

# **Ofcom's Annual Report on the BBC: 2021/22**

## Annex 1: Compliance with regulatory requirements

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## Introduction and summary

- A1.1 This annex sets out our assessment of the BBC's compliance with the specified requirements set out in Clause 59 of the [Framework Agreement](#) (the Agreement). The specified requirements include the conditions and obligations found in:
- The [Operating Licence](#): which sets out the regulatory conditions that Ofcom considers appropriate for requiring the BBC to:
    - fulfill its Mission and promote the Public Purposes;
    - secure the provision of distinctive output and services; and
    - secure that all audiences in England, Scotland, Wales and Northern Ireland are well served.
  - Schedule 3 of the Agreement: which includes obligations relating to the BBC's commissioning activity, as well as other matters.
  - The [Operating Framework](#): which contains the provisions Ofcom considers appropriate to secure the effective regulation of the activities of the BBC as set out in the [Royal Charter](#) (the Charter) and Agreement.
  - Other specified requirements: which include the information requirements in Article 47 of the Charter and clauses relating to complaints.
- A1.2 Our overall assessment is that the BBC has performed well in this reporting period, complying with the vast majority of the specified requirements despite the continued impacts of Covid-19. In relation to the Operating Licence, our assessment is that it has either met or exceeded all but four conditions.<sup>1</sup> This is a significant improvement from the 15 Operating Licence conditions not met due to the impacts of Covid-19 in the 2020/21 reporting period. In addition, there was one condition relating to reporting of on-screen and on-air portrayal targets which was partially met.<sup>2</sup>
- A1.3 In relation to the conditions the BBC did not meet for this reporting period, it explained that two of these<sup>3</sup> were due to the continued impacts of Covid-19. One of these conditions was in relation to live or specially recorded sessions on Radio 1 and the other was in relation to regional non-news programming on BBC One and BBC Two. It provided Ofcom with detailed information explaining how Covid-19 impacted its ability to meet these two conditions, including the mitigations it put in place to limit the impact of the non-compliance and to continue to meet its Mission and Public Purposes. After assessing this information, we are satisfied that during the review period the BBC's compliance with these specific conditions continued to be significantly adversely impacted by Covid-19 and do not consider it is appropriate to take any further action in relation to the BBC's non-compliance with these conditions.
- A1.4 For two conditions<sup>4</sup> the BBC did not meet in 2021/22, the BBC explained these were non-Covid-19 related and concerned its daily news quotas on Radio 1 and 1Xtra where it missed the quotas by a few minutes on a couple of days for each station. Specifically, the missed quotas were as a result of scheduling changes due to the

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<sup>1</sup> Our compliance assessment is based on information provided by the BBC and other available information

<sup>2</sup> Further information on this partial non-compliance is summarised in paragraph A1.5.

<sup>3</sup> Further information on the two conditions missed due to the continued impacts of Covid-19 are found in paragraphs A1.09-A1.33 below

<sup>4</sup> Further information on the two conditions missed to scheduling can be found in paragraphs A1.34-A1.38 below

death of Prince Philip which resulted in the loss of a single bulletin on each station and as a result of other errors resulting in the loss of a single bulletin for each station. We consider the non-compliance to be relatively minor in nature and scale and as a result we do not consider it is appropriate to take any further action in relation to the BBC's non-compliance with these conditions.

- A1.5 The BBC only partially complied with condition 2.43, which relates to its reporting on the progress it has made annually towards its on-screen and on-air portrayal targets. The BBC has been unable to measure and report on its performance against its on-air targets. It has used another data set to provide evidence of some of its efforts to deliver on-air representation, but this is not a suitable substitute for the metrics required to assess progress against its on-air targets. The BBC has acknowledged this deficit and is actively developing a system to enable it to measure on-air representation. It expects to be able to fully report against this target in 2023/24. We will not be taking any further action at this time but will explore with the BBC how it plans to approach reporting in 2022/23 and will continue to closely monitor reporting in this area.
- A1.6 We set out further details of our assessment, and the information relied on, in the rest of this annex, including a selection of infographics that illustrate some of the conditions where the BBC met or exceeded its obligations in the reporting period.

