



Sky Response to Ofcom Consultation

April 2026

Executive summary

Sky recognises and supports the objectives underpinning the new prominence regime introduced by the Media Act 2024 ('the Media Act') and understands the importance of ensuring that public service content remains easy for viewers to find on connected TV platforms. Indeed, through Sky's partnerships with the public service broadcasters ('PSBs'), successfully agreed over many years, we are already delivering the outcomes that Parliament is seeking through the Media Act and providing significant benefit and value to both the PSBs and UK audiences.

We also understand Ofcom's desire to provide additional support for PSB sustainability. However, Sky is concerned that in attempting to use its new Media Act powers to provide substantial additional support for PSBs, Ofcom's proposed Code of Practice ('the Code') and Guidance on the Agreement Objectives ('the Guidance'):

- go beyond the will of Parliament;
- have been proposed without sufficient evidence;
- are not appropriately targeted;
- are underpinned by an incorrect and unreliable impact assessment;
- severely underestimate the impact on Sky; and
- risk having the opposite effect to that which Ofcom intends, reducing viewing to public service remit ('PSR') content by ignoring the needs of UK audiences.

Ofcom's proposals, if implemented, would not reflect Ministers' statements in Parliament during the passage of the Media Act that the aim was for the regime to be **proportionate and allow for flexibility and operability across different RTSSs**. Sky is particularly concerned that Ofcom has not used the flexibility afforded to it by the Media Act to recognise the fundamental difference in the business models of the different RTSS. Nor has it correctly evaluated the impacts of its proposals on Sky's services, and is, therefore, drawing the wrong conclusions, risking creating significant unintended consequences for our business.

Sky's approach over many years has been actively to choose to present PSB content prominently throughout our services alongside the best content from Sky, for which our customers have chosen our services, and the best content from the rest of the world. This balance of content has been hugely beneficial for our customers and for PSBs, driving significant viewing and engagement with PSB content across our platforms. A proportionate, and flexible implementation of the Media Act will allow Sky to continue to operate this successful model for the benefit of audiences, whilst providing additional benefit for PSBs on platforms that have not traditionally provided the support that Sky has.

However, by proposing disproportionate, inflexible and, ultimately, inoperable requirements, which do not reflect the context of Sky's unique business model and will require us to make fundamental changes to this successful balance of content on our services, Ofcom risks undermining these positive outcomes. Although we already provide substantial prominence for PSBs on our two RTSS across both linear and VoD, including the first five slots on the EPG, the first four slots in the Apps rail and many of the most prominent promotional rails on our RTSS, Ofcom's proposals conclude that what Sky is doing is somehow insufficient and that we must go much further. Instead, Sky considers a better approach would be for Ofcom to recognise that what Sky is already delivering is 'appropriate' prominence, which delivers good outcomes for

audiences and PSBs, and use the ability that it already has under the Media Act to reflect this in the requirements that it places upon us.

Ofcom's current proposals will also negatively impact competition: having a significant adverse impact on Sky's business, whilst not affecting those platforms that do not, and have never, supported PSBs, namely the global aggregation services like Amazon Prime Video, global streaming services such as Netflix, and VSPs like You Tube, where viewing is increasingly concentrated. Sky is concerned that if Ofcom does not present more proportionate proposals, not only will Sky's business be less attractive to customers, but viewers are likely to bypass newly regulated areas of the Sky user interface ('UI') altogether in favour of global streaming apps that would be better able to personalise content discovery. Ofcom's proposals will therefore directly weaken a responsible UK-based provider that invests significantly in public service media ('PSM') content, to the benefit of global players.

Furthermore, by failing to provide clarity that content delivered outside of apps falls within the scope of the new regime, Ofcom risks effectively mandating app-only access to PSB content, both linear and on-demand. This would reduce flexibility and competition, degrade the user experience, and ultimately work against the interests of audiences and the PSBs alike. Ofcom's proposals therefore risk constraining innovation in platform design and functionality, driving convergence towards a uniform television experience, and reducing consumer choice. These outcomes would not operate in the interests of audiences and risk depressing, rather than increasing, engagement with PSB content on Sky's platforms. As a result, the proposals therefore risk undermining the objectives of the new prominence regime.

Sky acknowledges that Ofcom has been given new powers under the Media Act to drive specific policy outcomes, and that it wants to use them accordingly. However, concurrently, Ofcom has recognised that there is a risk that the world has already moved on beyond the Media Act. Its 'Transmission Critical' report notes that:

"While we expect [the Media Act] to have tangible benefits for the discoverability of PSB content, these regulations will not apply to PSB content on VSPs, nor will they help audiences find PSB news on online intermediaries like social media."

Ofcom has proposed stringent and restrictive requirements on Sky, a provider already demonstrably providing 'appropriate' prominence for PSBs, at the same time as acknowledging that viewing is migrating to platforms beyond the scope of its new powers. By proceeding with its current proposals, Ofcom risks damaging a key part of the ecosystem that is already working well, whilst not addressing the real risks to PSM visibility.

All these factors suggest that Ofcom should reconsider its approach and apply its new powers initially with greater caution, in the knowledge that it can always go further in future. Sky believes that there are pragmatic, sensible changes to the Code and the Guidance that would mitigate the negative impacts, continue to deliver positive outcomes for PSBs and align the proposals more clearly with Parliament's intent whilst not foreclosing future changes. We would like to work proactively with Ofcom on solutions to deliver a final code and guidance that achieve these outcomes.

Summary of Sky's key concerns

Ofcom's proposals for primary content areas are disproportionate

Parliament explicitly designed the regime to be flexible, proportionate and practical

The proposals in the Consultation go materially further than the intent of the underlying legislation to ensure 'appropriate' prominence for PSB content on

designated platforms. This formulation was debated exhaustively during the legislative process and Parliament rejected requiring 'significant' prominence, instead supporting a regime that, in the words of the Minister was aimed to be "*flexible, operable and proportionate*".

Ofcom has failed to establish, through evidence, reasoning or justification how its proposed standard of PSB content being at a minimum 'no-less prominent' than all other content relates to Parliament's intention for it to secure 'appropriate' prominence. Ofcom's adopted standard of 'no less than' rests on an unstated and untested assumption that 'appropriate' means 'equal to' and that anything less, including Sky's current successful arrangements with PSBs, is 'not appropriate'. This does not follow from the statute, the evidence, or logic.

Ofcom must reconsider its interpretation of 'appropriate' prominence to bring it in line with the will of Parliament. Under well-established principles confirmed by extensive case law and regulatory practice, when a regulator is exercising a statutory duty, its interpretation of relevant legislation must remain closely aligned to the text chosen by Parliament - it must not misstate, modify or replace the legal standard in the legislation. The approach in Ofcom's current proposals risks not meeting this requirement.

In reconsidering its proposals, Ofcom should take proper account of the successful outcomes for audiences that Sky's existing arrangements with the PSBs have delivered over many years, and why they are considered by PSBs themselves to be the paradigm for 'appropriate' prominence.

Ofcom has not accounted for the very different characteristics of the regulated television selection services ('RTSS') that it proposed for designation

Despite Ministers' statements that the regime should allow for flexibility and operability across different RTSS, Ofcom's proposed Code does not envisage or allow for any context in determining what is 'appropriate' prominence. Instead, it adopts a 'one size fits all' approach, treating all RTSS the same, even though there are material differences between them. For Sky's platforms, these differences manifest in fundamentally different expectations of our users of the content that they expect to see in primary content areas.

This is because unlike all other designated platforms, Sky's RTSS are inextricably linked to its TV subscriptions - the content and the RTSS are indivisible. Sky's customers have specifically chosen our services because they wish to access specific Sky content. This creates very different expectations as to the balance of content promoted by the UI, and which conditions what 'appropriate' prominence should mean in this context, as well as resulting in vastly different impacts on Sky compared to the other RTSS providers.

Ofcom has severely underestimated the impact of its proposals on Sky

Ofcom's impact assessment is flawed and incorrect as it fails to take account of Sky's business model. It omits consideration of relevant direct impacts of its proposals on Sky and only focusses on effects that are not relevant to Sky. Therefore, Ofcom severely underestimates the effect of its proposals on Sky. The flaws in the assessment mean that Ofcom cannot safely form a reliable basis for its conclusions as to the impact of its proposals.

[X].

Ofcom's approach stifles innovation

The requirements for PSB app positioning contravene the Agreement Objectives and the policy basis for the Media Act

Sky's services currently re-order certain apps menus based on usage. This functionality enables audiences to discover the content they love quickly. Ofcom's Code would require Sky to remove this feature as Ofcom has told Sky that it would not comply with its requirement for explicit customer action to re-order apps themselves. Ofcom's failure to apply appropriate weight to this benefit, is concerning. Not least because its prominence proposals are required under the Media Act to be consistent with the 'Agreement Objectives', including ensuring that the Code does not disproportionately restrict how platforms innovate in the ways that users select and access content.

Ofcom must confirm that DIPS that are not in the form of an App are in scope of the new 'Must Offer/Must Include' ('MOMI') regime

Ofcom's Guidance remains unclear on whether the new MOMI regime means that PSBs are obliged to offer RTSS their content in a form other than an app, if so requested. Such access is crucial to ensure that natively ingested content, which presents PSB content to audiences in the most accessible way and which is highly valued by Sky's customers, is in scope of the regime. Ongoing confusion as to how non-app delivery will be secured by RTSS under the new regime risks undermining the ability for Sky's services to continue to function as they have done up to now. This is particularly pertinent to the continued supply of native linear content to IP platforms - a crucial requirement for any potential DTT switch-off, on which Ofcom has encouraged Government to provide "urgent clarity".

It also, paradoxically, risks actively reducing customers' engagement with PSB content: [3<].

It cannot be the intent of the new regime to deprive these audiences of PSB content in the manner to which they have become accustomed and which they prefer versus an app environment.

Furthermore, continued failure to confirm that native delivery of PSB content is in scope risks setting a precedent that would have implications far beyond the prominence regime by validating the BBC's iPlayer only strategy ahead of the interests of UK audiences, as well as creating incentives for PSBs to withdraw native supply, harming viewers, and reducing innovation.

Ofcom should be more flexible in its application of the accessibility requirements

Ofcom must make clear that older RTSS should not be held to the same accessibility standards as new platforms

Sky strongly agrees with the policy intent that viewers with accessibility needs should be able to make use of mainstream platforms. However, we are concerned that, as with prominence in primary content areas, Ofcom has failed to consider and take account of the capabilities of individual RTSS and is proposing to apply blanket accessibility requirements to all RTSS, regardless of when they launched on the market and whether they remain in manufacture. This is disproportionate.

The Media Act expressly enables Ofcom to set different criteria for different platform types. We urge Ofcom to use this flexibility to distinguish accessibility requirements between the latest, actively supported platforms [3<].

There are sensible and meaningful changes that Ofcom can make to the Code and Guidance to reduce the adverse impact on Sky whilst driving significant benefits for PSBs

Primary content areas

We recommend that Ofcom revises its 'no less than' standard - equating 'appropriate' prominence with at least 'equal' prominence - to a more proportionate level. This would reflect better the will of Parliament, and the aims of Ministers for the Media Act to be

operable, flexible and proportionate. Ofcom should also make clear that ‘appropriate’ prominence is context dependent and will vary between different RTSS. This is likely to be particularly relevant where an RTSS operates as a subscription service, as Sky does.

Ofcom could do this by clarifying in Action 2.2 that, with appropriate safeguards, content made available by an RTSS provider and contractually linked to the RTSS, should not form part of any prominence comparison with PSB content. Alternatively, it could achieve the same outcome by using the power available to it to define a separate category of RTSS subject to a similarly adjusted action.

App placement

Ofcom should clarify in the Code that ‘auto-sort’ technology that is driven by customer viewing and choice is consistent with ‘user choice’ and is therefore permitted. It could do this by adopting the same formulation as Action A3.4 in relation to Search, which acknowledges that the user’s past behaviour *is* a relevant factor in determining prominence of results.

Non-app DIPS

It is essential that Ofcom clarifies publicly in its final guidance and as part of its IPS designation process that its regulation will guarantee continued provision of non-app content - both linear and on-demand - in order to ensure that viewers can continue to access the PSB content across Sky Q and Sky Glass/Stream in the manner to which they are accustomed and prefer. This is particularly vital for native linear streams, as a failure to do so risks undermining the positive case for the Government’s Future of TV Distribution project, where ensuring that audiences have access to familiar functionality such as an EPG has been a key policy goal.

Ofcom can do this by stipulating in the Guidance that where a designated platform has requested the DIPS be made available via alternative means, the must-offer obligations will be satisfied by the PSB making its DIPS available via such alternative means, subject to both parties entering into arrangements that are consistent with the ‘agreement objectives’.

Implementation

Ofcom’s proposed approach to prominence, particularly in relation to primary content areas, will create significant practical implementation challenges for RTSS that already deliver high levels of public service broadcaster prominence pursuant to long-standing, negotiated agreements.

As we explain below, it is not at all clear how RTSS providers will be able to reliably assure themselves that they are compliant with Ofcom’s Code without defaulting to a rigid, quantitative benchmark of a blanket minimum 50% PSB content in each of any primary content areas. The subjective and dynamic nature of the compliance factors (including number, duration, position, time of day, presentation and any other factor deemed relevant), and the compliance and enforcement framework, effectively constrains RTSS providers into a single compliance route. This is compounded by the fact that Ofcom has proposed to set a requirement applicable collectively across all PSBs, whilst RTSS negotiate contractual prominence obligations separately with each individual PSB.

Alongside these compliance challenges, Ofcom’s proposals, if implemented in their current form, would require significant operational and technical planning, resource and funding. As explained in this response, 12 months is unlikely to be sufficient for all the measures, and Ofcom should therefore allow a longer period, or introduce greater flexibility to enable RTSS to prioritise appropriately. In light of the flaws in Ofcom’s proposals, Sky suggests that it would be preferable, to consult stakeholders further

(formally or informally) on the period for implementation, once it has revised its proposals.

Introduction

Sky is one of the UK's major television service providers, playing a crucial role in the distribution of content to millions of viewers across the UK. Over many years, Sky has been at the forefront of platform innovation in the UK, repeatedly launching new platforms and services to customers, including digital broadcasts, personal video recordings, high definition, voice search and Sky Glass, our latest streaming TV. Our mission has been to make it as easy as possible for all our customers to find the content that they want to watch, including PSB content, as seamlessly as possible and our services are designed specifically to achieve this outcome. Sky's services offer a bridge between free and pay, linear and on-demand, broadcast and streaming, for the benefit of the customer.

Sky currently operates three distinct platforms, two of which have been recommended for designation as RTSS under the Media Act:

- Sky Entertainment OS (Sky Glass and Sky Stream) (to be designated);
- Sky Q (to be designated); and
- Sky +HD: not recommended for designation.

How Ofcom implements the Media Act is therefore of critical importance to the way that Sky's business functions. We are directly impacted by Ofcom's proposals, [X] if the new prominence, accessibility and MOMI regime under the Media Act is implemented disproportionately. Ofcom's current proposals, if adopted in their present form, [X] and be contrary to the interests of the millions of UK citizens and consumers who choose Sky's services to access a broad range of UK content, including from the PSBs.

Sky has mutually beneficial agreements with all PSBs

As Ofcom is aware, Sky has longstanding, highly effective partnerships with the PSBs that play an important role enabling and supporting the delivery of public service media in the UK.

Ofcom itself has commented positively on Sky's long history of negotiating mutually beneficial deals with PSBs. In its 'Small Screen: Big Debate' Public Service Media review - the source of the new prominence legislation - Ofcom highlighted Sky's deals with the PSBs for carriage of their online services on Sky Glass as "*examples of an ambitious and open approach to genuine, strategic partnerships*".¹

During the passage of the Media Bill, the long-standing relationships between Sky and the PSBs - encompassing shared and retained value for both parties, and, without any regulatory requirement, delivering high levels of prominence - were often set against the significant issues that the PSBs face when negotiating similar arrangements with global platforms. During pre-legislative scrutiny, both ITV and Channel 5 specifically referenced that the existing deals that they had with Sky were the model for what they were seeking from new platforms:

¹ Paragraph 1.22 of Ofcom's recommendation Recommendations to Government on the future of Public Service Media (<https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/208895-future-of-psb/statement/statement-future-of-public-service-media.pdf?v=367725>)

“In a sense to reassure you, what we are looking to do is have a commercial agreement with the platform-a partnership; a win-win, where we benefit and they benefit. That is what we are looking to do, and we definitely have those sorts of relationships with Sky and Virgin now.”² (ITV)

and

“We currently have positive deals with Sky and Virgin, and we essentially want what we have now on these new platforms, with a bit more prominence.”³ (Channel 5)

We were repeatedly assured that Sky’s services were not the intended focus of Government intervention and, indeed, that our arrangements with PSBs were exemplars that should inform wider industry practice. That Ofcom’s actions would put these successful partnerships at risk by [X] is a matter of the greatest concern for Sky.

Sky already affords a high degree of prominence to PSB content (across linear, native VoD and apps)

We bring substantial practical experience of the platform/PSB relationship having negotiated and delivered prominence for PSBs across all our platforms over many years, balancing the expectations of our customers with the commercial needs of non-PSBs including Sky.

Sky’s services are offered in a highly competitive market environment, in which large numbers of scaled operators seek to attract customers to their services. Demonstrating to customers the value of what they are paying for is essential. Sky considers that ensuring that users of its services are able easily to discover content that appeals to them, from among the wide range of content available via its services, is a central part of ensuring that it remains successful in such an environment. This is particularly relevant given that some of our closest competitors are not within scope of this legislation.

UK public service content, provided by the PSBs, is an important element of the offering on Sky’s platforms. Sky’s customers want to watch content from the PSBs and do watch a great deal of it. Accordingly, Sky is incentivised to surface this content to fulfil its objective of enabling its customers to access easily the programmes that they want to watch. Equally, we have a customer base of millions of UK households, and it is in the PSBs interests that we carry their content and that we make it prominent to help the delivery of their public service obligations. This dynamic has worked well to deliver good commercial outcomes for both parties over many years without the need for a backstop of regulation.

To leverage the benefits of this dynamic, Sky already affords the PSBs a high degree of prominence in our user interfaces, without regulation. Although the Sky Glass and Sky Stream EPGs are not yet regulated by Ofcom, and therefore not subject to the requirements of the EPG code, Sky has made a conscious decision to give the PSBs the same level of prominence that they would have on EPGs on regulated platforms – e.g. on satellite and on DTT – i.e. BBC 1 at slot 1, ITV at slot 3 etc. This means we have actively chosen to put PSBs ahead of our own channels even though there is no regulatory requirement to do so. PSB content frequently appears among the most prominent promotional rails on our RTSS Sky Q and Sky Entertainment OS (as well as numerous other areas of the

² ITV response to Q42 <https://committees.parliament.uk/oralevidence/13329/pdf/>.

³ Channel 5 response to Q43 <https://committees.parliament.uk/oralevidence/13329/pdf/>.

user interface), and the PSB apps are provided with the top slots in the Apps Menu and in the apps rail (on a cold start), as demonstrated in the following screenshots:

Figure 1: Sky Glass screenshot illustrating BBC and ITV prominence in the Switcher rail

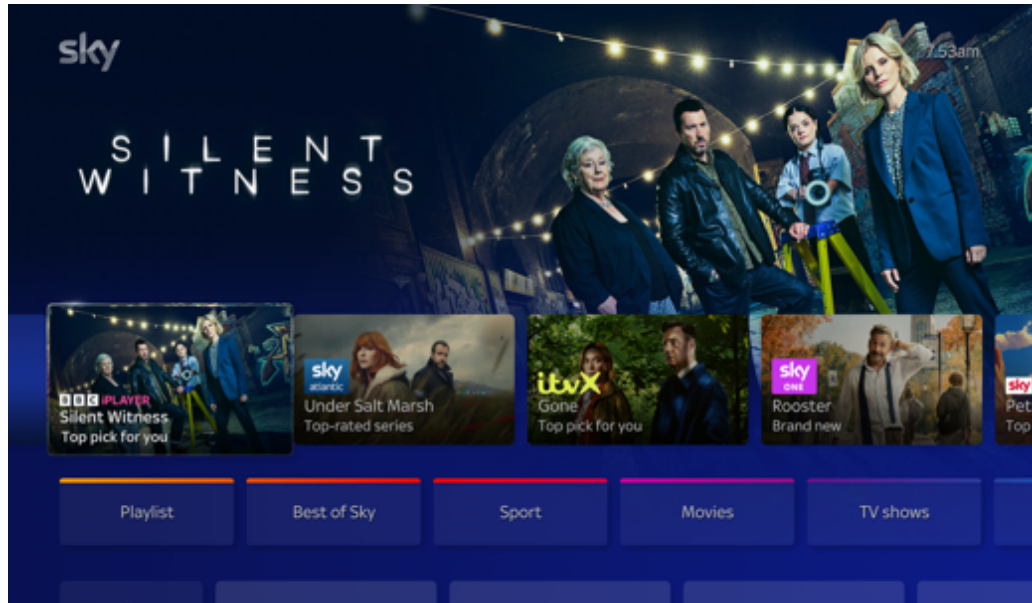


Figure 2: Sky Q screenshot illustrating BBC and ITV prominence in the Top Picks rail



Figure 3: Sky Glass screenshot illustrating apps order in the apps rail on the Homepage on a cold start, with the PSB apps in the most prominent positions



Delivery of PSB content outside of PSB apps also enables a deeper integration into the Sky Q UI. The figure below shows the Sky Q catch-up area, where the PSBs are given prominence, and are able to curate their own content areas, delivering significant value.

