in determining whether spending on access services by broadcasters is under the limit of 1% of their relevant turnover. Ofcom has previously concluded, following consultation, that this limit would be appropriate to ensure that broadcasters do not face disproportionate costs in providing access services. Ofcom confirmed this position following the Access Services Review. Accordingly, Ofcom considers that, by taking account of the assessed cost of expenditure on signing within the 1% limit, it will ensure that the costs placed upon broadcasters are not disproportionate;*³⁹

- 3.32 In sum, we do not consider that Ofcom's proposals are 'arbitrary, disproportionate and excessive'. Ofcom's proposals were carefully calibrated to restore the value of contributions to alternative arrangements and to allow sign language users to benefit from rising provision, in the same way as users of subtitling and audio description, and consistent with the way channels with larger audiences are regulated. As indicated above, broadcasters continue to be protected from disproportionate burdens by the cap on total assessed expenditure on access services of 1% of relevant turnover. The net result for sign language users could mean that provision of first run sign-presented programmes funded by the BSLBT could triple from the existing level of 10 - 12 hours a year, which we do not regard as excessive provision given the low level of current provision.

Ofcom should take a more strategic and holistic approach

Broadcasters' comments

- 3.33 Both COBA and a broadcaster argued that Ofcom should adopt a more holistic approach towards improving the accessibility of television. The broadcaster suggested that Ofcom's call for inputs on speaking EPGs, its reports on the quality of live subtitling, ATVOD's access services questionnaire, and Ofcom's consultation on signing were 'competing priorities', and that 'a more strategic and holistic approach to access service would be helpful'. It said that significant technological developments had occurred in access services since Ofcom had last examined the market in detail, most notably with regard to the significant uptake of on-demand services, the providers of which are committed to increasing the provision of access services.
- 3.34 COBA noted that its members are providing or seeking to provide access services across a range of linear and non-linear services, including domestic and non-domestic ones. It argued that Ofcom's general approach to access services should,

³⁸ Paragraphs 4.42 to 4.46, and A4.7 to A4.11, 2007 Statement

³⁹ 2007 Statement, Paragraph 4.44.

as far as possible under existing laws, recognise that licence holders face cost increases on a number of levels at the same time, as well as the fact that new technology is giving audiences greater choice in how access services are provided. COBA said that it understood that disability groups have told ATVOD that they view provision of access services on catch-up programming as a priority.

- 3.35 In a related comment, another broadcaster said it may be appropriate to allow broadcasters to direct some of their current spending on linear television into their own non-linear plans so as to extend the availability of signing onto new platforms. It said that it is continuing with its own plans to implement signing provision on catch-up and on-demand non-linear services in sign-interpreted form.

Ofcom's response

- 3.36 Ofcom does not agree with the respondents who imply that Ofcom's regulatory interventions are not driven by a strategic and holistic approach.
- 3.37 Reflecting the duties placed upon it by section 303 of the Act (see Section 2), Ofcom seeks to promote the 'understanding and enjoyment' of television services by people with visual or hearing impairments or both. This strategic objective underlay Ofcom's decision in 2007 to respond to sign language users' preferences by requiring that low audience channels replace sign-interpreted programming, watched by few if any sign language users, with a smaller quantity of sign-presented programming (or to help make sign-presented content available in other ways).
- 3.38 In Ofcom's view, a holistic approach requires that we consider how all those with visual and/or hearing impairments can be assisted to understand and enjoy television, taking account of the different ways in which they consume television content.
- 3.39 In doing so, far from ignoring the implications of technological developments that bear upon accessibility, Ofcom tracks them closely. For example, our annual Communications Market Reviews⁴⁰ have charted the growth in on-demand viewing, and we have supported the sustained efforts of ATVOD to persuade on-demand service providers to make their services more accessible. We are encouraged that these efforts are beginning to bear fruit. By the same token, we have closely followed the development and application of text to speech technology, with the aim of ascertaining whether it would be helpful for the visually impaired and feasible for TV service providers to make talking EPGs available.
- 3.40 Both COBA and some broadcasters appear to be saying that Ofcom should allow broadcasters to redirect expenditure away from sign-presented programming on their linear channels and towards sign-interpreted content made available through on-demand services. We see two main difficulties with this:
- a) first, the statutory framework does not provide for access services obligations imposed on television services to be met through programmes made available in on-demand services which are subject to a separate regulatory regime; and
 - b) second, the evidence on the preferences of sign language users that led to the present arrangements is that they prefer sign-presented programming and would

⁴⁰ Ofcom, *Communications Market Report 2014*, August 2014 (<http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr14/>)

be unlikely to consider sign-interpreted programming a better substitute. Responses to the consultation support this assessment. The broadcasters have not produced evidence to support their view that providing sign-interpreted content on catch-up services would be preferred by sign language users to the current arrangements.

3.41 The remainder of this section is devoted to the responses to the questions contained in the 2014 consultation, and Ofcom's conclusions.

Restoring the value of minimum contributions to alternative arrangements

Ofcom's proposals

- 3.42 Since 1 January 2009, Ofcom's Code has enabled relevant channels to choose to schedule sign-presented programmes on their own channels, or to contribute a minimum annual amount (currently £20,000) to alternative arrangements that contribute to the provision of sign-presented programming. There has been no change to this amount since it was set in December 2007.
- 3.43 Most broadcasters choose to contribute to the alternative arrangements run by the BSLBT, which commissions sign-presented programmes shown on the Community Channel and Film4. However, there is no bar to them meeting their obligations by providing sign-presented programmes on their own channel, or by devising other alternative arrangements, provided that these are approved by Ofcom.
- 3.44 Ofcom asked whether:
- a) it would be appropriate to increase the minimum contributions to bring them back to the 2007 level in real terms, and to make annual adjustments for inflation thereafter; and
 - b) if the minimum contribution was adjusted for inflation, it would be appropriate to make annual adjustments on the basis of the Consumer Price Index (CPI) (rounded to the nearest £100), rather than on the basis of comparisons with the costs of existing sign-presented programmes, or with general TV production costs.

Consultation responses

Sign language users

- 3.45 Individuals and groups representing the interests of sign language users (AHL, ABSLTA, BDA, BV, HDM, LC, and several individuals) said that, as a minimum, contributions to alternative arrangements should be adjusted for inflation from the end of 2007. Others agreed (BSLBT, CCP, Remark!). Two organisations were unsure (DE, HD).
- 3.46 Many wanted Ofcom to go further, by setting a higher baseline (BDA, BSLBT, BV, several individuals). Some attendees at the meetings hosted by Ofcom argued that Ofcom should now set contributions which would have the effect of retrospectively 'clawing back' the additional amounts that would have been due had contributions been inflation adjusted between 2008 and 2014.

Broadcasters

- 3.47 Most broadcasters agreed with the principle of adjusting contributions to alternative arrangements for inflation (C4C, Viacom, and three other broadcasters). Another broadcaster, whilst noting that it was open to considering forward looking inflationary rises, said that in this case, it would be happy for these increases to be in line with CPI. A third broadcaster said that further research into the cost base was needed, though ensuring a suitably high level of production values was clearly a key factor.
- 3.48 However, a broadcaster said that indexing should start from 2015, not from the end of 2007. It said that Ofcom's 2007 statement made absolutely no reference to inflationary increases, and that it was unreasonable to expect retrospective fees as though Ofcom's policy had changed prior to 2014. It said that contributions should rise annually in line with CPI until they reached a ceiling of £30,000.
- 3.49 COBA said that, though there might well be a need for an increase in funding for BSLBT, it did not believe it would be proportionate to introduce an inflation-linked rise in fees in perpetuity without a clear and robust analysis of audience demand and supply costs (for a fuller discussion of COBA's points, see the text headed 'Audience demand etc.' above).

Ofcom's conclusions

- 3.50 Ofcom understands why some sign language users would prefer inflation adjustments to be applied to a higher baseline figure than the current £20,000, but does not consider that the arguments advanced justify departing from the proposals to simply restore the real value of the contribution level set in December 2007. However, we also note that our proposals for progressive increases to contribution levels after 2016 would have the effect of securing increases in real terms over time.
- 3.51 We do not agree with the suggestion made by some sign language users that Ofcom should 'claw back' the additional amounts that would have been due had contributions been inflation adjusted between 2008 and 2014. That would amount to retrospective regulation, which would not be appropriate. However, we disagree with the broadcaster that asserted that restoring the real value of the contribution to the level when it was first set (December 2007) would amount to retrospective regulation, precisely because Ofcom is only proposing to change fees going forward and is not imposing the 'claw back' proposed by some consultation respondents.
- 3.52 We note the suggestion from one broadcaster that further research into the cost base was needed, though ensuring a suitably high level of production values was clearly a key factor. Ofcom's consultation paper explained that the cost of produced sign-presented programmes varied widely (a point endorsed by BSLBT in its consultation response). However, the broadcaster did not explain how any additional research would help improve our knowledge base, nor how it would be possible to take into account the desirability of high production values. Accordingly, Ofcom does not consider that the case for further research into the cost base for producing sign-presented programmes has been made.
- 3.53 Ofcom notes that there is broad support for minimum contributions to be adjusted for inflation using the CPI index. Against that background, Ofcom has decided that it would be appropriate to adjust the level of contributions to alternative arrangements in order to restore their value to the 2007 level in real terms, and to make annual adjustments for inflation rounded to the nearest £100 thereafter in accordance with the Consumer Prices Index.

- 3.54 In order that broadcasters of relevant channels should have sufficient notice to prepare for these and other changes, Ofcom has decided in view of the additional time it has taken to complete the consultation process that the changes should take effect from 1 January 2016. The Code on Television Access Services and related Guidance have been amended as shown in Annex 3 to reflect the changes.

Minimum signing requirements

Ofcom's proposals

- 3.55 As explained in Section 2, relevant channels have the choice of scheduling sign-presented programmes on their own channels, or contributing to alternative arrangements. Those that opt to show sign-presented programmes on their own channels must schedule a minimum of 30 minutes a month between 7am and 11pm.
- 3.56 Ofcom asked whether minimum signing requirements should remain fixed at 30 minutes a month, or rise progressively over ten years to 75 minutes a month.

Consultation responses

Sign language users

- 3.57 Sign language users and representative bodies supported a progressive increase (AHL, HDM, RM), but several respondents (BDA, HoD, an academic, some individuals) wanted the maximum proposed by Ofcom (75 minutes a week) to be increased to 120 minutes or more, given the much larger amounts of programming accessible to users of subtitling and audio description (BDA). Some wanted the target set at 120-150 minutes a month (BDA, BV, HDM), and for this to comprise first-run programming. Others wanted the increase to take place at a faster rate (ABSLTA, BV, HoD, LC, an academic).
- 3.58 Sign language users and representative bodies argued that resourcing for BSL programming was unfair by comparison with that made available for Welsh and Gaelic speakers through S4C and BBC Alba, and for subtitle users. These groups had benefited from a substantial increase in accessible content, while sign-presented provision for BSL users had remained unchanged (Limping Chicken, Remark!, an academic, and several individuals). AHL said that raising minimum signing requirements progressively would bring them in line with the requirements for subtitles and audio description as well as the requirements for signing on channels with an audience share of greater than 1%.
- 3.59 Two respondents pointed to the educational value to children of sign-presented programmes; a teaching assistant said that these were the best way to cover complex subjects in the National Curriculum, so teachers were desperate to have more BSL programmes. ABSLTA said that teachers spent hours trying to fill the gaps in deaf students' knowledge of world news and social issues, given that GCSEs required a high level of media literacy and social knowledge.

