



How Ofcom regulates the BBC: A review

September 2021

Executive Summary

The UK's creative industries are world-beating. Prior to the pandemic, the sector was growing faster than the UK economy overall – at a rate of 5.6% compared to 1.4% for the whole UK economy.¹ The BBC plays a key role in this success story investing c.£1.4bn annually in original TV content made all across the UK.² And we have plans to go further in the future.³

But the media market is changing. It is increasingly fast-paced, dynamic, digital and global. Yet the BBC is being regulated as if we were still in a broadcast, linear world with only UK-based competitors. The current regulatory structure is too rigid, overly focused on broadcast linear channels and does not allow the BBC to innovate at pace to meet audience expectations and provide best value to licence fee payers. It is right the BBC is well-regulated, but our regulatory structure needs to recognise the framework in which others are operating too so the BBC is able to compete in today's global market and deliver for audiences.

So we welcome Ofcom's review of how it regulates the BBC. Broadcast linear channels are still popular with many, but audiences are increasingly viewing online – around 40% of the average person's daily viewing is now spent on a wide range of online, on-demand content services⁴ with BBC iPlayer requests up 28% year-on-year.⁵ And change is only going to continue in the coming years. Recent estimates suggest online platforms could account for 40% of all live radio listening by 2035, up from 14% in 2020.⁶

It's clear regulation needs reform to ensure it remains fit-for-purpose and future-proof. In our view, to maximise the benefit of reforms and to meet the challenges ahead for UK audiences, the following issues will be critical to get right in the context of Ofcom's review:

1. A **reformed, modern operating licence** which reflects a BBC that reaches audiences beyond broadcast linear channels and in the context of a rapidly changing market. We strongly support Ofcom's proposals for the BBC to have more scope to determine how to fulfil our licence obligations across our platforms and services. This means moving away from a system of quantitative conditions and output reporting to a system which focus on how the BBC delivers for audiences across TV and audio therefore allowing us to be more responsive to audience needs. This will

¹ DCMS, [Economic Estimates](#), 2019 figures. Updated February 2021.

² BBC [Commissioning supply report](#) 2019

³ BBC, [The BBC Across the UK](#), March 2021.

⁴ Ofcom, [Small Screen Big Debate consultation](#), December 2020 (Source: All individuals aged 4+, 2019. Source: Ofcom estimates of total audio-video viewing. Modelled from BARB, Comscore and TouchPoints data)

⁵ BBC, Annual Report and Accounts 2020/21, July 2021.

⁶ Mediatique, Ownership and use of audio enabled devices in 2023, May 2021

require additional transparency from us about our plans and performance – for example by building on developments around our annual plan and annual report. We want to work with Ofcom to agree a shared view in this area.

2. An **agile and faster process for changing the UK Public Services** so the BBC can innovate in the market, and respond to changes audiences expect in a timely way. We welcome Ofcom's plans to look at these processes. We believe a faster, streamlined Public Interest Test (PIT) process could improve outcomes for audiences by allowing the BBC to bring changes to market more quickly, and simplify the process for stakeholders. We also agree that a more transparent process around materiality assessments could be beneficial – especially where the BBC has determined changes are non-material. We look forward to discussing with Ofcom how this could be achieved.
3. **Editorial standards and complaints:** audience trust in our editorial output is critical and maintaining the highest editorial standards and a robust, fair and transparent complaints system are a key part of this. We therefore welcome the opportunity to take stock of the BBC's performance in protecting audiences and maintaining content standards as well ways in which complaints handling could be improved. Like Ofcom, we believe the BBC First framework has generally worked well, but we would like to discuss how the complaints system might be streamlined and improved.
4. Enable global **commercial growth:** the BBC needs to continue to maximise its commercial returns – via our commercial subsidiaries, and to work across the BBC Group to deliver our Mission and Public Purposes effectively. We look forward to Ofcom publishing findings from its ongoing review of BBC Studios. If there are areas relevant to us or other stakeholders not covered in these findings, we consider this review is a useful opportunity to consider potential regulatory changes.
5. Proportionate and targeted **reporting and accountability** that supports the regulatory framework while not creating an undue burden.