Figure 4: Sky Q screenshot illustrating PSB native content in the most prominent positions

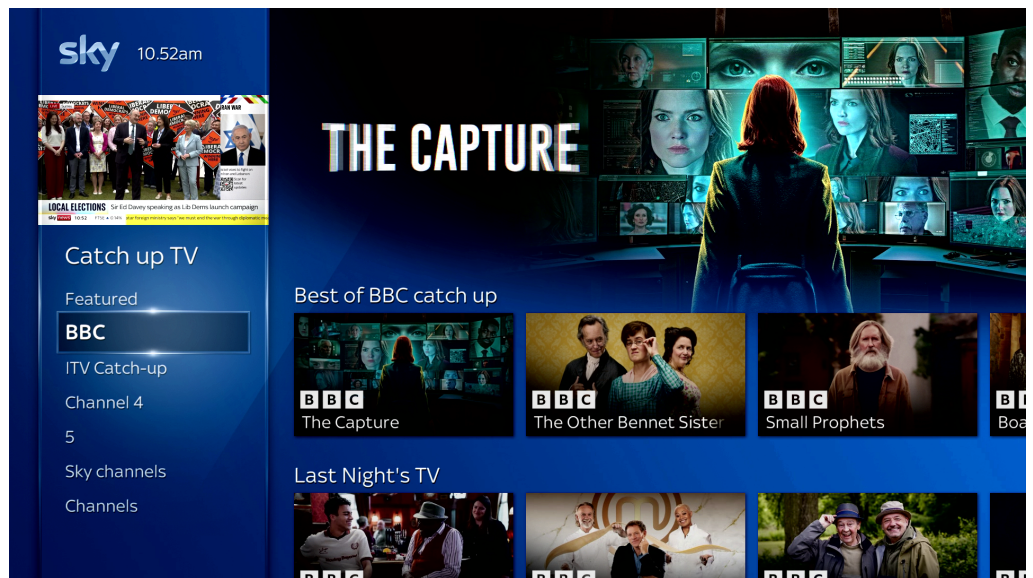
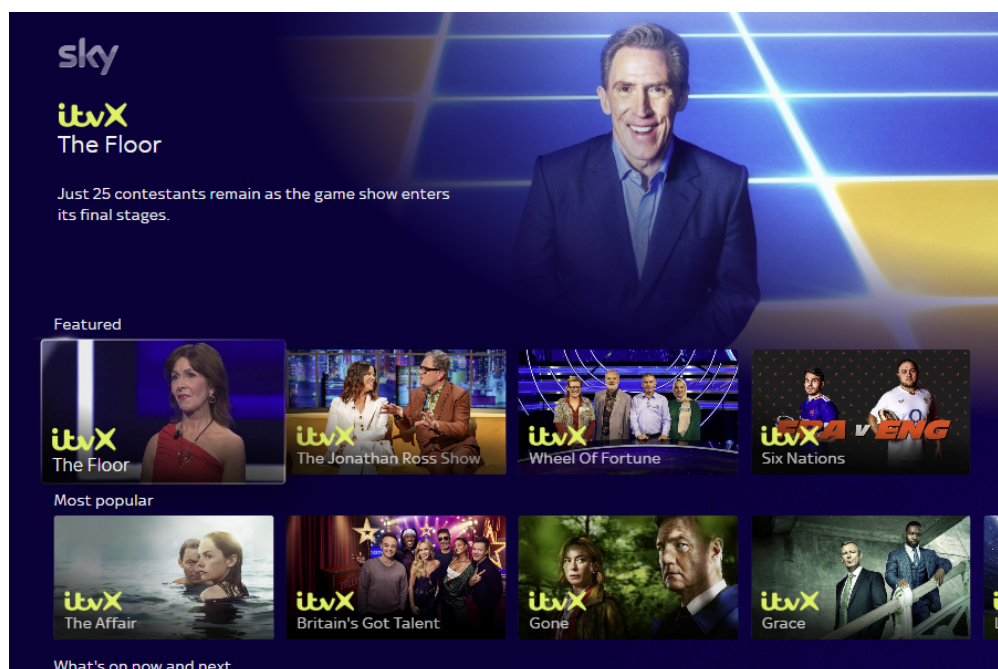


Figure 5: Sky Glass screenshot illustrating dedicated partner space including VOD content rows managed directly by partner and a linear TV rail



Equally, we need to balance the need to help users find PSB content against the need to enable customers to easily access the wide range of non-PSB content available on our platforms, including, in particular, content to which they have subscribed, both from Sky and third-party providers. We believe that our approach to content discovery currently strikes an appropriate balance as attested by the fact that we have a long track record of reaching mutually successful deals with the PSBs. Ofcom's proposals will undermine this balance, [3<] (for the reasons set out throughout this response).

The structure of this response

In the remainder of this document, we set out:

1. Sky's concerns relating to Ofcom's disproportionate prominence requirements

Our principal concerns relate to the following proposals:

- a) **Primary content areas.** the requirement to ensure that the degree of prominence given to public service programmes (taken together) is no less than the degree of prominence given to non-public service programmes (taken together); and
- b) **Auto-sort on apps rail.** The effective ban on Sky's innovative auto-sort technology (based on viewer usage) as a default setting on apps menus/rails

As described in detail below, these proposals go far beyond the intent of 'appropriate prominence' under the Media Act and should be revised accordingly to reflect what Parliament has asked Ofcom to deliver. Ofcom's proposals would degrade the viewer experience, reduce consumer choice and stifle innovation, contrary to the third agreement objective that arrangements between RTSS and PSBs should not disproportionately restrict how providers of

RTSS may make innovations in the ways that users may select and access programmes and services.

2. That Ofcom must now clarify in its Guidance that DIPS that is not an app is subject to 'Must Offer'

This ongoing lack of clarity from Ofcom about how non-app delivery will be secured by platforms under the new regime risks undermining the ability for Sky's services to continue to function. [3<], Ofcom's guidance risks changing the incentives between platforms and PSBs including the potential for unfair charges by the PSBs.

Failure to provide clarity will result in worse outcomes for audiences and paradoxically risk actively reducing engagement with PSB content by making it harder for a significant number of people in the UK to access PSB content in the form that they wish to.

3. That Ofcom's blanket approach to accessibility requirements is disproportionate and will prove unduly burdensome

Sky takes its responsibilities concerning accessibility very seriously. We take an inclusive approach to design which means we strive to consider the needs of our diverse customer base before designing products. We work closely with user testing, community forums and closed forum networks and this enables us to meet the needs of our under-represented customers.

Sky has already implemented all the accessibility features proposed under Ofcom's draft code on Sky Glass and Sky Stream, which launched in 2022. Further, we have not only implemented all the accessibility features on the Sky Q EPG required under the Ofcom EPG Code (including on older Sky Q box models that are not subject to these requirements) but have also rolled certain of these features to additional areas of the Sky Q user interface.

We strongly support the policy intent that viewers with accessibility needs should be able to make use of mainstream platforms. However, we are concerned that Ofcom is proposing to apply blanket accessibility requirements to all RTSS, regardless of when they launched on the market and whether they remain in manufacture and in support. Implementing text-to-speech capability across the entire user interface on Sky Q - which launched in 2016 and is no longer in manufacture - will be significantly more difficult and disproportionately costly than for newer platforms, owing to its age and technical architecture.

4. Other concerns relating to prominence:

Sky also has concerns about the following aspects of the consultation:

- a) [3<];
- b) Apparent requirement to list prominently PSB DIPS apps in genre-specific apps menus;
- c) Apparent requirement to list prominently PSB channels in genre-specific live TV areas;
- d) Requirement for PSB content attribution to reference the DIPS in which the programme is included; and
- e) Why we consider our approach to search to be compliant with Ofcom's proposed requirements.

Ofcom's Prominence Proposals are excessive and disproportionate

- Ofcom's proposal of a minimum of 'no less prominence' for PSB content than non-PSB content goes beyond 'appropriate' prominence and is not supported by evidence
- Ofcom's proposals fail to take account of the differences between the various RTSS, resulting in a flawed, unreliable impact assessment
- Ofcom fails to understand the material adverse impact its proposals will have on Sky
- Ofcom's proposals will, in practice, not deliver the flexibility that it envisages
- Ofcom can ensure 'appropriate' prominence by reducing the target proportion and/or reflecting Sky's unique position as a UK pay TV retailer

Ofcom's requirement that PSB content is 'no less prominent' than all other content in 'primary content areas' exceeds the scope of Parliament's mandate

Section 362AP(1) of the Media Act requires Ofcom to issue a code of practice to reflect the requirements in Section 362AO(1) of the Media Act that RTSS providers must secure that:

*"the manner in which its service presents internet programme services to its users in the United Kingdom gives an appropriate degree of prominence to each of the designated internet programme services included in its service"*⁴

Taking that requirement, Ofcom proposes in Action A2.2a that, in addition to actions relating to DIPS as apps (A1), Search (A3), and Listed Channels (A4) all RTSS providers must ensure that:

*"Across all of the primary content areas (taken together), the provider should ensure that the degree of prominence given to public service programmes (taking all of the public service programmes together) is **no less than** the degree of prominence given to programmes which are not public service programmes (taking all such programmes together)"*⁵

Nothing in the development of the Media Bill, the debates in Parliament at the time, the pre-legislative scrutiny process, Ofcom's own previously stated position and the views of the PSBs themselves had suggested that such a significant proportion of the UI being reserved to PSB content was required or justified, let alone that Ofcom would ultimately come to such an expansive position.

In the Parliamentary debate on the Media Bill, the then Minister, Julia Lopez, clearly noted that the aim of the Government was that an expanded prominence regime should be flexible, operable and proportionate.

⁴ <https://www.legislation.gov.uk/ukpga/2024/15/contents>.

⁵ Action A2.2 a. of the Code (Available at: <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/197515-prominence-and-accessibility-on-connected-tv-platforms/main-docs/annex-2---draft-code-of-practice-for-regulated-television-selection-services.pdf?v=410573>).

“As has been discussed at length, the core aim is to secure prominence for PSB services and content online, but for it to be flexible, operable and proportionate, so that we can design the Bill for innovation and consumer choice. We are giving Ofcom the power to establish that balance”⁶

Having been given this power, it is unfortunately clear from the proposals that Ofcom has not sought to establish such balance. For the reasons explained throughout this submission, Ofcom’s requirement for PSB content to be at a minimum ‘no less prominent’ than all other content put together is neither flexible nor proportionate. It will also directly reduce ‘innovation’ and harm ‘consumer choice’.

That Ofcom has come to such a position is surprising given the importance put on getting this requirement correct during the drafting of the Media Act. Ofcom knows that during the passage of the Bill the question of whether the text of the Media Act should require ‘appropriate’ or ‘significant’ prominence was debated exhaustively. Having considered all the evidence, Parliament decided on ‘appropriate’ and decisively rejected the much more onerous ‘significant prominence’. Indeed, one of the most important inputs into this debate was Ofcom’s own evidence to the DCMS select committee’s pre-legislative scrutiny process – where it clearly stated that it considered that ‘appropriate’ was a better formulation.

“On the specific point about ‘significant’ or ‘appropriate’, I think that ‘appropriate’ works. It is consistent with the linear broadcast regime, which would work alongside the new online provisions.”⁷

Accordingly, Parliament has explicitly asked Ofcom to secure ‘appropriate’ prominence for PSR content. Ofcom should be doing that within the context of Government’s policy aim of ensuring that the new regime is *flexible, operable and proportionate*. A proper interrogation of the meaning of ‘appropriate’ and the reasons for which Parliament chose this formulation over ‘significant’, should have been the guiding principle for how Ofcom approached this consultation.

Sky respectfully contends that the minimum ‘no less than’ requirement can in no way be consistent with Parliament’s intent that the Media Act should secure ‘appropriate’ prominence, and less still with the aims of the Government that the regime should be *flexible, operable and proportionate*. Ofcom has overreached.

Nothing in its desire to support PSB sustainability justifies Ofcom going beyond the instructions clearly given to it by both Parliament through the wording of the Media Act by Government through its clearly articulated policy aim, Ofcom general duties, and Ofcom’s own clearly stated previous position.

Ofcom has misinterpreted ‘appropriate’ prominence

Parliament asked for ‘appropriate’ prominence not ‘significant’ prominence. Ofcom has not explained why ‘appropriate’ prominence should equate to, at a minimum, parity between PSB and non-PSB content. Ofcom’s adopted standard

⁶ <https://hansard.parliament.uk/commons/2024-01-30/debates/60B0BCEC-E10B-4768-83E8-E930CB15739B/MediaBill#contribution-6B11903E-85EE-4F07-9AC8-CF341F26B70C>.

⁷ <https://committees.parliament.uk/oralevidence/13428/pdf/> response to Q308.

of 'no less than' rests on an unstated and untested assumption that 'appropriate' means at least 'equal to' and that anything less, is 'not appropriate'. This does not follow from the statute, the evidence, or logic. Indeed, Ofcom's 'no less than' formulation means that anything less than a minimum of equal prominence between PSB and non-PSB content will be non-compliant.⁸ However, it is entirely possible that PSB content receives less than 'no less' prominence in primary content areas and yet receives an 'appropriate' degree of prominence overall, having regard to the totality of the interface including app positioning, search, live TV and attribution.

Unusually for an Ofcom consultation, particularly one of such magnitude, Ofcom doesn't appear to have considered any other options for how 'appropriate' prominence should be interpreted.

It is reasonable to acknowledge that there should be a substantial delta between a requirement to deliver 'appropriate' prominence and a requirement to deliver 'significant' prominence as rehearsed extensively throughout the debates on, and scrutiny of, the Media Act. 'Appropriate' therefore should clearly be understood as a considerably lower bar than 'significant', and to be capable of accommodating different facts and context.

This is not what Parliament enacted. Section 362 AO (1) of the Media Act requires an "*appropriate degree of prominence*" - a standard that is suitable, fitting and proportionate in the circumstances. It does not require equality, still less a de facto 50% floor across all RTSS. Ofcom has adopted an interpretation that amounts to the 'significant prominence' rejected by Parliament, and, as we set out throughout this response, it has done so without adequate evidence, without transparency, in a manner that is disproportionate, and not targeted at cases where action is needed.

The proposed standard also exceeds every international comparator that Ofcom itself identifies in the consultation: Italy requires only 30% European content visibility; France mandates a single public interest app on the Homepage; Australia requires five free-to-air apps to be displayed prominently.⁹ None approaches a minimum 'no less than' requirement of primary content areas accruing to PSBs. Ofcom has not explained why the UK requires intervention that substantially exceeds comparable jurisdictions.

Ofcom's approach to 'appropriate prominence' fails to take account of the major differences between the different RTSS

Section 362AO (1) of the Media Act requires RTSS providers to ensure that PSB content is given an "*appropriate degree of prominence*", and as noted above, the ordinary, natural meaning of appropriate in this context means that such prominence should be suitable, fitting and proportionate **in the circumstances**.

DCMS has recently confirmed its plans to designate 15 separate platforms as regulated television selection services on the advice of Ofcom. One of the major flaws of the consultation and draft Code is the fact that no account is taken of

⁸ Paragraph 3.119 of the Consultation (Available at: <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/197515-prominence-and-accessibility-on-connected-tv-platforms/main-docs/consultation---prominence-and-accessibility-on-connected-tv-platforms.pdf?v=410792>).

⁹ Paragraph 3.47 of the Consultation.

the specific characteristics of the individual RTSS. Ofcom applies a 'one size fits all' approach, and does not consider the differences, for example, in how the 15 different RTSS present content, or how the varieties of business model might affect what content is presented and how, such as to impact what constitutes 'appropriate' prominence. This is despite Ofcom (1) recommending each of them individually to the Secretary of State for designation following consultation, and (2) its express power under the Media Act to treat different platforms differently.

Amongst the designated platforms are a spectrum of different operating models. For example, these include:

- a. Roku - operating a monetisation of its UI and selling its merchandised slots directly;
- b. Apple TV OS - a hybrid of direct consumer propositions and revenue share requirements for content providers;
- c. PSB-owned and operated platforms, YouView and Freely; and
- d. a pay-TV platform, Sky, [SKY] has subscription agreements with customers for its content, e.g. Sky Sports/Sky Entertainment packages, with the option for content from other providers. Sky's RTSS are only available with those content subscriptions.

As we explain throughout this submission, the fact that Ofcom has failed to take any account of these very different operating models in drawing up its requirements for 'appropriate' prominence in primary content areas compounds its error in setting the base requirements disproportionately high. This does not make sense and misses a fundamental point: what is 'appropriate' for one RTSS may not be 'appropriate' for another and that 'appropriateness' will vary dependent upon context.

Again, this is clearly not what Parliament's intent for how Ofcom should implement the legislation was. In the Third Reading of the Media Bill on 7 December 2023, the then Minister John Whittingdale, noted:

*"The hon. Lady also raised the subject, which was debated on Second Reading and in the Select Committee, of whether the requirement for "appropriate prominence" is a better description than "significant prominence". That is something we looked at carefully, particularly as it was one of the Select Committee's recommendations, but we feel that it is important that the approach to regulation **should be proportionate and allow for flexibility and operability across different RTSSs**. We believe that an appropriate level of prominence, as determined by Ofcom in the code of practice, provides that flexibility and enables Ofcom to implement the regime in a practical way."*¹⁰

Parliament specifically wanted Ofcom to determine 'appropriate' prominence in a way that allowed for flexibility and operability **across different RTSSs**. Furthermore, the legislation understands this, envisages this flexibility and specifically gives Ofcom the ability to set different requirements for different

¹⁰ <https://hansard.parliament.uk/Commons/2023-12-07/debates/ad8aa73c-5005-49d3-95bb-ed889e548bb8/MediaBill%28ThirdSitting%29>

contexts.¹¹ Without explanation, Ofcom has chosen not to use the powers specifically given to it for this purpose.

Sky is in a materially different position to other RTSS providers

Notably, Sky's RTSS operate on a fundamentally different basis to all the other RTSS that Ofcom has recommended, exactly the fact noted by the Minister at third reading that requires a need for different flexibility and operability. Sky operates subscription pay-TV services where customers pay every month (often with a minimum term of 12-24 months) for access to specific Sky content, for example Sky Sports packages, as well as directly retailed 3rd party content, supplied with the relevant RTSS that they have chosen as the best way to view that content (whether Sky Q, Sky Glass or Sky Stream).

Unlike the other designated platforms, Sky's RTSS are not available without the subscription element to Sky's own content, which is integral to the functioning of the RTSS.¹² Indeed, on Sky Q and Sky Stream customers who subscribe are renting the equipment, i.e. the RTSS, directly from us, and are required to return it on the expiry or termination of their contract.

