

Ofcom's Proposed Plan of Work 2020-21– response from the Welsh Government

The Welsh Government welcomes this opportunity to comment on Ofcom's proposed Plan of Work for 2020-21. We will provide comments below on the areas of Ofcom's proposed priorities and work plan which are of importance to the Welsh Government.

Working with Ofcom

While the relationship between Ofcom and the Welsh Government is constructive and positive, there is scope for greater joint working between the two organisations. The Welsh Government would like to explore how this could be taken forward. An annual, jointly agreed forward work plan might set out those areas where there are issues of common interest. This would require closer working relationships not only between the Welsh Government and Ofcom's Wales office, but also with the subject matter experts across Ofcom. Closer working would enable the Welsh Government and Ofcom to develop a greater understanding of issues affecting consumers and businesses in Wales, to inform future policy and regulatory analysis.

A commitment to explore and develop a joint forward work plan and a suitable governance to deliver and monitor the plan would be a welcome addition to Ofcom's Plan of Work. We appreciate Ofcom's independence from government and this principle should be fully protected in any joint work plan we seek to develop.

Ofcom's role in a devolved Wales

The Welsh Government was pleased to have appointed David Jones in April 2019 as the Ofcom Board Member for Wales. The Welsh Government will continue to liaise closely with him to ensure that the interests of Wales are appropriately represented on Ofcom's Board. We also recognise the invaluable contribution of the Ofcom Advisory Committee for Wales; the Content Board Member for Wales; and the Communications Consumer Panel Member for Wales.

It is crucial that Ofcom's Wales office in Cardiff is sufficiently resourced. In the context of Ofcom's additional regulatory responsibilities following the BBC Charter Review and the recent announcement that the UK Government is minded to appoint Ofcom as the online harms regulator, we remain concerned as to whether Ofcom in Wales, as well as an UK level, has the sufficient capacity to undertake these additional responsibilities.

Over the last few years, in our responses to Ofcom consultations about previous draft Annual Plans, we have referred to Ofcom's intention to increase its visibility and presence in Scotland and asked whether there was any intention for a comparable expansion in the other devolved nations, including Wales, to ensure parity. We are pleased to learn that Ofcom now intends to advertise more posts on a location neutral basis, and that there are plans to increase the number of individuals based in the Cardiff office. We look forward to more information about these plans in due course.

Memorandum of Understanding

The Welsh Government is pleased that the Memorandum of Understanding (MoU) which outlines the relationship between the UK Government, the Welsh Government, the National Assembly for Wales and Ofcom is now fully operational.

There is a scope to widen and strengthen this MoU. It currently describes a formal consultative role for the Welsh Government in setting the strategic priorities for Ofcom with respect to its activities in Wales, in so far as the Welsh Government will be consulted on the annual plan and Ofcom will consider any representations. Consideration should be given to further defining this role, without compromising Ofcom's independence from government. A commitment to explore and develop opportunities to strengthen the MoU should be included in the proposed Plan of Work.

Broadcasting

The Welsh Government will continue to engage with Ofcom's fourth review of public service broadcasting, *Small Screen: Big Debate*.

It is vital that Ofcom continues to fulfil its obligations in relation to public service broadcasting in Wales, including those related to ITV Cymru Wales, S4C and Channel 4. Similar to last year's Annual Plan, it is disappointing that there is no mention of S4C in the proposed Plan of Work, despite the channel continuing to implement the recommendations of the review of the channel. We would ask Ofcom to reflect on our previous comments in relation to public service broadcasting, which still stand - including the substantive points made in our response to Ofcom's third review of public service broadcasting, which is available on Ofcom's website¹.

The proposed Plan of Work acknowledges the launch of the Britbox streaming service, a partnership between the BBC and ITV. At the Ofcom Wales event to discuss the Plan of Work on 29 January, we asked whether Ofcom expected to regulate this service according to the standards of the Broadcasting Code or the additional requirements made of the BBC via its Royal Charter and Framework Agreement. Ofcom officials present at the event agreed to take this away for further consideration. It would be helpful for this point to be clarified as soon as possible - in the final Plan of Work if that is feasible. Although the service currently provides access to pre-existing content only, both the BBC and ITV have committed to making new content specifically for Britbox. We would expect the BBC to be mindful of – and held to account for - all of its public purposes and associated duties, including those specific to Wales, when creating content for any platform, including Britbox.

Ofcom's role as external regulator of the BBC

The Welsh Government provided a detailed response in July 2017 to Ofcom's consultation on its first Operating Licence for the BBC².

¹http://stakeholders.ofcom.org.uk/binaries/consultations/psb-review-3/responses/Welsh_Government.pdf

² https://www.ofcom.org.uk/__data/assets/pdf_file/0016/105361/Welsh-Government.pdf

In our consultation response, we raised a number of serious concerns about the draft Licence, which we strongly urged you to address to create a final Licence that was fit for purpose. It was disappointing that the Licence was not amended to reflect a number of important improvements which were suggested and explained in detail by the Welsh Government in its response to the consultation. These comments are still relevant. We have previously welcomed Ofcom's assurance that the Operating Licence and performance measures will evolve over time.

It is disappointing that there is no specific mention of *assessing the BBC* in the section on Wales, as there is in the same section for Scotland. We would urge Ofcom to confirm that it does intend to monitor the BBC's delivery in Wales by including in the final Annual Plan a comparable statement about the BBC Operating Licence in Wales.