Broadcasters

- 3.60 Most broadcasters opposed any increase, wanted it scaled back, or felt that the case for any increase had not been made.
- 3.61 In specific comments:

- a) a broadcaster considered that minimum signing requirements should remain fixed at 30 minutes a month, and that more content providers would then increase provision on a voluntary basis, for example, within on-demand services;
- b) another broadcaster said that Ofcom's proposals would lead to a threefold increase in the funds available to the BSLBT that would enable many more programmes to be commissioned –far more than what Ofcom's consultation characterised as a 'modest increase in the quantity, quality and diversity of new content'. Another broadcaster made a similar point;
- c) ✂
- d) ✂

Ofcom's conclusions

- 3.62 As regards the points raised by sign language users, Ofcom understands why sign language users would prefer:
- a) to see larger increases in the amount of sign-presented content on television more quickly. However, our assessment suggests that if costs for broadcasters increased quickly and / or significantly, this could result in some broadcasters' costs exceeding the expenditure cap of 1% of relevant turnover that Ofcom has put in place to protect broadcasters from disproportionate burdens. This would mean that more channels would be permitted to provide less subtitling, and that some might cease to be required to provide access services at all, to the detriment of all users of access services, including sign language users; and
 - b) broadcasters to meet their signing obligations with first run programmes rather than repeats, but notes that legislation sets obligations in terms of the proportion of qualifying programmes, which includes both first run and repeated programmes.
- 3.63 Some broadcasters have argued that Ofcom has not established that the provision of signed programmes is deficient and so provided any justification for the change in levels of provision required. This has a bearing on several of the questions posed in the consultation. We have addressed this and related arguments above, in paragraphs 3.15 to 3.22.
- 3.64 As regards the specific comments by these broadcasters, Ofcom:
- a) doubts that retaining a minimum requirement of 30 minutes a month would lead to further voluntary provision of sign-presented content, for example in on-demand services. This is because online services are normally (though not exclusively) used as an alternative means of distributing content previously made available in broadcast programmes. It is not clear, absent regulation, what incentives a broadcaster would have to commission new signed content for its on-demand service. In the light of other comments made by the same broadcaster (see paragraph 3.35 above), it appears it may have in mind providing sign-interpreted content online as an alternative way of meeting its regulatory obligations. However, for the reasons explained in paragraphs 3.36 to 3.41 above, this is not a requirement Ofcom is able to impose under the statutory scheme;

- b) Ofcom does not consider that a three-fold increase in signing obligations over several years on relevant channels is unreasonable, for two reasons: first, the proposed increases appear large only by comparison with the low level of obligations currently set by Ofcom – 30 minutes of sign-presented programming a month, or a voluntary contribution to alternative arrangements of £20,000 a year; second, channels with larger audiences are subject under the statutory requirements to a five-fold increase in signing obligations over a ten year period, and all channels are subject to an eight-fold increase in subtitling obligations and a five-fold increase in audio description requirements over the same period. Paragraph 4.7(b) of the 2014 consultation document illustrated the disparity in signing obligations that this creates;
- c) ✂
- d) ✂

Progressive increases to contributions to alternative arrangements

Ofcom's proposals

- 3.65 Ofcom also asked whether the minimum contributions should remain fixed at £20,000 a year (but adjusted for inflation since 2007) or should rise progressively over a ten year period to £50,000 (also adjusted for inflation since 2007).

Consultation responses

Sign language users

- 3.66 Sign language users and representative bodies were keen that minimum contributions should rise progressively, but many wanted them to rise beyond £50,000 (adjusted for inflation), or to increase over a shorter period.

Broadcasters

- 3.67 Broadcasters were opposed to progressive increases in minimum contributions, and cited a number of reasons:
- a) noting that it was aware that many people preferred sign-presented programming, one broadcaster said that it was important that increasing the cost of alternative arrangements did not rise to the extent that it was more cost-effective for broadcasters to replace sign-presented programming with sign-interpreted programming;
 - b) another broadcaster referred to its arguments that Ofcom had presented no evidence that its proposals were necessary or proportionate and said that, in seeking to link the monetary contributions with the monthly quota of signed programming, Ofcom showed flawed logic. It suggested that, where broadcasters already provide signed content, it was highly unlikely that an increase in the total minutes produced would result in a proportional linear increase in expenditure, given the high level of costs involved in TV production;
 - c) a third broadcaster said that, in aligning the possible increase to the progressive increase in signing quotas on larger channels, Ofcom had ignored the fact that these quotas were met by repeating programmes. Therefore an increase in such quotas would not necessarily result in a commensurate increase in costs – it said

that its own channels have made substantial use of repeats to meet its subtitling and audio description quotas. Another broadcaster made a similar point;

- d) the same broadcaster said that increasing threefold the funds available to the BSLBT would enable it to greatly increase the number of programmes it commissions – by far more than the ‘modest increase in the quantity, quality and diversity of new content’ predicted by Ofcom;
- e) the same broadcaster said that money taken from the budget of hard-pressed children’s channels might be used to fund adult programmes made by BSLBT, as only ten of the 136 programmes it had commissioned were for children;
- f) the same broadcaster said that the increase would be disproportionate to the benefit - most of the small number of sign language users could read English and therefore use subtitles; and
- g) the same broadcaster said that Ofcom should go ahead with an inflation-based 20% increase, and conduct a review of the potential benefits (including the target audience’s preferences and how widely BSLBT programmes are watched) in relation to further increases, as well as the disbenefits, including the opportunity costs for broadcasters’ programme budgets.

Ofcom’s conclusions

3.68 Ofcom recognises why sign language users would like to see contributions rise more quickly to higher levels than it proposed. However, as with increases to the minimum signing requirements, the scenarios we have considered suggest that if costs for broadcasters increased quickly and / or significantly, a number would breach the expenditure cap of 1% of relevant turnover that Ofcom has put in place to protect broadcasters from disproportionate burdens (see paragraph 3.31(g) above). The net result might be less subtitling, or indeed fewer access services overall. With this in mind, Ofcom does not consider that there is sufficient justification to increase contributions levels at a higher or faster rate than proposed.

3.69 As regards the comments made by broadcasters, Ofcom:

- a) notes the concerns expressed by a broadcaster that increasing the cost of alternative arrangements might make it more cost-effective for broadcasters to replace sign-presented programming with sign-interpreted programming. Ofcom considers that two points are relevant: first, as we explained in the consultation document, the impact assessment suggested that the proposed increases in contributions to alternative arrangements would not result in many broadcasters reaching the 1% expenditure cap on relevant turnover; second, under the current regulatory arrangements, it is not open to these broadcasters to meet their obligations with sign-interpreted content, for the reasons referred to in paragraph 3.40 above;
- b) has addressed in the section above (paragraphs 3.14 to 3.29) the arguments that it has presented no evidence for its proposals. Ofcom does not agree that it is illogical to link minimum contributions to alternative arrangements with the monthly quota of signed programming. As Annex 3 to Ofcom’s Code on Television Access Services makes clear, both are mechanisms to secure the policy objective of making more sign-presented programmes available to sign language users. In this connection, it would not make sense for the basic regulatory obligation (sign presentation on broadcasters’ own channels) to rise,

without requiring corresponding increases in contributions to alternative arrangements, as this would change the balance of incentives. There is, of course, no compulsion on broadcasters to contribute to alternative arrangements;

- c) did not argue that ‘an increase in the total minutes produced would result in a proportional linear increase in expenditure’. As explained in paragraph 4.8 of the 2014 consultation document, Ofcom proposed to make the increases in contributions to alternative signing arrangements correspond to increases sign-presented programme obligations, and consistent with the rise in obligations imposed on channels with audiences larger than those of relevant channels;
- d) notes that, far from ignoring the fact that broadcasters meet their regulatory obligations to provide access services with programmes that are repeated, we have taken this into account for many years. Repeat rates are factored into all Ofcom’s impact assessments, as appropriate, on the basis of first run rates as a proportion of total output that broadcasters notify to us⁴¹. Furthermore, and with specific reference to sign presentation, in the 2007 consultation Ofcom estimated that the annual cost of meeting the sign-presented programme obligation of 30 minutes per month would have equated to £60,000; this estimation assumed a repeat rate of six times, and was based on cost data provided by the Community Channel⁴²;
- e) does not consider that a three-fold increase over several years in contributions to the alternative arrangements by relevant channels is inherently unreasonable. First, the proposed increases only appear large by comparison with the low level of current obligations i.e. 30 minutes of sign-presented programming a month, or a voluntary contribution to alternative arrangements of £20,000 a year. Second, all channels are already subject to an eight-fold increase in subtitling obligations and a five-fold increase in audio description requirements over the same period. Channels with larger audiences are subject to a five-fold increase in signing obligations over a ten year period. Paragraph 4.7(b) of the 2014 consultation document illustrated the disparity in signing obligations that this creates;
- f) notes that about 7% of BSLBT’s commissions from 2009 to 2012 were for children’s programmes⁴³; that in 2012, children’s channels accounted for about 10% of contributions from broadcasters; that broadcasters of children’s channels are not obliged to contribute to BSLBT if they are dissatisfied with its editorial choices; and that it is open to them to meet their regulatory obligations by catering for children who use sign language in their own schedules;
- g) notes that English is a second language for sign language users, and that many Deaf school leavers do not have high levels of literacy in English.⁴⁴ For these reasons, it cannot be assumed that all or most sign language users would find it easy to use subtitles to understand and enjoy television. In this connection, we note that Parliament decided to make separate provision for sign language users in section 303(5)(d) of the Act; and

⁴¹ See, for example, paragraph A6.20, *Television access services: Review of the Code and Guidance*, March 2006

(<http://stakeholders.ofcom.org.uk/binaries/consultations/accessservs/summary/access.pdf>)

⁴² 2007 Consultation; paragraph A5.23.

⁴³ See Figure 12, Annex 3, 2014 consultation.

