

The News Media Association's Response to Ofcom's [Consultation](#): "*How Ofcom Regulates the BBC's Impact on Competition*".

1. Background

- 1.1. The News Media Association (the "**NMA**") is the voice of UK national, regional and local news media in all their print and digital forms - a £4 billion sector read by more than 47.3 million adults every month. Our members publish around 900 news media titles - from The Times, The Guardian, The Daily Telegraph and the Daily Mirror to the Manchester Evening News, Kent Messenger, and the Monmouthshire Beacon.
- 1.2. The NMA writes in response to Ofcom's consultation, "*How Ofcom Regulates the BBC's Impact on Competition*", (the "**Consultation**"). As Ofcom is aware, we are extremely disappointed that it reached the conclusion that the BBC's plans to expand further into online local news did not meet the threshold of being 'material' and chose not to halt these damaging plans that also cut funding to respected local radio production. We believe this expansion from the BBC will directly threaten the sustainability of local news titles and risks leading to the loss of jobs for local journalists. We strongly urge the BBC and Ofcom to think again. As the Digital, Culture, Media and Sport Select Committee summarised recently:

"We echo the concern expressed by colleagues across the House and beyond about the BBC's proposed changes to local radio provision... The BBC's plans to direct more resources to its online local news services may risk harming commercial news publishers, whose sustainability is already precarious".¹

- 1.3. We acknowledge the BBC has a Charter commitment to serve local audiences, but the BBC plans to expand into online local news in competition with independent local news titles, rather than in partnership via the Local Democracy Reporting Scheme,² for example. Local news media has a monthly total brand reach of 40 million nationally and is relied upon as a trusted source of independent local news, reaching more than 90 per cent of audiences in many of its local markets. It is important to stress that the sector's challenges are not a result of a decline in audiences but in revenues, coupled with significant cost pressures. Historically speaking, it is not out of turn to say that the BBC could not have picked a worse time to bring unfair competition into the local news market. The BBC proposals regarding local news runs against the Cairncross Report's recommendation for the BBC to "*think more carefully about how its news provision can act as a complement, rather than a substitute, for private news provision.*"³

¹ DCMS Select Committee, "[Sustainability of Local Journalism](#)", 25 January 2023.

² The BBC, "[Local Democracy Reporting Service](#)", accessed 27 January 2023.

³ Pg. 54 Frances Cairncross, "[The Cairncross Review](#)", 12 February 2019.

1.4. We note that Ofcom has sought to rectify several stakeholder concerns around the competition procedures the BBC undertakes, and some of the Consultation’s proposals are commendable – as we set out in this response. Nevertheless, none of these proposals reach the heart of the issue of how Ofcom regulates the BBC, which is that Ofcom is prepared to allow the BBC – one of the world’s most powerful news brands – to aggressively expand in a vulnerable local news market at the expense of independent providers that are already facing considerable challenges. Ofcom appears to lack a true understanding of the local news market, which means it is unable to understand what is actually material in this market. Whereas the Competition and Markets Authority works to help smaller companies enter markets that are dominated by giants, Ofcom seems to be doing the opposite.

2. Response

2.1. **Question One:** *Do you agree with our proposals to: a) place a requirement on the BBC to publicise its planned changes to public services? b) provide further guidance on how the BBC should set out information about its planned changes? If not, please explain which changes, if any, should be made to the guidance and where appropriate, provide relevant evidence supporting your view.*

2.1.1. The NMA joined the voices of several respondents to Ofcom’s 2021 consultation, “*How Ofcom Regulates the BBC*”,⁴ expressing dissatisfaction over the BBC’s engagement with stakeholders when determining whether a proposed change to its public service is material. We are pleased that such opinions were recognised by Ofcom in the Consultation and, in principle, with its subsequent proposals to improve BBC engagement. However, we believe Ofcom’s proposed drafting could provide further clarity to the benefit of the BBC, Ofcom and stakeholders.

