



Ofcom's Third Review of Public Service Broadcasting

Terms of Reference

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About this document

This paper sets out the terms of reference for Ofcom's third review of Public Service Television Broadcasting (PSB) and sets out how we will:

- report on the past delivery of public service content ; and
- examine changes in both the broadcasting and wider communications sector and their potential effect on the current PSB system.

It explains how this review will be conducted in a different manner from Ofcom's previous two PSB reviews because:

- the transition from analogue to digital broadcasting, which formed the context for our first two reviews, is complete;
- Ofcom has decided to renew the Channel 3, 4 and 5 licences for a further 10 years; and
- Ofcom's remit in conducting the review has changed as a result of the Digital Economy Act 2010.

Because of these factors we anticipate that we will complete this review in a shorter time frame than previous PSB reviews.

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Ofcom's Third Review of Public Service Broadcasting

The context for this review

- 1.1 Our first PSB review covered the years from 1998 to 2002 and the second PSB review from 2003 to 2007. Both of these reviews took place in the context of uncertainty for the PSB system stemming from:
 - 1.1.1 the on-going transition to fully digital broadcasting, bringing far greater choice of channels to all viewers and uncertainty as to how consumer behaviour might change;
 - 1.1.2 the resulting increase in audience fragmentation and competition for the Public Service Broadcasters (PSBs), which were no longer the only broadcasters to have access to the majority of viewers;
 - 1.1.3 questions about how regulation could continue to secure public service content given the decrease in value of some of the benefits¹ received by the PSBs; and
 - 1.1.4 the nascent role of the internet in people's media consumption habits and the potential implications for more traditional media and distribution networks.
- 1.2 In many respects the pace of change since our last review has continued unabated. While television remains remarkably resilient the internet is now a pervasive medium which is changing delivery and consumption of all media content, including public service content. In the past few years:
 - 1.2.1 PSBs have continued to evolve their distribution strategies, including through new platforms such as YouView and Freeview Connect;
 - 1.2.2 PSB 'players' offering catch-up services online and on connected devices have been well received by consumers and are available on a wide range of TV platforms. The PSBs have also started to experiment with distributing new PSB content online, either before then broadcasting it on television or instead of using television at all;
 - 1.2.3 significant investment in superfast broadband has continued, meaning it will soon be available to most consumers. Mobile broadband is also increasingly available and increasing in speed, driven particularly by the launch of 4G services. These developments are making consumption of audio-visual content online increasingly common;
 - 1.2.4 viewers are increasingly accessing video on new devices, such as tablets (which were not yet widely owned or used at the time of our last review), and there are questions about whether younger people are using television and media in general in a different way from their parents;

¹ Such as guaranteed access to spectrum.

- 1.2.5 there has been continued decline in the amount of time people spend watching linear television, albeit at a relatively slow rate;
- 1.2.6 the local, regional and Nations media landscape has continued to evolve. There have been well-documented pressures on local and regional newspapers, while hyperlocal websites have become increasingly common and the licensing of local television services has begun, with the first channels already on air;
- 1.2.7 Overall spend on UK-originated content shown UK-wide on the PSB channels has declined in real terms since 2007. At the same time there has been increased investment by commercial broadcasters beyond the PSBs in UK television programmes covering genres such as arts, drama and comedy. Despite a drop in spend on UK-originated content by the PSBs overall, the proportion of the total spent by PSBs on network programmes outside of London and in the Nations has increased. However, spend on programmes made specifically in and for each Nation (i.e. not shown UK-wide) has declined over the same period; and
- 1.2.8 new entrants such as Google, Amazon and Netflix have started experimenting with investment in original content.
- 1.3 This pace of change means that there is a great deal of uncertainty about how content and technology sectors will develop in the future. However, these changes also need to be set against a number of other developments that, somewhat counter intuitively, mean this review takes place in circumstance with a degree more stability for the PSBs than our previous two reviews:
- 1.3.1 Digital switchover has been completed and the share of viewing to television services provided by the PSBs, which had gradually declined with the increasing number of available channels, now appears more stable when their portfolio channels² are taken into account.
- 1.3.2 Consumption of linear television still represents around 90% of all viewing. While other ways of watching have grown in popularity they remain small in comparison – and have had less impact on linear viewing than was initially anticipated by many.
- 1.3.3 There has been a recovery in the television advertising market, leading to reduced cyclical pressures on commercial broadcasters. Television advertising also currently appears more resilient to alternative means of advertising, particularly online, than was thought might be the case (indeed its share of total advertising is up from 2007). Online advertising however continues to grow rapidly.
- 1.3.4 Ofcom has decided to renew the Channel 3, 4 and 5 licences for a further ten years, providing for delivery of their public service remits and obligations over the medium-term. The BBC has a licence fee settlement until 2016/17 (albeit with the Charter Renewal process likely to begin relatively shortly).