⁴⁴ *Researching Deaf Children’s Literacy*, July 2008, Dr Diana Burnham, University of Oxford

(http://eprints.ncrm.ac.uk/327/1/Diana_Burman_ESRC_Deaf_Childs_Lit_3.7.08_St_Cats_May08.ppt)

h) does not agree that we should defer increases in regulatory obligations (save for an inflation-based increase in contributions to alternative arrangements) to allow for a review of the potential benefits to sign language users and the costs to broadcasters, as they are already clear and were set out in the consultation document. As we noted in the consultation paper, sign language users would benefit from the proposals:

- to increase signing obligations, as this would allow sign language users to benefit from rising provision over time, in the same way as other access service users (paragraph 4.7 of the 2014 consultation paper);
- to index contributions to alternative arrangements, as this would enable BSLBT to reduce its reliance upon repeats (paragraph 4.25 of the 2014 consultation); and
- to increase contributions to alternative arrangements gradually over time, which would translate over time into a modest increase in the quantity, quality and diversity of new content, and a reduction in repeats (paragraph 4.31 of the 2014 consultation);

3.70 As regard the costs to the relevant broadcasters, we carried out a thorough analysis of the cost impact on broadcasters, and published indicators of how this would affect broadcasters in general. Furthermore, the 1% expenditure cap would still ensure the proportionality of the access services obligations, as set out above. We explained in the 2014 consultation document that, for reasons of commercial confidentiality, we were not publishing specific estimates of the impact of increased obligations (paragraphs 4.20 and paragraph 4.35), but we did publish anonymised indicators of the impact on these broadcasters, and we provided the information that some broadcasters used to assess how they would be impacted. We have updated this analysis in the light of 2013 data on broadcasting revenues, and (as before) have looked at the potential impact on each broadcaster. Updated industry-level indicators can be found in Annex 4 to this document.

Transitional arrangements

Ofcom's proposals

- 3.71 Ofcom noted in the consultation paper that implementing the progressive increases proposed would mean that longer-established channels would face a significant increase in obligations at the outset, albeit from a low base.
- 3.72 Ofcom asked whether it would be appropriate to apply transitional arrangements to prevent sudden increases in obligations. Ofcom consulted on a proposal to apply these transitional arrangements to channels that had reached the fourth (or later) anniversary of their relevant date by 2015, to avoid sudden large percentage increases in obligations.
- 3.73 Under these arrangements, such channels would be required to increase signing on their own channels from 30 minutes in 2015 to 45 minutes in 2016, 60 minutes in 2017, and 75 minutes in 2018. Alternatively, we said that they could increase contributions to other arrangements approved by Ofcom (such as BSLBT) from £24.1k in 2015, to £36.1k in 2016, £48.2k in 2017 and £60.2k in 2018⁴⁵.

⁴⁵ These figures reflected the latest available data at the time of the consultation, so did not take account of inflation during 2014.

Contributions from (and including) 2016 onwards would be adjusted further for inflation using the latest available yearly CPI inflation data.

Consultation responses

Sign language users

- 3.74 AHL agreed that it was reasonable for the established channels to have rising obligations, as did one individual. BSLBT thought that Ofcom was being unduly cautious, while others felt that the proposed transitional period was too long (some individuals, DEQ, LC), or that obligations should continue to rise beyond the levels proposed by Ofcom (several individuals, HoD, an academic, RM).
- 3.75 Most sign language users opposed the principle of transitional arrangements, suggesting that the increase should take effect immediately, to 'remedy the loss of income since 2007' (several individuals, ABSLTA, BDA, Deafinitequality, LN). BSLBT thought that broadcasting revenues would have risen since 2012, the latest data available to Ofcom when the consultation was prepared.

Broadcasters

- 3.76 Several broadcasters:
- a) referred to the general objections they had to Ofcom's proposals. A summary of these and Ofcom's response can be seen above in the first part of Section 3;
 - b) reiterated the objections they raised in response to proposals for an increase in minimum contributions to alternative arrangements. A summary of these and Ofcom's response can be seen under the heading 'Progressive increases to contributions to alternative arrangements' above.

3.77 ✂

Other respondents

- 3.78 An individual respondent who uses subtitles said that the changes should not result in reductions in subtitling.

Ofcom's conclusions

- 3.79 Ofcom understands that sign language users and the BSLBT would like to see immediate and substantial increases in sign language obligations (including the level of contributions to alternative arrangements). However, in Ofcom's judgement, this would not be in the interests of access services users in general, as such increases would increase the likelihood that a significant number of channels would have to spend more than 1% of their relevant turnover on access services, and would thus be exempted, to the detriment of access service users generally.

3.80 ✂

- 3.81 We considered whether varying the transitional period would further ameliorate the position for broadcasters and subtitle users without affecting provision for sign language users in the longer term. In doing so, we had regard to the need for increases in minimum signing requirements that would make sense in scheduling terms (e.g. no less than 5 minutes), and the need to avoid the perverse outcome that

'newer' broadcasters might have higher obligations than more established broadcasters. As a result, we believe that a seven-year transitional period applying to all broadcasters that have reached the fourth anniversary of their relevant date would strike an appropriate balance, for the following reasons:

- a) sign language users would still benefit from a significant annual increase in resources for signed TV over a seven year transitional period. Although slower than the initial proposals, it would also allow more time for BSLBT (the likely beneficiary) to plan expenditure in ways that further reduce the risk of inflating costs;
- b) subtitle users would benefit from a longer transitional period, as it would probably delay the point at which a number of channels could secure exemptions on cost grounds from access service obligations or a reduction in subtitling targets. We estimate that a four year transition period would result in access services being dropped altogether on two channels from 2016, and subtitling being reduced on a further three channels from that date. By contrast, a seven year transition period would delay access service cuts on the two channels to 2017, and reductions in subtitling would not begin before 2018. Moreover, these estimates assume no growth in revenues. Over a seven year transition period, there would be a greater likelihood of real growth in revenues so reducing or eliminating the need for cuts (as exceeding the 1% expenditure cap would be less likely). More detail is given in the updated impact assessment at Annex 4; and
- c) broadcasters would benefit from a slower increase in regulatory obligations.

3.82 Accordingly, we have concluded that transitional arrangements should apply to all broadcasters that have reached the fourth anniversary of their relevant date, and that these arrangements should come into force from 1 January 2016. The amendments to Ofcom's Code and Guidance shown in Annex 3 give effect to this provision.

Other points

3.83 In addition to responding to the consultation questions, consultees made a number of other points. We summarise these below, together with Ofcom's response.

3.84 The BDA and a broadcaster asked Ofcom to consider allowing channels with larger audiences to participate in alternative arrangements. Ofcom did in fact consider in 2007 whether channels with larger audiences could participate in alternative arrangements, as part of the review of signing arrangements. We explained then that:

- a) from a legal perspective, we were not satisfied (having regard to the criteria in section 303) that Ofcom would have a basis for exempting these channels from the statutory requirements and subjecting them to the same regime as relevant channels;
- b) retention of the current arrangements would allow sign language users on all platforms to access a wide range of signed programmes on channels accounting for two thirds of viewing.⁴⁶

3.85 While we will keep these arrangements under review, we do not presently see any reason to change this assessment.

⁴⁶ Paragraph 3.22, 2007 Statement

- 3.86 AHL asked Ofcom to consider increasing signing requirements on larger channels. In fact, these channels have already reached the target of 5% set out in legislation. Nevertheless, our most recent report on actual provision shows that some of these channels are providing more than they are required to.⁴⁷
- 3.87 A broadcaster said that it was rather unclear why relevant channels were precluded from offering sign-interpreted content as an alternative to sign-presented programmes or contributions to the BSLBT. Ofcom set out the reasons in its December 2007 statement.⁴⁸ In brief, it became clear that few if any sign language users were benefiting from sign-interpreted programmes on relevant channels, most of which were shown late at night. Accordingly, following a lengthy consultation period with both sign language users and broadcasters, we concluded that the needs of sign language users would be better served by a minimum of 30 minutes sign-presented programming each month during the more social hours of 7am to 11pm.
- 3.88 A broadcaster said that profitability of individual channels, not revenues, should be the measure used by Ofcom to consider whether substantial increases in fees can be afforded. We considered the basis for assessing affordability as part of a consultation on access services arrangements in 2004. We explained then that we did not consider it practicable, at least in the short term, to base assessments of affordability on profitability. We noted that profit figures are not prepared by companies on a consistent basis. It would also be possible for broadcasters to assess operating costs on a different basis. While it would be possible to overcome this by requiring broadcasters to make declarations of profit or operating costs on a comparable basis especially for this purpose, this approach would require very intrusive and detailed regulation, and would take a considerable time to establish, increasing the regulatory burden on broadcasters, and significantly delaying the publication of the code, to the disbenefit of disabled viewers. We concluded that qualifying revenue was a consistent and available measure and it made sense to use it.⁴⁹ We remain of that view.
- 3.89 Several sign language users and groups representing their interests said that the consultation and the questions were too complex to understand easily. Ofcom recognises that the consultation was complex, particularly as English is a second language for some sign language speakers. Given that we expected close scrutiny of the consultation from broadcasters (including their legal advisers), we considered it important to ensure that the proposals were expressed precisely, and with supporting evidence and argument. In the circumstances, higher level summaries might have been criticised as insufficiently clear, and could have set the process back. For these reasons, we:
- a) provided a summary of the consultation proposals in BSL, and invited responses in BSL (we received one);

⁴⁷ *Television Access Services report 2014*, Ofcom, April 2015

(<http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports/tv-access-services-2014>)

⁴⁸ See, for example, paragraphs 4.5 to 4.10, and paragraph 4.29, 2007 Statement

⁴⁹ Paragraph 27 of Annex 2, *Statement on Code on Television Access Services*, Ofcom, July 2004

(http://stakeholders.ofcom.org.uk/binaries/consultations/tv_access_services/statement/statement.pdf)

- b) invited groups representing sign language users to two well-attended meetings at which those present were able to ask questions about the proposals and provide their responses⁵⁰;
 - c) publicised the consultation in a special online interview with the editor of the BBC programme *See Hear*.⁵¹ The BBC also published an article and a link to the consultation on *See Hear*'s Facebook page;⁵² and
 - d) sought assistance from the BSLBT in encouraging sign language users to respond to the consultation. BSLBT posted an article in the *Sign Zone* with Ofcom's BSL summary.⁵³
- 3.90 We are pleased that, as a result, Ofcom received many more responses from sign language users and groups representing their interests than any previous consultation. Non-confidential responses have been posted on Ofcom's website.⁵⁴

⁵⁰ The summaries of the two meetings with representatives of BSL users are available on Ofcom's website at the following link: <http://stakeholders.ofcom.org.uk/consultations/review-signing-arrangements-tv/?showResponses=true>

⁵¹ See: BBC, *Interview with Ofcom – Subtitled Version*, 10 September 2014 (<http://www.bbc.co.uk/programmes/p026dk4b>): retrieved on 6 May 2015.

⁵² See: BBC SEE HEAR Facebook post, 22 July 2014, 04:02 (<https://www.facebook.com/bbcseehear/posts/758907020828039>); retrieved on 6 May 2015.