2.1.2. We fear that the vague requirement for the BBC to “*publish proposed changes to its public service activities in sufficient detail, and in sufficient time*” – though well intentioned – would be abused by a reluctant BBC that has already expressed that “*further requirements to engage with stakeholders when assessing materiality would add ‘unnecessary delays’*”. Indeed, it is unclear what is ‘sufficient’. As we highlighted in our response to Ofcom’s consultation, “*Modernising the BBC’s Operating Licence*”, the lack of clarity over what is “*adequate*” in the Operating Licence’s requirement on the BBC to provide adequate links from BBC Online to third party material gave way to appallingly low referral rates from the BBC,⁵ also leaving little scope for third parties to hold the BBC accountable. It is with this context that we believe further clarity is necessary and would lead to better outcomes for all. Under Paragraph 4.25 of the Consultation, Ofcom provides helpful drafting explaining what its minimum expectations are. Providing this level of detail when defining “*sufficient time*” and “*sufficient detail*” would be welcomed.

⁴ Ofcom, “[How Ofcom regulates the BBC](#)”, 21 July 2021.

⁵ Using figures provided in Ofcom’s 2019 “[Review of BBC News and Current Affairs](#)”, we calculated that only 0.019% of links on the BBC News website were to UK news publishers. Contrast this to the more than 80% of external hyperlinks from Mail Online and Mirror Online going to broadcasters, newspapers and other online publishers.

- 2.1.3. We are pleased the Consultation recognises stakeholder comments that the BBC uses various means to update stakeholders on its planned changes to its public service – such as through blogs, e-mails and speeches – when updates are outside the timescale for inclusion in the Annual Plan. We agree that important BBC announcements are easy to miss when they come from one of several unpredictable mediums. The Consultation suggests that the BBC could create a dedicated page on its website that is regularly updated to inform stakeholders about proposed changes. This is a helpful solution; it sets out a clear outcome for the BBC to action and a certain destination for stakeholders to visit that Ofcom can equally monitor with ease. Speeches and blogs may cover what the BBC plans to change, but where exactly will they be published? A dedicated page would resolve this issue and would place little burden on the BBC to create and operate. The proposed drafting falls short of making this a requirement, instead stating that the BBC should “*use an alternative, consistent means of communication*”.⁶ A requirement that makes accountability difficult to enforce.
- 2.1.4. We understand that Ofcom wishes the BBC to update stakeholders on its proposed changes to its public services via the BBC Annual Plan wherever possible, and this frequently means that stakeholders must wait for the Annual Plan’s publication to read critical updates, rather than as soon as the BBC has decided on a course of action. Even if it is a matter of weeks until the Annual Plan is published, we see little reason in waiting for its publication to receive updates. By way of context, editors for local publishers cover several jobs, such as HR, finance and policy – they have many competing priorities, and would greatly benefit from as much notice as reasonably possible, particularly if the BBC’s plans threaten the welfare of their business. In this regard, we suggest that Ofcom’s guidance should require the BBC to update stakeholders directly as soon as possible, but it should replicate its updates in the Annual Plan to ensure there is still a one-stop document covering all its proposals. Currently the drafting appears unclear and lacking, setting out that “*when the BBC develops plans outside the normal timescales for inclusion in the annual plan, it should use alternative means of communication*”,⁷ with no indication of what the ‘normal timescale’ is, leaving the door wide open to abuse. Again, a dedicated page which announces proposed changes to the BBC’s public services that is updated as soon as BBC plans are formed is a clear solution and will have more utility than updates coming via the Annual Plan and various other channels.
- 2.1.5. On 1 February 2023, we discussed with Ofcom how a formal and comprehensive response is almost always provided by a public body once it has consulted on its proposals. The response will usually set out in detail the public body’s reasoning, frequently backed by evidence, including key comments from stakeholders, why the public body agrees or disagrees with those views and an indication on next steps. This practice is widespread amongst public bodies because it is an accountable form of meaningful engagement. It lets stakeholders holistically understand how the public body has acted on their collective input, and helps the public understand what their tax money is being used for, and why. It is a notable omission that the BBC does not

⁶ Ofcom, “[How Ofcom Regulates the BBC’s Impact on Competition](#)”, 30 November 2022.

⁷ Ofcom, “[How Ofcom Regulates the BBC’s Impact on Competition](#)”, 30 November 2022.

publish a formal consultation response once it has considered its proposal's impact on competition. It is particularly important that the BBC publicly publishes a response document in cases where it concluded that its competition impact is immaterial. Stakeholders, who were likely at pains to stress that the BBC's plans are material, will need to understand why the BBC came to its decision in detail and be provided with an up-to-date view of what the BBC's plans are after the consultation period. Given that this is a common exercise undertaken by tax funded public bodies, it is not an unreasonable ask for the BBC to do the same.