² In addition to PSB services, such as ITV, Channel 4 and Channel 5, the PSBs also offer other channels on a purely commercial basis, such as ITV2, E4 and 5 USA.

- 1.4 In order to focus this review, we have therefore made a number of important assumptions when considering the detailed scope of the forthcoming PSB review:
- 1.4.1 **A long term view:** with new PSB licences due to come into force shortly and covering the next 10 years, this review is an opportunity to look forward to the key opportunities and challenges for PSB delivery over the next decade, looking at how the system as a whole operates in the interests of UK citizens and consumers.
 - 1.4.2 **The broadcasting sector as a whole is currently functioning well:** we have a strong broadcasting sector with the PSBs and commercial channel providers complementing each other and with a strong independent production sector, although we recognise that some argue this is not a uniform picture in all parts of the UK.
 - 1.4.3 **Among the total television audience as a whole, the appetite for public service content remains broadly strong:** although we will test (through new primary research) the potentially diverse views of different generations to understand the likelihood that this will change in the future.
 - 1.4.4 **The potential for disruptive innovation to destabilise the current system requires further analysis:** whilst linear viewing remains very resilient, the potential for disruption, including a greater shift to non-linear consumption, remains. We need to continue to monitor and understand the potential for this and other significant structural changes.
- 1.5 During the course of our work, should we receive any evidence that challenges any of these assumptions we will consider the implications of that for the review.

The focus and scope of this review

- 1.6 Given the context above and in order to focus our work, we have developed a central hypothesis for this review to consider:

“The PSB institutions and system continue to deliver for viewers as part of a successful mixed broadcasting ecology delivering high-quality UK content, but the pace of innovation and sources of risk and fragility need to be monitored...”

...The key challenge in coming years is to adapt both public service content and its distribution in the context of an increasingly dynamic commercial channel sector, ensuring that public service content remains attractive, resonant and necessary and easy for viewers to access and find so that it can reflect and take advantage of an increasingly connected society...

...This will ensure that we maximise the social and economic value of funding and delivery of public service content.”

