

# **Response of Channel 5 Broadcasting Ltd (Five) to the Ofcom Consultation on Signing on Television**

Five welcomes the opportunity to respond to Ofcom's consultation on future arrangements for signing on television. We believe this consultation provides the opportunity to address a serious failing in these arrangements. But we fear that if Ofcom's proposals are not amended, the current unsatisfactory system will be replaced by one that could prove worse. It is Ofcom's approach to regulating broadcasters' responsibilities that we oppose, not the intention of creating a sign zone, which we support in principle.

Five takes seriously its responsibilities for providing services for the disabled. We are an active member of the Broadcasting and Creative Industries Disabilities Network (BCIDN) and are keen to promote services of value to our disabled viewers.

We recognise the importance of access services to people with visual or hearing impairments, and have always fulfilled or exceeded our access service obligations, including the provision of signing. Currently four per cent of all hours on Five include signing; this will rise to five per cent in the new year. We are preparing to fulfil our obligations in respect of our two digital channels, Five US and Five Life, which begin from the anniversary of their launches in mid-October.

As we said in our response<sup>1</sup> to Ofcom's review of the Code on Access Services a year ago, we believe Ofcom has made a major contribution to understanding the value of access services by commissioning comprehensive research on each of the three access services. This research revealed that, while subtitling and audio description are used and valued, the number of people with hearing impairments who use signing out of choice to help them watch television amounts to a few thousand at most. Therefore, the number of people using signing to follow a particular programme with signing represents a tiny proportion of those who watch it, and for lower audience channels that number is probably between miniscule and zero.

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<sup>1</sup> Response of Channel 5 Broadcasting Ltd (Five) to Ofcom's Review of the Code on Television Access Services, June 2006

This unsatisfactory situation is made much worse because, unlike subtitling and audio description, the limitations of technology mean signing has to be visible to all viewers of a programme. This results in considerable levels of irritation among non-signing viewers, and ensures that sign-interpreted programmes are never shown in or around peak time.

Therefore, we are pleased Ofcom has set out to tackle what is clearly an unacceptable situation and made clear its desire to arrive at a position of greater benefit to viewers who rely on signing, while being less onerous on broadcasters and viewers generally. But we are dismayed at the regime which Ofcom proposes putting in place, as it could well lead to more onerous obligations on broadcasters without guaranteeing any greater benefits for sign language users.

Five is supportive of the idea of a free-standing sign zone housed on the Community Channel, and is willing to help get it established. We would also be prepared to support it financially in lieu of our signing obligations on Five Life and Five US. But we oppose strongly what seems to us an attempt by Ofcom to strong-arm us and other broadcasters into supporting this arrangement by changing the nature of our signing obligations. We believe the Ofcom proposal is unnecessarily heavy-handed and disproportionate. We also believe there are some serious risks attached to it that are not addressed by Ofcom in its consultation document.

Five would favour a lighter touch approach, in which the threshold at which channels are obliged to offer signing is raised and other channels (except the five terrestrials) have the opportunity voluntarily to contribute to a sign zone as an alternative to their current obligations. Such an approach would mean the sign zone could be created on the basis of voluntary effort and goodwill, rather than through regulatory intervention which we believe is unnecessary in conception and heavy-handed in the nature of its execution

We develop our arguments further in response to Ofcom's consultation questions

*Q1. Do consultees agree that these are appropriate policy objectives for Ofcom in considering possible alternative arrangements for signing on television?*

Five does not believe that Ofcom has articulated clear and appropriate policy objectives.

Firstly, although Ofcom conducted extensive research into how widespread the use of signing is, it did not conduct similar research into whether and to what extent sign language users have a preference for sign-presented programmes over sign-interpreted ones.

In gauging the extent of support for sign-presented programmes, it has relied on feedback from organisations representing the deaf and sign language users. While such views are obviously of value, Ofcom should not accord them the same evidential weight as its own research.