2.1.6. The consultation response should also be accompanied by a short one-page declaration at the end to, at the very least, declare that the BBC has: (i) considered materiality; (ii) undertaken a public interest test (if applicable); and (iii) if not, why not – akin to how a bill must make a statement of compatibility with the Human Rights Act. This would not be a burdensome task for the BBC, as it is a tick box exercise covering what the BBC would have done already and would go a long way to make the BBC more transparent about its decisions. Regardless of whether a formal consultation response was published, the BBC should publicly publish this one-page declaration once it has concluded its competition assessments in all cases going forward.

2.2. **Question Two:** *Do you agree with our proposals to put in place more guidance about how stakeholders and the BBC should engage during the assessment of materiality by the BBC?*

2.2.1. As we have repeatedly stressed to Ofcom, we know with experience that the onus is on the commercial sector to get in contact with the BBC to start a dialogue on its plans. It took the best part of a year to meet with the BBC on the Across the UK plan, which necessitated the NMA to repeatedly e-mail the BBC to secure it. Therefore, we are pleased that Ofcom has considered stakeholder views and sought to require the BBC to “*proactively seek dialogue with stakeholders*”.⁸ While we have had engagement with the BBC on Across The UK, this has not felt like a consultative process. The BBC has not listened to, or addressed concerns we have raised. Furthermore, the BBC consultation process, unlike in most public organisations, does not result in a formal response from the BBC to answer concerns raised during consultation. A requirement to do so would bring greater transparency to the BBC's decision making.

2.2.2. We are particularly pleased with the proposal to ensure that it is easy for stakeholders to raise concerns with the BBC. We wholeheartedly support Ofcom's suggestion for the BBC to have a dedicated and monitored e-mail inbox that stakeholders can use to contact the BBC and we urge Ofcom to make this a requirement in the guidance. The guidance should set out clear timeframes for responses to e-mails. As we have raised with Ofcom several times, it is unclear where stakeholders can go to level complaints with the BBC, forcing stakeholders to reach out to various BBC contacts with the hope the matter gets progressed. In this way, a dedicated inbox will equally benefit the operation of the BBC. We also agree with Ofcom's drafting that it “*would expect the BBC to explain how it has engaged with stakeholders, and taken account of this*”

⁸ Ofcom, “[How Ofcom Regulates the BBC's Impact on Competition](#)”, 30 November 2022.

engagement, as part of any materiality assessment".⁹ This ensures a degree of accountability, going some way to ensure that the BBC cannot pay lip service to a requirement to engage with stakeholders.

- 2.2.3. The NMA disagrees with the proposal "*Stakeholders should describe specific concerns with the BBC's proposal and justify these concerns with appropriate reasoning and, where possible, evidence*".¹⁰ We do not recognise Ofcom as a regulator of news media and Ofcom should not seek to set out in guidance how news publishers ought to engage with the BBC. The guidance forms part of the BBC's Operating Framework and putting conditions on stakeholders is a form of, albeit unintentional, regulatory creep. The regulatory obligation is on the BBC and that is where it should remain. As set out at Paragraph [2.1.6](#), it is the BBC who should demonstrate and be transparent about its regulatory compliance. Stakeholders will likely engage with the BBC comprehensively and use empirical data where possible without guidance, since it is in their interest. To have this proposal written in guidance is unnecessary and potentially dangerous.
- 2.2.4. We also strongly disagree with Ofcom's proposal that "*The timescales for any dialogue would be set by the BBC and we would not expect dialogue to consist of a lengthy formal process. We do not expect the BBC to delay implementation of a change if stakeholders have not engaged in dialogue where there has been a reasonable opportunity for them to do so*".¹¹ The timescale for dialogue will need to reflect the nature and scale of proposed changes and allow adequate time for individual publishers and organisations like the NMA to gather the required evidence. While we agree that lengthy processes should not be used as a delaying tactic, timeframes must allow for due process. We urge Ofcom to recognise that enshrining in guidance that dialogue should not be a lengthy process will mean that stakeholders will not be able to adequately engage because the BBC will seek to conclude this process as soon as possible, allowing the BBC to not receive adequate levels of scrutiny that could contradict the BBC's intentions, something that is in its benefit.
- 2.3. **Question Three:** *Do you agree with our proposals to include further guidance on what the BBC should include in its public interest test consultation?*
- 2.3.1. We are pleased that Ofcom has recognised that the BBC should provide more detail in the Public Interest Test ("**PIT**") process, in response to stakeholder feedback. The proposed guidance will be beneficial to all parties involved. We feel it could be improved in relation to its proposed requirement to ensure the BBC PIT consultation includes "*a firm indication of the scale of the change*".¹² This should be amended to explicitly include a requirement on the BBC to provide empirical evidence, wherever possible. Furthermore, that evidence must be accompanied by the BBC's demonstration of how it arrived at the figures it provided, to allow stakeholders to scrutinise its data.