- 1.7 In particular, the review will need to test whether the PSBs will remain resilient to structural changes affecting viewing habits and TV advertising. Areas for consideration will include:
- 1.7.1 the potential for new entrants to disrupt the current model of public service broadcasting, for instance by driving a greater shift to non-linear consumption;
 - 1.7.2 the impact of technology - such as personal video recorders (PVRs), new and emerging video on-demand (VOD) services and devices such as tablets and smartphones - on viewing habits;
 - 1.7.3 the potential opportunities and impact of increasingly globalised content and technology markets;
 - 1.7.4 the role of TV advertising alongside advertising on other platforms in the marketing mix; and
 - 1.7.5 the impact of new intermediaries which control platforms, including their control of potentially valuable direct relationships with audiences.
- 1.8 The core focus of this review will be on the BBC's television services (including the Gaelic language service, BBC Alba), the Channel 3 services (ITV, STV and UTV), Channel 4, Channel 5 and Welsh language service S4C.
- 1.9 The Digital Economy Act 2010 made some changes to Ofcom's duties in conducting a PSB review. We will therefore carry out a wider 'media services' review in addition to looking at the PSBs, which will seek to provide important context for the core focus of our review. Our media services review will consider the contribution to the delivery of the public services objectives of the portfolio channels and non-linear catch-up services offered by the PSBs, other television channels provided by commercial broadcasters, radio stations, and services such as on-demand players and websites.
- 1.10 Our work on the BBC will focus on its role in the overall delivery of the PSB purposes and objectives, to establish both the contribution and impact of the BBC as part of the system of public service broadcasting. We will not seek to ask or answer questions in relation to the BBC which are matters for the forthcoming Charter Review process.
- 1.11 The Digital Economy Act 2010 introduced new duties for Channel 4 Corporation ("C4C") in relation to media content and a requirement for Ofcom to carry out a periodic review of C4C's discharge of these duties. We will do so alongside our PSB review. We also propose to focus on C4C as part of our consideration of strategic challenges.
- 1.12 Our work will be divided into the following areas:
- 1.12.1 **Historical data reporting:** a comprehensive review of historical output, investment, consumption and viewer attitudes. This will include the delivery and consumption of PSB across the Nations of Scotland, Wales and Northern Ireland. Our review of delivery will use as its basis the data collected for Ofcom's PSB Annual Reports, with specific additional data as required.
 - 1.12.2 **Market context:** an outline of the key trends and events that have taken place over the period under review, a detailed overview of the current

market across the UK and likely drivers of future change, and a number of hypotheses for how the market may develop in future against which to assess how we might best maintain and strengthen PSB.

1.12.3 **Key policy themes:** a more detailed assessment of a small number of key policy areas and their implications for the future. In addition to meeting our duties to carrying out a PSB review, the proposed key themes and the strategic challenges referred to below are areas which are central to Ofcom's general duties to secure a wide range of TV and radio services of high quality and wide appeal, and to maintain plurality in the provision of broadcasting. The key themes are likely to include:

- i) The role of public service broadcasters in supporting the wider creative economy in the UK;
- ii) The role of the independent sector and developments in television and digital (online-only) commissioning;
- iii) The changing delivery and consumption of programming in key genres, such as UK, National, regional and local news, and children's programming.

1.12.4 **Strategic challenges:** We will focus in depth on three key strategic challenges:

- a. **Keeping PSB relevant to audiences:** The growth of digital consumption presents both opportunities and threats to keeping public service content relevant to audiences. We want to understand, including through new primary research across the UK including each of the Nations, how audience expectations are changing in relation to the production and delivery of public service content.
- b. **Distribution: platform access, availability and discoverability.** As viewers access video services on new platforms and devices, how can we ensure that content made by the PSBs continues to achieve reach and impact to ensure continued economic and social benefits? Can we ensure that PSB services have access to the platforms needed to reach as wide an audience as possible? As the choice of services increases and so ways of discovering content become more important – and more sophisticated – can we ensure that PSB services remain easy to discover?
- c. **Channel 4 Corporation:** Channel 4's licence has just been renewed for a further ten years and C4C has a relatively new set of media content duties. However, C4C faces increasing competition from large, well-funded global media companies and a range of innovative online providers, both offering compelling alternatives for the younger audiences that C4C seeks to appeal to. Will C4C be of sufficient scale to compete successfully and retain its younger audience? Are there ways that C4C could be strengthened to support the delivery of its obligations as viewing patterns change?

Areas where we are not considering significant additional work at this stage

- 1.13 There are also a number of areas where Ofcom has already conducted thorough analysis in our previous PSB reviews and where we do not intend to undertake significant additional work at this stage. In particular, these are:
- 1.13.1 **The economic rationale for intervention:** where significant externalities endure in the broadcasting world which mean that private preferences may not yield an optimal outcome.
 - 1.13.2 **The purposes and objectives of PSB:** where we do not envisage conducting a wholesale review but may consider the implications of our work.
 - 1.13.3 **The pros and cons of contestable funding:** where we have previously set out in detail our views on the relative merits of institutional delivery vs. competitive funding.
 - 1.13.4 **The appropriate mix of institutional structures for delivering PSB:** we do not intend to examine in detail whether there might be a more optimal mix of institutions for delivering public service content in the future; nor do we intend to explore the potential impact of further devolution in Scotland, Wales or Northern Ireland.
- 1.14 We may, of course, revisit any of these areas as part of the review should it become apparent during the course of our work that it is important to do so.