Customers who have actively chosen to take out a pay-TV subscription have a very different set of expectations from those engaging with the majority of other RTSS. A Sky customer, who is paying a monthly subscription for access to specific content – e.g. Sky Sports or Sky Entertainment – will rightly have an expectation that that content will be 'significantly' prominent and easy to access given that they are paying specifically for it. Our survey data shows that around 80% of new joiners to Sky Glass and Sky Stream joined Sky to get Sky content.¹³

The difference between Sky's subscription model and a customer buying, say, an LG or Samsung TV and then taking out a series of individual subscriptions – to Netflix, Disney, Amazon Prime etc – is that there is no connection (either contractually or in the mind of the viewer) between that content subscription and the RTSS. You don't need the subscription to have the RTSS, and you don't need the RTSS to have the subscription. The subscription content available on, for example, the LG RTSS is available on many devices, the LG RTSS is purely a means of access. Consumers are therefore not in a continuing direct relationship with the RTSS as they are with Sky. As such, there is no risk of 'churn' to the RTSS. If a customer is dissatisfied with disaggregated content being presented to them (including potentially the perceived value of their Netflix/Disney subscription) they are not going to respond by throwing away their LG television.

Conversely, the Sky customer contracts directly with Sky. If a Sky customer is dissatisfied with the value of their Sky Subscription, they will cancel it, and in the case of Sky Q and Sky Stream automatically lose access to the RTSS itself. Under Sky's model, there is therefore a direct link between the customer, the RTSS and the content which they expect to see on screen which is not the case for other RTSS.

[REDACTED].¹⁴ [REDACTED].

¹¹ Section 362 AP (6) of the Media Act.

¹² Note that Sky Glass is the exception in that it can operate on a hardware only basis on expiry of a contract in which case it reverts to an 'unsubscribed mode'.

¹³ Source: Sky joiners survey February 2026 – All TV Only.

¹⁴ [REDACTED].

Figure 6: [REDACTED].

[REDACTED]

A comparator business model, that demonstrates the uniqueness of Sky's position, is that of Amazon. Like Sky, Amazon is an RTSS provider, content aggregator and content provider. [REDACTED]. However, because of the way in which Amazon has separated the RTSS element from the content subscription and aggregation element (as content is an add-on to its other business activities) it is not at all subject to the same impact of this regulation. Amazon Fire TV OS 6, 7 and 8 have been recommended as RTSS by Ofcom and confirmed to be designated by the SoS. However, Amazon's content and aggregation service is Amazon Prime which exists as a separate app and is not sold with Amazon's RTSS. The content service is therefore not in scope of the prominence requirements.

In contrast, on Sky's platforms, its content is integrated throughout the UI of the RTSS, with third party pay and PSB content in the most convenient way for customers to find what they want to watch.

Ofcom has not provided any evidence or justification for its proposals on primary content areas

As explained above, Parliament did not ask Ofcom to require a minimum of equal prominence for PSB and non-PSB content. It asked Ofcom to secure 'appropriate' prominence. In the consultation, Ofcom has decided that 'appropriate' prominence should equal a minimum of equal prominence in primary content areas – the 'no-less than' test. It is legitimate therefore, to question how and why Ofcom has turned Parliament's 'appropriate' into the requirement that PSB content should be at a minimum no less prominent than all other content.

The only explanation that Sky can find in the consultation for why Ofcom has decided that appropriate prominence should mean at a minimum 'no less than' is:

- 1) Ofcom's opinion that audiences would benefit from a range of public service and non-public service content being easily discoverable.¹⁵
- 2) that Ofcom has noted that "*on **some** TSS, public service content is currently less prominent than other content, but that the balance on some other TSS **appears** broadly similar*".¹⁶

The qualification in the second point is significant but entirely unexplored. Ofcom does not identify which TSS deliver less prominence, and which deliver 'broadly similar' prominence, or why. No assessment of current practices of the different RTSS is made here or given anywhere in the consultation. No assessment is made of what Ofcom's proposals would mean for the likely changes that each platform would need to make. Indeed, no data at all is provided in support of this proposal. The only clue that Ofcom has provided is

¹⁵ Paragraph 3.127 of the Consultation.

¹⁶ Ibid.

a methodology statement in Annex 4 of the consultation that describes that Ofcom undertook a:

“high-level and qualitative assessment of the volume of public service and non-public service content present in promotional areas, disaggregated content areas and search results (text and voice)”¹⁷

The results of the ‘high-level and qualitative assessment’ are not provided. Nor is any justification made for why to determine something so fundamental and impactful, a ‘high-level and qualitative assessment’ was deemed appropriate instead of a detailed, data rich, examination of how and why the different RTSS present PSB content in the manner in which they do. And then what that should mean for Ofcom’s requirements considering the flexibility that Parliament has given it to set different requirements for different RTSS.

Sky requested that Ofcom share or publish any data that it has drawn on to support its conclusions that on some TSS public service content is less prominent, but that the balance on some other TSS appears broadly similar. Ofcom declined to do so. Its response was to repeat sections of the Consultation and state that *“[we] exercised our judgement in how we interpreted the data, taking into account its nature and source, and also in how we took this evidence into account when formulating our proposals.”¹⁸*

As well as no supporting data, no arguments or explanation are advanced as to why Ofcom’s ‘noting’ that at least on some TSS, public service content is currently less prominent than other content, but that the balance on some other TSS ‘appears’ broadly similar leads naturally to the ‘no-less than’ equal prominence requirements that it has proposed. Neither is Ofcom’s opinion, unsupported by any survey data, that audiences would benefit from a range of public service and non-public service content – a statement which is so broad as to be entirely uncontentious – developed in any way into a sense of what that means for ‘appropriate’ prominence.

No other options for creating an appropriate balance between public service and non-public service content, or why that balance may differ depending on context are presented or considered. In fact, no analysis of any other options is presented at all.

For Ofcom to reach such an expansive position without publishing any evidence or putting forward any argument as to how and why it has arrived at this position, and not any other, from a requirement to secure ‘appropriate’ prominence is unreasonable and clearly contrary to Ofcom’s principals of consultation.

Ofcom’s data does not support the proposals for primary content areas

In the absence of any evidence presented by Ofcom to answer the question *“how has Ofcom turned ‘appropriate’ into ‘no less than?’*, Sky has looked to the qualitative audience research provided in an annex to the consultation – the 2CV study – for potential evidence. This research found that the app rail is *“the*

¹⁷ Paragraph A4.36 of the Consultation.

¹⁸ Email from Kirsty Johnson dated 05/02/26.

*central feature on the TSS, shaping most content journeys” and “consistently the first feature noticed, and the element of the interface looked at for the longest”.*¹⁹ Within the primary content areas themselves, the evidence that we can find appears to undermine rather than support the threshold. The hero banner was found to be “*generally perceived by users as advertising rather than a navigational tool*”,²⁰ with eye-tracking confirming it was the last feature that participants looked at. As to disaggregated content rows, participants who defaulted to the app rail “*did not use disaggregated content rows unless prompted by the researcher*,”²¹ and PSB content rows were “*not perceived as personal or relevant*”²² by those who did not already engage with PSB services.

This is significant because the problematic ‘no less than’ standard applies not to app menus but to primary content areas - disaggregated content rows and promotional areas - which are, on the basis of the 2CV research, secondary elements of the interface. The evidence base, such that it is, is thus largely about the wrong part of the interface. It is a justification for intervention at the app level but not the primary content areas. Indeed, Ofcom's own data shows that “*around 90% of...clicks are on apps and around 10%...are on disaggregated content areas or promotional areas.*”²³ An effective 50% minimum threshold applied to the 10% of user journeys that pass through primary content areas, based on evidence about the 90% that pass through app menus, is not evidence-based regulation. The case for a demanding ‘no less than’ standard in the areas where user engagement is lowest and the evidence of impact on PSB viewing weakest is not made.

The lack of evidence and reasoning should suggest a modest requirement not an expansive one

Notwithstanding our view that Ofcom has misinterpreted Parliament's instruction, in choosing a minimum ‘no-less than’ standard for ‘appropriate’ prominence, without any interrogation of other options, Ofcom has proposed imposing the most demanding option available to it. This decision requires a correspondingly strong justification. As demonstrated, Ofcom has proposed this option without any published evidence or reasoning as to why the standard should equate ‘appropriate’ with a minimum of ‘no-less than’. It is also proposing substantial requirements in an area of the UI which its own data suggests are not needed.

Ofcom acknowledges that measurement in this area is “*challenging*”. It notes that “*disaggregated content areas and promotional areas vary considerably in terms of layout and the frequency with which the content featured changes, making exact and comparable measurement across TSS challenging*”.²⁴ This conclusion, and the lack of supporting evidence for the proposals, argues for regulatory modesty, not ambition. Where Ofcom cannot precisely measure the baseline, or supply evidence to support its conclusions, the proportionate response is precaution, and a less demanding standard - revisited as better evidence emerges - not the most demanding standard reasonably open to it, with ‘judgement’ invoked to fill the evidentiary void. The statutory duties of

¹⁹ Paragraph 3.35(b) and Annex 5, page 5 of the Consultation.

²⁰ Paragraph 3.34(e) of the Consultation.

²¹ Annex 4, page 43 of the Consultation.

²² Annex 4, page 5 of the Consultation.

²³ Paragraph 3.36 of the Consultation.

²⁴ Paragraph 3.112 of the Consultation.

proportionality and targeting constrain the range of permissible outcomes, and a specific quantitative threshold imposed on admittedly preliminary evidence, untargeted at the platforms where the problem exists, lies outside that range.

Ofcom cannot rely on 'regulatory judgement' to bridge the gap between its proposals and the evidence

Ofcom acknowledges that its “assessment of likely impacts is primarily qualitative”²⁵ and that determining appropriate prominence “requires a high degree of regulatory judgement”.²⁶ Regulatory judgement is legitimate, but it is not a substitute for evidence. The evidence that Ofcom has gathered, taken on its own terms, does not support the standard it has chosen. Ofcom cannot invoke regulatory discretion to bridge the gap between the evidence it has and the standard it has chosen.

Regulatory judgement is properly exercised where, having gathered all reasonably available evidence, a regulator must choose between options the evidence does not conclusively determine. It is not properly exercised to bridge the gap between incomplete evidence and a preferred outcome, particularly where no other options have been considered. Ofcom has the statutory powers to conduct rigorous quantitative analysis. Instead, it chose a “primarily qualitative”²⁷ approach and then relied on the imprecision of its own self-imposed methodology to claim a wider margin. A regulator that opts for a less precise methodology cannot then invoke that imprecision to justify a more demanding standard.

Sky would observe that it is unusual for an Ofcom consultation to not propose, analyse and consider a range of options on any given decision.

Ofcom's assessment of the impact of its prominence proposals is flawed and unreliable

Ofcom's impact assessment is incorrect as it is built on the wrong assumptions

Having failed to provide evidence to justify its proposals, Ofcom's assessment of the impact of these proposals then fails to substantiate the true impact of these proposals correctly.

Ofcom acknowledges that its proposals may lead to a value transfer from RTSS providers to DIPS providers, although it attempts to downplay this impact:

*“This **may** create an opportunity cost for RTSS providers, to the extent that it reduces the space in primary content areas available for monetisation.”²⁸*

“Our prominence proposals may have some adverse impact on RTSS provider revenues, as we are proposing in our Guidance that appropriate prominence for DIPS is provided without requiring payment in exchange.”

²⁵ Paragraph 3.27 of the Consultation.

²⁶ Paragraph 3.127 of the Consultation.

²⁷ Paragraph 3.27 of the Consultation.

²⁸ Paragraph 3.135 of the Consultation.

This may create an opportunity cost for RTSS providers, reducing their ability to monetise prominence, for example by selling placements in app rows, or promotional or sponsored content areas.”²⁹

However, Ofcom’s impact assessment is predicated on the erroneous assumption that all RTSS providers monetise their primary content areas through sales to content providers, and therefore the sole impact of its proposals would be an ‘opportunity cost’, to the extent that it reduces the space in primary content areas available for monetisation via prominence. Ofcom deems this acceptable; in part justified by the fact that it considers that this cost would be offset by higher prices caused by the scarcity of remaining space. We note that Ofcom has not provided any evidence to substantiate its assertion that RTSS providers would be able to charge higher prices because of the scarcity of space.

The key issue, however, is that Ofcom has used a basis for its impact assessment which is irrelevant to how Sky’s platform operates compared to other RTSS providers and irrelevant to any assessment of the impact of the proposals on our business.

As we have previously explained to Ofcom, [REDACTED]. [REDACTED] we use the primary content areas, and other parts of the UI to present customers with the content which they are most likely to want to watch, including content to which they have subscribed, and for which we need to continue to convince them to subscribe every month.

[REDACTED].

As explained above, our platforms are fundamentally different to all the other RTSS, and the value impact is therefore different.

Using the concept of monetised prominence as its only metric, leads Ofcom to the conclusion that:

*“any revenue impact would be small or moderate in many cases”.*³⁰

This may be true in ‘many’ cases; however, Ofcom is silent on ‘other’ cases where the revenue impact will not be small or moderate. This is because Ofcom has not considered any other impacts of its proposals beyond opportunity costs of selling placements in app rows or primary content areas.

[REDACTED].By failing to account for other impacts beyond monetised prominence, Ofcom has not properly assessed the impact of its proposals. The impact assessment is therefore unreliable and unsafe.

As explained above, consideration of the different ways in which each RTSS use the ‘primary content areas’ should have been of utmost importance and relevance to Ofcom in first, determining what ‘appropriate prominence’ might look like, and, having done so, in assessing the impact of its proposals on RTSS providers. Ofcom has failed to take either step. This has led it to concluding weakly, and without proper evidence, that it considers the likely impact of its

²⁹ Paragraph 6.23 of the Consultation.

³⁰ Paragraph 6.25 of the Consultation.

proposals on RTSS providers “*would be proportionate*”.³¹ Separately, Ofcom repeats this conclusion by stating that its proposals will have no disproportionate impacts.

“Our assessment is that, while achieving our aims for prominence and accessibility, the proposed approach would also avoid any disproportionate impacts on firms that provide valuable services to UK consumers.”³²

These are surprising conclusions for Ofcom to have reached given [§]. The Consultation also states that Ofcom believes that:

“We expect the proposed actions to moderately increase the overall prominence of public service content, though the size of this effect may vary significantly by RTSS.”³³

This erroneous conclusion is a compounding effect of the fact, as set out above, that Ofcom has not undertaken any analysis of existing levels of prominence. Its ‘high-level and qualitative’ assessment, with unpublished results, led it to the conclusion that some RTSS have less prominence for PSB content than everything else and some are broadly similar.

Ofcom’s proposals would require Sky, seen as an exemplar platform for our existing arrangements with the PSBs, [§].

Nor can requiring that at least half of prominence in primary areas be given to content from a small number of PSB services - irrespective of customer preferences and the commercial model of the platform - be “*avoiding disproportionate impacts on firms that provide valuable services to UK consumers*”: it is a fundamental reconstruction of Sky’s customer proposition.

It is clear to us that the impact of Ofcom’s proposals on Sky’s ability to present content to which Sky’s customers have subscribed, [§], ought to have been included in Ofcom’s impact assessment. A failure to interrogate properly the major differences in how platforms derive value means that the impact assessment on which Ofcom has based its decision is partial, flawed and unreliable. This cannot be a basis for Ofcom proceeding with its proposals.

[§]

Ofcom’s proposals [§]

For Sky’s platforms, Ofcom’s proposals are acutely damaging. Sky Glass, Stream and Q customers have specifically chosen and paid for a content proposition centred on Sky’s programming. Unlike all the other RTSS, our proposition requires us to demonstrate every month to customers that we are providing a range of high-quality content that they are prepared to continue to pay for, in a highly competitive market. The most engaged-with content areas on our platforms naturally reflect those choices.

³¹ Paragraph 3.140 of the Consultation.

³² Paragraph 6.33 of the Consultation.

³³ Paragraph 3.138 of the Consultation.

[REDACTED].

[REDACTED].³⁴ [REDACTED].

[REDACTED].

[REDACTED].

Figure 7: [REDACTED]

[REDACTED].

[REDACTED].

Figure 8: [REDACTED]

[REDACTED]

[REDACTED].

[REDACTED].

[REDACTED].

Figure 9: [REDACTED]

[REDACTED]

[REDACTED].

[REDACTED].

[REDACTED].

[REDACTED].

[REDACTED].

[REDACTED].

³⁴ [REDACTED].

[REDACTED].

Figure 10: [REDACTED]

[REDACTED].

Ofcom's proposals will also have other [REDACTED] which are unaccounted for in the impact assessment in the consultation. For example,

[REDACTED].

Ofcom's conclusion that "any revenue impact would be small or moderate in many cases"³⁵ results from the fact that it has confined its analysis to RTSS providers losing the ability to monetise UI promotional placements, and failed to consider the dynamics of a subscription TV business which promotes content to its subscribers through the UI according to what the platform believes that the user wants to watch. Sky contends that Ofcom has not made the case for why 'appropriate' should be understood as 'equal' and has not supported this with any evidence. In addition to this, the failure of its impact assessment to consider relevant factors, make it an unsafe basis for Ofcom to proceed with its proposals in Action 2.2a for RTSS providers to provide a minimum of 'no less' prominence to PSB content in primary content areas.

Ofcom's proposals do not deliver the flexibility it believes

The level at which the proposals are set undermine the 'safe harbour' approach and risk weakening, rather than reinforcing, the flexibility that Parliament intended

Ofcom notes that it intends for the Code to operate as a "safe harbour",³⁶ i.e. RTSS providers will be treated as complying with the prominence duty if they follow the actions contained within the Code. Ofcom acknowledges that RTSS providers may choose not to follow the Code by taking "alternative actions", although it quickly notes that in that instance providers will not be automatically treated as compliant in this case and that Ofcom may investigate.³⁷

Because the requirements of the Code are set so high, any flexibility for RTSS providers to diverge from the Code is in practice de minimis. RTSS providers face a binary choice: either implement the Code with its disproportionate requirements for 'appropriate' prominence in full and thereby ensure the benefit of 'safe harbour' or attempt to follow a more proportionate 'alternative' approach to delivering 'appropriate' prominence and risk the threat of Ofcom enforcement action. Setting such high minimum level requirement effectively precludes any alternative arrangement as it sets a base level of expectation that makes it difficult to understand how an RTSS providers could meaningfully diverge from the Code without the risk of PSB complaint and Ofcom intervention.

³⁵ Paragraph 6.25 of the Consultation.

³⁶ Paragraph 4.4 of the Consultation.

³⁷ Paragraph 3.6 of the Consultation.

This flawed design therefore effectively automatically mandates a single compliance route - i.e. following the Code in full - and discourages RTSS and DIPS providers from agreeing bespoke deals in the interests of both parties which would remain fully compliant with the Agreement Objectives.

Furthermore, Ofcom has set a collective requirement in the Code - RTSS providers must provide the 'no less than' requirement to "public service programmes (**taking all of the public service programmes together**)". However, an RTSS provider does not negotiate collectively with the PSBs, they negotiate individually. This further diminishes the opportunity to diverge from the Code and Ofcom has not explained how RTSS providers might meaningfully diverge from the Code and agree 'alternative arrangements' with one PSB, if one or more of the others do not agree to do so.

If Ofcom is to persevere with a 'safe harbour' approach, the only way that it can be made to work effectively is by Ofcom materially reducing the requirements that the Code places on RTSS providers. It should do this by reformulating the requirements for 'appropriate' prominence, as we recommend below, to give RTSS providers the comfort that the flexibility that Parliament intended, and that Ofcom claims, is meaningful.

Contrary to its intended outcome, Ofcom's proposals risk imposing a 'fixed proportion' standard

Ofcom has argued in the consultation, and in subsequent discussion with Sky, that its proposals for primary content areas afford RTSS providers meaningful flexibility. In the consultation, it states that it is "*not proposing to recommend how RTSS providers should design their primary content areas*", considers its approach "*broad and flexible enough to apply to different UIs, and should maintain the ability of RTSS providers to innovate and update their service*"³⁸ and that "*RTSS providers should have reasonable discretion in how they trade off these different factors provided the intended outcome is met overall*".³⁹ It emphasises that providers themselves will identify which parts of their disaggregated content areas constitute "primary content areas",⁴⁰ and that it rejected a more prescriptive approach - such as recommending that public service content make up a fixed proportion of the space in particular areas - on the basis that "*[s]etting prescriptive thresholds for each of these factors would make UIs homogenous, which would disproportionately restrict RTSS providers' ability to differentiate and innovate their services*".⁴¹

Ofcom argues that the 'no less than' requirement can be assessed across multiple qualitative and quantitative factors including number, duration, position, time of day, presentation and any other factor deemed relevant. While Ofcom characterises this as a flexible, outcome-based standard, in practice, the combination of breadth, subjectivity and dynamism inherent in this test creates material uncertainty as to what compliance requires at any given point in time.