Ofcom's cross-cutting themes

We note Ofcom will be looking at three key-themes in its review – transparency and engagement; public value; and diversity. All are areas the BBC takes extremely seriously and the BBC Board has clear duties under the Charter to oversee transparency and diversity. We are continuing to take steps to ensure we observe high standards in these areas:

On transparency:

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- The BBC is by far the most transparent organisation in the industry, as numerous independent reviews have confirmed.⁷
- Our most recent Annual Plan set out a series of commitments about how we will deliver against our public purposes across all our services. We will report against these in our next Annual Report.
- Our Annual Plan also sets out in more detail future plans for changes to public services.
- We have included more detailed reporting in our Annual Report about the performance of different services, such as iPlayer and Sounds, than ever before.
- We also publish quarterly performance reports for BBC Sounds that are available to the whole market.
- We provide Ofcom with significant additional detailed information about performance during the year, including detailed briefing sessions, evidence of compliance and detailed papers on performance against the mission and public purposes.
- The BBC publishes a fortnightly report covering complaints which fall within Ofcom's remit. The reports include detail of all complaints numbering over 100 at the first stage of the complaints process. The reports also include detail about complaints which are covered by the Ofcom Broadcasting Code and which go onto the BBC's Executive Complaints Unit (ECU) and are upheld and resolved. The ECU published findings include details of the complaint, relevant BBC Editorial Guidelines and an explanation of the ECU's reasons for its finding as appropriate to the nature of the complaint. Furthermore the BBC has a 'Corrections and Clarifications' page⁸ and the 'BBC Responses to Complaints page'⁹ which provide further detail on how to complain and the results of complaints for licence fee payers and the public.

On diversity we are:

- A market leader, working towards ambitious 50/20/12 targets to accelerate diverse representation on and off screen.¹⁰
- Making good progress on closing the gender pay gap. The BBC's gender pay gap for 2020/21 is now 5.2% - down from 9.6% when we first published four years ago. In comparison, the other broadcasters' most recently published gender pay gaps (2020) were: Channel 4 (23%) Sky (11.6%), ITV (9.8%).
- Delivering on our 50:50 monitoring project to increase women's representation on air.
- Nurturing diverse new talent, including though allocating funding to how we commission video and audio content.

⁷ Cf. Hutton, Will. [BBC Public Service Transparency Review](#). January 2019. Saul, Christopher. [BBC Commercial Transparency Review](#). December 2018.

⁸ https://www.bbc.co.uk/helpandfeedback/corrections_clarifications

⁹ <https://www.bbc.co.uk/contact/complaints/recent-complaints>

¹⁰ 50/50 men and women; at least 20% BAME and at least 12% people with disabilities. This reflects the make up of the UK. Alongside this we are also building socioeconomic diversity and LGBTQ+ inclusion.

On public value

- We are developing our approach to public value, building on our recent work with UCL. This includes thinking about how we look at public value in a framework which starts analysis from a place of value co-creation. Through this lens, the BBC is a dynamic market shaping force, in contrast to a traditional market failure based approach to public intervention, which inherently limits the role of institutions such as the BBC to doing what others won't. We consider our work can make a significant contribution to a number of areas of this review and we look forward to discussing it further with Ofcom.

We set out more detailed comments below in response to Ofcom's specific consultation questions.

Responses to Ofcom's consultation questions

Question 1: Do you agree with the proposed scope of the review of BBC regulation as set out in this document? If not, please explain the areas where you think changes should be made.

We broadly agree with the scope that Ofcom have set out for this consultation. We recognise the importance and value of BBC regulation for licence fee payers as well as industry and other stakeholders. Regulation helps to reassure all stakeholders that the BBC is delivering the mission and public purposes, and doing so in a way that does not unduly impact the wider market. It is right that as a publicly funded organisation we face a greater level of public accountability than our competitors.

Nevertheless, given the market changes since the rules were written it will be important to reform how regulation works in key areas.

Question 2: Do you agree with the proposed approach to reviewing the BBC Operating Licence? If not, please explain why.

We fully support Ofcom's work to reform our operating licence. We believe that the proposals Ofcom has set out for considering changes could result in a better system for audiences, stakeholders and the BBC. To operate successfully in today's dynamic market, the BBC needs to have more control about how we deliver against the Mission & Public Purposes to meet audience needs and expectations.

The existing licence requirements are largely a continuation of the BBC Trust Service licence conditions first created in 2007,¹¹ which has thrown up a range of challenges. More flexibility for the BBC to set detailed targets and requirements would help to

¹¹ As Ofcom was required to do by Schedule 2 of our Agreement with DCMS to put in place when it set the first operating licence.

ensure we continue to put audiences – and not regulatory compliance – at the heart of our decisions making.