Approach

Timetable

- 1.15 This review will take place over a shorter time period than the previous two reviews. Immediately following the publication of this document, we will conduct initial analysis, including audience and market research, and take account of any initial representations from stakeholders. We will then issue a detailed public consultation before publishing a final statement next year. The projected timetable is:
- May to autumn – initial analysis
 - Autumn to spring – public consultation
 - Late spring – final analysis
 - Summer 2015 – publication of final statement

Period under review

- 1.16 In answering the questions set out above, the review will consider the period since the last review (2008 to 2013 inclusive)³ as well as considering how the market might develop over the next five years and beyond.

Stakeholder engagement

- 1.17 As part of the review we will issue a detailed public consultation to allow all interested parties to submit information and set out their views and opinions on the key issues. We are interested in meeting with stakeholders throughout the process to hear their views, including those in Scotland, Wales and Northern Ireland where we will hold separate events.
- 1.18 We also anticipate a need for additional data to inform the review and will be writing to stakeholders shortly setting out the information we are requesting.

Point of contact

- 1.19 We would be pleased to receive comments about these Terms of Reference and the scope and content of this review. To let us know your thoughts, to ask questions, or to request further information about the PSB review, please email PSBreview@ofcom.org.uk, by the end of June 2014 or contact Gareth Barr on 020 7981 3362.

³ The Communications Act 2003 requires us to consider 2008 to 2012 inclusive and we will consider 2013 to ensure our analysis is up to date. Our review of C4C's discharge of its media content duties will cover the period from June 2010 (when they were introduced) to 2013.

Annex 1

PSB Review: statutory framework

Section 264 of the Communications Act 2003: OFCOM reports on the fulfilment of the public service remit

- (1) It shall be the duty of OFCOM--
 - (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
 - (b) as soon as practicable after the end of each such subsequent period as may be selected by OFCOM for the purposes of this section,to satisfy, for that period, the review and reporting obligations of subsection (3).
- (2) The period selected by OFCOM for the purposes of subsection (1)(b) must be a period of not more than five years beginning with the end of the previous period for which OFCOM have satisfied those review and reporting obligations.
- (3) The review and reporting obligations for a period are--
 - (a) an obligation to carry out a review of the extent to which the public service broadcasters have, during that period, provided relevant television services which (taking them all together over the period as a whole) fulfil the purposes of public service television broadcasting in the United Kingdom; and
 - (b) an obligation, with a view to maintaining and strengthening the quality of public service television broadcasting in the United Kingdom, to prepare a report on the matters found on the review.
- (4) The purposes of public service television broadcasting in the United Kingdom are--
 - (a) the provision of relevant television services which secure that programmes dealing with a wide range of subject-matters are made available for viewing;
 - (b) the provision of relevant television services in a manner which (having regard to the days on which they are shown and the times of day at which they are shown) is likely to meet the needs and satisfy the interests of as many different audiences as practicable;
 - (c) the provision of relevant television services which (taken together and having regard to the same matters) are properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and
 - (d) the provision of relevant television services which (taken together) maintain high general standards with respect to the programmes included in them, and, in particular with respect to--
 - (i) the contents of the programmes;
 - (ii) the quality of the programme making; and
 - (iii) the professional skill and editorial integrity applied in the making of the programmes.

(5) When--

- (a) determining the extent to which any of the purposes of public service television broadcasting in the United Kingdom are fulfilled, and
- (b) reviewing and reporting on that matter,

OFCOM must have regard to the desirability of those purposes being fulfilled in a manner that is compatible with subsection (6).