This means that Ofcom's claimed flexibility is overstated, and its proposals have all the disadvantages that Ofcom has itself identified. The definition of 'primary content areas' is not a matter of provider discretion. The draft Code defines

³⁸ Paragraph 3.129 of the Consultation.

³⁹ Paragraph 3.143 of the Consultation.

⁴⁰ Paragraph 3.117 of the Consultation.

⁴¹ Paragraph 3.143 of the Consultation.

them as “the parts of the disaggregated content area or disaggregated content areas with which users engage the most (for example the rails or rows with which users engage the most)”.⁴² This is an objective, data-driven criterion - Ofcom itself states that it would “expect these areas typically to include, for example, the most visible and prevalent content rows”.⁴³ The provider is not choosing which areas to designate; it is identifying areas that already meet a factual test determined by engagement data.

The standard applied to those areas - that “the degree of prominence given to public service programmes (taking all of the public service programmes together) is no less than the degree of prominence given to programmes which are not public service programmes (taking all such programmes together)”⁴⁴ - is a rigid quantitative benchmark. The end point is binary: does PSB prominence at least equal non-PSB prominence, or does it not? Ofcom itself warns that falling “significantly short on one [factor] could also suggest non-compliance”,⁴⁵ and that “if public service content is consistently less prominent across all factors, this may indicate that the recommendation is not being followed”.⁴⁶ The factors and absence of prescriptive weightings of those factors would appear to be intended to afford a degree of flexibility, but in practice do not. The requirement for public service content to occupy at least half of the prominence across the most engaged-with areas of a provider's platform will be seen by the PSBs as precisely the kind of ‘fixed proportion’ that Ofcom claims to have rejected. [§<].

The compliance framework reinforces this rigidity. Ofcom advises providers “to keep records to ensure they can demonstrate compliance”⁴⁷ and indicates that it will “monitor and assess RTSS and DIPS providers' compliance’ through ‘formal information gathering powers, reviewing industry data and complaints, and informal engagement with providers’”.⁴⁸ As noted above, providers who choose not to follow the Code “will not automatically be treated as compliant” and Ofcom “may choose to investigate”.⁴⁹

The only genuine discretion that Ofcom's proposals purport to leave is over distribution of prominence - more PSB content in some rows and less in others, more at certain times of day and less at others. But even this residual flexibility does not withstand scrutiny. Ofcom's own evidence and views establishes that position on the UI is not a neutral factor: “upfront positions are generally more noticeable and lead to more user engagement, all else being equal”,⁵⁰ and its commissioned eye-tracking research confirms that users' attention is overwhelmingly concentrated on the top areas of the interface. Position is also one of the specified factors against which compliance is assessed, and, as noted above, Ofcom warns that falling “significantly short on one [factor] could also suggest non-compliance”⁵¹.

[§<].

⁴² Table A of the Code.
⁴³ Paragraph 3.117 of the Consultation.
⁴⁴ Action 2.2(a) of the Code.
⁴⁵ Paragraph 3.119 of the Consultation.
⁴⁶ Ibid.
⁴⁷ Paragraph 3.118 of the Consultation.
⁴⁸ Paragraph 7.7 of the Consultation.
⁴⁹ Paragraph 1.8 of the Consultation.
⁵⁰ Paragraph 3.128 of the Consultation.
⁵¹ Paragraph 3.119 of the Consultation.

Ofcom's proposals will [redacted]

Sky brings extensive practical experience of the platform/PSB relationship having negotiated and delivered prominence for PSBs across all our platforms over many years. We have provided substantial amounts of information to Ofcom in response to information requests and, at Ofcom's request attended a meeting with Ofcom on 30 July 2025 to describe in detail how these arrangements work. This information and these practical examples, do not appear to be reflected in the materials that Ofcom has published.

In particular, the 'no less than' standard in the Code does not establish any objective or measurable benchmark by which an RTSS provider can determine whether it is compliant on an ongoing basis. According to Ofcom, prominence is not to be assessed against a defined period, numerical threshold or weighting of factors, nor as explained above, is there clarity as to how different forms of prominence are to be traded off against one another. As a result, RTSS providers are left without a reliable compliance framework, despite facing enforcement risk if a PSB or Ofcom reaches a different view. [redacted]. The practical effect of this is the worst of all worlds with a system which sets a disproportionately high base requirement – that PSBs should be a minimum 'no less prominent' than everything else – but justifies that by arguing for a flexibility which in practice will not be available, based on the Code as drafted.

This is compounded by the fact that the aggregate nature of the Code's prominence test creates a material risk of conflict with existing PSB agreements. As noted above, the 'no-less than' requirement is collective across all PSBs, yet RTSS providers negotiate a series of separate deals with the individual PSBs. Ofcom does not explain how individual PSBs and platforms are expected to a) negotiate and b) monitor contractual compliance with 'appropriate' prominence based on interpretation of a collective requirement?

[redacted]. This would undermine commercial certainty, incentivise multiple strategic disputes, and cut across Parliament's intention that the new regime should operate alongside, rather than displace, negotiated arrangements that already deliver appropriate prominence.

[redacted].

Ofcom's proposals risk undermining the aims of the prominence regime

Ofcom's proposals will negatively impact Sky's ability to promote genuinely public service content

As well as the impact on incentives for platform innovation, the [redacted].

Again, on this point Ofcom's impact assessment runs contrary to the real-world impact on Sky. Ofcom states

"Our proposals related to prominence are designed to also take into account the value of non-public service content to audiences, and would

avoid disproportionate adverse effects such as making it difficult for audiences to find and access popular non-public service content.”⁵²

Ofcom’s proposals would require Sky to [REDACTED].

A further consequence of Ofcom’s proposals is that they risk Sky’s ability to promote the many further examples of PSM content that we and others make including content from Sky Arts, Sky Kids and Sky Docs. As Ofcom has acknowledged frequently content which holds public value is not only made by the public service broadcasters. As Ofcom knows, Sky’s contribution to PSM has always been significant and is growing. We produce a large amount of original British content, much of which is demonstrably ‘public service’ in nature, clearly fulfilling the purposes and characteristics of public service content as envisaged in legislation.

And yet, given the broadening of the PSB remit in the Media Act to essentially include any UK original programming made by PSBs – this could result in the perverse outcome where, as a direct result of Ofcom’s proposals, and the requirement for no less than equal prominence in primary content areas to come from the PSBs, Sky could have to make content such as *‘Married at First Sight’* prominent on our RTSS at the expense of Sky News or Sky Arts content.

It cannot have been the policy intent of Government or Parliament for UK-based, UK-focussed platforms like Sky, lauded for our arrangements with PSBs as well as investment in our own PSM content such as Sky News and Sky Arts (in the absence of any regulatory benefits), [REDACTED].

Ofcom’s proposals risk viewers by-passing primary content areas to go directly to Global streaming apps.

Another impact that Ofcom does not appear to have considered is that its proposals could have the opposite effect of that which it intends, namely reducing engagement with PSB content. Ofcom claims that its prominence proposals would benefit audiences by *“making a diverse range of high-quality public service content easy to discover and view”*.⁵³

However, Ofcom has not assessed the fact that by proposing such a fundamental change to how RTSS operate there is a material risk that users will simply bypass PSB-dominated UIs all together, and directly navigate to global streaming apps, thereby entirely undermining the purpose of the intervention. The 2CV data commissioned by Ofcom would appear to underline this risk.

Ofcom’s proposals will stifle innovation and result in adverse outcomes for audiences

The ‘no less than’ standard is also restrictive of innovation, contrary to the third Agreement Objective that arrangements should *“not disproportionately restrict how RTSS providers may make innovations in the ways that users may select and access IPS”*.⁵⁴ There is a striking internal inconsistency here. Ofcom notes that it expressly rejected recommending *“that public service content makes up a fixed*

⁵² Paragraph 6.11 of the Consultation.

⁵³ Paragraph 6.6 of the Consultation.

⁵⁴ Paragraph 2.29 of the Consultation.

proportion of the space in particular areas” because it would “*make Uls homogenous*” and “*disproportionately restrict RTSS providers’ ability to differentiate and innovate their services*”.⁵⁵ Yet as explained above, due to the lack of material flexibility and the compliance uncertainty, the ‘no less than’ standard will in practice achieve [§<].

Sky’s use of ‘Personalisation’ functionality is a good example of innovation that directly benefits customers, by arranging content that is most likely to be of interest to them (based on past viewing habits) at the front of certain recommendations rails, but that would likely have to be removed in order to manage compliance with Ofcom’s proposals.

If implemented, Ofcom’s proposal on prominence would infringe its statutory duties

As a result of exceeding Parliament’s instruction to deliver ‘appropriate prominence’ for PSB content, Ofcom’s proposals, if implemented would be unreasonable, and would create new policy objectives or obligations not authorised by the Media Act. Under well-established principles confirmed by extensive case law and regulatory practice, when a regulator is exercising a statutory duty, its interpretation of relevant legislation must remain closely aligned to the text chosen by Parliament - it must not misstate, modify or replace the legal standard in the legislation. The approach in Ofcom’s current proposals risk not meeting this requirement.

In addition, the proposals on prominence in primary content areas would also infringe Ofcom’s general duty under section 3(3)(a) of the Communications Act 2003 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*”. It would also be contrary to Ofcom’s duty under section 6(1) of the Media Act not to impose burdens which are unnecessary.⁵⁶

The standard is not based on evidence

Ofcom acknowledges that its “*assessment of likely impacts is primarily qualitative*”⁵⁷ and that determining appropriate prominence “*requires a high degree of regulatory judgement*”.⁵⁸ Regulatory judgement is legitimate, but it is not a substitute for evidence. As set out in detail above, the evidence that Ofcom has gathered, taken on its own terms, does not support the standard it has chosen.

Lack of transparency reinforces the impression that the evidence does not support Ofcom’s approach

As explained above, Ofcom has not provided any evidence or data to support why its approach to prominence across primary content areas is ‘appropriate’.

⁵⁵ Paragraph 3.143 of the Consultation.

⁵⁶ Sky notes that Ofcom is also under similar duties under section 108 of the Deregulation Act 2015 to ensure that regulatory action is taken “*only when it is needed*” and that “*any action taken is proportionate*”.

⁵⁷ Paragraph 3.27 of the Consultation.

⁵⁸ Paragraph 3.127 of the Consultation.

When Sky asked Ofcom to provide the data supporting its assertions on the balance of prominence, Ofcom declined to provide it.

Furthermore, there is no acknowledgement of the extent to which the TSS used in Ofcom and third party research included services such as YouView, Freely or Freeview Play that are directly connected to the PSBs themselves and which exist precisely to promote free-to-air and public service content and would naturally be expected to give such content greater prominence.⁵⁹

Ofcom acknowledges that “*some platforms also prioritise their own content*” - self-preferencing - but frames this exclusively as a problem for PSBs.⁶⁰ It does not consider the mirror image: that PSB-owned platforms will naturally self-preference PSB content, making the “no less than” standard either already exceeded or unnecessary on those platforms. This one-directional analysis, combined with the failure to identify which platforms are the sources of the claimed deficit, amounts to regulation by vague assertion. It is the antithesis of the transparency that section 3(3)(a) demands.

The standard is disproportionate

As explained above, Ofcom’s proposal is disproportionate as it:

- a. exceeds the scope of Parliament’s mandate, guaranteeing ‘significant’ not ‘appropriate’ prominence;
- b. fails to take account of the specific context of the individual RTSS;
- c. fails to adequately assess the impacts of the proposals generally;
- d. fails to adequately assess the impact of the proposals on Sky;
- e. risks exacerbating the very problem it is trying to address by driving users to global streaming apps;
- f. results in a fixed proportion of prominence, which Ofcom explicitly sought to avoid; and
- g. will stifle innovation and result in adverse outcomes for audiences.

The standard is not targeted at cases where action is needed

As noted above, Ofcom's own evidence shows that approximately 90% of user clicks are on apps, with only around 10% on primary content areas.⁶¹ The case for a demanding ‘no less than’ standard in the areas where user engagement is lowest and the evidence of impact on PSB viewing weakest is not made out.

The standard also rests on an unstated assumption that ‘appropriate’ means ‘equal to’ and that anything less is ‘not appropriate’. This does not follow from the statute, the evidence, or logic. As explained above, Sky has argued, and as

⁵⁹ We note that the Looper ‘preliminary dataset did not include YouView, Freeview or Freely, and that Freely was itself a late addition to the list of RTSS and therefore Ofcom relied only on publicly available information.

⁶⁰ Paragraph 2.9 of the Consultation.

⁶¹ Paragraph 3.31 of the Consultation.

was previously accepted by the PSBs and Ofcom, that the prominence that its platforms give to PSBs *is* appropriate.⁶²

Ofcom should change the code to reflect ‘appropriate’ prominence

Ofcom should revise its baseline for the level of ‘appropriate prominence’ in primary content areas

As set out above, we consider that the ‘no less than’ standard that Ofcom proposes for primary content areas is disproportionate, goes beyond the will of Parliament and has been proposed without evidence or accurate assessment of the impact. [X].

Instead, we consider that a formulation that gave the effect of [X] would be much more consistent with Parliament’s intent in requiring ‘appropriate prominence’. This is given the fact that ‘appropriate’ is a) a lower bar than ‘significant’, b) not coterminous with ‘equal to’, and c) consistent with a sensible counterfactual where ‘significant’ prominence could be understood at a standard of ‘no less than’ [X].

Setting a more proportionate level like this would [X] of all prominence on RTSS’ most valuable disaggregated content areas accruing to PSBs. This would of course be **in addition** to the requirements around app placement of all PSB apps being within the first 7 slots at a ‘Cold Start’, which we already deliver, prominence in the first five positions in the EPG which we already deliver, as well as the other measures in the code. Taken together, all these factors amount to any reasonable definition of ‘appropriate’ prominence.

[X] is also much closer to some of the key conclusions that Ofcom has reached, where it considers that its proposed actions would only ‘*moderately increase the overall prominence of public service content*’,⁶³ and that its proposed approach avoids ‘*any disproportionate impacts on firms that provide valuable services to UK consumers*’. As explained above, these are not credible conclusions for Ofcom to have reached on the basis of its proposals for a minimum prominence of no less than. They may, however, be appropriate conclusions for it to reach based on [X].

Resetting the definition of ‘appropriate’ prominence to [X] would enable Ofcom to acknowledge that Sky’s existing arrangements with PSBs, already offering substantial prominence across linear programming, app placement and primary content areas and delivering positive outcomes for audiences, remains ‘appropriate’.

⁶² Sky considers that the proposals may also raise concerns under the Subsidy Control Act 2022 (by conferring a selective economic advantage on PSBs without the requisite assessment of proportionality and necessity, and without satisfying the Altmark criteria regarding clearly defined public service obligations, pre-established compensation parameters, and the absence of overcompensation) and Article 1 of Protocol 1 ECHR as given effect by the Human Rights Act 1998 (by requiring RTSS providers to allocate at least 50% of their UI to PSB content without compensation, which may not represent a proportionate interference with possessions).

⁶³ Paragraph 3.31 of the Consultation.

As explained above, a more sensible threshold is also more likely to enable the Code to function as a genuine 'safe-harbour'. This would help to ensure that the Code to preserve and to encourage the sort of positive commercial outcomes that exist already between Sky and the PSBs and embed these principles to give the PSBs better cover to negotiate similar deals with the other RTSS providers.

Ofcom should revise its proposals to take account of the different operating models of the different RTSS providers

Ofcom should also revise its proposals to take account of the fact that the circumstances of the RTSS must be determinant of 'appropriate prominence'. Again, as demonstrated by the contribution from then Minister John Whittingdale at the Third Reading of the bill cited above, this was clearly what Parliament intended Ofcom to do.

As described in detail above, the pay-TV subscription element means that Sky's RTSS operate fundamentally differently from the other RTSS which do not have an ongoing relationship with their users. As noted, unlike the other designated platforms, Sky's RTSS are not available without the subscription element to Sky's own content, which is integral to the functioning of the RTSS. This is a significant enough difference that justifies Ofcom acknowledging this in the Code. There are two ways that Ofcom could amend the Code to do this.

Firstly, by revising Action 2.2 to make clear that where an RTSS provider is also a content provider that retails its own content directly to the end-user under subscription, that that content **should not** be considered part of the requirement for PSB content to have 'a degree of prominence across the primary content areas that is no less than the degree of prominence given to other content'. We consider that it is reasonable that Ofcom should set a cap on the amount of content in primary content that an RTSS provider should provide. We suggest that that cap should be set at a level of 'no more than' all other programmes which are not provided by the RTSS.

We suggest that Ofcom could achieve this by adopting something akin to the following alternative wording for Action A2.2:

*"Across all of the primary content areas (taken together), the provider should ensure that 'appropriate prominence' is given to public service programmes. **This should be assessed in the context of the particular RTSS**, but will be assumed that the provider should ensure that the degree of prominence given to public service programmes (taking all of the public service programmes together) is no less than the degree of prominence given to all other programmes which are not public service programmes (taking all such programmes together), **but excluding from such assessment all content provided by the RTSS provider itself under contract with the end user. That content should be no more than the total of all other programmes.**"*
(additions in bold)

We believe that this, or a similar formulation, would strike the following balance which could work both for PSBs and for RTSS providers:

- a. acknowledgement of the importance of providing 'appropriate' prominence for public service content;

- b. acknowledgement that what is ‘appropriate’ prominence will differ in the context of different RTSS;
- c. specific recognition that audiences who have an ongoing relationship with the RTSS and are paying for specific content should have an expectation that that content will be no less prominent than everything else that service; and
- d. that PSB content should be no less prominent than all other remaining content.

Alternatively, the Media Act specifically allows Ofcom to differentiate between different descriptions of RTSS when setting recommendations under its code for prominence and accessibility. Section 362 AP states:

“The actions recommended in a code of practice issued under this section may include-actions relating to particular descriptions of regulated television selection services.”⁶⁴

Ofcom has decided not to use this ability to reflect the differences in RTSS with specific actions that would account for the different expectations of the users of different RTSS. This is a missed opportunity. If it were minded not to amend Action 2.2 in the manner described above, Ofcom could use this power in 362AP to create a separate description of an RTSS that operates as a pay-TV platform where users subscribe on an ongoing basis for specific content provided by the RTSS provider. This would enable Ofcom to make clear that it is reasonable that certain descriptions of platforms should be treated differently by creating a further category to give the same effect as above, e.g.:

“For those RTSS where users pay a subscription for content over which the RTSS provider has editorial control, these programmes will be excluded from the requirement for the provider to ensure that the degree of ‘appropriate prominence’ given to public service programmes is no less than the degree of prominence given to all other programmes which are not public service programmes. That content should be no more than the total of all other programmes.”

Auto-sort on apps menus

- The application of auto-sort to the apps rail on the Homepage should be treated as individual user choice and therefore permitted under the Code
- Withdrawal of auto-sort would deprive Sky viewers of valuable customer-centric technology (contrary to the third Agreement Objective which aims to promote innovation), and compound the risk of viewers ceasing to subscribe to Sky

Sky’s approach to PSB DIPS apps ordering

Ofcom proposes that PSB DIPS apps should be listed in a specified order and within a specified range of positions within apps menus. We agree with this and as a matter of course the PSB apps already occupy the first 4 slots in our in-

⁶⁴ <https://www.legislation.gov.uk/ukpga/2024/15/contents>.

scope platforms at a 'cold start' (i.e. when the viewer first launches Sky Q or Sky Glass/Stream (and following a factory reset). This is the case both in the apps menu and in the apps rail available on the Homepage. This is of course, again, testament to the fact that Sky as a responsible UK platform provider is already providing PSBs with appropriate prominence, despite not having to and has been recognised as such by the PSBs themselves.