We believe that for Ofcom to articulate the view that the interests of hearing impaired sign language users “would be better served by the provision of more sign-presented programming”, original research to discover if this is indeed true should be commissioned. We also note that the recent literature review commissioned by Ofcom found no previous research evidence supporting a preference for sign-presented programmes<sup>2</sup>.

Secondly, the Communications Act requires broadcasters to provide a proportion of programmes “presented in, or translated into, sign language”<sup>3</sup>. This makes clear that it is up to broadcasters to choose to provide either sign-presented or sign-interpreted programmes. Ofcom has no power to dictate that any broadcaster should provide sign-presented programming rather than sign-interpreted programming.

Thirdly, a requirement on broadcasters to provide sign-presented programmes instead of sign-interpreted ones (which is the effect of what Ofcom is proposing) is at odds with the separate policy objective of any new arrangements not imposing disproportionate burdens on broadcasters. To provide sign-presented programmes at the level proposed by Ofcom would cost several times the current cost of sign-interpreted programmes and be far more expensive in terms of opportunity cost.

Fourthly, we do not believe there is any evidence that the very small numbers of viewers who use sign language, and who by and large do not watch sign-interpreted programmes on low-audience channels, would discover and watch a much smaller number of sign-presented programmes on such channels.

Therefore, Five believes that Ofcom needs to refine and clarify its policy objectives. We agree with the objective of reducing the amount of sign-interpreted programmes on low audience channels and are prepared to support Ofcom’s policy objective of securing alternative arrangements that will result in an increase in the number of sign-presented programmes. However, we disagree profoundly with the way Ofcom proposes to bring this about.

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<sup>2</sup> “No specific information was identified from the literature reviewed with regard to target audience awareness and perception of signing on television”, Television Access Services – Literature Review, prepared by i2 media research on behalf of Ofcom, March 2006, page 19

<sup>3</sup> Communications Act 2003, s303 (5) (d)

*Q2. Do consultees agree that Ofcom has identified appropriate options?*

Five does not believe Ofcom has identified appropriate options. We believe Ofcom has unreasonably excluded considering the option of raising the audience threshold at which broadcasters are obliged to provide signing; we discuss our reasons in response to Question 3 below.

Furthermore, Five finds Ofcom's analysis of options highly unsatisfactory. The three options Ofcom has considered should all be ones that meet its policy objective; otherwise, what is the point of including them? It is contradictory to say "In the light of Ofcom's policy objectives and the evidence and analysis discussed above, Ofcom has considered the following options"<sup>4</sup> and then reject two of them on the grounds that "it would not help to meet the policy objectives"<sup>5</sup> (Option 1) and "this would not contribute to the policy objectives"<sup>6</sup> (Option 2). If these options were not likely to meet the policy objectives, there seems little justification in considering them in the first place.

Five finds this approach disingenuous, and believes it falls below Ofcom's generally high standards of policy analysis. But not only does Ofcom's approach self-evidently favour one of the three options, there is no proper analysis of the disadvantages and pitfalls inherent in that option.

Five is also dismayed that the one approach that we believe makes most sense in providing more sign presented programmes and not being disproportionate in its impact on broadcasters is neither analysed nor even mentioned as one of Ofcom's policy options, nor included even among its three disregarded "suggestions".

This approach would be to allow broadcasters of low audience channels a three-way choice:

- current levels of sign-interpreted programmes; or
- a smaller quantity of sign-presented programmes; or
- contributing to the alternative arrangements suggested by Ofcom

Such an option would still provide a basis for broadcasters to support the sign zone, but they would not be penalised by having to show sign-presented programmes if they chose not to (or if the alternative arrangements failed to materialise or fell apart). This approach would also be more in keeping with the lack of a strong evidence base as to whether sign language users prefer sign-presented or sign-interpreted programmes.