⁵³ See: BSL Zone, *Deaf people have until Monday to reply to Ofcom's BSL on TV consultation*, 19 September 2014 (<http://www.bslzone.co.uk/latest/bsl-video-ofcom-launch-consultation-bsl-tv/>); retrieved on 6 May 2015

⁵⁴ Ofcom, *Review of signing arrangements for relevant TV channels*, Responses (<http://stakeholders.ofcom.org.uk/consultations/review-signing-arrangements-tv/?showResponses=true>)

Annex 1

Changes to signing arrangements for relevant domestic TV channels: a plain English guide

Purpose of this summary

A1.1 This summary is mainly intended for people who use sign language, for whom English may be a second language. It has less detail than the main document, which is the definitive record of Ofcom's decisions and the reasons for them.

Introduction

A1.2 In 2003, Parliament decided that TV channels should show some programmes with subtitling and sign language, for people who are deaf or cannot hear well.

A1.3 Parliament also said that some programmes should have audio description, to help people who are blind or cannot see well. Audio description explains to people who cannot see the TV screen what is happening. We call subtitling, signing and audio description 'access services'. Parliament said that, after ten years, TV channels should provide signing on 5% of their programmes.

A1.4 Parliament told Ofcom to draw up the detailed rules. We set these rules out in the 'Code on Television Access Services'. The Code says that TV channels should provide access services if they:

- a) have reasonably large audiences in Ofcom's view (0.05% share of UK viewing or more); and
- b) earn enough money to pay for access services by spending no more than 1% of their total income on such services.

A1.5 About 70 channels meet these tests. Until 2009, almost all of them chose to meet their signing targets by showing signed programmes in the middle of the night. The programmes included a signer in the corner of the TV screen. We call these 'sign-interpreted' programmes because the programmes are interpreted in BSL. The only programme presented by Deaf people for Deaf people was the BBC programme *See Hear*. We call this kind of programme 'sign-presented'.

Ofcom's first review

A1.6 In 2006, we decided to see if our rules on programmes with sign language were helping Deaf people. After talking to Deaf people and broadcasters, we decided that showing sign-interpreted programmes in the middle of the night on TV channels with small audiences was delivering almost no benefit to Deaf people. We found that very few people, if any, watched the sign-interpreted programmes on TV channels with small audiences.

A1.7 We asked a working group of Deaf people to tell us what they would like instead. They told us that they like to see more sign-presented programmes instead.

- A1.8 We explained that sign-presented programmes would cost more than sign-interpreted programmes. The Deaf working group told us that:
- a) they would prefer fewer programmes presented by Deaf people, rather than more programmes with sign interpretation; and
 - b) it would be better if the programmes could be shown during the day, instead of in the middle of the night.
- A1.9 Some broadcasters suggested that, instead of showing sign presented programmes on their own channels, they could pay money into a fund. The fund could be run by Deaf people and broadcasters, and used to pay for making sign-presented programmes to be shown on another channel. The Deaf working group told us that they liked this idea too.

The current rules

- A1.10 We thought about what Deaf people and broadcasters had told us, and at the end of 2007 we decided to change the rules for signing on TV channels with small audiences (between 0.05% and 1% of UK audiences).
- A1.11 We said that from the start of 2009, TV channels with small audiences:
- a) must show at least half an hour of sign-presented programmes each month. This was less than the amount of sign-interpreted programmes they used to show. This is because it costs more to make sign-presented programmes; and
 - b) must show these programmes between 7am and 11pm, not in the middle of the night.
- A1.12 But we also said that, if broadcasters did not want to show sign-presented programmes on their own TV channels, they could pay for sign-presented programmes to be shown in other ways instead. We call these 'alternative arrangements'. We said that broadcasters would have to pay £20,000 a year towards alternative arrangements.
- A1.13 Most broadcasters decided that they wanted to do this. They joined with some Deaf people to set up the British Sign Language Broadcasting Trust (BSLBT), so that this could pay for sign-presented programmes to be made. The Community Channel agreed to show these programmes on its channel. We agreed that broadcasters who gave money to BSLBT did not have to show sign-presented programmes on their own channels.
- A1.14 For the time being, no broadcaster has suggested other alternative arrangements, but they are free to do so.
- A1.15 TV channels with large audiences as well as all public service channels (all BBC channels, ITV, Channel 4, Channel 5 and S4C) must continue to show signed programmes on their channels. These can be sign-presented or sign-interpreted programmes. Most broadcasters choose to show sign-interpreted programmes. This provides Deaf people with access to soaps like *Coronation Street* and *Holby City*, as well as documentaries and entertainment programmes.

Ofcom's second review

- A1.16 Last year, we decided to look again at the rules. There were two main reasons. First we thought that most broadcasters might be able to afford to spend more on signing, as they are now earning more money. Second, we had not changed the amount that broadcasters contribute to BSLBT (or other arrangements) since it was set at £20,000 in December 2007. Since then, rising costs have reduced the value of the contribution, making it harder for BSLBT to make as many new high quality programmes.
- A1.17 We thought about different ideas. We decided to ask broadcasters and sign language users about three main suggestions:
- a) first, that broadcasters showing sign-presented programmes on their own channels should increase the amount over several years from 30 minutes to 75 minutes every month;
 - b) second, that minimum contributions to alternative arrangements should also increase over time. They should start from £20,000 and rise to an eventual maximum of about £60,000;
 - c) that these contributions should be changed to reflect inflation each year to keep their value.
- A1.18 We also suggested that, to avoid sudden large increases in obligations, these obligations should be spread over four years for those broadcasters that would be most affected.
- A1.19 Many Deaf people, Deaf groups and broadcasters told us what they thought. We thought carefully about their views. Then we decided on the new rules.

The new rules

- A1.20 Ofcom originally proposed that the new rules should start from 1 January 2015. But it took us longer than expected to complete the consultation process. So, we could not decide on the new rules in time to give broadcasters enough notice before the start of 2015. For this reason, we have decided that the new rules should start from 1 January 2016.
- A1.21 From 1 January 2016:
- a) broadcasters showing sign-presented programmes on their own channels will be required to increase the amount over some years from 30 minutes to 75 minutes;
 - b) minimum contributions to alternative arrangements will also increase over time, from £24,100 in 2016, to an eventual maximum of £61,400 plus inflation; and
 - c) these contributions will be adjusted for inflation each year to keep their value.
- A1.22 Finally, for most channels we have decided to spread these changes over seven years instead of four. We worked out that if these channels had to make the changes over four years, there was a chance that some might not have enough money to pay for access services.

- A1.23 We wanted to avoid this. If broadcasters do not have enough money to pay for access services, that harms viewers who use subtitles and audio description, as well as signing. By giving broadcasters more time, there is more chance that the amount of money they earn will grow. The more money they earn, the more money they have to pay for access services.
- A1.24 Even though the changes are being spread over seven years instead of four, the amount of money being spent on signed TV will still grow each year. So people who use sign language will also benefit from more signed TV programmes.

Annex 2

Section 303, Communications Act 2003

303 Code relating to provision for the deaf and visually impaired

(1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance to –

- (a) the extent to which the services to which this section applies should promote the understanding and enjoyment by –
 - (i) persons who are deaf or hard of hearing,
 - (ii) persons who are blind or partially-sighted, and
 - (iii) persons with a dual sensory impairment,of the programmes included in such services: and
- (b) the means by which such understanding and enjoyment should be promoted.

(2) The code must include provision for securing that every provider of a service to which this section applies ensures that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.

(3) The code must also require that, from the fifth and tenth anniversaries of the relevant date, the obligations in subsections (4) and (5), respectively, must be fulfilled by reference to averages computed over each of the following –

- (a) the twelve month period beginning with the anniversary in question; and
- (b) every twelve month period ending one week after the end of the previous period for which an average fell to be computed.

(4) The obligation to be fulfilled from the fifth anniversary of the relevant date is that at least 60 per cent. of so much of every service which –

- (a) is a service to which this section applies, and
- (b) has a relevant date after the passing of this Act,

as consists of programmes that are not excluded programmes must be accompanied by subtitling.

(5) The obligations to be fulfilled from the tenth anniversary of the relevant date are -

- (a) that at least 90 per cent. of so much of a Channel 3 service or of Channel 4 as consists of programmes that are not excluded programmes must be accompanied by subtitling;
- (b) that at least 80 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by subtitling;
- (c) that at least 10% per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by audio-description for the blind;
- (d) that at least 5 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be presented in, or translated into, sign language.

(6) A reference in subsection (4) or in any paragraph of subsection (5) to excluded programmes is a reference to programmes of the description for the time being set out under subsection (7) in relation to that subsection or paragraph and also in relation to the service in question.

(7) The code must set out, in relation to subsection (4) and each of the paragraphs of subsection (5), the description of programmes that OFCOM consider should be excluded programmes for the purposes of the requirement contained in that subsection or paragraph.

(8) In complying with subsection (7), OFCOM must have regard, in particular to –

- (a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes;

- (b) the size of the intended audience for the programmes;
 - (c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
 - (d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;
 - (e) the technical difficulty of providing the assistance; and
 - (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.
- (9) The exclusions that may be set out in the code under subsection (7) –
- (a) may include different descriptions of programmes in relation to different services to which this section applies;
 - (b) in the case of a service which OFCOM are satisfied (having regard to all the matters mentioned in subsection (8)) is a special case, may include all the programmes included in the service.
- (10) The requirements that may be imposed by the code include, in particular –
- (a) requirements on persons providing services to which this section applies to meet interim targets falling within subsection (11), from dates falling before an anniversary mentioned in subsection (3);
 - (b) requirements on persons providing such services to meet further targets from dates falling after the anniversary mentioned in subsection (5); and
 - (c) requirements with respect to the provision of assistance for disabled people in relation to excluded programmes, or in relation to a particular description of them.
- (11) The interim targets mentioned in subsection (10)(a) are the targets with respect to the provision of assistance for disabled people which OFCOM consider it appropriate to impose as targets on the way to meeting the targets imposed in pursuance of subsection (3).
- (12) This section applies to the following services –
- (a) S4C Digital or any other television programme service provided by the Welsh Authority for broadcasting in digital form so as to be available for reception by members of the public;
 - (b) any licensed public service channel;
 - (c) a digital television programme service but not an electronic programme guide;
 - (d) a television licensable content service but not an electronic programme guide;
 - (e) a restricted television service.
- (13) In this section –
- “electronic programme guide” means a service which –
 - (a) is or is included in a television licensable content service or a digital television programme service;
 - (b) consists of –
 - (i) the listing or promotion, or both listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
 - (ii) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;
- “programme” does not include an advertisement.

Annex 3

Revisions to Ofcom's Code on Television Access Services and related Guidance

Introduction

- A3.1 This Annex sets out the changes to the Code and Guidance that Ofcom has made to the Code on Television Access Services and the Guidance to broadcasters of relevant channels on arrangements for signing as set out in and in Annex 3 to the Code. Both revised documents can be found on Ofcom's website.⁵⁵
- A3.2 For ease of reference, additions to the text of the Code and Guidance are underlined, and deletions are scored through. Ofcom has also identified in the text below minor changes to address misspellings and typos.