Figure 11: Sky Glass screenshot illustrating apps order in the apps rail on the Homepage on a cold start in the UK, with the PSB apps in the most prominent positions

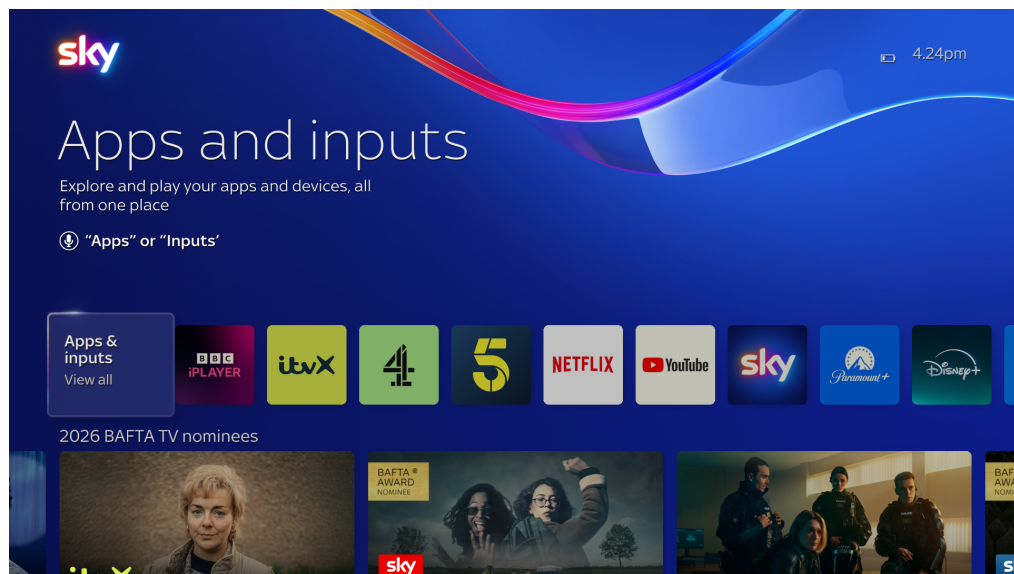


Figure 12: Sky Glass screenshot illustrating apps order in the 'Featured' rail in the apps menu – this rail has a static order applied, with the PSB apps in the most prominent positions



The success of our platforms is built entirely around ensuring each customer has seamless access to the content that they want to find and watch in as easy and frictionless way as possible. As soon as the user starts to engage with apps

available on our platforms, the apps listed on the apps rail on the Homepage are reordered automatically, according to which have been most-recently accessed by that user.⁶⁵ This feature is designed to enable users to quickly and easily access the content they most want to watch and automatically updating the ordering as the user's app usage changes over time. This feature does not require the user to keep pro-actively changing the apps order according to what they are currently watching in any given week/month.

Sky's implementation of auto-sort is applied purely to deliver customer value through personalisation and ease of use. Unlike certain retail platforms, Sky does not sell prominent app placements as an alternative monetisation strategy. As Sky derives no commercial benefit from maintaining a static app rail, there is no platform level incentive to do so. The purpose of auto-sorting is therefore limited to enhancing the customer experience by dynamically reordering content in line with individual usage.

Furthermore, the top 'Featured' apps rail in our dedicated app menu is not reordered based on usage to ensure a customer has ease of access to an apps rail that surfaces featured apps available on the product. PSBs are positioned at the start of this rail, as shown in the screenshot at Figure 12 above. This ensures customers can access apps via their preferred method; based on recency (on the apps rail on the Homepage) or based on fixed order (in the apps menu) that is updated from time to time to reflect either market share changes or customer entitlement - but always with the PSB apps in the top positions.

Sky customers value the innovation of auto-sort technology

We know that Sky customers value ease of access to the content they most want to view. [X]⁶⁶ [X]. This is why we focus on personalised and dynamically ordered rails to reduce navigation effort and perceived friction.

Through various qualitative and quantitative research insights, personalisation of content promotion is a significant driver of customer decisions to subscribe to⁶⁷ and stay with Sky.⁶⁸

Sky customers value Personalisation

- Prospective customers rate personalisation features as a key consideration with high appeal when deciding to subscribe
- [X]

Lack of personalisation on Sky's aggregation-first products can impact customer satisfaction and perceptions. Due to the sheer volume of content

⁶⁵ Within the Apps Menu, the top "Featured" rail (with the PSB DIPS apps in the top positions) do not re-order according to usage; however, the lower category rails do re-order according to usage.

⁶⁶ [X].

⁶⁷ Source: Sky OS Feature Prioritisation, Quantitative Research, March 2024 - Prospects (n=3510).

⁶⁸ Source: Sky OS Feature Prioritisation, Quantitative Research, March 2024 - Existing customers (n=1225).

and apps available, personalisation of the apps rail helps to avoid overwhelm, [§].⁶⁹

Applying additional restrictions to the Sky user interface that undermines personalisation further impacts [§].⁷⁰ How we effectively offer customers choice across content that is available linearly, on-demand and within apps, impacts our ability to meet customer expectations, and a static interface with less personalisation would be a step backwards in terms of platform innovation and customer proposition.

Ofcom's proposals would require Sky to remove valuable customer centric technology, contrary to its requirements to ensure that the Code is consistent with the Agreement Objectives

Ofcom has told Sky that its proposals mean that RTSS will not be permitted to apply auto-sort functionality to automatically re-order apps based on the user's app usage, and that the only permitted re-ordering is where the user actively re-orders the apps – i.e. they have actively dragged or moved the apps into a different order, or have proactively deleted apps.⁷¹ Our platforms, as a matter of course, have for many years already been compliant with Ofcom's proposals about app ordering at a cold start. However, were we to retain the auto-sort functionality that we have specifically developed to deliver a better user experience we would run the risk of being non-compliant with Ofcom's new rules as a result of customer behaviour, watching content from non-PSB apps, or watching PSB content in a way that resulted in a non-compliant ordering of the apps.

That Ofcom proposes to require Sky to remove innovative technology that has been specifically designed to meet audience interests is an extraordinary outcome, and clearly contrary to the interests of UK audiences. It is also contrary to the requirement on Ofcom under section 362AP(5) of the Media Act to ensure that the Code of Practice is consistent with the agreement objectives:

"Ofcom must secure that the actions recommended in a code of practice issued under this section are consistent with the agreement objectives."⁷²

It is clear that Ofcom's proposals run directly contrary to the third agreement objective under the Media Act, which requires RTSS and DIPS providers to enter into arrangements that do not disproportionately restrict how the provider of a RTSS may make innovations in the ways that users may select and access internet programme services or programmes included in such services.⁷³

It is self-evident that requiring Sky to remove innovative technology disproportionately restricts our ability to make innovations in the ways that users may select and access services or programmes. Therefore, Ofcom has

⁶⁹ [§].

⁷⁰ [§].

⁷¹ Meeting with Kirsty Johnson, 28 January 2026

⁷² Section 362AP (5) of the Media Act.

⁷³ Section 362AM(1)(c) Communications Act 2003.

failed to ensure that the actions recommended in the Code are consistent with the agreement objectives.

Ofcom's proposals also directly undermine Ofcom's own conclusion in its impact assessment that:

*"Our proposals would allow substantial flexibility in RTSS design, features and technology, avoiding any unnecessary homogenisation of services. We consider this would allow significant scope for continued innovation and competition over RTSS design and features."*⁷⁴

We need only restate the importance of the words of the Media Minister, Julia Lopez, who passed the legislation cited above that the Government aimed to design the Bill for "innovation and consumer choice".⁷⁵ As the body charged with seeking to ensure that the implementation of the Media Act seeks to promote innovation and consumer choice, it is surprising that Ofcom is now proposing changes that will achieve the exact opposite, requiring the removal of innovative technology, leading to homogenisation of user interfaces and reduced personalisation and choice for end-users.

Removal of auto-sort functionality will also particularly disadvantage users with accessibility needs. From an accessibility perspective, ordering a rail based on demonstrated customer use is consistent with the intent of the Web Content Accessibility Guidelines ('WCAG') principles of *Understandable* and *Operable*.⁷⁶ WCAG guidance emphasises supporting adaptation and personalisation so that users can more easily find content that is most relevant to them. Personalised, usage led sort ordering reduces the number of interactions required to reach commonly accessed content and does so without introducing additional controls or complexity and supports Ofcom's broader duty to ensure that TV services are inclusive, usable and do not unduly disadvantage particular groups of viewers.⁷⁷

Removal of auto-sort will [redacted]

[redacted].

PSBs are not materially disadvantaged by the application of auto-sort technology

The apps rail on Sky Glass/Stream Homepage displays nine app tiles within the initial visible area, without requiring customers to scroll to view app logos. On Sky Q, six app tiles are visible above the vertical fold on the Homepage, reflecting differences in logo sizing on that platform.

[redacted].⁷⁸

⁷⁴ Paragraph 6.33 of the Consultation.

⁷⁵ <https://hansard.parliament.uk/commons/2024-01-30/debates/60B0BCEC-E10B-4768-83E8-E930CB15739B/MediaBill#contribution-6B11903E-85EE-4F07-9AC8-CF341F26B70C>.

⁷⁶ Worldwide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.1, <https://www.w3.org/TR/WCAG21/>.

⁷⁷ Paragraphs 2.17 - 2.21 and 2.31 of the Consultation.

⁷⁸ [redacted].

[REDACTED].⁷⁹ [REDACTED].

In addition, customers access apps through a range of alternative entry points, including voice commands (e.g. “open [app name]”), red button prompts on linear channels, and content-led placements throughout Sky’s editorial and automated merchandising experiences. Many of these routes are not reflected in Ofcom’s analysis of what constitutes ‘appropriate prominence’.

PSB apps are therefore not materially disadvantaged by the application of auto-sort. Further, given that additional app launches from linear channels (e.g. as a result of a Red Button prompt to watch in app) trigger the auto-sort, PSB apps on Sky’s platforms have an advantage over apps from providers without a linear channel (or with less prominent linear channels).

[REDACTED]:

Figure 13: [REDACTED]

[REDACTED]

Ofcom’s risk assessment fails to consider the loss of auto-sort functionality

At no point in its impact assessment does Ofcom consider the impact of removing auto-sort functionality. This is particularly disappointing given that Sky specifically demonstrated this functionality to Ofcom and [REDACTED]. This omission leads Ofcom to erroneously conclude that “*the likely impacts would be proportionate*”.⁸⁰

Given the [REDACTED], and the limited impact of the application of auto-sort for PSBs, this proposal is both unreasonable and disproportionate.

Auto-sort based on individual usage should be treated as user choice

Ofcom notes that:

“Our proposed recommendation would also allow RTSS providers to offer users the option to customise their app menu. We recognise that some users would want the ability to reorder apps in the app menu to improve ease of access to their preferred apps. We do not intend to prevent users from doing this, nor do we consider the duty to give appropriate prominence should override a user’s active choice as to the apps they want to prioritise.”⁸¹

Auto-sort improves ease of access to users’ preferred apps without the inconvenience of the user having to proactively re-order apps, which they might need to do on a regular basis to reflect their changing viewing habits. As apps are re-ordered based on the recency of use by that individual household, this

⁷⁹ [REDACTED].

⁸⁰ Paragraph 3.99 of the Consultation.

⁸¹ Paragraph 3.81 of the Consultation.

meets a reasonable definition of ‘user choice’ and as such should be permitted under the new Code.

We note that this would be consistent with how Ofcom is approaching user behaviour in other parts of the prominence requirements where Ofcom seems to recognise the importance of user preferencing being a relevant factor in determining ‘appropriate’ prominence. In Action A3.4 relating to new requirements around ‘Search’ functionality Ofcom states:

*“The provider may have regard to, among other things, **the user’s past behaviour** when determining the relevance of content in response to a user search.”⁸²*

Ofcom explains that if a user is known to frequently watch a particular programme it would be reasonable for the RTSS provider to assign greater relevance to that programme in response to that user’s searches.⁸³

We agree completely with Ofcom here, and this is very sensible. However, it is self-evident that the same standard should apply across the other functionality. User behaviour is as relevant a factor for RTSS providers to consider in terms of app ordering beyond a cold start as it is for Search functionality.

Concerns relating to guidance on agreement objectives

- The Guidance and Code should be explicit that native delivery of PSB content, not in the form of an app, is within the scope of the MOMI regime
- Failure to do so will result in adverse impacts for audiences, RTSS, and PSBs, and will lead to an increased number of disputes requiring resolution by Ofcom

Ofcom has again failed to clarify that DIPS content provided outside of an app is subject to MOMI

Our customers have repeatedly told us that having a consistent and seamless means of watching live, recorded and on-demand content is their preferred way of accessing content. As explained below, ‘native’ delivery (i.e. delivery outside an app where playout of content is delivered by the built in platform video player and associated experience) brings multiple benefits to our customers including consistent playback quality and easy content discovery across a range of different providers. These benefits are instantly lost where there is a requirement for a transition from the native environment into an app environment which will always create some friction or barrier for audiences compared to native delivery.

While Ofcom’s draft statement on methods for designating IPS suggested that an IPS was limited to delivery via an app, in response to points made by Sky’s response to this consultation Ofcom’s final statement clarified that a PSB

⁸² Action 3.4 of the Code.

⁸³ Paragraph 3.152 of the Consultation.

service which is not an app, but which meets the definition of an IPS under the Media Act and satisfies the designation conditions, is capable of being designated.⁸⁴ As set out previously and below, that would clearly include PSB content delivered ‘natively’ to Sky’s platforms over the internet.

Ofcom further advised on a call with Sky on 21 August 2025 that IPS designations would encompass VoD content catalogues and linear public service channels, rather than distribution technologies, and that distribution and format would form part of the negotiations between the PSBs and platforms, and therefore subject to the agreement objectives. The logical conclusion that Sky took from this is that Ofcom envisages the continued supply of native content to be within the scope of its designation of IPS – should the IPS satisfy Ofcom’s criteria – e.g. making a significant contribution to delivery of the PSB remit.

Indeed, its draft Guidance on Agreement Objectives, Ofcom goes a long way to recognise this fact. The guidance states:

*“We recognise that DIPS will normally be delivered in the form of an app. However, **there may be circumstances** where this is not the case – for example, where an RTSS provider wants its RTSS to operate in a way that includes DIPS that are not apps, or where a DIPS provider wants to offer its DIPS in a form that is not an app. **In these exceptional circumstances**, we consider that **it may be consistent with the Agreement Objectives** for payments to be made by the provider who wishes to offer or include (as applicable) the DIPS that is not an app.”⁸⁵ (emphasis added)*

Sky welcomes the acknowledgement that there will be circumstances in which it is not the case that DIPS will be delivered in the form of an app. However, it is still unclear from the draft guidance (or any other documentation published to date, including the Draft Code of Practice, which only references DIPS as apps in section A1.2) whether the new MOMI regime places an obligation on PSBs to make their DIPS available other than via an app, where the RTSS requests this. The current wording of the draft guidance does not provide this certainty as it very unclearly drafted. Ofcom acknowledges the possibility of alternatives to apps, without explaining whether the provider to whom a non-app delivery request has been made must accede to that request.

Whilst Ofcom notes that it may be consistent with the Agreement Objectives for payments to be made by the provider who wishes to include the DIPS that is not an app it stops short of clarifying that the PSBs **must offer** DIPS outside of an app in response to a request from an RTSS. This is disappointing given that Sky has raised its concerns on this matter with Ofcom on multiple occasions. The reference to the Agreement Objectives and payment imply that the arrangement would be subject to the MOMI obligations, such that there would be an obligation to supply. However, this is itself undermined by the suggestion that payment may be required for what would otherwise amount to a ‘core’ term.

⁸⁴ Paragraph 3.93 of Ofcom Statement, “Designation of Public Service Broadcasters Internet Programme Services” dated 22 July 2025.

⁸⁵ Paragraph 2.23 of the Guidance (Available at: <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/197515-prominence-and-accessibility-on-connected-tv-platforms/main-docs/annex-3---draft-guidance-on-agreement-objectives.pdf?v=410574>).

As we have explained to Ofcom, the ongoing lack of clarity as to how native delivery of PSB content will be secured by platforms under the new must-offer/carry regime risks incentivising the PSBs to withdraw the content that they currently deliver natively to Sky platforms. This is the case with both linear streams and VoD content. Indeed, as Ofcom is aware, despite its clear requirements under the Framework Agreement, the BBC has already required the removal of native VoD content from Sky Q in the absence of an explicit positive obligation to provide its content natively. Without any meaningful regulatory protection, and to avert the very real possibility of the BBC hostilely removing all its content from Sky's platforms, Sky was reluctantly forced to agree to a phased removal. [X].

Withdrawal of PSB native content more broadly from Sky Q and Sky Glass/Stream will adversely impact [X] households, making it much harder for them to access and engage with PSB content by introducing unnecessary friction into the viewing experience as a result of the need to watch PSB content solely by navigating in and out of the individual PSB apps. Perversely, this will likely reduce viewing to PSB content and could potentially ultimately lead to audiences switching away from Sky's platforms as the user experience that they subscribe for is degraded.

The lack of clarity also risks stifling innovation, running contrary to the intent of the third 'Agreement Objective', leading to the homogenisation of platforms and reduction in consumer choice. Without a clear statement within the guidance that the provision of DIPS that is not an app falls within Ofcom's definition of a DIPS and is therefore subject to the 'Must Offer' requirement when requested by the RTSS, Ofcom risks merely delaying having to adjudicate on inevitable disputes between platforms and providers of designated IPS on this issue.

It is therefore essential that Ofcom clarifies publicly in its Guidance and as part of the forthcoming IPS designation process that non-app delivery – both in respect of PSB linear and on-demand content – **is subject to the MOMI obligation**, when requested by the RTSS, in order to ensure that viewers can continue to access the PSB content they love across Sky Q and Sky Glass/Stream in the manner to which they are accustomed and prefer. Without this, Ofcom will effectively be issuing de-facto approval of the BBC's iPlayer only strategy, ahead of the interests of UK audiences.

Sky's native environment is the best way of presenting a range of linear and on-demand content to viewers seamlessly

As we have previously explained to Ofcom, Sky's two RTSS support the delivery of content delivered 'natively' (i.e. outside an app) as follows:

- **Sky Q:** Linear channels are delivered over satellite. In addition to VoD content delivered natively via progressive download, Sky Q can also support apps (although functionality and features for app-delivered content are more limited than for native VoD content); and
- **Sky Glass and Stream:** All content is delivered over the internet via linear IP channels, native streaming VoD or apps (there is no need for a satellite dish). Due to the absence of a hard drive, native VoD content is streamed over the internet rather than delivered via progressive download, and recordings are delivered via network PVR.

Sky's platforms therefore support a mixture of content delivered via apps and content delivered 'natively' (i.e. ingested content played back outside of an app). On Sky Q boxes, the PSBs deliver their on-demand programme service ('ODPS') via both methods (native/PDL and app). To deliver content via PDL, Sky ingests content into its servers. When a viewer wishes to watch a VoD programme, they select the programme from the user interface, and it is downloaded over the internet to the set top box hard drive from Sky's servers. Ofcom specifically recommended designation of Sky Q to the Secretary of State, who accordingly confirmed that it should be among the 15 RTSS. In making its recommendation, Ofcom must have contemplated the method of delivery of content that Sky Q utilises as a relevant factor. On Sky Glass/Stream, the PSBs currently deliver their ODPS via an app but deliver their linear channels natively as IP channels which are listed within the EPG.

Native delivery brings several benefits including consistent playback quality and easy content discovery across multiple providers, which are highly valued by customers. These benefits are instantly lost where there is a requirement for a transition from the native environment into the app environment which will always create some friction or barrier compared to native VoD. Where the viewer launches an app – the app must load, the viewer must register or sign in (potentially requiring a smart phone interaction), select programme, after which it may buffer, and the user must adjust to navigating in a new environment (including for accessibility functionality), creating friction and potential barriers to viewing. Depending on the specific app, that friction may stop the user completing the journey and watching the programme, for example because of a long load time for the app, a failure to load or find the relevant programme, or due to issues with the broadband connection.