(6) A manner of fulfilling the purposes of public service television broadcasting in the United Kingdom is compatible with this subsection if it ensures--

- (a) that the relevant television services (taken together) comprise a public service for the dissemination of information and for the provision of education and entertainment;
- (b) that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music, by the inclusion of feature films in those services and by the treatment of other visual and performing arts;
- (c) that those services (taken together) provide, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs in, and in the different parts of, the United Kingdom and from around the world;
- (d) that those services (taken together) satisfy a wide range of different sporting and other leisure interests;
- (e) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes on educational matters, of programmes of an educational nature and of other programmes of educative value;
- (f) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes dealing with each of the following, science, religion and other beliefs, social issues, matters of international significance or interest and matters of specialist interest;
- (g) that the programmes included in those services that deal with religion and other beliefs include--
 - (i) programmes providing news and other information about different religions and other beliefs;
 - (ii) programmes about the history of different religions and other beliefs; and
 - (iii) programmes showing acts of worship and other ceremonies and practices (including some showing acts of worship and other ceremonies in their entirety);
- (h) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of high quality and original programmes for children and young people;
- (i) that those services (taken together) include what appears to OFCOM to be a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom;

- (j) that those services (taken together), so far as they include programmes made in the United Kingdom, include what appears to OFCOM to be an appropriate range and proportion of programmes made outside the M25 area.
- (7) In carrying out a review under this section OFCOM must consider--
- (a) the costs to persons providing relevant television services of the fulfilment of the purposes of public service television broadcasting in a manner compatible with subsection (6); and
 - (b) the sources of income available to each of them for meeting those costs.
- (8) Every report under this section must--
- (a) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the purposes of public service television broadcasting in the United Kingdom have been satisfied;
 - (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those purposes are fulfilled;
 - (c) set out the findings of OFCOM on their consideration of the matters mentioned in subsection (7) and any conclusions they have arrived at in relation to those findings; and
 - (d) set out OFCOM's conclusions on the current state of public service television broadcasting in the United Kingdom.
- (9) In performing their duties under this section, OFCOM must have regard, in particular, to--
- (a) every statement of programme or service policy which has been made by virtue of this Chapter by a public service broadcaster, or which is treated as such a statement;
 - (b) every equivalent statement of policy made by the BBC in pursuance of the BBC Charter and Agreement; and
 - (c) such matters arising at times before the coming into force of this section as OFCOM consider material.
- (10) Every report prepared by OFCOM under this section must be published by them--
- (a) as soon as practicable after its preparation is complete; and
 - (b) in such manner as they consider appropriate.
- (11) The following are relevant television services for the purposes of this section--
- (a) the television broadcasting services provided by the BBC;
 - (b) the television programme services that are public services of the Welsh Authority (within the meaning of section 207);
 - (c) every Channel 3 service;
 - (d) Channel 4;
 - (e) Channel 5;
 - (f) the public teletext service.
- (12) The following are public service broadcasters for the purposes of this section--
- (a) the BBC;
 - (b) the Welsh Authority;

- (c) the providers of the licensed public service channels; and
- (d) the public teletext provider.

(13) In this section--

"belief" means a collective belief in, or other adherence to, a systemised set of ethical or philosophical principles or of mystical or transcendental doctrines; and

"drama" includes contemporary and other drama in a variety of different formats.