Ofcom's Code on Television Access Services

1. "This code⁵⁶ sets out the requirements on subtitling, sign language and audio description ('television access services') that apply to television services licensed in accordance with the Communications Act 2003, the Broadcasting Act 1996, or the Broadcasting Act 1990. Guidance on practices to be followed in providing access services is set out in Appendix 4 to this code. Ofcom notes that some broadcasters already provide television access services on a voluntary basis, and encourages broadcasters to do so where possible, and to have regard to relevant parts of the code and guidance.
2. In this code:
 - a) 'average audience share' means the audience share over a year in each country where the service is received;
 - b) 'domestic broadcaster' means the provider of a television programme service which is primarily intended for reception by members of the public within the United Kingdom;
 - c) 'non-domestic broadcaster' means the provider of a television programme service which is primarily intended for reception by members of the public in Member States of the European Union other than the United Kingdom;
 - d) 'relevant channels' means channels subject to access services obligations with an audience share between the audience share and signing thresholds set out in Annex 2 to the Code, and which are excluded under section 303(9) of the

⁵⁵ *Code on Television Access Services*, May 2015, Ofcom (<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2015/>). The previous version of the Code, published in December 2012, is available here: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2013/>

⁵⁶ Amended in accordance with Ofcom's statement: *Changes to signing arrangements for relevant domestic TV channels*, 13 May 2015 (<http://stakeholders.ofcom.org.uk/consultations/review-signing-arrangements-tv/statement/>)

Communications Act 2003 from the percentage targets for signing set out in paragraph 9 of this Code.

Statutory provisions

3. Under Sections 303 to 305 of the Communications Act 2003 ('the Act'), Ofcom is required to draw up, and from time to time review and revise, a code giving guidance as to the extent to which television services should promote the understanding and enjoyment by persons who are deaf or hard of hearing, as well as those who are blind or partially sighted, or who have a dual sensory impairment (deafblind).
4. The code is to apply to licensed public service channels, digital television programme services, television licensable content services (TLCS), and restricted television services, as well any digital television programme services (DPS) provided by the Welsh Authority (including S4C Digital). The BBC Agreement⁵⁷ also requires the BBC to observe the code in respect of its public television services subject to any exclusions agreed between Ofcom and the BBC having regard to the considerations set out in section 303(8). The code is not to apply to electronic programme guides provided under a TLCS or DPS licence, or to services comprising advertising (teleshopping), which is excluded from the definition of programme for the purpose of section 303.
5. Ofcom is required to set ten year targets for subtitling, signing and audio description ('television access services'), as well as five year targets for subtitling. It is also empowered to set other interim targets, and these are set out in ~~the~~ table 1 below. The targets apply to the anniversary of the relevant date for the service in question.
6. The 'relevant date' for the purpose of determining the tenth anniversary of services is 1 January 1997 in the case of BBCs 1 and 2, 1 January 1998 for Channel 5, and 1 January 2000 for Channels 3 and 4 and S4C Digital. In the case of digital television programme services, the relevant date is the date ~~on which the provision of that 2003, the date is the~~ of entry into force of the legislation, which is 29 December 2003. In the case of television services starting after 29 December 2003, the relevant date is the date on which provision of that service commenced unless Ofcom has determined by reference to the factors set out in paragraph 4012 that all the programmes in a particular service should be excluded and has imposed a separate timetable for alternative requirements in relation to that service. Ofcom may determine that a television service should be treated as a continuation of a previous service in order to prevent broadcasters from avoiding the requirements of this code by replacing one service with another.
7. Ofcom is also empowered to exclude certain types of programme or service from the requirement to provide television access services, or apply different targets to excluded programmes.

⁵⁷ The BBC Agreement can be found at the following link:
http://www.bbc.co.uk/bbctrust/governance/regulatory_framework/charter_agreement.html

Targets

8. The statutory targets for broadcasters are expressed as percentages of the service, including all programmes⁵⁸ other than advertisements and programmes that have been excluded by reference to the factors summarised in paragraph 12. They rise from a low level to the ten-year targets prescribed by the Act, that is eighty per cent (80%) for subtitling, five per cent (5%) for signing and ten per cent (10%) for audio description. Different signing arrangements apply to relevant channels. In the case of Channel 3 and Channel 4, the relevant target for subtitling is 90%. The targets reflect the statutory requirement for subtitling to be applied at the rate of sixty per cent (60%) of non-excluded programmes from the fifth anniversary.
9. Licensed public service broadcasters and S4C which are already under an obligation to provide television access services are required to continue meeting the interim targets set in Annex 1. The BBC is required to continue meeting the interim targets to which it has committed itself, also set out in Annex 1. Other broadcasters are required to meet the targets set out in the Table 1 below.⁵⁹

Table 1: Access services targets

Anniversary of relevant date or notice date	Subtitling	Signing		Audio Description
		<u>Relevant channels⁶⁰</u> (monthly)	<u>Other channels</u> (annually)	
First	10%	<u>30 minutes</u>	1% of all non-excluded programmes	2%
Second	10%	<u>30 minutes</u>	1%	4%
Third	35%	<u>30 minutes</u>	2%	6%
Fourth	35%	<u>30 minutes</u>	2%	8%
Fifth	60%	<u>45 minutes</u>	3%	10%
Sixth	60%	<u>45 minutes</u>	3%	10%
Seventh	70%	<u>60 minutes</u>	4%	10%

⁵⁸ Section 405 of the Communications Act provides that 'programme' includes an advertisement and, in relation to a service, anything included in that service. Section 303(13) excludes advertisements from the meaning of programme for the purpose of that section.

⁵⁹ A list of channels required to provide access services is available on Ofcom's website at http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv_access_serv/. The targets applying to all these channels can be found in the most recent of the periodic reports published by Ofcom on its website at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports/>.

⁶⁰ Pending a review of the signing arrangements on relevant non-domestic channels, to take place in 2015, the signing obligations for these channels remain unchanged from the position as set out in paragraph 2.55 of Ofcom's statement on *Access services obligations for non-domestic channels*, published in October 2012 (http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-non-domestic/statement/Non_dom_access_services.pdf).

Eighth	70%	<u>60 minutes</u>	4%	10%
Ninth	70%	<u>60 minutes</u>	4%	10%
Tenth	80%	<u>75 minutes</u>	5%	10%

10. Transitional arrangements for signing apply to all relevant channels that have reached the fourth (or later) anniversary of their relevant date by 1 January 2016 (i.e. channels with a relevant date earlier than 1 January 2012) as set out in Table 2 below.

Table 2: Transitional arrangements for signing obligations

(for channels that have reached the fourth (or later) anniversary of their relevant date by 1 January 2016)

Year	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
<u>Minimum monthly sign-presentation obligations</u>	<u>30</u> <u>minute</u> <u>s</u>	<u>35</u> <u>minute</u> <u>s</u>	<u>45</u> <u>minute</u> <u>s</u>	<u>50</u> <u>minute</u> <u>s</u>	<u>60</u> <u>minute</u> <u>s</u>	<u>65</u> <u>minute</u> <u>s</u>	<u>75</u> <u>minute</u> <u>s</u>

11. The targets and ~~interim targets~~ represent minimum obligations and apply ~~in each year, from each anniversary referred to in the case of Table 1, and for each calendar year as referred to in Table 2.~~ In compliance with section 303(3) of the Communications Act, from the fifth anniversary, targets will apply on a rolling basis starting each week from one week after the date to which the previous annual average has been calculated.

Excluded programmes

12. Ofcom may exclude programmes and services having regard, in particular, to:
- the extent of the benefit which would be conferred by the provision of the assistance for disabled people in relation to the programmes;
 - the size of the intended audience for the programmes;
 - the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
 - the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom ;
 - the technical difficulty of providing the assistance; and
 - the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.

Audience benefit

13. Having regard to these factors, television services are excluded from providing television access services if their share of viewing falls below the audience share threshold⁶¹. The audience share threshold for:
 - a) domestic television services is an average audience share of all UK households over a 12 month period ('audience share') of 0.05% or less;
 - b) non-domestic television services is the average audience share in the relevant EU Member State or States where the service is received over a 12 month period indicated in Annex 2.
14. Ofcom would expect to exclude television services from providing signing if they do not meet the relevant signing threshold. The signing thresholds for:
 - c) domestic television services is an average audience share of 1% or less;
 - d) non-domestic television services is the average audience share indicated in Annex 2.
15. Ofcom will consider, in the light of the factors set out above, whether or not channels with an audience share of slightly more than or slightly less than the signing threshold should be excluded.
16. Section 303 (10) (c) of the Act allows Ofcom to impose alternative requirements with respect to the provision of assistance for disabled people in relation to any programmes or services it has excluded. In considering whether alternative requirements should be imposed on individual channels, it is open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that would also meet the needs of sign-language users more effectively.
17. Having regards to this, Ofcom requires that ~~television services achieving an audience share between the relevant audience share and signing thresholds~~ relevant channels (as defined in paragraph 2(d) of this Code) should, from the first anniversary of the relevant date, broadcast each month no less than the minimum amounts of sign-presented⁶² programming specified in Table 1, such programming to be shown between 7am and 11pm local time. ~~30 minutes of programming presented in sign language each month.~~ Ofcom will keep this requirement under review.
18. Broadcasters may, if they wish, propose alternatives to the arrangements set out in paragraph ~~43~~17, and Ofcom will consider these in the light of the factors set out in paragraph ~~40~~12, the needs of people with hearing impairments and the guidance set out in Appendix 3 to the Code. Further guidance on this is set out in Annex 3 to the Code.
19. To aid planning for broadcasters not currently required by reason of audience share or revenue to provide television access services, Ofcom will carry out a mid-year

⁶¹ The provisions in paragraphs ~~132~~ to ~~154~~ apply to television services that are required to provide access services (otherwise than by reason of the provisions in paragraphs ~~132~~ to ~~154~~) including those that have been exempted in the circumstance described in paragraph 7, which have had different targets applied to them.

⁶² Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

review based on corresponding data for revenue and audience shares, and will publish a statement indicating which channels will be required to provide access services (see paragraph 2630 below) in the following year⁶³.

20. In the event that the audience share of a television service currently required to provide television access services falls below the threshold in two successive quarters, Ofcom will notify the broadcaster that the obligation will discontinue at the end of the calendar year in question.
21. Television services intended for reception by members of the public outside the European Union are exempt from television access service requirements.

Technical difficulty

22. Television access services need not be provided if Ofcom is satisfied that this would be impracticable on grounds of technical difficulty, including the following cases:
 - a) audio description of music and news programmes and services, where there is little space within the dialogue/sound track to provide audio description, and less need. However, broadcasters are required to ensure that producers, editors and presenters are trained in techniques to describe the significance of images for the benefit of the blind and partially-sighted audience. Broadcasters are required to provide a statement of the training they are providing within 12 months of becoming subject to the code;
 - b) provision of subtitling that is not supported by commercially-available set top boxes (e.g. Chinese or Urdu); and
 - c) provision of access services where a service is broadcast with several different language feeds, making the choice of language for signing access services problematic.