In addition to presenting content in a consistent and familiar setting, Sky's native environment has the following benefits:

- a. **Consistent playback quality:** unlike streaming content over the internet, PDL first downloads the content to the set top box, so that playout is local to the device, and it also allows playback to begin shortly after the download starts, and before the full file is saved, ensuring a smooth viewing experience with minimal buffering regardless of the broadband speed available to the customer. Users can choose their preferred download quality (SD, HD, or Ultra HD);
- b. **Easy content management:** users have the benefit of features like auto-downloading subsequent episodes, auto-playing subsequent episodes, and the ability to pause, resume, or prioritise downloads. This technology enhances flexibility and convenience, allowing viewers to still watch downloaded content when offline (e.g. if the internet is not available), manage bandwidth usage, and enjoy uninterrupted entertainment regardless of live broadcast schedules, with benefits for customers with limited broadband speeds;
- c. **Ease of playback:** once selected, content can download in the background whilst the user watches something else, with a discrete banner notification once sufficient content has been downloaded to allow viewing of the entire programme. Similarly, once downloaded, the programme is instantly available for playback from the Recordings sections. This is a significant advantage over app playback, where on selection, the relevant app must

launch and load, before a programme buffers, and then plays out -an experience that must be re-lived each time the programme is resumed;

- d. **Continue watching:** the ability to easily continue watching recent programmes regardless of provider, from a prominent rail on the homepage or showpage, and to do so on different TVs in the home if the user has multiroom installed, or uses the Sky Go app in the home;
- e. **Content discovery:** Sky's UI and navigation are designed to work intuitively with native content, with full searchability (text and voice searching) and browsing of content catalogues compared to having to review content hosted across multiple app services or requiring detailed app metadata integration. Furthermore, as Sky can see what native content has been watched it can tailor recommendations to the household using actual consumption data, which is not the case where viewing takes place in an app;
- f. **Accessibility features:** where available, native VoD enables subtitles and audio-description to be turned on and off using the '?' key on the remote across all content, together with the ability to optimise the audio track depending on the viewers preference (e.g. late-night mode, or speech mode to make dialogue clearer).

It is critical that Ofcom clarifies that PSBs cannot mandate deep linked app delivery of their linear public service channels

While Sky's newest platforms, Glass and Stream, have integrated App-based delivery more fully than older Sky platforms, linear channels (including the public service channels) listed in the Glass/Stream EPG are delivered natively over IP rather than playing out via Apps.

Native delivery of linear channels provides a significantly superior viewing experience for viewers compared to an App-based delivery of linear channels. For Sky to be able to continue to provide an EPG that functions in the manner that audiences know and expect, it is crucial that Sky can access and provide PSB linear streams natively within the Sky EPG so that audiences can scroll up and down the EPG, choosing programmes and channels directly without the friction of having to go in and out of a series of individual apps, all with different functionality and characteristics and with a requirement to log in to each separately, to find the linear streams. Failure by Ofcom to clarify that native linear streams must be provided by PSBs upon request from RTSS puts this at material risk.

Ofcom should therefore clarify in the final Guidance and the accompanying Statement that designation of PSB linear channels as part of a designated IPS does not place a requirement on TSS providers to carry only the app-delivered version of the channel or to list the app-delivered version in their EPG, but that the PSB content that the channel carries should instead be delivered by alternative means, where the platform has requested this.

As currently drafted, Ofcom's proposed Guidance fails to clarify how Ofcom will interpret the interplay between the first and third agreement objectives. The requirement under the first agreement objective to give an appropriate degree of prominence to designated IPS includes:

*"an appropriate degree of prominence being given to public service remit content **and any listed channel** included in that designated internet programme service, **so far as the prominence of that content or***

channel is capable of being affected by the operation of the regulated television selection service”.⁸⁶

At the same time, the requirement under the third agreement objective is for agreements between PSBs and Platforms to:

*“not disproportionately restrict how the provider of a regulated television selection service may make innovations in the ways that users may select and access internet programme services or programmes included in such services”.*⁸⁷

Sky's concern here is that without explicit clarity in the guidance that native linear feeds are automatically subject to must offer, Ofcom's application of the first agreement objective in isolation could result in PSBs withdrawing their native channels delivered over IP from the EPG on Glass and Stream and instead insisting that Sky lists their app-streamed channels in the EPG. This position would of course be entirely contrary to the third agreement objective aimed at protecting platform innovation, and, again, cannot have been the intention of Parliament in arriving at the final formulation of the three equally important objectives. Ofcom should therefore make a clear statement that the PSBs cannot use the first agreement objective to restrict supply of their public service channel(s) to delivery via their apps, but that PSBs **must supply** these channels via alternative means, where requested to do so by a designated platform.

Failure to clarify that supply of native linear feeds are within the scope of MOMI and subject to the agreement objectives risks directly undermining the Government's Future of TV Distribution project

The need for Ofcom to provide regulatory comfort around continued supply of native linear feeds to platforms such as Sky Glass and Sky Stream, is of particular pertinence as DCMS is currently contemplating a final decision on the Future of TV Distribution. Of course, encouraging DCMS to conclude this process swiftly was one of Ofcom's key recommendations in its 'Transmission Critical' publication.

As Ofcom is aware from its participation in the DCMS 'working groups' on the Future of TV Distribution, assuring a successful full transition to IPTV, that does not leave behind, or disadvantage any audiences, particularly older and/or more vulnerable audiences is a key policy outcome for Government. An important contributory part of this is the importance that the working groups have ascribed to the maintenance of familiar features from DTT to ensure a consistency of experience for audiences. These features include a traditional grid-type EPG and the ongoing ability to watch live TV channels from different providers without the friction of going between different apps - all with different interfaces and most with requirements for individual log-ins.

Although the Sky Glass and Sky Stream EPGs are not yet regulated by Ofcom, and therefore not subject to the requirements of the EPG code, Sky has made a conscious decision to give the PSBs the same level of prominence that they would have on EPGs on regulated platforms - e.g. on satellite (and on DTT) - i.e. BBC 1 at slot 1, ITV at slot 3 etc. Without being required to, we have done this

⁸⁶ Section 362AM(2) Communications Act 2003.

⁸⁷ Section 362AM(1)(c) Communications Act 2003.

specifically to mirror the user experience that long-term customers of Sky+ HD and Sky Q are used to prior to transitioning to Sky Glass/Stream and make discovering content on the newer IPTV service as simple as possible. This is then combined with public service content receiving prominence on Sky Glass and Sky Stream's various content rails throughout our UI to ensure ease of discovery.

For Sky to be able to continue to provide a linear IPTV service that functions in the manner that audiences know and expect, and in turn makes any transition to IPTV more manageable for audiences, it is crucial that Sky can access and provide PSB linear streams natively that can be launched from the EPG. Without such guarantees surrounding access to the supply of native linear streams, Government and Ofcom inadvertently risk impacting the probability of older and more vulnerable audiences being left behind as a transition to IPTV distribution of TV takes place amidst evolving viewing habits.

Without clarity from Ofcom that [REDACTED]

[REDACTED].⁸⁸ [REDACTED].

[REDACTED].

[REDACTED].⁸⁹

[REDACTED].⁹⁰

[REDACTED].

[REDACTED].⁹¹ [REDACTED].

[REDACTED].

[REDACTED].

A failure to provide clarity on the scope of DIPS will also lead to material adverse impacts on PSBs

As Ofcom is aware, Sky plays a crucial role in the distribution of the PSBs' content and therefore in helping to secure the positive outcomes that Ofcom is seeking from provision of public service media in the UK. In turn, PSB content is important to Sky's customers, and we have demonstrated ourselves to be a valued partner to the PSBs over many years, consistently pursuing the best PSB experience for Sky customers. A major part of this has been the success of Sky's significant investment in launching Sky Q and ensuring it remains highly used and popular even as viewers migrate to TV delivered over IP.

[REDACTED].

[REDACTED].⁹²

⁸⁸ [REDACTED].
⁸⁹ [REDACTED].
⁹⁰ [REDACTED].
⁹¹ [REDACTED].
⁹² [REDACTED].

Ofcom's failure to confirm that native content is in-scope of MOMI thereby risking making it harder for viewers to find and access PSB content, is likely to lead to lower engagement and viewing, particularly for those 'vulnerable' audiences who may not actively seek out content on the PSB apps, and/or are reluctant to engage with app-based services and/or have difficulties or objections to signing in to streaming services, in addition those impacted by technical constraints.

The inevitable consequence of PSB native content being withdrawn from Sky platforms is therefore likely to be reduced viewing, reach and impact for PSB programming.

The agreement objectives explicitly intend to prevent disproportionate impacts on a platform's ability to innovate

Ofcom should also consider the impact of not confirming that non-app DIPS are subject to MOMI on innovation and the wider sector. Sky Q is one of the only platforms where PSB VoD content is available outside of the PSB apps. As noted above, this innovative approach to content distribution has been an important element of Sky Q's success in reaching millions of homes in a dynamic and competitive market. If the Codes and Guidance, as well as the supporting IPS designations, are designed by Ofcom in a way that enables the PSBs to remove their native VoD content from [§<], in favour of exclusive app distribution, it will have a chilling effect on future platform innovation. Any new platform provider will have to adopt the PSBs' preferred distribution model if they wish to include PSB content, and it is difficult to envisage a new platform, targeting UK audiences, launching without the PSBs' content.

While the first two agreement objectives in the Media Act are intended to protect PSBs' interests, the interests of platforms (and therefore ultimately consumers and audiences) are reflected in the third agreement objective which seeks to promote and protect platform innovation. Specifically, section 362AM of the Communications Act 2003 (as amended by the Media Act 2024) states that arrangements between PSBs and platforms should:

"not disproportionately restrict how the provider of a regulated television selection service may make innovations in the ways that users may select and access internet programme services or programmes included in such services"

It is critical that Ofcom implements the MOMI provisions in a manner that avoids undermining or restricting existing and future innovations, in line with Parliament's intent. Interpretative decisions that Ofcom takes now in the Guidance are of crucial importance both to the successful functioning of the regime, and the likelihood of Ofcom being locked into adjudicating a cyclical series of disputes between individual platform providers and individual designated IPS providers, as commercial arrangements come up for renewal.

The Media Act contemplates delivery beyond apps and seeks to support platform innovation

As noted above, our understanding of Parliament's intent in passing the final text of the Media Act was that it should incentivise the continuation of exemplar deals, such as those that Sky had struck with the PSBs, and not introduce regulatory risks that could unravel them. This intent is reflected in (i) the broad definition of "Internet programme service", (ii) the criteria for designation of IPS and (iii) the acknowledgement of the importance of platform innovation under the third agreement objective, as explained in further detail below.

The definition of IPS is broad

The definition of “Internet Programme Service” under the Media Act has been drafted broadly, focusing on content (such as VoD programme services and linear channels) rather than the means of delivery (such as native delivery or App-based delivery). Sections 362AA(10) and (11) of the Communications Act 2003 (as amended by the Media Act 2024) define “Internet Programme Service” as follows:

- (10) *In this Part, a reference to an internet programme service is a reference to –*
- a) *an on-demand programme services where the programmes viewed by a user of the service are accessed by the user by means of the internet,*
 - b) *a non-UK on-demand programme services where the programmes viewed by a user of the service are accessed by the user by means of the internet, or*
 - c) *a service which satisfies the requirements in subsection (11).*
- (11) *The requirements are –*
- a) *that the principal purpose of the service is the provision of programmes,*
 - b) *that the programmes viewed by a user of the service are accessed by the user by means of the internet, and*
 - c) *that the programmes it provides to a user of the service are contained in*
 - i. *such on-demand programme service as is described in subsection (10)(a) or such non-UK on-demand programme service as is described in subsection (10)(b), and*
 - ii. *another service which is, or two or more other services each of which is, such an on-demand programme service, such a non-UK on-demand programme service, or a service (other than those kinds of service) that consists of, or has as its principal purpose the provision of, programmes.*

The definition of IPS is therefore clearly met by PSB content delivered in a range of ways, not solely via an app. PSB on-demand and linear content delivered natively in this manner therefore satisfies the definition of IPS under subsection 362AA (10)(a) and/or (c) of the Media Act.

Further, the PSBs’ content delivered natively on Sky platforms will be capable meeting the designation criteria outlined above:

- a. The PSBs have full editorial control over the selection, order and arrangement of their VoD content within their ODPS available via PDL on Sky+HD and Sky Q boxes;
- b. The PSBs can make the public service remit content readily discoverable within the service, in the same way as they are able to achieve this via their apps;
- c. The PSBs also have full editorial control over their public service channels delivered over IP.

The criteria for designation of IPS are also broad

The criteria for designation of IPS by Ofcom are broadly drafted in the Media Act, and therefore can be met by PSB content delivered in a range of ways, not solely via an app. The criteria are that that:

- a. The IPS makes or is capable making a significant contribution to the licensed PSB’s or S4C’s individual PSR;

- b. Programmes included in the IPS that contribute towards the Licensed PSB's or S4C's individual PSR are readily discoverable and promoted by the service; and
- c. Ofcom considers it appropriate to designate the IPS.⁹³

There is a straightforward solution to provide the clarity that Sky requires

The clearest way of achieving this would be for Ofcom to stipulate in the Guidance that the must-offer obligations under the Media Act will be satisfied in the following scenarios:

- a. where a designated platform has not requested the designated IPS be made available via alternative means, the obligations will be satisfied by the PSB making its app available to the designated platform, subject to both parties entering into arrangements that are consistent with the "agreement objectives"; or
- b. where a designated platform has requested the designated IPS also be made available via alternative means, the must-offer obligations will be satisfied by the PSB also making its designated IPS available via such alternative means, subject to both parties entering into arrangements that are consistent with the "agreement objectives".

Unless Ofcom amends the guidance to this effect that native content is categorically subject to the designation of IPS and to the MOMI regime, Sky faces two significant risks. Firstly, the outright refusal of PSBs to supply that content - we refer Ofcom again to the BBC's position of forcing Sky to remove native VoD from Sky Q, and the broader difficulty that we have had in negotiating a new deal with the BBC. [REDACTED]. Again, we fundamentally challenge a notion that this scenario was envisaged, or desired, by Parliament when it passed the Media Act and specifically the confirmation in the explanatory notes to the Media Act that:

*"The agreement objective at 362AM(1)(b)) would be compatible with [zero net fees], i.e. there is no requirement for payments or transfers of value to pass between the provider of a designated IPS or RTSS (in either direction) for the supply and carriage of a designated IPS. However there may be instances where payments or transfers of value are deemed an appropriate arrangement between parties - for example, to cover costs reasonably incurred by the provider of the designated IPS to accommodate bespoke technical requirements of the provider of the relevant RTSS."*⁹⁴

[REDACTED],⁹⁵ [REDACTED]:

Figure 14: [REDACTED].

[REDACTED].

⁹³ Section 362AA(2) and (3) Communications Act 2003.

⁹⁴ Paragraph 135 of the Explanatory Notes, available at: https://www.legislation.gov.uk/ukpga/2024/15/pdfs/ukpgaen_20240015_en.pdf

⁹⁵ [REDACTED]

Failure to provide clarification on these matters will inevitably result in a high volume of referrals to Ofcom

We have urged Ofcom to set out a clear statement in the Guidance to ensure that RTSS will continue to have access to native content, both linear and VoD following the IPS designation.

Without any such clarity being forthcoming, the inevitable outcome will be Ofcom being forced to adjudicate over a series of complaints, every time Sky undertakes a renewal of our arrangements with an individual PSB, as well as likely between other platform providers and PSBs. Whilst Ofcom may have envisaged having to intervene to resolve issues between a PSB and a global platform given the backdrop to the introduction of the new regime, we consider it unlikely that it wishes to be required to intervene to resolve a series of disputes between a long established, highly trusted and innovative UK platform and the PSBs. Failure to make a clear statement on native delivery would unfortunately make this scenario much more likely.

Ofcom's accessibility proposals are disproportionate

- Sky broadly supports Ofcom's proposals as evidenced by the wide range of accessibility features already available on Sky Q, Sky Glass and Sky Stream
- However, it is significantly more challenging to implement accessibility features on older RTSS like Sky Q. [36].
- Ofcom should exempt older platforms like Sky Q from the full requirements of the Code and/or build greater flexibility into the code to enable RTSS providers to focus introduction of accessibility features on areas of their UI that would be of most benefit for end users
- Ofcom should clarify that the new accessibility obligations for RTSS apply only to the platform's native user interface, and do not require RTSS providers to enable or support these accessibility features within third-party apps

Ofcom is right to place accessibility requirements on newer RTSS but should not hold older RTSS to the same accessibility standard

Sky strongly agrees with the policy intent that viewers with accessibility needs should be able to make use of mainstream platforms. This is why Sky has already implemented all the accessibility features proposed under Ofcom's draft code on Sky Glass and Sky Stream, which launched in 2022. This is also why Sky has not only implemented all the accessibility features on the Sky Q EPG required under the Ofcom EPG Code (including on older Sky Q box models that are not subject to these requirements) but has also rolled certain of these features to additional areas of the Sky Q user interface beyond the regulated EPG.

However, we are deeply concerned that Ofcom is proposing to apply blanket accessibility requirements to all RTSS, regardless of when they launched on the market and whether they remain in manufacture and in support. Implementing the full suite of accessibility features on older RTSS will be significantly more difficult and disproportionately costly than for newer platforms, owing to their age and technical architecture.

As noted above in the context of the recommended actions on prominence, section 362AP(6) of the Media Act expressly enables Ofcom to set different actions for different descriptions of RTSS. As with prominence requirements, Ofcom has failed to use this power appropriately. In line with the approach taken under both the Ofcom EPG Code and the European Accessibility Act, we consider it appropriate for Ofcom to distinguish between [36]. This differentiation is essential to avoid disproportionate burdens.

It is significantly more difficult to implement accessibility features on older RTSS like Sky Q and Ofcom should create a separate description accordingly

Newer platforms can more readily deliver modern accessibility features, whereas older ones cannot achieve parity without disproportionate investment and disruption. Recognising these differences is essential to ensuring that regulatory expectations remain both practicable and proportionate across different platforms.

Sky operates a range of platforms, some current and actively developed; [REDACTED]. Our support model reflects each platform's technical capabilities and life-cycle status. [REDACTED].

Each generation of Sky set top box is based on electronics comprising processors, storage and specialist reception systems. During the lifetime of the set top box, the Sky roadmap seeks to exploit the physical capabilities of that device to deliver new features whilst maintaining performance. As the product reaches maturity the service is fully exploiting the underlying platform. Introduction of new features to products at the end of their lifecycle becomes more complex and expensive as resources are saturated and incremental change may involve compromise to existing facilities. Additionally, the surrounding platforms that power legacy services are also subject to similar generational considerations. An almost exact parallel can be drawn with other consumer electronics devices like smartphones where the latest software is only compatible with newer devices. [REDACTED].

As noted above, all the accessibility features proposed in the draft Code have already been implemented on Sky Glass and Sky Stream, which launched in 2022.

[REDACTED].

It will be particularly challenging to implement text-to-speech across the entire Sky Q user interface

Ofcom proposes that RTSS support the following accessibility features:

- a. Text to Speech: where visual information is needed to make use of the RTSS, including but not limited to for navigating the user interface and for perceiving information about assistance for disabled people, the provider should ensure that users are able to access this information in a non-visual format, for example through a function that renders text / symbols as audio;
- b. Magnification: the provider should ensure that users are able to enlarge the size of any elements of the user interface necessary to make use of the RTSS, including images and text, for example through a 'magnification' or 'zoom' function; and
- c. High contrast: users should be able to adapt the user interface in order better to distinguish visual elements from their surroundings, where these elements are necessary to use the RTSS.

While Sky Q already supports high contrast functionality across the entire user interface, implementation of magnification and text to speech functionality across the entire Sky Q user interface would require additional development work.

We have assessed the extent of the work required and have provisionally concluded that:

- a. The work to extend the current EPG magnification functionality to the rest of the user interface is not significant and we anticipate delivery of this feature as part of our Sky Q engineering roadmap for 2027 without incurring significant cost; and

- b. The work to extend the current EPG text-to-speech functionality to the rest of the user interface **is significant** [8<]

Implementing text-to-speech on Sky Q presents significant technical and operational challenges. As an older, more complex platform, Sky Q was not originally designed with the architecture needed to support modern accessibility functionalities, making any retrofit disproportionately difficult and expensive. Retrofitting text-to-speech, across the entire user interface would require substantial reengineering of core systems, including areas that are otherwise stable and nearing end of life. Sky Q is also made up of many specific templates, particularly in deeper product setting menus, meaning that supporting these would involve extensive design and engineering work that would need to be delivered iteratively and carefully sequenced around other roadmap commitments across the Sky Group. These challenges are not simply incremental; they are structural. The underlying capability for text-to-speech was retro-fitted into the Sky Q platform when we implemented text-to-speech in 2020/2021. Scaling this to the wider user interface - and on even older operating platform than we were dealing with in 2021 - would not be fit-for-purpose. Migration to the newer text-to-speech platform used by Sky Glass/Stream would instead be required. This means that the same requirement that is relatively straightforward and low cost on a modern platform such as Sky Glass becomes materially more difficult and expensive on Sky Q.