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<sup>4</sup> Condoc, paragraph 3.17

<sup>5</sup> Condoc, paragraph 3.20

<sup>6</sup> Condoc, paragraph 3.22

We find the lack of such an option particularly odd, as in a letter to Five dated 8 March 2007 entitled “Future of signing on television”, which set out Ofcom’s initial thinking on the funding of a sign zone on the Community Channel instead of providing sign-interpreted programmes, Ofcom said explicitly “For those remaining channels who did not wish to participate, their obligations under the act would still stand”. We do not understand how there can have been such a radical change in Ofcom’s thinking in the two months between the sending of this letter and the publication of the consultation, without any further communication with broadcasters.

*Q3. Do consultees agree with Ofcom’s reasons for rejecting the ideas described in paragraph 3.18?*

Five believes Ofcom should have given serious consideration to raising the threshold at which channels are obliged to provide signing. Five believes it is sensible to use audience share as the basis for determining which channels should provide access services, and an audience share of 0.05% is an appropriate threshold above which (subject to revenue considerations) channels should be obliged to carry subtitling and audio description – as these services reach or have the potential to reach substantial audiences.

But we question, in light of Ofcom’s research findings about the small number of people with hearing impairments who make use of signing, whether it would be more proportionate to adopt a higher threshold for the provision of signing. The Communications Act explicitly requires Ofcom when drawing up its Code to have regard to “the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes”<sup>7</sup>. If virtually no-one is watching sign-interpreted programmes on low audience channels, what is the rationale for continuing to require them to be provided?

Five does not accept Ofcom’s assertion that “when Parliament enacted the Communications Act, it was aware that relatively few people use sign language”. The only reference<sup>8</sup> that Ofcom has put forward to support this assertion is a single speech in a House of Lords debate that was actually on an entirely separate clause of the then Bill. In fact there was no explicit Parliamentary debate on the signing provisions of the Act. Even if there had been and Parliament had passed the legislation in the belief that there were around 50,000 sign language users, Ofcom’s research has now demonstrated that the number of such people who have a hearing disability and are able to use signing to help them watch television is around a fifth of that number.

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<sup>7</sup> Communications Act 2003, s303 (8) (a)

<sup>8</sup> Condoc, paragraph 1.9

*Q4. Do consultees agree with the proposals outlined in paragraph 3.32?*

Five supports the proposal for a sign zone as an alternative to having signing on low-audience channels. We applaud the Community Channel for the role it has played in helping get this plan off the ground and for offering to provide the programming and the time for it in its schedule.

But we object strongly to the degree of coercion implied in these arrangements. We find draconian the imposition of a new requirement to provide sign-presented programmes. Under Ofcom's proposals, channels would be forced to invest far larger sums<sup>9</sup> than at present in making and screening programmes to be watched by audiences less than miniscule in number.

The effect of Ofcom's proposals would be to force channels to provide funding for a sign zone.

But Ofcom's proposal is made far less acceptable by the fact that the proposed sign zone has yet to be created. Although discussions have taken place to establish a Signing Trust that would oversee the new arrangements and a contract with the Community Channel, very little detailed work has been done on its precise structure or governance. There seems to have been little detailed thinking about exactly how its relationship with the Community Channel would work in practice, nor are there any agreed aims and objectives. At a meeting organised by Ofcom on 29 June, someone involved in the Sign/Community Channel Working Group reported that "lots of people on the Working Group were very vague about how the Trust would work".

Therefore, broadcasters are being asked by Ofcom to sign up to an arrangement based on the creation of a new body, the constitution and standing of which has yet to be fully discussed, never mind agreed upon; and only a few early steps have been taken towards its establishment.

Five is very willing to help in the establishment of a Sign Trust, and has already participated in several discussions aimed at helping set it up. But there will still be much to do after the closing date for this consultation before it can be guaranteed that the Sign Trust will exist in a proper form.

Even if the Sign Trust is established, it cannot be guaranteed that Ofcom will approve its proposals as an acceptable alternative scheme. It is not at all clear from the consultation document what criteria Ofcom would employ in deciding whether a scheme is acceptable or not.