Cost

23. Ofcom has determined average costs per hour of providing programming with subtitling, signing and audio description, including any alternative requirements imposed in accordance with paragraph 4417. These have been used to calculate the costs of three levels of provision:
 - a) Level One equates to the full current annual targets for subtitling, signing and audio description, as well as any alternative requirements;
 - b) Level Two equates to 66% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description, and any alternative requirements; and
 - c) Level Three equates to 33% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description and any alternative requirements.

⁶³ Those channels whose relevant date falls before the end of a calendar year will be expected to start providing access services from the anniversary of that date, subject to meeting the audience threshold, unless they can demonstrate that they would be unable to meet the cost of Level 3 (or higher) obligations from 1% of their actual or projected relevant turnover.

24. In determining the applicable costs for each channel, Ofcom will have regard to the number of hours broadcast each day, the proportion of the schedule that is exempted from the provision of one or more access services, and the percentage of repeats.
25. Broadcasters whose services are not otherwise excluded will be required to achieve the highest Level of provision they can afford within a budget equating to 1% of their 'relevant turnover'⁶⁴. Only broadcasters unable to afford Level Three costs will be exempt from provision altogether on grounds of cost.
26. In determining the applicable amount of relevant turnover, Ofcom will have regard to the most recent declarations of relevant turnover.
27. In the case of channels in common ownership⁶⁵, Ofcom will determine which channels that are not otherwise excluded should provide television access services by averaging the total relevant turnover across all services in common ownership. If this means that each of the channels would have an average relevant turnover which would enable it to meet one of the three Levels at a cost of 1% or less of that average relevant turnover, those channels will be required to provide the relevant Level of television access services. If the averaging of relevant turnover would mean that none of the services would need to provide television access services, Ofcom will assess eligibility on the basis of the individual relevant turnover attributable to each service.
28. Services which meet the 1% threshold in the most recent declarations of relevant turnover before the start of the next calendar year will be required to provide television access services at the appropriate level for the whole of the next calendar year.

Other exclusions

29. Other television services excluded by section 303 of the Communications Act 2003 from the requirement to provide television access services are:
 - a) those comprising advertising only, for example, a shopping channel;
 - b) electronic programme guides; and
 - c) those licensed outside the United Kingdom.

Changes in audience share and relevant turnover

30. Ofcom will conduct a mid-year review of the audience share and relevant turnover of channels licensed in the United Kingdom, based on the most recent four quarters for which corresponding data is available. Ofcom will notify the licensee, if on the basis

⁶⁴ As defined in Ofcom's Statement of Charging Principles, 8 February 2005. (www.ofcom.org.uk/consult/condocs/socp/main/?a=87101).

⁶⁵ For the purpose of the Code, Ofcom will treat a channel as being in common ownership with one or more other channels if each channel is a subsidiary (within the meaning of the Companies Act 1985) of a common holding company or if they share a common parent at any point in the chain of ownership which has a majority interest in each. In determining whether channels are in common ownership, Ofcom will also have regard to other relevant factors of the kind set out in Ofcom's Guidance on the definition of control of media companies (<http://stakeholders.ofcom.org.uk/consultations/media2/statement/>).

of that review Ofcom considers that a channel is likely, in the following year, to become:

- a) subject to a requirement to provide television access services;
- b) subject to a different Level of provision; or
- c) excluded from the requirement to provide television access services.

31. If a mid-year review indicates that the audience share of a television service providing television access services has fallen below 0.05% but remains at 0.04% or above, and this is confirmed by figures for the subsequent quarter, the licensee will be required to maintain the existing level of provision in the following year, against the targets applying in the current year. In the event that the average audience share remains below 0.05% in the following year, the requirement to provide television access services will cease at the end of that year, or earlier if the licensee demonstrates to Ofcom's satisfaction that continuation of the obligation would threaten the viability of the service.
32. If a service that ceases to be required to provide television access services subsequently regains the levels of audience share and / or qualifying revenue that would subject it to the requirement once more, the licensee will be required to resume provision at the appropriate Level described in paragraph 4923 above. Ofcom will determine which level of annual target should apply in consultation with the licensee.
33. If, at any time, a licensee demonstrates to Ofcom's satisfaction that continuation of access service obligations would threaten the viability of its service, Ofcom may reduce, suspend or terminate those obligations.

Presentational and technical standards

34. Broadcasters are required to observe the standards set out in the Guidelines on Television Access Service Standards in Appendix 4 to the code.
35. There are currently no technical standards for the means by which Television Access Services are to be made available to viewers. However, Ofcom expects television service providers to use reasonable endeavours to ensure that such television access services can be accessed by the greatest number of viewers in their homes (whether they receive their services by terrestrial signal, or by satellite or cable).

Promotion of awareness

36. Ofcom requires television service providers to promote awareness of the availability of their television access services to potential users of the services by making available accurate and timely information to electronic programme guide (EPG) operators listing their services, and by providing similar information on their website. Ofcom has imposed corresponding obligations on EPG operators through the EPG code made under section 310 of the Act. Broadcasters who provide programme synopses for use in EPGs should indicate which programmes are accompanied by television access services by including the standard upper-case acronyms for subtitling (S), audio description (AD) and signing (SL). Where broadcasters provide access services to other countries, they should endeavour to use the indicators for access services used in those countries.

37. Ofcom will also expect television service providers to demonstrate that they are taking effective steps to publicise awareness of their television access services through other means, including periodic on-air announcements and information in publications aimed at persons likely to benefit from television access services. Where the nature of the access service is not spelt out in full, the standard abbreviations referred to in paragraph 3536 above should be used.

Programming and scheduling

38. Ofcom expects that broadcasters will normally schedule programming with subtitling and audio description at peak viewing times for each channel. However, as signing is currently only provided in open format, it is accepted that signed programmes may need to be shown outside peak viewing hours (subject to paragraph 4617 above) and recorded by viewers with hearing impairments. In selecting programmes for which access services are to be provided, broadcasters should seek advice from disability groups about how best to maximise the benefits to the blind and those with visual impairments, to the deaf and hard of hearing, and to the deafblind. Ofcom encourages broadcasters not to seek to fulfil their obligations by scheduling multiple repeats of programmes, as this will detract from the benefit of providing access services to users.

Equal Opportunities legislation

39. Broadcasters will need to have regard to their obligations under equal opportunities legislation, including the need to make reasonable adjustments in the delivery of services so as to make these accessible to disabled people, and should seek their own advice on this.

Monitoring and compliance

40. Broadcasters to whom this code applies:
- a) are required to submit returns for each six month period covering quarters starting from 1 January 2005, in the form and format to be notified separately by Ofcom; and
 - b) shall make and retain a recording in sound and vision in a form acceptable to Ofcom of every programme included in the service for a period of 60 days from the date of its broadcast, and provide a copy of the recording for examination and reproduction on request by Ofcom.

Review

41. This code is subject to periodic review.”

Guidance to broadcasters of relevant channels on arrangements for signing

“Introduction

- A3.1 This Annex to the Code on Television Access Services sets out guidance for broadcasters of relevant channels on signing on television. Relevant channels are those which:
- are required as a result of Ofcom’s mid-year review to be subject to access service obligations in the following year;
 - are determined by Ofcom to have had an average audience share of all UK households over the preceding year of less than 1%; and
 - are excluded under section 303(9) of the Communications Act from the percentage targets set out in paragraph 79 of the Code on Television Access Services (‘the existing obligations’).
- A3.2 Ofcom expects to notify broadcasters of relevant channels (subject to the timely provision by them of information on relevant turnover⁶⁶) by 31 May each year that, as a result of the mid-year review, they will be subject to the arrangements applying to channels with an audience share of less than 1%. For advance planning purposes, broadcasters currently subject to obligations under the Code on Television Access Services that spend less than 1% of the relevant turnover of relevant channels on access services should work on the premise that they will be excluded from the existing obligations and will be required to meet the new requirements described below.

Regulatory requirements

- A3.3 From 1 January ~~2009~~2016, and in accordance with section 303(10)(c) of the Communications Act 2003, relevant channels ~~will be required to transmit 30 minutes of sign-presented programming each month between 7am and 11pm. This amount is subject to review from time to time. should, from the first anniversary of the relevant date, broadcast each month no less than the minimum amounts of sign-presented programming specified in Table 1 of the Code on Television Access Services, such programming to be shown between 7am and 11pm local time.~~ Ofcom will keep this requirement under review.
- A3.4 Broadcasters of relevant channels who wish to propose that they should not be subject to these regulatory requirements should follow the procedures below.

Alternative arrangements

- A3.5 Ofcom will consider proposals from individual broadcasters or groups of broadcasters of relevant channels for alternative ways of achieving the objective of

⁶⁶ As part of their annual information return, non-PSB licensees are required to provide data on relevant turnover for the previous year by 31 March. In accordance with the Code on Television Access Services, Ofcom will use this data together with audience share data to assess which channels will be required to provide television access services in the following year. Ofcom will aim to notify relevant channels by 31 May. Broadcasters that do not provide information on their relevant turnover by the time requested may have less notice of whether or not some or all of their channels will be subject to access service requirements.

making more sign-presented programming available to deaf or hearing-impaired sign language users. Broadcasters are not obliged to propose alternative arrangements. Nor is Ofcom required to accept that the proposal by broadcasters of any alternative arrangements will result in Ofcom not imposing the regulatory requirements. In deciding whether or not to impose the regulatory requirements in A3.3 on broadcasters that have submitted alternative proposals, Ofcom will have regard to the matters set out in A3.7 a-e below.

A3.6 Broadcasters may discuss possible alternative arrangements for relevant channels with Ofcom in advance of a formal proposal, and Ofcom encourages them to do so. In any case, in order that broadcasters and / or third parties have sufficient time to plan for the implementation of alternative arrangements, they should submit proposals no later than 30 June in the year before they wish to implement them. If they do not submit proposals by this date, broadcasters are likely to be obliged to implement the regulatory requirements set out in A3.3. Provided the proposals contain sufficient information, Ofcom will endeavour to decide whether or not to impose the regulatory requirements by 31 July.

A3.7 In determining whether the regulatory requirements should be imposed on broadcasters that have proposed alternative arrangement, Ofcom will consider whether the alternative arrangements would be likely to provide better assistance for deaf people using sign language, and in particular whether they would:

- a) contribute to a diversity of sign-presented programming broadcast between 7pm and 11pm;
- b) incorporate effective mechanisms for taking account of the views of deaf groups about the preferences of deaf people for programming;
- c) ensure that the terms of access to sign-presented programming are no less favourable to sign language users than access to the channel in respect of which alternative arrangements are proposed;
- d) amount to, or be equivalent to, an annual financial contribution in respect of each relevant channel, as set out in Table 2 below of approximately £20,000.⁶⁷ This amount is subject to review from time to time; and
- e) commit the broadcaster to implement the arrangements or to contract with an acceptable party to implement the arrangements for a period of not less than two years, subject to a provision allowing the channel to discontinue the arrangements if it ceases to be subject to access service obligations.