We have, however, implemented text-to-speech on additional select areas of the wider Sky Q user interface such as navigation menus, the home page of the UI, accessibility settings, show pages, voice search results, on-screen notifications and on-screen PIN. Sky implemented these areas to ensure customers wishing to use text-to-speech could follow all main discovery journeys and settings in the native UI.

However, it is unlikely that Sky would elect to introduce text-to-speech across the entire Sky Q user interface given the technical difficulties described above, combined with the dwindling Sky Q customer base and the availability of newer Sky platforms for customers to migrate to that support the full suite of accessibility features.

A requirement to implement all accessibility features across the entire user interface would therefore be entirely disproportionate.

Ofcom's impact assessment is inadequate

In relation to text-to-speech, Ofcom's impact assessment concludes that: *"Given the presence of similar features on many current TSS, costs for RTSS providers are likely to be small (if any) in many cases. We have provisionally assessed the likely costs to be proportionate".*⁹⁶

Ofcom's impact assessment fails to account properly for the substantial cost differentials between implementing accessibility features on older RTSS like Sky Q versus on newer platforms such as Sky Glass/Stream. As part of a formal information request to which Sky responded on 19 September 2025, Ofcom

⁹⁶ Paragraph 4.45 of the Consultation.

specifically requested data on historical costs of implementing accessibility features on both Sky Q and SOIP but did not ask for estimated costs for meeting any future accessibility requirements. The underlying platform supporting Sky Q was five years old at the point of implementing text-to-speech in 2021, and a further five years has passed since its implementation. As such, implementing further changes creates technical risk in updating legacy code which could lead to instability on the platform. Ofcom has therefore proceeded on an incorrect assumption that the costs for extending text-to-speech functionality across the wider UI are broadly equivalent to historical costs, when in fact they will be significantly higher as outlined above. Ofcom's assessment understates the true scale of the cost and complexity associated with retrofitting older platforms and therefore does not provide a reliable or proportionate basis for evaluating the proposed obligations.

Ofcom should follow model set by EPG Code and European Accessibility Act, which exempt older platforms from accessibility requirements

Ofcom should follow the established regulatory model adopted in both its own EPG Code and the European Accessibility Act ('EAA'), each of which take account of older platforms ability to comply with the full suite of accessibility obligations.

When Ofcom introduced new accessibility requirements (including text-to-speech) under the EPG Code in 2018, EPGs made available on models of TV receivers beginning development before 27 July 2018 were (and remain) exempt.⁹⁷

Departing from this approach would therefore be inconsistent with Ofcom's own past practice. Indeed, Ofcom's statement accompanying the EPG Code set out clearly why the full requirements were not applied uniformly across all platforms, recognising and emphasising that older devices could not reasonably support equivalent functionality:

*"... the new practice that we have decided to set out in the EPG Code is mainly limited to new TV receivers so would not require any material changes to equipment already designed and in the market. This allows EPG providers and their manufacturing partners the opportunity to integrate accessibility features **during the design and testing phases, thereby limiting the potential burden on them**".⁹⁸ [Emphasis added]*

The EAA reflects the same logic at EU level, incorporating carve-outs for older platforms which are no longer being placed on the market, and the platforms operating across those products, to avoid imposing excessive and disproportionate burdens on providers and recognising that mandating uniform compliance across all devices would be both impracticable and counter-productive where time and resource would be better utilised in

⁹⁷ Paragraph 19 of the Ofcom Code of Practice on Electronic Programme Guides dated 31 July 2023 (<https://www.ofcom.org.uk/siteassets/resources/documents/consultations/uncategorised/9660-epg/associated-documents/secondary-documents/code-practice-epg.pdf?v=324752>)

⁹⁸ Ofcom EPG Accessibility Statement dated 27 June 2018, Paragraph A2.84 (b) (<https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-2-6-weeks/108396-epg-accessibility/associated-documents/statement-epg-accessibility.pdf?v=323298>).

updating new products. Whilst Article 32 EEA provides that the carve-outs only apply for an initial five-year transitional period, this does not alter the core principle under Recital 64 that the requirements should not impose a disproportionate burden on the economic operator. Articles 2 and 32(1) and Recital 64 of the EAA state:

*“This Directive applies to the following products **placed on the market after 28 June 2025**:...d) consumer terminal equipment with interactive computing capability, used for accessing audiovisual media services.”⁹⁹*

“Without prejudice to paragraph 2 of this Article, Member States shall provide for a transitional period ending on 28 June 2030 during which service providers may continue to provide their services using products which were lawfully used by them to provide similar services before that date.”¹⁰⁰

“For reasons of proportionality, accessibility requirements should only apply to the extent that they do not impose a disproportionate burden on the economic operator concerned, or to the extent that they do not require a significant change in the products and services which would result in their fundamental alteration in the light of this Directive.”¹⁰¹

Furthermore, as noted above, section 362AP(6) of the Media Act makes clear that a Code of Practice issued by Ofcom in respect of prominence and accessibility requirements may recommend different actions for different descriptions of RTSS and for different descriptions of internet programme services. This wording indicates that Parliament did not intend a single, uniform code to apply identically to all RTSS, regardless of their technical characteristics, user base, or lifecycle stage. Instead, Ofcom is thereby empowered to tailor its recommended actions to the distinct types of services within the regime. Given this explicit flexibility in the Media Act, Ofcom should consider developing differentiated obligations within the Code to reflect the practical differences between [X]. Doing so would align the Code with the legislative framework and avoid imposing uniform requirements that would be disproportionate and impracticable for certain RTSS, including older or legacy platforms. The European Commission allowed a five-year period to consider what requirements should apply to older platforms and so it is appropriate for Ofcom to consider the circumstances of each category of RTSS for the accessibility features.

In the alternative Ofcom should provide greater flexibility for implementation of accessibility features on older RTSS

If Ofcom is not minded to provide a full exemption for older or legacy RTSS, we propose an alternative approach grounded in existing regulatory precedent. Ofcom could introduce a “reasonable endeavours” requirement for such platforms, mirroring the EPG Code’s formulation that providers need only implement accessibility features such as text-to-speech, high contrast and magnification “so far as practicable”. This would provide flexibility for providers of older RTSS while still ensuring meaningful progress in the provision of these

⁹⁹ Article 2 of the European Accessibility Act (Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0882>) (“the EAA”).

¹⁰⁰ Article 32(1) of the EAA.

¹⁰¹ Recital 64 of the EAA.

accessibility features. As noted by Ofcom in its statement accompanying the revised EPG Code:

“We are introducing a new practice for EPG licensees to use ‘reasonable endeavours to secure so far as practicable’ the adoption of the new accessibility features... This should result in the accessibility features being made available to consumers, but prevent any unintended distortions arising in the rare instances where implementing the proposed features would not be practicable. This revised approach would also give EPG licensees a degree of flexibility in developing the features in the most effective way, and would allow us to take account of the fact that, for some EPG providers, implementation may be more complex or involve a lengthier process than for other EPG providers.”¹⁰²

Ofcom should also clarify that text-to-speech, magnification and high contrast functionality is **not required across the entire UI** where this would be disproportionate, technically impracticable, or of limited incremental benefit to users, but may be focused on the areas of the interface that are the most valuable to disabled users. It should be for RTSS providers to determine what these areas are based on their specific RTSS, though guidance from Ofcom in this regard would be welcome (for example, to clarify that the priority should be enabling users to navigate content using text-to-speech, versus implementing text-to-speech to enable users to navigate deep into operational settings menus).

We note that in its Consultation Document, Ofcom emphasises that the core objective of the accessibility duty is to ensure that disabled users can navigate the interface to find and access available IPS and programmes, rather than to mandate accessibility functionality across all menus or screens.¹⁰³ Concentrating accessibility functionality on the most used content discovery and navigation areas therefore provides the greatest benefit to disabled users, while avoiding unnecessary implementation burdens. The wording of the final Code should therefore be updated to reflect this.

Ofcom should make clear that the new accessibility requirements for RTSS do not extend to supporting these accessibility features on Apps

In respect of apps, Ofcom confirmed on a call on 4 February 2026 that the obligations on RTSS to implement text-to-speech, magnification and high contrast apply where the user is navigating the native UI but not where the user is navigating individual IPS that are delivered via an app.

While we welcome this clarification, Ofcom must also make this clear in the final code and accompanying statement.

On our 4 February call, Ofcom also noted the requirement under paragraph B2.4 of the Code for RTSS providers to take ‘reasonable steps’ to secure that users

¹⁰² Ofcom EPG Accessibility Statement dated 27 June 2018, Paragraph A2.84 (e) (<https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-2-6-weeks/108396-epg-accessibility/associated-documents/statement-epg-accessibility.pdf?v=323298>).

¹⁰³ Paragraph 4.24 of the Consultation.

can make use of assistance for disabled people included on programmes within DIPS. Ofcom suggested on our call that this requirement was primarily intended to cover subtitles and similar features, but B2.4 is drafted more broadly – explicitly stating that it applies to assistance *‘including but not limited to subtitles, audio description and British Sign Language’*. This creates ambiguity as to whether RTSS providers would be expected to ensure that features such as text-to-speech can also function within third party apps, which would be entirely unreasonable from both a technical and operational perspective. [X]. We therefore request that Ofcom provide an explicit statement confirming that RTSS providers (or at the very least RTSS no longer in manufacture) are *not* required to make text-to-speech, magnification, high contrast settings, or other RTSS-native accessibility features work within apps, including DIPS apps.

This clarification is particularly important [X]. It would be more reasonable and proportionate for such requirements to apply only to newer RTSS that have been designed with the capability to accommodate accessibility features within DIPS.

Additional concerns relating to Ofcom's prominence proposals

- [REDACTED].
- Ofcom should clarify that apps menus are not themselves required to be 'immediately visible' within UIs
- Ofcom should clarify that RTSS are not required to include or give prominence to DIPS apps and PSB channels within apps menus and live TV areas dedicated to specific genres, where the DIPS app or PSB channel does not include sufficient genre-specific content to merit inclusion/prominence in that apps menu or live TV area.
- The Code should be amended to enable greater flexibility for RTSS and DIPS to agree alternative attribution e.g. attributing the PSB channel rather than the PSB DIPS
- We broadly agree with Ofcom's proposed principles for Search, which align with Sky's approach to search results

Proposals for [REDACTED]

Applicability to Sky Q and Sky Glass/Stream

The Sky Q EPG is a 'Regulated EPG' and therefore not in scope of the prominence proposals for listed (i.e. PSB) channels. The Sky Glass/Stream EPG may also shortly be designated by government as a 'Regulated EPG' and so will also fall outside scope of the new prominence proposals. [REDACTED].

[REDACTED].

Ofcom's proposals [REDACTED]

[REDACTED].¹⁰⁴

[REDACTED],¹⁰⁵ [REDACTED].¹⁰⁶ [REDACTED].

[REDACTED].

[REDACTED].¹⁰⁷

[REDACTED].

¹⁰⁴ Paragraph 3.200 of the Consultation.
¹⁰⁵ Section 204A(2)(b) Communications Act 2003.
¹⁰⁶ Section 204A(2)(a) Communications Act 2003.
¹⁰⁷ [REDACTED].

Figure 15: [REDACTED]

[REDACTED]

[REDACTED].

Ofcom’s proposals will adversely impact the user experience

[REDACTED].

[REDACTED].

Ofcom’s proposals will adversely impact other broadcasters

[REDACTED].

[REDACTED].

[REDACTED].

[REDACTED].

Ofcom has failed to reflect these considerations in its impact assessment

[REDACTED].

Alternative approach proposed by Sky

[REDACTED].

[REDACTED].

[REDACTED].

[REDACTED].¹⁰⁸

[REDACTED].¹⁰⁹

[REDACTED].

[REDACTED].

[REDACTED].

Positioning of apps menus

Our understanding on reading the draft Code, Ofcom’s consultation document and following discussion with Ofcom, is that while the specified DIPS apps must be immediately visible within apps menus without the user taking any further

¹⁰⁸ Action A1.4(f) of the Code.

¹⁰⁹ Paragraph 3.55 of the Consultation.

action (such a scrolling) there is no requirement for the apps menus themselves to be immediately visible within user interfaces.

For example, on Sky Q the apps rail on the homepage is not immediately visible 'above the fold' and the user needs to scroll down the homepage in order to access it. A requirement to surface app menus more prominently on our user interfaces would significantly undermine our ability to serve customers content led personalisation or prioritise valued aggregation features including 'Continue watching', 'Recordings', and TV Guide favourites for example, impacting perceived subscription value.

Ofcom should confirm in its statement that accompanies the final code that there is no requirement for apps menus themselves to be immediately visible within user interfaces.

Inclusion of DIPS apps in genre-specific apps menus

The draft code requires that where a DIPS is included in the RTSS as an app, the RTSS provider should include that app in each of the apps menus¹¹⁰ and give the app such prominence in accordance with the recommendations of the code. "Apps menu" is defined in the Code as "*an area of the user interface of a regulated television selection service where users may directly access multiple internet programme services that are delivered via an app. This may take the form of, among other things, a single row/rail of apps, or a grid/multiple rows of apps*".¹¹¹

This proposal is appropriate for main apps areas such as Sky's apps menu and apps rail on the homepage (subject to Sky's concerns relating to auto-sort, described above). However, it would be unreasonable and contrary to viewer interests to require RTSS to include PSB apps within apps menus dedicated to particular genres, if the PSB apps do not contain relevant content for that genre. Similarly, it would be unreasonable and contrary to viewers interests to require RTSS to give prominence to DIPS apps in apps menus dedicated to specific content genres/types, where the DIPS apps only include a small amount of content relevant to that genre when compared with other apps.

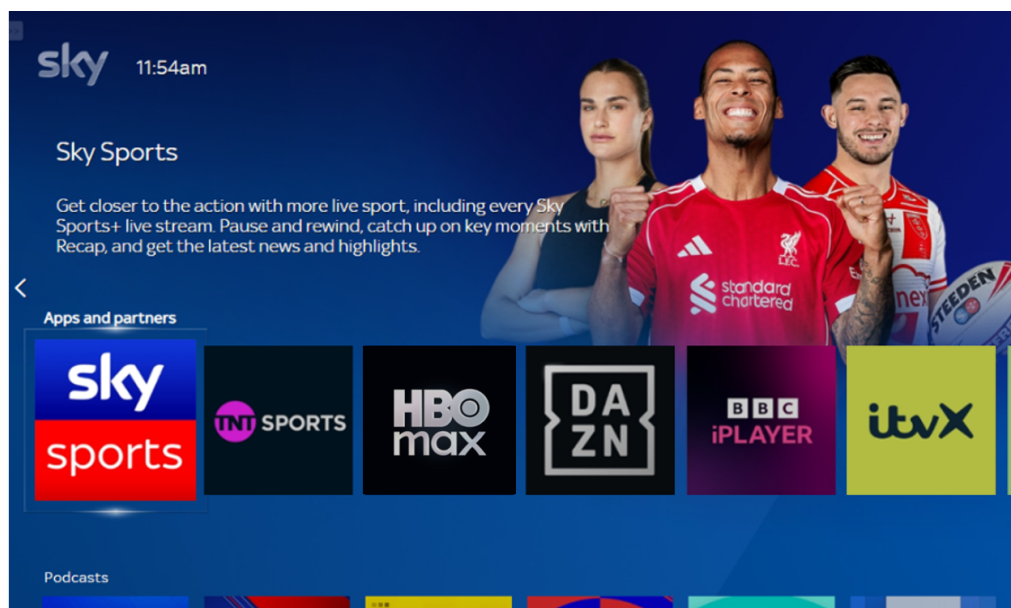
For example, on Sky Q and Sky Glass/Stream, the sports section includes an apps rail dedicated to apps that include sports content. Within this rail, Sky currently pins the Sky Sports, TNT Sports, HBO Max apps, DAZN and Premier Sports¹¹² in the first positions because they are the most relevant sports providers on the service. BBC iPlayer, ITVX, Channel 4 and Channel 5 apps are placed in the next four positions on a cold start (on the basis that they all include at least some sports content) followed by other third-party apps. However, these apps re-order based on usage, in the same way as the apps rail on the homepage. It would be unreasonable to prevent Sky from listing additional dedicated sports apps (in particular those to which viewers have subscribed) ahead of the PSB apps within the dedicated sport rail - whether via auto-sort or by pinning additional non-PSB apps in the top positions.

¹¹⁰ Action A1.2 of the Code.

¹¹¹ Definitions section of the Code.

¹¹² Premier Sports on Sky Glass/Stream only.

Figure 16: Sky Q screenshot illustrating apps order in apps rail within the dedicated Sports section of the user interface



Ofcom should therefore amend the Code to make clear that, where apps menus are dedicated to specific genres, the RTSS is only required to:

- a. include a DIPS app in that apps menu where the DIPS app contains content relevant to that genre; and
- b. afford PSB prominence in that apps menu where the PSB app includes at least as much relevant content when compared with other apps included within that apps menu.

Proposals for Live TV areas dedicated to specific content genres and categories

Ofcom proposes that RTSS include the public service channels in specified positions within each live TV area.¹¹³ Live TV area is defined as “an area of the user interface of a regulated television selection service where users may access linear television channels”.¹¹⁴

While this proposal is appropriate for primary live TV areas - such as Sky’s main electronic programme guides (EPGs) on Sky Q and Sky Glass/Stream - it does not sufficiently account for the existence of additional live TV areas that are designed around specific content genres or viewing contexts. In such cases, requiring PSB content/channels to be listed and applying a fixed PSB ordering requirement could undermine the utility and purpose of those areas for viewers.

¹¹³ Action A4.3-A4.4 of the Code

¹¹⁴ Definitions section of the Code.

By way of example, the Sky Q and Sky Glass/Stream user interfaces include a “Live sport this week” rail accessed via the dedicated Sports section. This rail presents individual live sports events that are currently airing or scheduled to air, ordered chronologically by transmission time. Content is manually curated by Sky, with “on now” events displayed first, followed by upcoming events up to seven days ahead. All relevant live sports content broadcast on PSB channels is included where applicable.

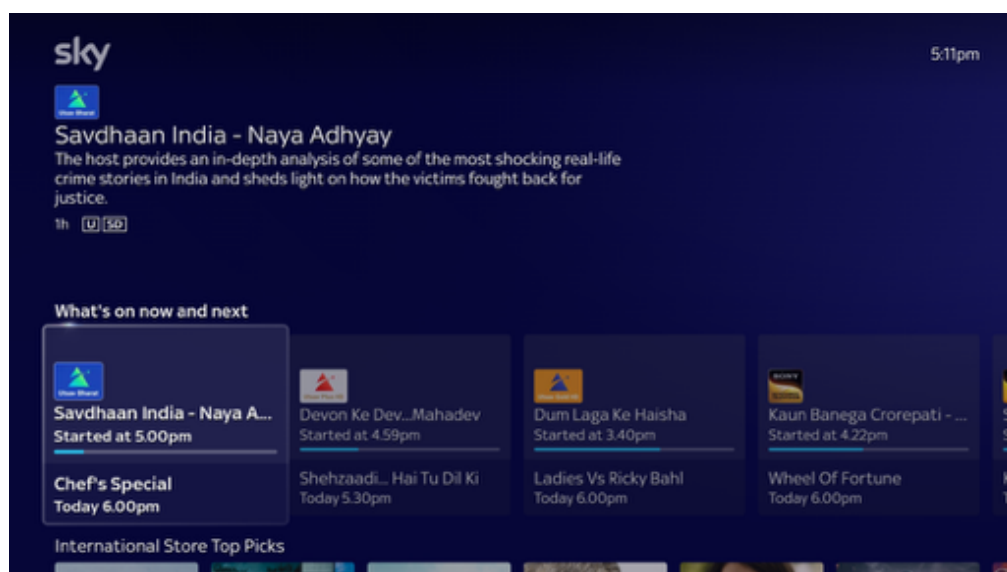
Figure 17: Sky Glass screenshot illustrating the “Live sport this week” rail within the Sports section of the user interface



It would not be meaningful or helpful for viewers for PSB channels to be surfaced in a fixed or specified channel order within this rail, as the rail is not channel based and PSB channels may not be broadcasting relevant sports content at the relevant time, or at all. Imposing a channel level prominence requirement in this context would disrupt the chronological ordering of live events and diminish the effectiveness of the user experience.