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<sup>9</sup> Ofcom's own Impact Assessment suggests that the cost of its proposals could be £60,000 pa for a channel with a two per cent signing requirement compared to a £19,000 cost for sign-interpreted programmes. These figures ignore the opportunity cost of scheduling the programmes. Condoc, paragraph A5.23

Nor does Ofcom appear to have given detailed thought to longer term scenarios. Even if all goes well, and the Sign Trust is set up successfully and signs a two-year contact with the Community Channel to provide it with capacity and programmes, there is no guarantee this arrangement will continue. For example, after two years, the Community Channel could decide it has other priorities; or there could be a disagreement between the Trust and the Community Channel over the programming being commissioned. In such eventualities, with alternative arrangements no longer being available, low audience channels would be forced to re-introduce sign-presented programmes for the then foreseeable future.

Given the uncertainty, both at the present time and in the longer term, Five believes it is unreasonable to expect channels to have only the two options: making their own sign-presented programmes or writing a cheque for the putative Sign Trust. Instead, they ought to have a third option – continuing to provide sign-interpreted programming at the levels laid down in the Access Services Code.

We have some additional comments on some of the precise proposals for obliging channels to have sign-presented programmes, as we do not believe all these have been thought through or properly justified in the consultation document. Taking these proposals in the order in which they are presented in paragraph 3.32:

- a We can see no rationale for having separate arrangements for public service channels. Access service obligations apply to all channels, whether they are public service or not. The only criteria used to distinguish between channels are audience share and revenue. We do not see why BBC4 and CBBC should be treated differently from Five US and Five Life – all four are channels with an audience share of less than one per cent, and the same regime should apply to them all.
- b The one per cent threshold is not justified. Beside being a round number, it is not clear why this should be a cut-off point for the new arrangements. Apart from the five main terrestrial channels, at present seven other channels have an audience share well above one per cent. It is not clear what benefit there is in forcing them to continue providing sign-interpreted programmes. Indeed, if they had the option of contributing to the sign zone instead, this could bolster its position by providing additional funds. Conversely, the one per cent threshold could weaken the sign zone over time: several significant and expanding channels with audience shares just below one per cent might contribute in the early years, but as their audiences grow and they exceed the threshold they will be forced to withdraw from the sign zone and revert to providing sign-interpreted programmes instead.

- d The proposed rules for the scheduling and duration of sign-presented programmes are prescriptive in the extreme. Ofcom has failed to explain why such a dirigiste approach is justified. They also take no account of channels that are on air less than 24 hours a day (for example, Five US starts transmission at 12 Noon).
- g We welcome the idea of a review of arrangements, but believe the timescale for this should be set in the context of current plans for the Trust. We understand the Community Channel is working on the assumption that the Trust would agree a two year contract with it. Therefore, Ofcom's review should aim to take place once the Trust is established and programmes have actually started being broadcast, which may be further away than one year.

*Q5. Do consultees agree that the aim should be to put any new arrangements in place from the start of 2008?*

Five has no desire to delay the introduction of new arrangements. However, considerable work still needs to be done to set up the Sign Trust and then agree a contract and a programme strategy with the Community Channel. It is important for Ofcom to realise that a start up period is necessary for any new broadcasting venture, and to allow a reasonable lead time between a channel being established and programmes starting to be broadcast, during which period funds need to flow into it. Therefore, we believe it would be reasonable for new arrangements (including appropriate channels being excused their signing obligations) to be put in place from the start of 2008 or soon thereafter.

*Q6. Do consultees have any comments on the impact assessment? Where possible, it would be useful for arguments about the cost of different options to be supported by relevant data.*

*Q7. Do consultees consider that the proposed revisions to the Code are sufficiently clear?*

We have no additional comments on the Impact Assessment or the Code revisions. Our comments on these are covered by arguments made earlier in this response.

*Channel 5 Broadcasting Ltd*

*July 2007*