Table 2: Minimum annual contributions to alternative signing arrangements

<u>Anniversary of relevant date or notice date</u>	<u>Minimum annual contributions to alternative arrangements</u> ⁶⁸ (from 1 January 2016)
--	--

⁶⁷ This figure represents the lower end of the range of current assessed direct costs of about £19,000 and the estimated cost of the regulatory requirements set out in paragraph A3.3 (£60,000 for a channel currently required to sign 2% of programming)

⁶⁸ The minimum annual contribution levels shown in this table are expressed in 2014 money; from 2016 onwards, Ofcom will publish inflation-adjusted minimum contribution levels for the following year at the same time it publishes the annual list of channels required to provide television access services in the following year.

<u>First</u>	<u>£24,500</u>
<u>Second</u>	<u>£24,500</u>
<u>Third</u>	<u>£24,500</u>
<u>Fourth</u>	<u>£24,500</u>
<u>Fifth</u>	<u>£36,800</u>
<u>Sixth</u>	<u>£36,800</u>
<u>Seventh</u>	<u>£49,100</u>
<u>Eighth</u>	<u>£49,100</u>
<u>Ninth</u>	<u>£49,100</u>
<u>Tenth</u>	<u>£61,400</u>

A3.8 The minimum annual contribution levels provided in Table 2 above apply to all channels that have not yet reached the fourth (or later) anniversary of their relevant date (i.e. channels with a relevant date on or later than 1 January 2012). Ofcom will publish inflation-adjusted minimum contributions for the following year at the same time as it publishes the annual list of channels required to provide television access services in the following year.

A3.9 Channels with a relevant date earlier than 1 January 2012 are subject to the transitional arrangements set out in Table 3 below.

Table 3: Minimum annual contributions towards approved alternatives (in lieu of monthly signing requirements)

(for channels that have reached the fourth⁶⁹ - or later - anniversary of their relevant date)

<u>Anniversary of qualifying date</u>	<u>2016</u>	<u>2017⁷⁰</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
<u>Minimum annual contributions</u>	<u>£24.5k</u>	<u>£28.6k</u>	<u>£36.8k</u>	<u>£40.9</u>	<u>£49.1k</u>	<u>£53.2</u>	<u>£61.4k</u>

A3.10 From 2022 onwards, the minimum annual contributions to approved alternative arrangements will be £61,400 (in 2014 money), adjusted annually to account for inflation from December 2014.

A3.11 The level of minimum annual contribution is subject to review.”

⁶⁹ i.e. channels with a relevant date earlier than 1 January 2012

⁷⁰ From 2016 onwards, Ofcom will publish inflation-adjusted minimum contribution levels for the following year at the same time it publishes the annual list of channels required to provide television access services in the following year.

Annex 4

Analysis of financial impact on broadcasters

Introduction

A4.1 Section 4 of the consultation document published by Ofcom included an assessment of the financial implications of the proposed policy for the broadcasters with relevant channels. We have updated this in the light of more up to date revenue data now available for all relevant channels), and to reflect the decisions set out in section 1.

Background

A4.2 Following consultation in 2004, Ofcom concluded that it was not appropriate for it to assess Parliament's decisions in relation to access services on a cost-benefit basis⁷¹. The task was to give effect to Parliament's instructions in ways that avoided disproportionate burdens on broadcasters. In setting signing obligations, Parliament was aware that that there was only a small population of BSL users but still imposed increasing sign interpretation requirements.

A4.3 In 2004, Ofcom decided that:

- (a) only channels with an audience share of at least 0.05% offered sufficient benefit to access service users to warrant provision of access services; channels with a lower share are therefore exempt and do not have to provide them; and
- (b) only channels that would spend no more than 1% of relevant turnover should be required to provide access services. In other words, as long as the cost to the broadcasters remained within this limit, the cost was not disproportionate.

A4.4 Furthermore, most qualifying broadcasters operate numerous channels. Following consultation, Ofcom decided in 2004 that, in order to assess whether channels that would qualify on audience share grounds could afford to meet their access service obligations, it would look at the average relevant turnover of those channels in common ownership. In doing so, Ofcom noted that it was reasonable to assume that access service provision would be commissioned at the corporate rather than channel level. This approach also avoids the possibility that broadcasters could avoid obligations through transfer pricing (i.e. moving revenues between channels).

A4.5 If the average relevant turnover of channels in common ownership qualifying on audience share grounds exceeds 1%, the calculations are performed again, this time assuming that subtitling targets are reduced by one third, or if necessary two thirds. If average relevant turnover still exceeds 1%, the channel with the lowest relevant turnover is excluded. If necessary, additional channels can be eliminated to

⁷¹ *Code on Television Access Services (Statement)*, Ofcom, 26 July 2004

arrive at the number that can afford to provide access services by spending no more than 1% of relevant turnover⁷².

- A4.6 When applying and estimating the cost associated with the signing arrangements for relevant channels, the 1% expenditure cap still applies and therefore ensures that the access services obligations placed upon broadcasters are not disproportionate. To reiterate, the 1% cap and the methodology Ofcom uses to apply the 1% cap, were not part of the consultation. These remain unchanged and protect broadcasters from disproportionate access services costs.

Our assessment of the financial impact on broadcasters

- A4.7 We have considered the effect of the increased signing obligations on the relevant channels and the broadcasters who own them. This is outlined in more detail below.

- A4.8 As in the original assessment:

- a) for reasons of commercial confidentiality, we do not publish estimates of the impacts on individual channels or broadcasters, although both have been considered;
- b) we have taken into account the fact that many channels would benefit from the seven-year transitional arrangements; and
- c) we have assumed zero real-terms growth in broadcasters' revenues..

Minimum contributions to alternative arrangements

- A4.9 Most broadcasters have chosen to contribute to alternative arrangements. Therefore we first consider the impact on broadcasters of Ofcom's decision to increase minimum contributions to alternative arrangements. For this purpose, we have assumed that all broadcasters would participate in the alternative arrangements, though at present three channels do not.

- A4.10 Table 1 below shows the contribution levels used for the impact assessment. The adjustment to the current contribution level in relation to contributions due in the calendar year 2016 reflects changes in CPI since the end of 2007 (when the current contribution level was set) and the end of 2014 (the latest full-year for which CPI data is available). Other than assuming zero real-terms growth in revenues, we have also assumed that channels' audience shares would not change, and that other access services costs would increase at the same rate as inflation.

⁷² Code on Television Access Services, May 2015, Ofcom (<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2015/>); paragraphs 26-27

Table 1 - transitional arrangements for channels ≥ 4th anniversary of relevant date in 2016 which opt contribute to alternative signing arrangements

Minimum annual contributions to approved alternatives for relevant channels	2016	2017 ⁷³	2018	2019	2020	2021	2022
	£24.5k ⁷⁴	£28.6k	£36.8	£40.9	£49.1	£53.2	£61.4

A4.11 As in the consultation paper, we have represented this in Figure 1 below showing the distribution of access service costs as a proportion of the aggregate relevant turnover of channels with access service obligations. In summary:

- a) in 2015, the base year, given their actual choices about how to meet access service obligations, we estimate that seven broadcasting groups will pay between 0.2% to 0.5% of their relevant turnover on access services, three groups are estimated to pay between 0.5% and 0.8%, and one group between 0.8% and 1%;
- b) in 2016, consequent upon the initial adjustment for inflation, we estimate that the same seven broadcasting groups would still pay between 0.2% to 0.5% of their relevant turnover on access services, three groups would still pay between 0.5% and 0.8%, and one group between 0.8% and 1%;
- c) in 2019, at the midpoint of the transitional period, we estimate that six groups will pay between 0.2 and 0.5%, four groups would pay between 0.5% and 0.8%, and one group would be exempt, as its costs would exceed 1%; and
- d) by 2022, when the maximum targets are reached by most broadcasters, we estimate that five groups will pay between 0.2% and 0.5%, five groups would pay between 0.5% and 0.8%, and one group would be exempt, as its costs would exceed 1%.

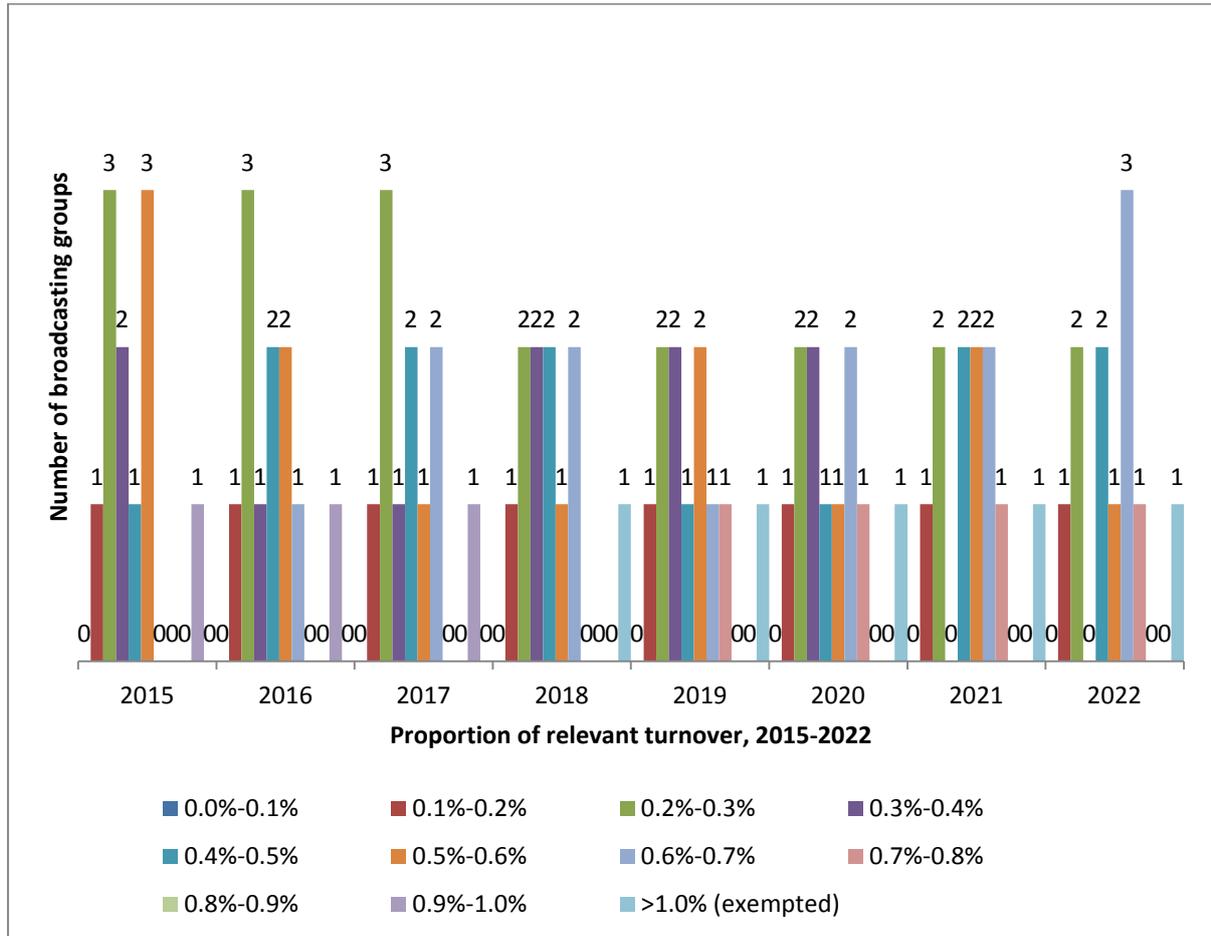
A4.12 We estimate that the cumulative average expenditure on access services will rise from 0.41% of aggregate relevant turnover in 2015 to 0.48% in 2022, when the transitional arrangements end. These figures are lower than those contained in the original assessment, principally because we have taken account of higher 2013 broadcasting revenues and lower access services costs, on the basis of cost data supplied to us by broadcasters.