Similarly, it would be unreasonable and contrary to viewer interests and expectations to require RTSS to list, and give prominence to, PSB channels within other live TV areas that are dedicated to specific content genres or types where a PSB channel does not offer content relevant to the genre or inclusion criteria, or have sufficient content. Examples of such areas include Audio & Music and International content.

Figure 18: Sky Glass screenshot illustrating the “What’s on now and next” rail within the International section, navigated to via the core Category rail on the homepage



Ofcom should therefore amend the Code to clarify that, where a live TV area is dedicated to a specific content genre or type, RTSS are only required to include PSB channels where the channel contains content relevant to that genre and meets the applicable criteria for inclusion. In cases where a live TV area lists live content from linear channels based on individual events and in chronological order of transmission - such as the ‘Live Sports This Week’ rail - the Code should make clear that there is no requirement to give prominence to PSB content where this would disrupt the chronological order.

Attribution

Ofcom proposes that wherever a public service programme is presented on the RTSS, the provider should clearly indicate to users in which DIPS the public service programme is included.¹¹⁵

While Sky agrees that it is important to provide appropriate attribution for PSB content, it may not in all circumstances be appropriate for that attribution to refer to the DIPS. [X].

¹¹⁵ Action A5.2 of the Code.

Figure 19: Sky Q screenshot showing general BBC attribution, using the BBC and ITV3 logos



Figure 20: Sky Q screenshot showing BBC iPlayer and ITVX app attribution



The code should therefore be amended to allow PSBs and RTSS providers flexibility to agree alternative approaches to indicating in which DIPS the programme is included, while still making clear to users which PSB is the programme provider.

Proposals for Search

Presentation of search results

Ofcom proposes in its draft Code that:

- a. Where one or more public service programmes are the most relevant search results, ensure that they are given greater degree of prominence in the search results than other programmes;
- b. Where public service and non-public service programmes are similarly relevant results, they should be given a similar degree of prominence;
- c. When determining relevance platforms may consider user behaviour;
- d. The degree of prominence should be determined in terms of the following factors:
 - o The number of programmes presented in search results
 - o The position in which programmes are presented
 - o The way in which programmes are presented
 - o Any other relevant factor
- e. Users should be able easily to access public service programmes from the search results in which those public service programmes are presented.¹¹⁶

Ofcom's Consultation Documents clarifies how it expects "similar prominence" to operate on RTSS:

"If a list of search results contained a similar amount of public service and non-public service content, with both appearing in similarly prominent positions overall and presented in a comparable manner, this would generally indicate that they were receiving similar prominence in line with recommended action A3.3. For instance, when a user searches for a "wildlife documentary", it might be the case that a range of both public service and non-public service content is similarly relevant. In that case, we would expect both to appear in search results, and both to receive similar levels of prominence, reflected in the number of each type of programme presented in the results, their positions on screen and the way in which they are presented".¹¹⁷

Ofcom further clarifies that:

"We are not proposing to prescribe the approach that RTSS providers should take to determining the relevance of responses: it would be for RTSS providers to decide how best to determine relevance, given the information and systems they have in place. Action A3.4 makes clear, however, that RTSS providers may take into account information about the user's past behaviour. For example, if a user is known to frequently watch a particular programme, we consider it would be reasonable for the RTSS provider to assign greater relevance to that programme in response to that user's searches, compared to another user who is not known to have watched the same programme".¹¹⁸

¹¹⁶ Action A3.1-A3.6 of the Code.

¹¹⁷ Paragraph 3.153 of the Consultation

¹¹⁸ Paragraph 3.152 of the Consultation.

We broadly agree with these principles, which align with Sky's approach to search results. [REDACTED]. We have set out below an overview of Sky's approach to displaying search on its RTSS, which has been carefully designed in order to help viewers find the content they want to watch and which in our view is consistent with the principles set out in Ofcom's draft code.

As explained further below, redesigning the search results pages and showpages would require substantial re-engineering across multiple layers of the platform.

Context

Sky's approach to search has evolved in response to fundamental and ongoing changes in the television ecosystem. Historically, satellite television discovery was largely channel-based, reflecting stable schedules, fixed brand attribution, and a predominantly linear viewing model. The growth of on-demand viewing, direct-to-consumer online services, and content distribution across multiple technical platforms has significantly changed how content is branded, made available, and discovered by viewers. Content is now more commonly associated with individual programmes, series, franchises, or talent, rather than a single channel, and availability can vary dynamically by service, subscription, and rights window.

In this environment, Sky's role as an aggregator requires search to operate across channels, VoD content, apps, and services, surfacing results based on customer intent rather than fixed channel hierarchies. Search on Sky RTSS is therefore designed to return and rank results according to relevance to the user's query, informed by a range of industry-standard criteria, including user behaviour, and is not commercially influenced.

This approach aligns with Ofcom's proposed framework, which recognises that relevance should be determined by RTSS providers based on their systems and available information, and that public service and non-public service programmes should receive prominence proportionate to their relevance.

As the content landscape continues to evolve, Sky will continue to mature its search capability to support ease of discovery, deliver consumer benefit, and provide a coherent experience across linear and on-demand content within a single aggregated interface

Search results

When a viewer enters a search term, the search functionality will retrieve and rank search results based on relevance. [REDACTED].

[REDACTED].

[REDACTED].

Figure 21: Sky Q screenshot illustrating text search results

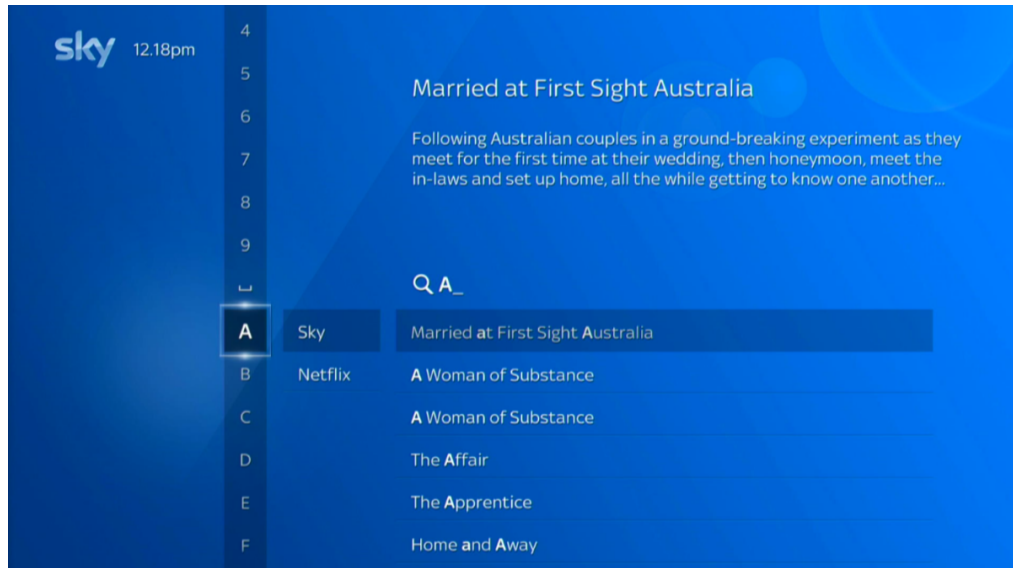
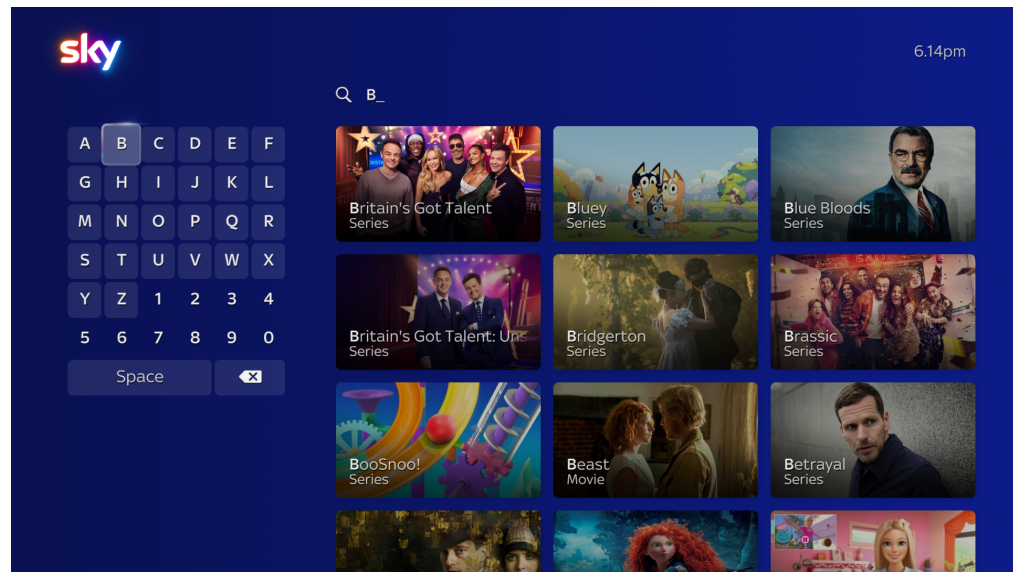


Figure 22: Sky Glass screenshot illustrating text search results

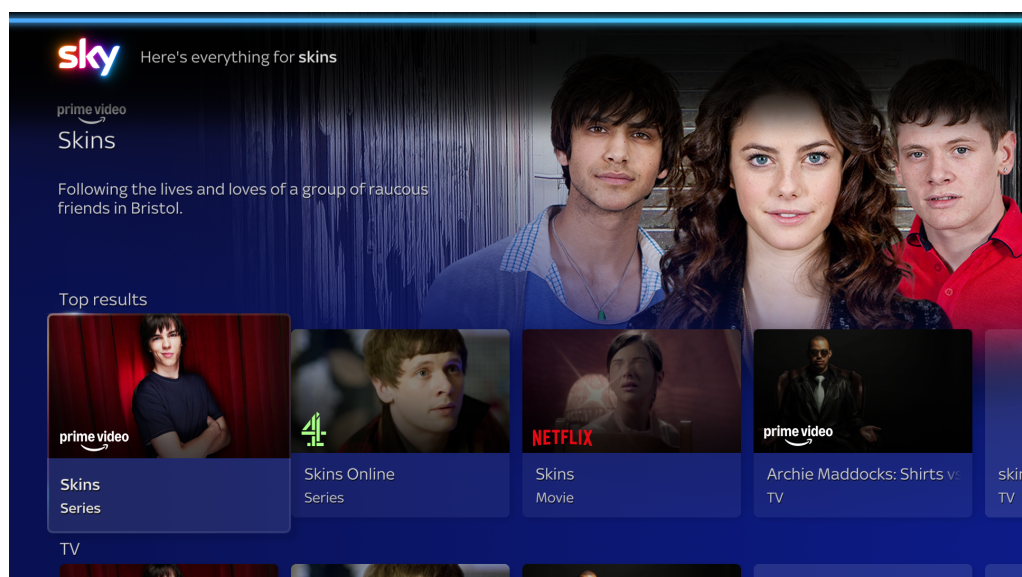


For voice search results on Sky Q and Sky Glass/Stream, provider logos are shown in search results when (i) a program is in focus and (ii) on each individual program tile when the page is rendered, as shown in Figures 23 and 24 below.

Figure 23: Sky Q screenshot illustrating voice search results page



Figure 24: Sky Glass screenshot illustrating voice search results page



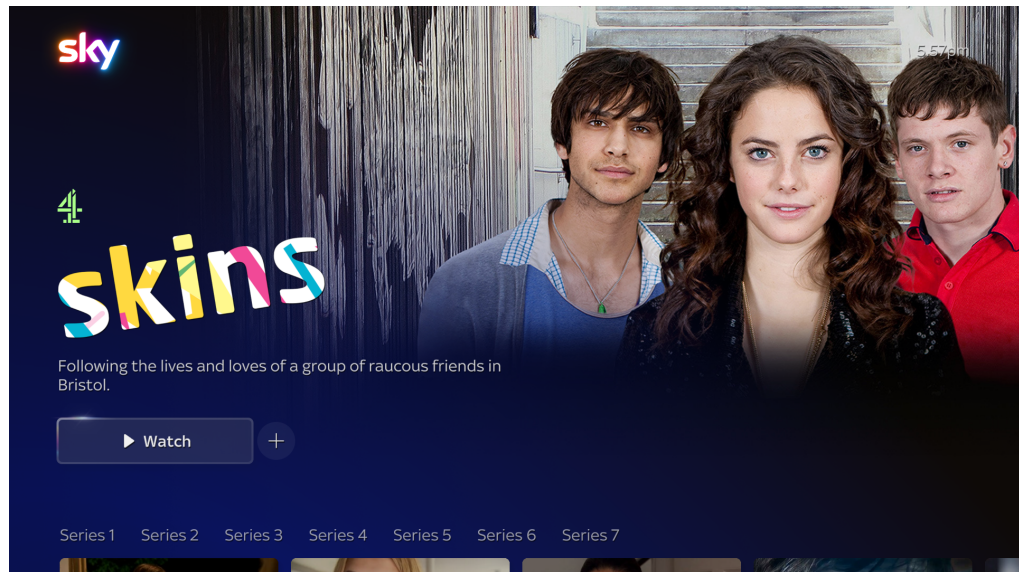
Currently a single provider logo is shown on each title result surfaced even where the programme is available from multiple providers. [8]. As per the context statement above, we continue to work to improve how we surface the most useful attribution for customers across our product experience, including on the multiple search results page as per screenshot above.

Once a viewer selects a single programme they are taken to a dedicated showpage which outlines availability of the show from all providers of that programme (see section on showpages below).

Follow-on showpages

When a user selects a title from the search results, they are taken to a showpage, as shown at Figure 25 below.

Figure 25: Sky Glass screenshot illustrating voice search results page

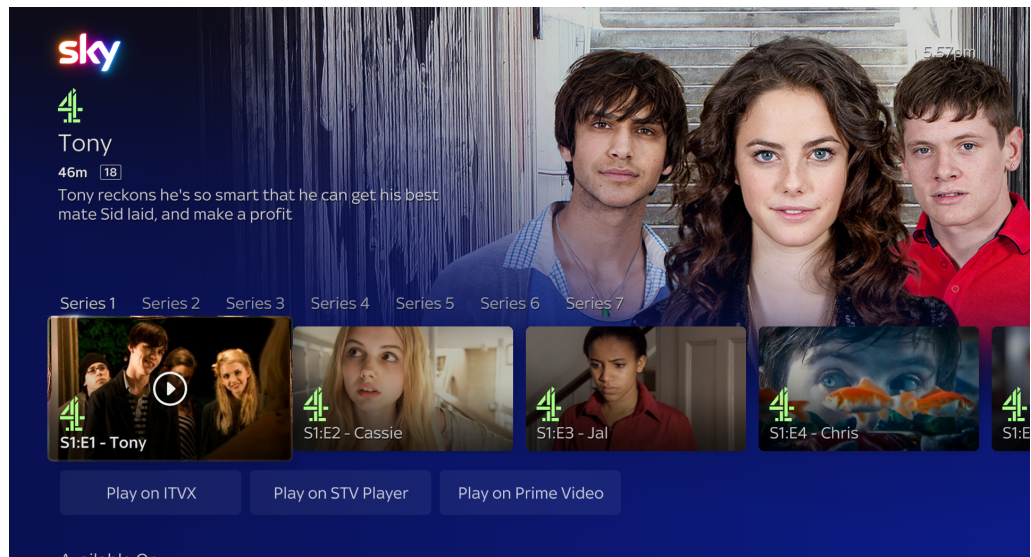


Showpages present all available viewing types (e.g. on demand, linear) and provides the user could choose to watch the programme selected. [X].

Because of this different attribution may appear in the top section of the showpage compared to the voice search results, as shown above. [X]. If the end-user has not watched the show before, a series level synopsis is shown.

[X]. Where the programme is also available from alternative providers, this is shown with each episode when in focus as per Figure 26 below.

Figure 26: Sky Glass screenshot illustrating alternative providers



Currently on showpages (and in search results), one provider features more prominently than another (based on relevance); the more prominent provider may or may not be a PSB. This will depend on the relevancy for the particular search term and the household. Accordingly, PSB content is not disadvantaged by Sky's approach.

Our search capability is based upon the principle of delivering to the best interests of viewers, connecting them quickly to content they want to watch, including content to which they have subscribed. [X].

Searches based on broad search terms

In most cases, where a user undertakes a voice search using broad search terms such as "wildlife documentary" or "romantic drama" [X]. Figures 27 and 28 below provide examples of search results pages for these types of broad search term:

Figure 27: Sky Q screenshot illustrating voice search results page for the search term “Business Documentaries”



Figure 28: Sky Glass screenshot illustrating voice search results page for the search term “Thriller TV shows”



[X].

Public service content in languages other than English

While the draft Code itself does not mention any specific requirement for RTSS to enable public service content in languages other than English to be returned within search results, Ofcom’s consultation document states:

*“We would expect RTSS providers to consider how public service content in languages other than English is able to be returned within search results. In particular, in order for Welsh language content to appear in search results, the RTSS would need to be able both to read and interpret the relevant metadata and to interpret the user’s search query. We understand that currently there can be challenges with surfacing Welsh language content on some TSS if Welsh language metadata is not recognised. RTSS providers would therefore need to consider how they can ensure this content receives prominence within search results”.*¹¹⁹

As explained in Sky’s response to information request in respect of prominence and accessibility of public service broadcasting on television selection services dated 10 July 2025, Welsh content is currently discoverable on Sky Q and Sky Glass/Stream via voice and text search through character matching. For example, if a program is titled “Craith”, a user will be able to discover the programme by text searching for “Craith” or voice searching for the query. However, there are two limitations that decrease the accuracy in finding Welsh content:

- a. A Welsh keyboard is not supported, which means a user will likely have to type out more of a term, or use more clicks, if they are searching for a Welsh programme that has any Welsh-specific diagraphs such as “ch”, “ff”, or “ng”; and
- b. A Welsh ASR model is not used which means the speech recognition will bias towards an English pronunciation. This means that the overall accuracy for the Welsh dialect and language will be lower compared to an English counterpart.

Further, a customer could use the voice search in Welsh to search for recommendations such as “show me a comedy”, however this will not yield accurate results as the Welsh language is not currently available as an automatic speech recognition model which means the transcription accuracy would be low. If a customer said, “Show me movies in Welsh” (speaking the English language) some results will appear dependent on what is available in the content catalogue.

It is unclear from the consultation document (and from subsequent engagement with Ofcom) whether RTSS are expected to develop their search functionality to yield search results for search queries beyond the programme title, where the query is made in a language other than English. Such a requirement would be entirely disproportionate given the burden this would place on RTSS to support this functionality, when balanced against the low number of users who speak Welsh/Gaelic/Irish - and in particular the number of users who speak only these languages and not also English.

Extending search functionality on Sky Q and Sky Glass/Stream to support broader searches (beyond programme titles) in Welsh, Gaelic and Irish would constitute a [X]. The Consultation states:

“RTSS providers may incur incremental costs to ensure that the search function is able to give appropriate prominence to relevant public service

¹¹⁹ Paragraph 3.155 of the Consultation.

*content that is in languages other than English, for example adjusting systems to recognise the relevant metadata and search queries. We do not have evidence of how much this specific change could cost, particularly as RTSS could choose to implement the change differently based on their existing systems”.*¹²⁰

In the absence of a detailed impact assessment, weighing the costs to RTSS and the benefits to users of implementing a full search capability in languages other than English, Ofcom should clarify in its final statement that it is sufficient for search functionality to match programme titles in languages other than English, and that full search capability in other languages is not required.

Implementation timeframe

Ofcom’s proposals, if implemented in their current form, would require significant operational and technical planning, resource and funding. As explained in this response, 12 months is unlikely to be sufficient for all of the measures, and Ofcom should therefore allow a longer period, or introduce greater flexibility to enable RTSS to prioritise appropriately.

In light of the flaws in Ofcom’s proposals, however, Sky suggests that it would be preferable, in the alternative, to consult stakeholders further (formally or informally) on the period for implementation, once it has revised its proposals.

Sky

April 2026

¹²⁰ Paragraph 3.166 of the Consultation.