In respect of operating licence reform:

- We think audiences will be best served by taking a “service neutral” approach allowing the BBC to deliver for audiences across its portfolios of TV channels and BBC iPlayer, radio stations and BBC Sounds, and other online services, rather than specifying detailed requirements for individual services. This is in line with the need Ofcom recognise in both this consultation and in *Small Screen: Big Debate* i.e. that some audiences are increasingly moving to online and on-demand services.¹²
- We strongly welcome Ofcom’s stated intention of moving away from a set of primarily quantitative output based requirements to something that focusses more on how well we deliver for audiences across our TV and audio services. This would align Ofcom’s regulatory approach with what we focus on within the BBC – delivering value for all audiences.
- We agree that implementing a new, more flexible operating licence will require us to be upfront with our audiences and stakeholders about what we plan to do and what we expect to deliver each year to meet the mission and public purposes. We agree with Ofcom that our Annual Plan is an appropriate vehicle for us to communicate our plans and that we should then evidence how we have complied with our regulatory requirements in our Annual Reports and Accounts.
- In respect of how step-in rights would work in practice, any power must be used proportionately and as a last resort where Ofcom has serious concerns about the BBC’s planned or actual delivery. We do of course hope that situation will never come to pass. Nevertheless, we should agree a timely process in which Ofcom reviews the BBC’s plans so that the BBC can execute without delay where Ofcom is satisfied with the plans set out.

In working through any changes to the Operating Licence, it will be important to ensure the new framework is focussed on fewer, but key performance metrics.

Question 3: Do you have any views on how to measure the BBC’s performance?

We welcome Ofcom’s proposed approach to measuring our performance for the periodic review using a similar process to previous years (i.e. the approach for assessing our performance for Ofcom’s Annual Report on the BBC.) This will allow Ofcom to complete this aspect of the review efficiently. We welcome continued engagement with Ofcom in this regard.

Over this Charter period so far we have continued to act on our commitment to transparency, including through developing our Annual Plan. This year’s Annual Reports and Accounts also for the first time summarises a range of audience performance

¹² To achieve a true ‘service neutral approach’, there may need to be changes to definition of a TV programme in both the BBC’s Framework Agreement and the Communications Act.

information for different services in one place, making it easier for stakeholders to scrutinise our performance. We consider this provides a good base on which to build going forwards as we continue to evolve our reporting.

However, any evolution of measurement of the BBC's performance must also consider both the impact of well-funded global media giants on the UK media market and hence the BBC's own performance, and the successive budget cuts imposed on the BBC, which inevitably affects its ability to serve all audiences.

We also note that, alongside the detailed information we publish each year in our Annual Report, we also provide significant amounts of information to Ofcom on our performance. This includes:

- Detailed descriptions and evidence of how we meet existing operating licence quotas and other relevant requirements;
- Significant additional information on our strategy and performance against each of the public purposes;
- Detailed audience and performance data including access to a range of BBC management information on a number of our services.

This is already a significant effort for both the BBC and Ofcom each year.

Looking forward, we believe a proportionate and less overly mechanistic system would include focused targets and reduce bureaucracy for the BBC and for Ofcom. Such a system i.e. one which allows the BBC to focus on how it delivers the mission and public purposes across the portfolio is likely to be more responsive to audience needs. We recognise that changes to the operating licence that deliver this – changes that allow more flexibility for us to set out own quotas and targets – may require us to develop different methods to demonstrate regulatory compliance. We hope that any such changes can build on the existing audience research and data we gather, as well as Ofcom's work in this area. In this respect, we should work together to ensure the information we publish or report to Ofcom is relevant and targeted. Again, we look forward to discussing this in greater detail as proposals for operating licence reform develop.

Question 4: Do you agree with our proposed scope of the review in relation to content standards? If not, please explain why.

The BBC is determined to provide a first class service to licence fee payers and see this review as an opportunity to engage with Ofcom on how to improve the process further. For example, by making sure that we deal with complaints as quickly as possible (recognising the large volume of complaints we now have to deal with). By ensuring there is transparency about how the complaints system works – about the respective roles of the BBC and Ofcom, and about how different types of complaints are treated.

We welcome this aspect of the review and consider this is an opportunity to take stock of:

- how the BBC has performed in protecting audiences and maintaining content standards;
- the operation of the ‘BBC First’ complaints procedure;
- handling of serious complaints; and
- how the BBC process and Ofcom’s procedures have interacted since the introduction of the current Complaints Framework in 2017.

The BBC has a good track record of resolving complaints within the BBC system and therefore minimising the number of stages complainants have to go through to receive a satisfactory answer from the BBC. In 2020/21, we received 462,255 complaints at stage 1 of the process; 600 proceeded to stage 2 of the process; and 178 went on to Ofcom. This represents about one in three of complainants whose complaints weren’t upheld or resolved.

We have implemented Ofcom’s revised Determination (2019) on the publication of information about the operation and effectiveness of the complaints process.¹³ The changes have been implemented and the fortnightly reports now include hyperlinks from the relevant entries to the published findings.

Like Ofcom, we believe the ‘BBC First’ framework has generally worked well, with a low rate of referral on to Ofcom and a small number of code breaches recorded about BBC output.