## Information relied on in assessing compliance

- A1.7 In assessing the BBC's compliance with the specified requirements, Ofcom has relied on various sources of information. These range from information gathered using our formal powers<sup>5</sup>, information provided by the BBC informally and publicly available information such as the BBC's Annual Reports and Accounts 2021/22.<sup>6</sup>

## Our assessment of compliance with the Operating Licence conditions

- A1.8 This section outlines our assessment of the BBC's compliance with its Operating Licence conditions between 1 April 2021 and 31 March 2022. Any conditions set for the calendar year have been measured across the 2021 calendar year.

### Non-compliance due to the impact of Covid-19 in 2021/22

- A1.9 The BBC did not meet the quota of two Operating Licence conditions in 2021/22 due to the continued impacts of Covid 19.
- A1.10 This is a significant improvement from the 2020/21 reporting period, which occurred at the height of the pandemic, where the BBC did not comply with 15 Operating Licence conditions due to the pandemic. In last year's compliance annex, we noted that the effect of the pandemic could continue to impact the BBC's ability to comply

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<sup>5</sup> Article 47 of the BBC Charter

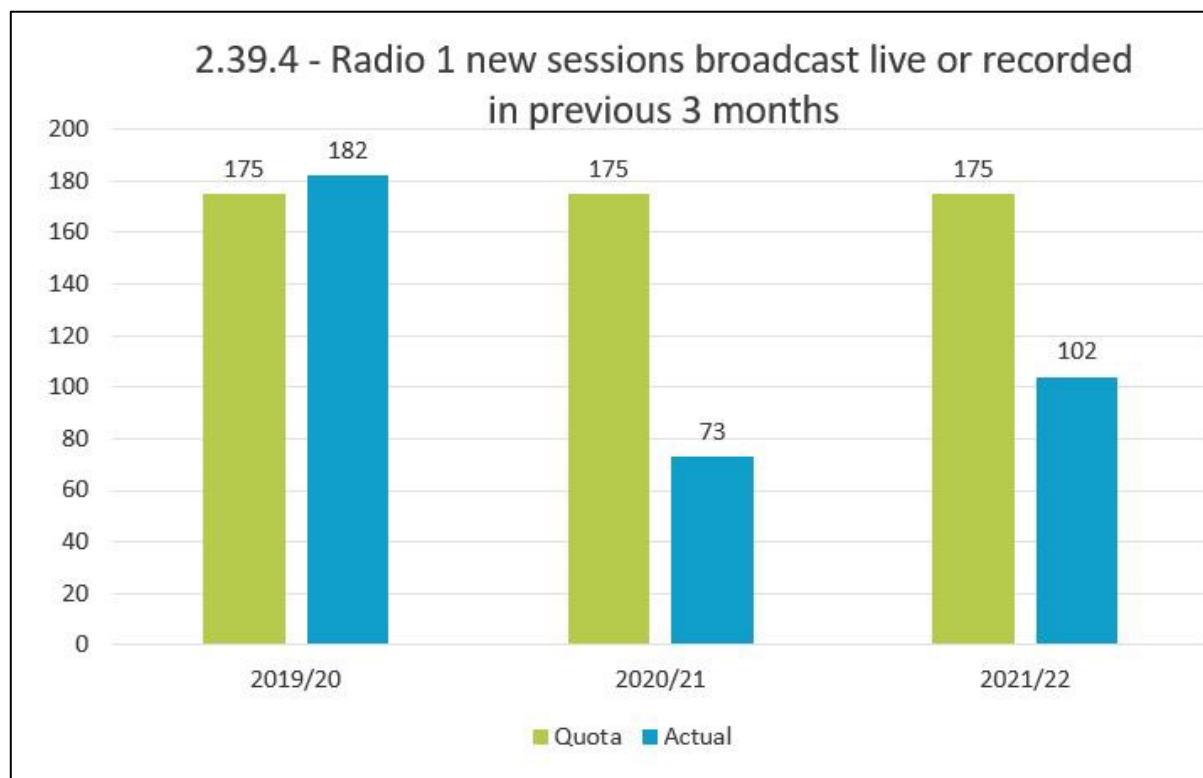
<sup>6</sup> Our assessment is based on the evidence gathered. It does not preclude us from looking further at any particular matter; for example, if we receive a complaint and/or if other evidence is relevant.