⁹ Ofcom, "[How Ofcom Regulates the BBC's Impact on Competition](#)", 30 November 2022.

¹⁰ Ofcom, "[How Ofcom Regulates the BBC's Impact on Competition](#)", 30 November 2022.

¹¹ Ofcom, "[How Ofcom Regulates the BBC's Impact on Competition](#)", 30 November 2022.

¹² Ofcom, "[How Ofcom Regulates the BBC's Impact on Competition](#)", 30 November 2022.

2.3.2. During the materiality process concerning the BBC’s plans to expand further into local news, the BBC provided evidence in attempt to prove that its local news content is unique from commercial providers. To do so, the BBC selected two days in selected areas (Derby and Birmingham and Black Country) and checked its stories against commercial operators that it also chose. In November 2022, the BBC then provided us with figures to purport that the BBC’s content was unique, ranging between 57% to 100% uniqueness in the content of its stories. However, other than the percentage of stories the BBC claimed to be unique, we did not know which stories it thought were, or were not, comparable. On receipt of those statistics in November, we ran the exercise ourselves over two days, but instead we used all the commercial operators in the areas from which the BBC chose to gather evidence. We found that the BBC did not have a unique presence on balance. Furthermore, when a BBC article was comparable to a local news provider’s, we found that the majority of the time the BBC’s article was published after the local news provider’s. Consequently, we evidenced that the BBC did not tend to put out distinctive content, and oftentimes replicated commercial providers’ original content. We have provided the headline figures below but, in the interests of full transparency, we **annex** to this consultation a separate Excel document containing the evidence we gathered undertaking this exercise, including which stories we thought were comparable or not.

Birmingham and Black Country	November 2022 (22 Articles)
Uniqueness % of BBC Articles	36%
In Non-Unique, Articles Published First by Local News	64%

Derby	November 2022 (21 Articles)
Uniqueness % of BBC Articles	23.8%
In Non-Unique, Articles Published First by Local News	75%

2.3.3. If we had taken the BBC’s opaque figures at face value, we would have been misled. It is with this context that we press that it is vital that the BBC should be required to provide evidence that is open to scrutiny whenever possible to substantiate its proposals. We believe that enforcing transparency is a reasonable ask.

2.4. **Question Four:** *Do you agree with our proposals to provide more detail in our guidance about the materiality assessment process?*

2.4.1. In principle, further detail in Ofcom’s guidance about the materiality process is helpful. However, we believe it should be a *requirement* for the BBC to engage with Ofcom when it undertakes a materiality process and concludes for itself that its plans are not material, rather than an *expectation*, as currently drafted. This circumvents the BBC from marking its own homework.

2.5. **Question Five:** *Do you agree with our proposal for additional flexibility for Ofcom to determine whether it is necessary to consult on materiality following a PIT in which the BBC has determined the change is material?*