Review of BBC's news and current affairs output

We welcomed Ofcom's review of the BBC's news and current affairs provision. As outlined in our response to Ofcom's draft annual plan for 2019-20, we were prepared to assist Ofcom in any way in relation to its review. However, we were not approached to feed into the review. That was disappointing given the concerns we have previously raised about the Operating Licence, and our clear view that the review should have considered whether there may be opportunities for the BBC - and the other Public Service Broadcasters - to enable increased plurality of provision in news and current affairs and to further improve reporting of the changing nature of the UK and decisions made by devolved governments.

In addition we noted that it was vital the BBC's own review of its news services in the nations in 2016 was fully considered in the context of Ofcom's review. It would be useful if you could confirm whether that review was provided to you by the BBC and whether it was fully considered? It would be useful to learn whether Ofcom will undertake any changes to the BBC's Operating Licence as a result of this review.

Licences

We reiterate what we have previously said to Ofcom; that when television and radio licenses for stations in Wales are awarded or reviewed, due consideration should be given to the bilingual nature of Wales and the importance of the Welsh language in the context of the Welsh Government's aim of having one million Welsh speakers by 2050, by specifying in the contract that a set number of hours be broadcast in Welsh along with a statement about Welsh-language web content such as text, streams and clips.

Radio

The Welsh Government's position on a number of issues in relation to radio including digital radio switchover; community radio; and commercial radio has not changed recently. These were reflected in the Welsh Government's response to the National Assembly for Wales' Committee's inquiry into radio in Wales³

³ <http://senedd.assembly.wales/documents/s83990/Welsh%20Government%20Response.pdf>

We welcome the development and roll-out of small-scale DAB services and the opportunities this new technology will present to smaller and commercial radio stations in Wales.

Research

The proposed Plan of Work sets out Ofcom's intention to carry out research on audience expectations for editorial standards across different platforms (e.g.; 'video-on-demand'), to help it apply proportionate rules that reflect changing viewing behaviours and audience expectations.

We would be very concerned to see lower standards applied to certain streaming services than are applied to broadcast content, especially where these standards cover the protection of children, hate speech and commercial references. We are therefore keen to understand the outcomes of this research and Ofcom's conclusions. We note however that this research does not appear in the annex listing Project Work for the year in the proposed Plan – please rectify this for the Final Plan of Work.

Telecoms

Encouraging investment in fibre networks

In undertaking the review of the wholesale telecommunications fixed access market there is a need to ensure that consumers, residents or businesses, in rural areas do not face higher prices for broadband and mobile phone services than those in urban areas as a result of the proposed regulatory interventions in those areas that are unlikely to see a competitive fibre environment. This is also linked to the focus on monitoring differential pricing practices in the proposed plan of work.

A commitment should be included in the proposed plan of work to assess the impact of the wholesale telecommunications fixed access market review on homes and businesses in rural areas.

We also seek the inclusion of a commitment from Ofcom to actively support the Welsh Government's Open Market Reviews. Data quality is increasingly an issue and Ofcom is well-placed to drive improvements in the quality of data collected and shared by the sector and which inform and underpin market-failure interventions.

Delivering universality of broadband services

The Welsh Government remains concerned that the Universal Service Obligation will not deliver connectivity to those homes and businesses in Wales that are most at risk of being left behind. This is largely a result of the premises cost cap, which does not reflect the reality of the cost of providing a sustainable broadband solution in the most rural areas of Wales. Ofcom figures appear to indicate that only around 15,000 premises in Wales might benefit.

The proposed plan of work should include a commitment to an annual review of and adjustment to the working and effectiveness of the USO.

In implementing the universal broadband service the proposed plan of work states that Ofcom will work with devolved Governments to ensure smooth interaction with publicly funded broadband schemes. Whilst welcoming this commitment there needs to be deeper engagement than there has been to date.

Moving to digital lines

There are a number of concerns about the impact of the PSTN on the ability of residents and businesses to continue to contact the necessary authorities in the event of a power cut and of the impact on life and limb services. It will be important that all potential issues are identified and addressed.

The current wording in the proposed plan of work should be strengthened to ensure that the process of identification and subsequent remedying of issues is robust.

5G innovation

The Welsh Government welcomes the commitment from Ofcom to encourage interested parties to explore innovative ways to use 5G and other emerging technologies, such as LoRaWAN, particularly in rural communities. This reflects the Welsh Government's ambitions and there is scope for Ofcom and the Welsh Government to work together to create the right conditions for interested parties to test and deploy innovative technology in Wales.

The proposed plan of work should highlight a commitment to work with the Welsh Government to encourage the use of new technologies in Wales.

Supporting the Universal Postal Service (3.17)

The Welsh Government welcomes the focus Ofcom is intending to give to sustaining the Universal Postal Service. This is vital to many of Wales' more rural communities.

We note the three strands of work intended for 2020-21:

- Research into customer needs, to be published in 2020;
- Continuing monitoring of Royal Mail's performance, due to conclude in 2022; and
- A review of the need for additional consumer protection in the parcels market, again to conclude in 2022.

We recognise that Ofcom has been committed since 2012 to monitoring the performance of Royal Mail as the universal service provider. The Welsh Government would like to ensure that this monitoring activity includes the impact of changes Royal Mail is making as a result of its announcement in May 2019 that it intends to transform its parcels business to become the primary focus of its activity.

Online

In the context of the recent announcement that the UK Government was minded to appoint Ofcom as the online harms regulator, the Welsh Government naturally supports any plans to clamp down on abuse over social media, particularly in relation to children and young people. On 12 February this was raised during the National

Assembly for Wales' Equality, Local Government and Communities Committee scrutiny session on violence against women, domestic abuse and sexual violence. A transcript of the session is attached for your information⁴.

In planning for future potential reduction of online harm, consideration will be needed of the capacity needed to manually and automatically moderate content in the Welsh language.

⁴ <https://record.assembly.wales/Committee/5965>