with its regulatory requirements in the 2021/22 review period and that we will continue to engage with the BBC regarding any impact on its compliance.

- A1.11 As part of our continued engagement with the BBC, where Covid-19 impacted its ability to meet any of the Operating Licence conditions, we asked it to provide us with detailed information as follows:
- The scale of the breach;
  - The specific reasons why the pandemic resulted in the breach of that condition;
  - What actions it had taken to meet the objective of the condition in another way and to minimise the impact on audiences; and
  - How it continued to deliver the Mission and Public Purposes.
- A1.12 On 14 February 2022, the BBC wrote to Ofcom, laying out its Operating Licence compliance forecast. This highlighted a small number of conditions it considered were at risk of non-compliance. We wrote to the BBC on 10 March 2022 requesting further information in relation to this compliance forecast in addition to the information we requested as set out in paragraph A1.11.
- A1.13 On 25 April 2022 ("the 25 April Letter") the BBC wrote to Ofcom confirming its compliance position for 2021/22. It confirmed that it did not comply with two Operating Licence conditions, one relating to live or specially recorded sessions (Condition 2.39.4) and one related to regional programming (Condition 2.67.6), due to the continued impacts of Covid-19 and provided the detailed information we had requested about how Covid-19 impacted its ability to comply with these conditions.

#### **Condition 2.39.4 – new music sessions live or recorded on Radio 1**

- A1.14 Condition 2.39.4 sets out that in each Financial Year, the BBC must broadcast at least 175 new sessions of live or recorded music within the previous three months (excluding repeats).
- A1.15 The BBC broadcast 102 sessions in 2021/22 which meant it did not meet this condition by 73 sessions. This is the second year in a row the BBC failed to meet this condition. Below we set out the BBC's performance against its quota for the last three years and the reasons the BBC provided for not complying with the condition in 2021/22 along with its mitigating actions.

**Figure A1.1<sup>7</sup> 2.39.4: new music sessions live or recorded on Radio 1.**

- A1.16 The BBC states in the Annual Report and Accounts 2021/22 that the reason it did not meet this condition was “*due to the continued impact of Covid-19. As in 2020/21, the need to ensure our work is Covid-19 secure has significantly impacted our ability to offer dedicated space for performers at the BBC. The need for social distancing created restrictions on how our spaces are used and how frequently.*”
- A1.17 In the 25 April Letter, the BBC provided detailed information about how Covid-19 impacted its ability to use its usual recording spaces, Radio 1’s Live Lounge and Maida Vale studios, to offer dedicated space for performers at the BBC to meet this condition. It explained that it needed to ensure these studios were Covid-secure and due to the small and enclosed nature of Radio 1’s Live Lounge, it needed to remain closed throughout 2021/22. Additionally, although Maida Vale Studios was open throughout 2021/22, it operated at a much-reduced capacity compared to pre-pandemic.<sup>8</sup> This was as a result of restrictions on the number of people allowed in the studios, and the number of studios able to be in operation, at any one time.
- A1.18 The 25 April Letter also set out the actions the BBC took to mitigate the loss of its usual studio spaces and included the reasons for not being able to record more

<sup>7</sup> Figure A1.1: The BBC stated 104 sessions were broadcast in the Annual Reports and Accounts. However, since publishing the report, the BBC have notified us that the correct number of sessions broadcast were 102.