We welcome discussion of the handling of serious complaints and election related complaints. Whilst we believe we have effective and robust systems in place, we welcome the opportunity to review these systems and discuss ideas for changes which would deliver better for audiences and licence fee payers.

We have implemented the recommendations of the Banatvala report on the complaints process and improved diversity in complaints handling. This is an area which we will continue to monitor and improve.

Question 5: Do you agree with the issues we have identified with the processes for assessing the competitive impact of changes to the BBC’s UK Public Services? If you consider there should be changes to these processes, please set out what these are and, if possible, provide any relevant evidence.

We believe that a successful BBC sits at the heart of this UK creative ecology and that we continue to play a positive role in promoting and stimulating the sector. Media markets are evolving fast with new entrants, new forms of content and new routes to

¹³ This requires that information about findings on editorial complaints “must be published, on a regular fortnightly basis, within 14 days of a final decision being made. Those published findings must include details of the complaint, relevant BBC Editorial Guidelines and an explanation of the ECU’s reasons for its finding that is appropriate to the nature of the complaint”.

market. We agree with Ofcom that faced with this pace of change in media markets it is essential that the BBC is able to continue to innovate, grow and change to be able to deliver for audiences.

While it is important that Ofcom regulates the potential impact of the BBC on fair and effective competition in the market, this should not allow some of the BBC's large global competitors to benefit at the expense of UK licence fee payers. The market and the BBC's competitor set are now global and we believe this should be reflected in Ofcom's decision making about proposed changes to the BBC's public services.

The PIT Process

We welcome the process improvements we have seen over the three PIT assessments we have undertaken so far. We consider we have worked collaboratively with Ofcom, significantly improving our engagement with Ofcom and have together eliminated much unnecessary duplication of effort. We want to build on these improvements.

It is evident to us from our PIT consultations to date that multiple rounds of consultation and a duplicative process are unhelpful. We should look to streamline the process – both stakeholder input as well as the research and analysis that we and Ofcom must separately undertake.

While Ofcom must always come a view independently of the BBC or other stakeholders, we are keen to explore ways to remove duplication and speed up the process. This might involve for example increased work with Ofcom at the evidence gathering stage and reducing the number of consultations to two.

Materiality assessments

Materiality assessments are an important part of the process of assessing the impact of changes to the UK public services. However, we consider that an overly lengthy process in respect of materiality assessments has the potential to stifle our ability to quickly innovate to deliver for our audiences. The pace of change in media markets – which Ofcom has acknowledged in this consultation and in the PSB Review – means that for the BBC unnecessary delays in making changes can be deeply detrimental.

For these reasons we would welcome consideration of the best process around materiality assessments in the course of this review.

Public value

Public value is a key part of the PIT process, where the BBC must evaluate the value that BBC activities generate, as well as the market impact. The tools for market analysis are well developed, but public value measurement is, as recognised in the Charter, less developed.

In this context, we continue to develop our analytical approach to public value building on our work with UCL.¹⁴ This approach to public value starts analysis from a place of the co-creation of value with the BBC as dynamic market shaping force. This contrasts to

¹⁴ UCL IIPP, [Creating and measuring dynamic public value at the BBC](#), December 2020.

traditional analysis of public interventions which start from a perspective of harm and market failure. The latter view point limits the role that institutions such as the BBC play as it focuses purely on market value, which is inadequate to capture scope of benefits that the BBC delivers.

Ideally, through this consultation process we would explore whether Ofcom would accept the framework we are developing based on the UCL report as the basis on which public value at the BBC should be considered. We look forward to discussing this further with Ofcom and to working together on ways to improve the assessment of the public value of our activities both in relation to changes as well as performance more broadly.

Looking beyond the BBC, we think there is a case for Ofcom to have strengthened duty to support the PSBs in the fulfilment of their purposes – including a requirement to take into account the public value that the PSBs generate in decision making.

Question 6: Do you have any concerns about the regulatory framework for the BBC's commercial activities that are not being considered in the review of BBC Studios?

We have been working to provide Ofcom with the access and information they require to be able to complete its work on the Review of BBC Studios over several years. We are not yet aware of the findings of this review, including whether Ofcom considers that changes to the regulatory framework may be beneficial. We expect that once Ofcom has published its findings we – and other stakeholders – will be in a better position to identify areas where we consider additional work may be required through this periodic review.

More generally, however, the BBC must continue to seek to deliver the greatest possible commercial returns to supplement the licence fee, as required by successive governments. We want to continue to grow our commercial arm, especially outside of the UK. To protect and enhance the public value we deliver through the UK public services – our commercial subsidiaries must work with and not against the BBC Public Service.