Section 264A of the Communications Act 2003: OFCOM reports: wider review and reporting obligations⁴

- (1) When carrying out a review under section 264 for a period, OFCOM must also carry out a review of the extent to which material included in media services during that period (taken together over the period as a whole) contributed towards the fulfilment of the public service objectives.
- (2) Every report under section 264 must--
 - (a) include a report on the matters found on the review under this section,
 - (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the public service objectives have been fulfilled,
 - (c) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those objectives are fulfilled, and
 - (d) set out OFCOM's conclusions on the current state of material included in media services.
- (3) "The public service objectives" are the objectives set out in paragraphs (b) to (j) of section 264(6) (as modified by subsection (4)).
- (4) Paragraphs (b) to (j) of section 264(6) have effect for the purposes of subsection (3) as if--
 - (a) references to the relevant television services were to media services, and
 - (b) references to programmes were to material included in such services.
- (5) In this section--

"material" does not include advertisements;

"media services" means any of the following services that are available to members of the public in all or part of the United Kingdom--

 - (a) television and radio services,
 - (b) on-demand programme services, and
 - (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service.
- (6) The services that are to be taken for the purposes of this section to be available to members of the public include any service which--

⁴ This section was inserted into the Communications Act by section 2 of the Digital Economy Act 2010.

- (a) is available for reception by members of the public (within the meaning of section 361); or
- (b) is available for use by members of the public (within the meaning of section 368R(4)).

Section 198A of the Communications Act 2003: C4C's functions in relation to media content⁵

- (1) C4C must participate in--
 - (a) the making of a broad range of relevant media content of high quality that, taken as a whole, appeals to the tastes and interests of a culturally diverse society,
 - (b) the making of high quality films intended to be shown to the general public at the cinema in the United Kingdom, and
 - (c) the broadcasting and distribution of such content and films.
- (2) C4C must, in particular, participate in--
 - (a) the making of relevant media content that consists of news and current affairs,
 - (b) the making of relevant media content that appeals to the tastes and interests of older children and young adults,
 - (c) the broadcasting or distribution by means of electronic communications networks of feature films that reflect cultural activity in the United Kingdom (including third party films), and
 - (d) the broadcasting or distribution of relevant media content by means of a range of different types of electronic communications networks.
- (3) In performing their duties under subsections (1) and (2) C4C must--
 - (a) promote measures intended to secure that people are well-informed and motivated to participate in society in a variety of ways, and
 - (b) contribute towards the fulfilment of the public service objectives (as defined in section 264A).
- (4) In performing their duties under subsections (1) to (3) C4C must--
 - (a) support the development of people with creative talent, in particular--
 - (i) people at the beginning of their careers in relevant media content or films, and
 - (ii) people involved in the making of innovative content and films,
 - (b) support and stimulate well-informed debate on a wide range of issues, including by providing access to information and views from around the world and by challenging established views,
 - (c) promote alternative views and new perspectives, and
 - (d) provide access to material that is intended to inspire people to make changes in their lives.
- (5) In performing those duties C4C must have regard to the desirability of--
 - (a) working with cultural organisations,

⁵ This section was inserted into the Communications Act by section 22 of the Digital Economy Act 2010.

- (b) encouraging innovation in the means by which relevant media content is broadcast or distributed, and
 - (c) promoting access to and awareness of services provided in digital form.
- (6) In this section--
- "participate in" includes invest in or otherwise procure;
- "relevant media content" means material, other than advertisements, which is included in any of the following services that are available to members of the public in all or part of the United Kingdom--
- (a) television programme services, additional television services or digital additional television services,
 - (b) on-demand programme services, or
 - (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service;
- and a film is a "third party film" if C4C did not participate in making it.
- (7) The services that are to be taken for the purposes of this section to be available to members of the public include any service which--
- (a) is available for reception by members of the public (within the meaning of section 361); or
 - (b) is available for use by members of the public (within the meaning of section 368R(4)).

Section 198C of the Communications Act 2003: OFCOM reports on C4C's media content duties⁶

- (1) For each relevant period, OFCOM must--
- (a) carry out a review of the extent to which C4C have discharged their duties under section 198A, and
 - (b) prepare a report on the matters found on the review.
- (2) OFCOM must publish each report under this section--
- (a) as soon as practicable after its preparation is complete, and
 - (b) in such manner as they consider appropriate.
- (3) "Relevant period" means each period selected by OFCOM for the purposes of section 264(1)(b) that ends after this section comes into force.

⁶ This section was inserted into the Communications Act by section 23 of the Digital Economy Act 2010.