<sup>8</sup> For 2021/22, the BBC was only able to record approximately 35% of the number of sessions it had recorded in 2019/20 before the pandemic.

sessions. The BBC explained that it used BBC Radio Theatre Broadcasting House on several occasions but noted that the venue is only available on an occasional basis. The BBC also mentioned that as part of Radio 1's Big Weekend of Live Music (28-31 May 2021) it also recorded a series of special sessions in iconic locations, including Coldplay at Whitby Abbey and Royal Blood on Brighton Pier. The BBC noted that the costs of staging one-off events like this are far higher than they are for recording a standard session, and that hiring an external studio to make up for the shortfall would also have been prohibitively expensive.

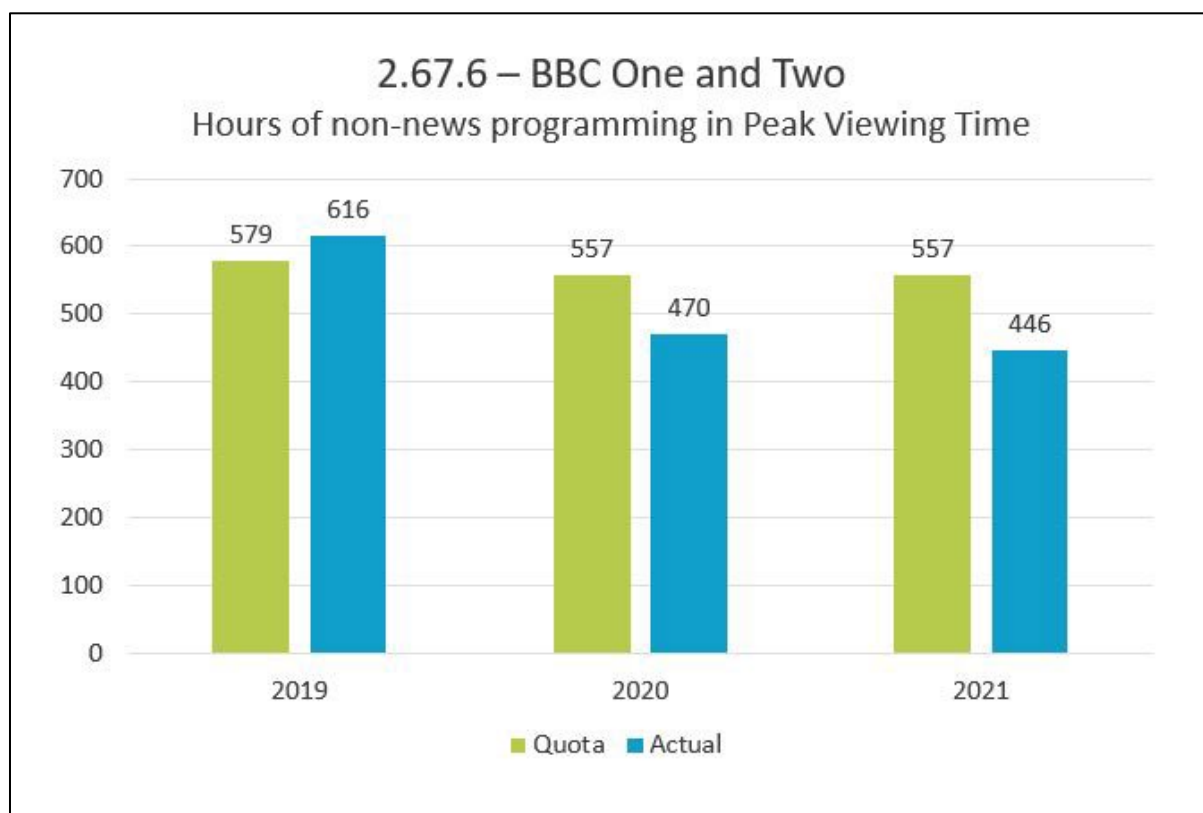
- A1.19 The BBC also detailed the other means by which live music continues to have a high profile on Radio 1. Specifically, it explained that in addition to the new performances recorded for Radio 1's Big Weekend of Live Music, a series of classic headline sets were broadcast. The BBC also broadcast live across the three days of the Reading Festival in August, and Radio 1's Live Lounge in September mixed both archive and new performances.
- A1.20 After assessing this information, we are satisfied that the BBC's compliance with this condition continued to be significantly adversely impacted by Covid-19. In light of this we do not consider it is appropriate to take any further action in relation to the BBC's non-compliance with this condition.
- A1.21 The BBC has advised us that, owing to ventilation checks, it did not open Live Lounge for recordings until 31st August 2022. We will continue to engage with the BBC to understand the impact, if any, the closure of the Live Lounge may have on its ability to meet this condition and to ensure that the BBC will continue to take actions to ensure the risk to noncompliance is as minimal as possible in the next reporting period.