A4.13 We also assessed the potential impact on individual channels. In summary, should every channel choose to contribute to alternative signing arrangements, we estimate that none of the relevant channels currently required to provide access services would become exempt in 2016. By 2019, two channels would be exempted and whilst no further channels would become exempt by the end of the period (2022), subtitling obligations on one further channel would be reduced by two thirds (it would still be required to meet signing and audio description obligations).

⁷³ From 2016 onwards, Ofcom will publish inflation-adjusted minimum contribution levels for the following year at the same time it publishes the annual list of channels required to provide television access services in the following year.

⁷⁴ Reflects CPI inflation between the end of 2007 and the end of 2014

Figure 1: How much broadcasting groups would have to pay for access services if minimum contributions to alternative arrangements are increased



Increase in minimum signing arrangements

- A4.14 Although most broadcasters have chosen to contribute to alternative arrangements, they could choose to provide sign-presented programming on their own channels. Therefore we have also assessed the financial effects of a switch to producing their own sign presented programming, as an alternative to contributing to alternative arrangements.
- A4.15 Table 2 below shows the transitional arrangements which will apply to channels having reached the fourth or later anniversary of their relevant date in 2016, under the assumption that all channels will decide to meet their signing obligations by showing sign-presented programmes. Again, other than assuming zero real-terms growth in revenues, we have also assumed that channels’ audience shares would not change, and that other access services costs would increase at the same rate as inflation.

Table 2 - transitional arrangements for channels ≥ 4th anniversary of relevant date in 2016 which opt to show sign-presented programming

Monthly signing requirements for relevant channels (minutes, sign-presented content)	2016	2017	2018	2019	2020	2021	2022
	30	35	45	50	60	65	75

A4.15 Our assessment starts from the estimated annual costs of meeting the requirement for 30 minutes of sign-presented content a month (£60,000) which was adopted following consultation in 2007⁷⁵. Indexing this for inflation using CPI, the equivalent cost in 2014 would be almost £74k. Accordingly, we are able to estimate the costs per channel of providing sign-presented programming, and from that, the impact this would have on the total cost to broadcasting groups of providing access services.

A4.16 The outcome is represented in the Figure 2 below showing the distribution of access service costs as a proportion of the aggregate relevant turnover of channels with access service obligations. In summary:

- a) in 2015, the base year, assuming relevant channels contribute to alternative signing arrangements rather than providing their own sign-presented programming, we estimate that seven broadcasting groups will pay between 0.2% to 0.5% of their relevant turnover on access services, four groups are estimated to pay between 0.5% and 0.8%, and one group between 0.8% and 1%;
- b) in 2016, we estimate that five broadcasting groups would pay between 0.2% to 0.5% of their relevant turnover on access services, four groups would pay between 0.5% and 0.8%, two group between 0.8% and 1%, and one group will be exempt, as its costs would exceed 1%;
- c) in 2019, at the midpoint of the transitional period, we estimate that four groups would pay between 0.2 and 0.5%, four groups would pay between 0.5% and 0.8%, three groups would pay between 0.8% and 1%, and one group would be exempt; and
- d) by 2022, when the maximum targets are reached by most broadcasters, we estimate that three groups would pay between 0.2% and 0.5%, one group would pay between 0.5% and 0.8%, three groups would pay between 0.8% and 1%, and three groups would be exempt.

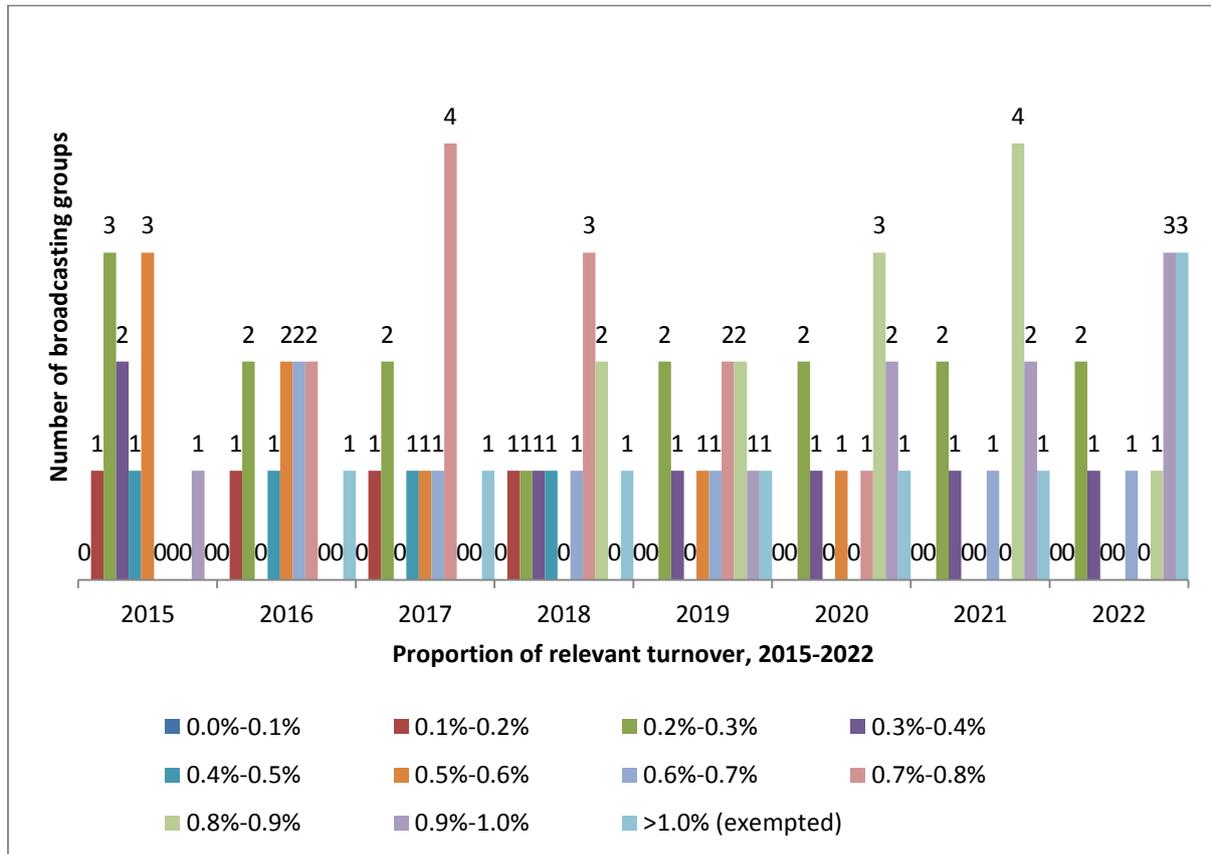
A4.17 As a result of rising signing cost, we estimate that the average expenditure on access services will rise from 0.41% in 2015 to 0.66% in 2022, when the transitional arrangements end.

A4.18 We also assessed the potential impact on individual channels. In summary, should every channel choose to meet the signing obligations by showing sign-presented

⁷⁵ This was based on data provided by the Community Channel, which indicated that the basic cost of a sign-presented half-hour programme was around £30,000 in 2007. Using data from the access services review of 2006, which indicated that broadcasters generally repeated sign-interpreted programmes about six times, Ofcom assumed a repeat rate of six times for the calculation of the annual cost of meeting the sign-presentation obligations, thus resulting at an estimated £60,000 per relevant channel.. See paragraphs A5.13 and A5.23 of Ofcom's 2007 consultation.

programming, we estimate that two channels would be exempted in 2016; by 2019, two further channels would be exempted; and by 2022, four more channels would be exempted. Subtitling obligations on one further channel would be reduced by two thirds, but it would still be required to provide signing and audio description.

Figure 2: How much broadcasting groups would have to pay for access services if signing obligations on relevant channels increase



Other observations

A4.19 In the medium term, as a result of some channels exceeding the 1% cap due to the increased sign obligations, there might be small reductions in the amount of subtitled and audio-described programming. However, it is difficult to quantify the scale of these, for a number of reasons. Actual outcomes are bound to differ from the estimates – some channels may gain higher audiences and higher revenues, while others may cease to qualify for any access service obligations as their audiences decline. Those channels permitted to reduce their subtitling quotas may nonetheless choose to subtitle and audio describe more programming than they are required to, as many channels already do.

A4.20 Overall, the estimated impact on the broadcasters is smaller than was anticipated in the consultation document, as broadcasting revenues rose in 2013. There is, of course, no guarantee that broadcasting revenues will continue to rise, either at the sector level, or at the level of individual broadcasting groups. However, to the extent that revenue growth does exceed inflation, the cost of access services as a proportion of relevant turnover is likely to fall. By the same token, if revenues fall, there would be an impact on the number of channels exempted from access services obligations on the grounds of affordability. However, we calculate that even if revenues declined by up to 25% by 2022 only two further channels (in addition to

the two channels mentioned above) would cease to be required to provide access services, out of the current 64.

- A4.21 Ofcom intends to carry out a review of the arrangements in 2019, the halfway point between 2016 (the first year when new obligations would start being phased in) and 2022 (the point at which most relevant channels would be subject to the maximum obligations). The review will enable Ofcom to take stock of whether the revised Code requirements are delivering the expected benefits to sign language users, and whether, as anticipated, the costs to most broadcasters remain a very small proportion of relevant turnover.

Conclusions

- A4.22 The new signing obligations established by Ofcom and set out in this statement will result in higher access services costs for broadcasters of relevant channels. However, we consider that these increases will not place a disproportionate burden on these broadcasters. This is because the 1% expenditure cap will remain in place as a guarantee against disproportionality. Our analysis suggests that the access services costs of the large majority of the channels currently subject to alternative signing arrangements will remain below this expenditure cap; at the same time, channels whose cost of access services would exceed 1% of the relevant turnover will be exempted from access services obligations.
- A4.23 Ofcom has indicated that it will review the policy in 2019. The review will enable Ofcom to take stock of whether regulation is delivering the expected benefits to sign language users, and whether, as anticipated, the costs to most broadcasters remain a very small proportion of relevant turnover.