- 2.5.1. In cases where the BBC has put its proposals forward for the PIT process, and thus agrees that their proposals are material by extension, it is still important that stakeholders are consulted by Ofcom when it undertakes its initial assessment to determine whether the BBC's proposals are material. There will likely be considerations that stakeholders will wish to put forward at the early stage of the assessment that will be useful for Ofcom to consider, which may not have been considered otherwise. Furthermore, although the BBC may concede that their proposals are material, it could likely be the case that its plans are far more damaging than its assessment suggests. Although there will be in all cases a further consultation as part of a BBC Competition Assessment or shorter assessment, having as much detail from stakeholders will be of great value to all parties. Under Ofcom proposals, Ofcom will still undertake its initial assessment on materiality, but may snub out views from stakeholders at this early stage.
- 2.5.2. From meeting with Ofcom, we heard that it does not always have the resources to fully scrutinise a whole market, such as the local news market, in detail. It is, therefore, important that Ofcom consults with stakeholders who do have a comprehensive understanding. We urge Ofcom to develop its understanding of local news, as its decisions to allow the BBC's expansion demonstrates that Ofcom does not fully realise the complexity of local news landscape nor the vulnerability of some independent publishers. For example, though perhaps immaterial to the BBC, a £1 million detriment is significant to local news providers. Furthermore, Ofcom's conclusion on the materiality assessment fails to consider the potential drag effect on publishers' opportunities, future commercial businesses entering this space or the number of users that local publishers may lose over time to the BBC. If Ofcom was to proceed with these proposals, it makes transparency of BBC decision-making all the more important (transparency can be improved with the suggestions made at [Paragraph 2.1.5-6.](#))
- 2.5.3. Additionally, Ofcom's proposed guidance now states that if it does consult on the materiality "*generally we will place a limit of two weeks for third parties to respond*".¹³ For reasons stated earlier in this response, short time limits are detrimental to trade bodies that must coordinate many members and stakeholders that are resource stricken. If Ofcom wishes to take evidence on the BBC's materiality assessment, one could infer it is because Ofcom does not believe that the BBC's proposals are material. It is precisely in these circumstances that stakeholders will want to gather and submit comprehensive evidence. Ofcom's suggested two-week consultation period is insufficient time to allow stakeholders to do so adequately. Particularly if the BBC is not required to be transparent about its decision-making as it reinforces an information asymmetry that creates further obstacles that requires more time for stakeholders to overcome.
- 2.6. **Question Six:** *Do you agree with our proposals to add further guidance on our expectations for the BBC's public value assessment?*

¹³ Ofcom, "[How Ofcom Regulates the BBC's Impact on Competition](#)", 30 November 2022.

- 2.6.1. In principle, further guidance on Ofcom’s expectations for the BBC’s public value assessment is welcome. Though, in practice, Ofcom’s guidance is unlikely to protect competition.
- 2.6.2. Ofcom recognises that non-BBC services also provide public value, and so it “*would expect the BBC to clearly articulate how a proposed change contributes to the distinctiveness of the BBC... and so it is the overall change in public value as a result of the proposal that is relevant for assessing whether any adverse impact on competition is justified*”.¹⁴ Indeed, there is no value to the public in the BBC killing off competition. However, whether this will lead to any tangible change is unlikely. The NMA and its members were at pains to demonstrate to Ofcom that the BBC’s plans to expand into online local news were not distinctive, neither in its location nor content. The Across the UK plan seeks to expand the BBC local news output in Bradford, Sunderland, Peterborough and Wolverhampton.¹⁵ However, JICREG figures show that commercial local news brands have a strong (deduped) total monthly brand reach in these areas:

Area	Commercial Local News Monthly Duped Total Brand Reach
Bradford	93.6%
Sunderland	94.6%
Peterborough	85.8%
Wolverhampton	91.6%

- 2.6.3. From the Across the UK plans, we can demonstrate that, rather than plugging any alleged democracy gap, the BBC targets an audience already well-served and unfairly competes with local titles using its globally known brand and public money to provide a similar service subscription/ad-free. The content that the BBC provides locally is not distinctive, as evidenced at Paragraph [2.3.2](#) of this response.
- 2.6.4. We are equally concerned with Ofcom’s proposed guidance whereby the BBC may consider “*how the proposed change contributes to the BBC’s long-term sustainability*”.¹⁶ We feel this green-lights the BBC to enter further into markets – such as local news – where its market power would be substantial, rather than sustain and improve its foothold in the TV arena, where it is principally valued but is facing stronger competition. Local publisher members have expressed that they feel the BBC has identified local news as a market which it could easily expand into to validate its public value because it is losing in ‘the streaming wars’ to the likes of Netflix.

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¹⁴ Ofcom, “[How Ofcom Regulates the BBC’s Impact on Competition](#)”, 30 November 2022.

¹⁵ The BBC, “[BBC publishes blueprint for the biggest transformation in decades](#)” – this expands on [the BBC’s Across the UK plan](#) published in 2021.

¹⁶ Ofcom, “[How Ofcom Regulates the BBC’s Impact on Competition](#)”, 30 November 2022.