#### **Condition 2.67.6 – regional programming on BBC One and BBC Two**

- A1.22 Condition 2.67.2 requires, in relation to programmes on BBC One and BBC Two taken together, that at least 5,909 hours are allocated to programmes which are of national or regional interest. In each Calendar Year, 557 hours of those programmes should consist of non-news programming in Peak Viewing Time (condition 2.67.6).<sup>9</sup>
- A1.23 In relation to condition 2.67.6, the BBC's output for 2021 was 446 hours which meant it did not comply with the quota for this condition by 111 hours. This is the second year in a row the BBC did not comply with this condition. Below we set out the reasons provided by the BBC for not meeting this requirement and the mitigating actions it has taken.

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<sup>9</sup> "Peak Viewing Time" is 18:00 to 22:30 in relation to all UK Public Television Services except for BBC Four which the peak viewing time is 19:00 to 24:00

**Figure A1.2 Condition 2.67.6 Hours of national and regional programming**

A1.24 In the 25 April Letter, the BBC explained that the main shortfall in hours for this condition was as a result of its decision in 2020 to decommission *Inside Out*, along with the subsequent delays in the delivery of its replacement programme, *We are England*, due to the impacts of Covid-19. This resulted in a loss of 110 hours of programming and was a key factor in the BBC performing worse against this quota compared to 2020/21 at the height of the pandemic.<sup>10</sup>

A1.25 The BBC specifically explained that because of Covid-19 restrictions such as lockdowns, social distancing, and the rule of six, it experienced challenges in recruiting for *We are England* and also faced difficulties in filming due to the investigative and observed nature of the programming. These factors combined meant that the BBC could not launch *We are England* until January 2022.

A1.26 The 25 April Letter also set out the actions the BBC took to mitigate the impact of its non-compliance. It explained that it had delivered more co-commissioned hours in England and had made use of its archive by repeating programmes which it considered still remained relevant and provided value to audiences in England, amounting to 4.83 hours. Although this is a relatively low number of mitigating hours

<sup>10</sup> The BBC also explained that there was a reduction of 21.5 hours in Scotland due to the impacts of Covid-19, resulting in reduced hours for *River City* and the loss of programming which was cancelled or didn't go ahead, such as the *Edinburgh Tattoo*.

in comparison to the overall shortfall in hours, we note the inherent difficulty in using alternative programming to deliver for audiences in the same way that current affairs programming serves audiences.

- A1.27 After assessing this information, we are satisfied that Covid-19 continued to have a substantial impact on the BBC's compliance with this condition. In light of this we do not consider it is appropriate to take any further action in relation to the BBC's non-compliance with this condition.
- A1.28 In taking this decision, it is also relevant that this condition does not specifically require the BBC to broadcast regional current affairs programming in England. However, we note the BBC has consistently used this type of programming to help deliver this condition and we consider it has been an important genre of programming to help the BBC meet this condition and continue to deliver its Mission and the promotion of Public Purpose 1 and Public Purpose 4.
- A1.29 Our continued focus of compliance with this condition has been to engage with the BBC to understand what it is doing to comply with this condition going forward and understand the role that regional current affairs programming in England will play in meeting this condition and the delivery of its Mission and promotion of Public Purpose 1 and Public Purpose 4 more generally. This is particularly relevant in light of the BBC's announcement that the autumn 2022 series of *We are England* will be the final one.<sup>11</sup>
- A1.30 We sent the BBC an Article 47 information request on 22 August 2022 which required the BBC, amongst other things, to provide information concerning its plans to meet the requirements of condition 2.67.6 going forward.
- A1.31 In its responses dated 21 September 2022 and 28 September 2022, the BBC explained that it was expecting to meet this condition in 2022 and forecast that *We are England* was likely to contribute around 50 hours towards meeting the condition. It also noted that it offers a variety of current affairs reporting and programming from England outside of peak time which is not limited to a single programme.
- A1.32 It also provided details of its high-level plans for how it will deliver current affairs investigative journalism in England beyond 2022. These plans will include less standalone programming to what it has previously delivered, but the BBC considers overall, its plans will lead to audiences receiving significantly more investigative journalism content across the year and it anticipates that the impact of this new model will be greater with a wider audience reach.
- A1.33 The delivery of local programming and regional current affairs makes a very important contribution to the delivery of the BBC's remit. We will ensure we continue to closely monitor the implementation of these plans, including how current affairs programming in England continues to contribute towards this condition and its overall

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<sup>11</sup> Tim Davies 26 May 2022 speech; <https://www.bbc.co.uk/mediacentre/speeches/2022/digital-first-bbc-director-general-tim-davie>



impact on delivering the Mission and the promotion of Public Purpose 1 and Public Purpose 4.

### **Non-compliance due to scheduling changes in 2021/22**

- A1.34 There were two Operating Licence conditions relating to daytime weekday radio news output that the BBC has not met due to the impact of the death of Prince Philip and as a result of technical and production errors.
- A1.35 Conditions 2.8.1 and 2.9.1 require that on Radio 1 and Radio 1Xtra respectively, at least one hour is allocated to news during Daytime each weekday (except for Public Holidays) including at least two extended bulletins, of which at least one must be in Peak Listening Time.<sup>12</sup>
- A1.36 In relation to conditions 2.8.1 and 2.9.1, the BBC did not meet each of these conditions by three minutes on two days during the reporting period. On the 12 April 2021, there were last minute scheduling changes on both Radio 1 and Radio 1Xtra as a result of the death of Prince Philip resulting in the omission of a news bulletin on each station.
- A1.37 On 23 April 2021 for Radio 1 and 20 April 2021 for Radio 1Xtra, there was a loss of a single news bulletin on each station as a result of technical and production errors. The BBC explained that it has reminded relevant staff that news bulletins are not to be dropped and to ensure any missed bulletins are rescheduled at the earliest convenient opportunity.
- A1.38 We have considered the relatively minor nature and scale of these contraventions; the external events that impacted the BBC's ability to meet the requirements of these conditions; and the action taken by the BBC in response to the errors. Taking these factors into account, we do not consider it is appropriate to take any further action in relation to the BBC's non-compliance with these conditions.

### **Partial non-compliance with diversity requirements**

- A1.39 This relates to condition 2.43 which places an obligation on the BBC to report annually to Ofcom on the extent to which it has made progress towards meeting its on-screen and on-air portrayal targets.
- A1.40 The BBC has reported on progress towards meeting its on-screen (TV) portrayal targets but remains unable to report on progress against its on-air (radio) targets. This means the BBC has again not fully complied with condition 2.43. The BBC has provided data from the 50:50 Impact Report to evidence progress in this area but the BBC acknowledges this is not a substitute for the metrics required to assess whether the BBC has met its voluntary on-air (radio) portrayal targets. The BBC has said it is developing a data measurement system with an external supplier so that it can begin

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<sup>12</sup> The Requirement for at least one extended bulletin to be in Peak Listening time applies only to Radio 1.

to measure and report on-air (radio) representation and achieve full compliance with this condition in future. It has said it will be able to begin collecting data next year and will be able to report against its on-air representation targets for 2023/24.

- A1.41 We will not be taking any further action at this stage, but we expect the BBC to continue to report on its delivery against its on-air target for the time this metric remains in place. We will explore with the BBC how it plans to approach reporting in 2022/23 and will continue to closely monitor this.

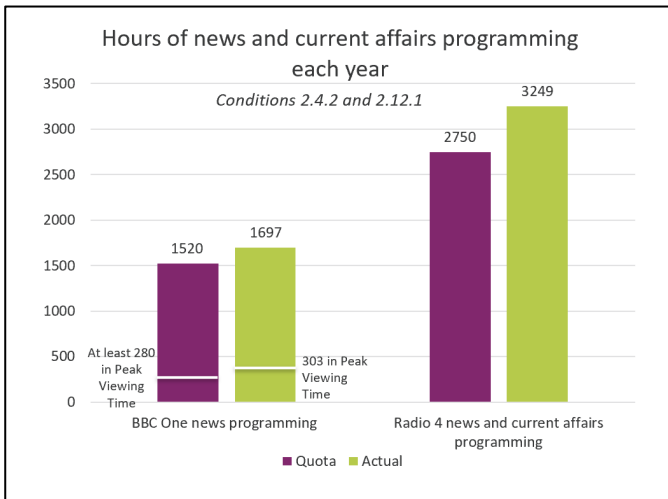
#### **Compliance with other Operating Licence conditions**

- A1.42 The graphs and infographics below illustrate a selection of the remaining licence conditions where the BBC met or exceeded its obligations this year. The BBC has set out in full its performance against all the conditions on pages 138-144 of its [Annual Report and Accounts 2021-22](#). On 12 July 2022 (12 July Notice), we wrote to the BBC to check the basis of the BBC's reporting in the Annual Report and Accounts. We obtained information from the BBC that set out how it reported its performance against all the conditions. Based on this information and our assessment of other available information, we are satisfied the BBC met or exceeded these obligations.

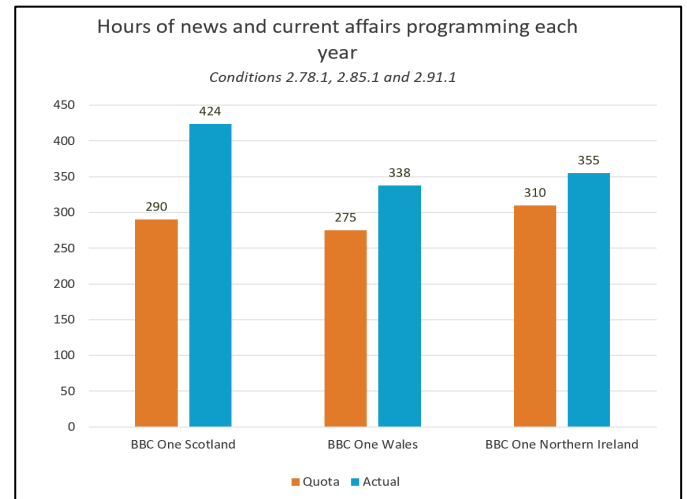
**Public Purpose 1: to provide impartial news and information**

A1.43 The BBC reported that it met or exceeded its obligations to provide impartial and accurate global and local news and current affairs for all parts of the UK.

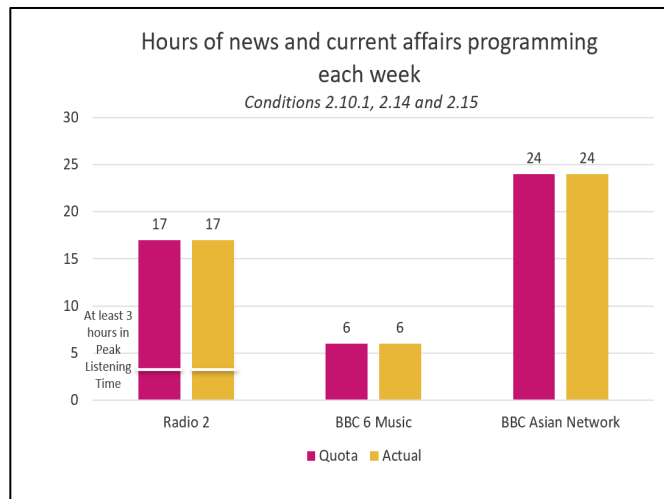
**Figure A1.3**



**Figure A1.4<sup>13</sup>**



**Figure A1.5**

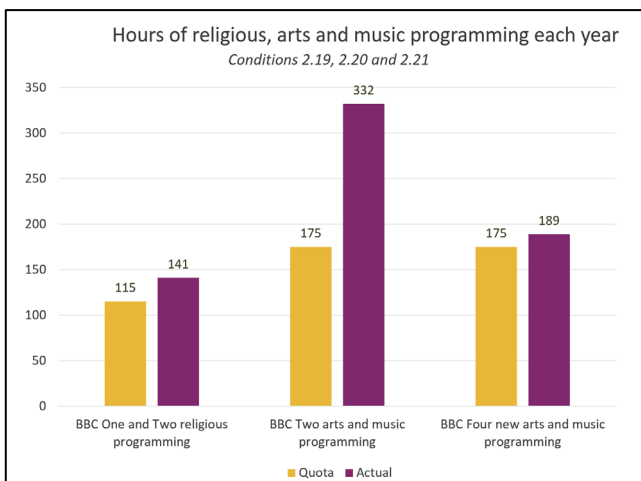


<sup>13</sup> Conditions 2.78.1, 2.85.1 and 2.91.1 fall under Public Purpose 4 in the Operating Licence, however, we have included them here as they also relate to news and current affairs programming.

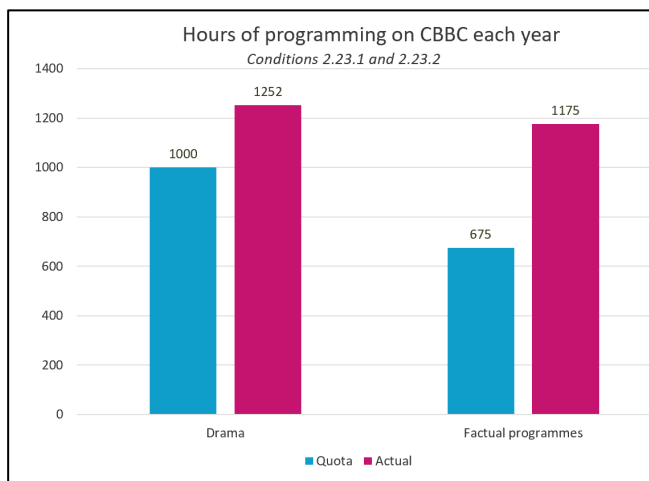
**Public Purpose 2: to support learning for people of all ages**

A1.44 The BBC met or exceeded its obligations to provide religious, arts and music programming on BBC One, BBC Two and BBC Four; drama and factual programming on CBBC; documentaries on Radio 1, Radio 1Xtra and Radio 3; and online content to support children with their learning.

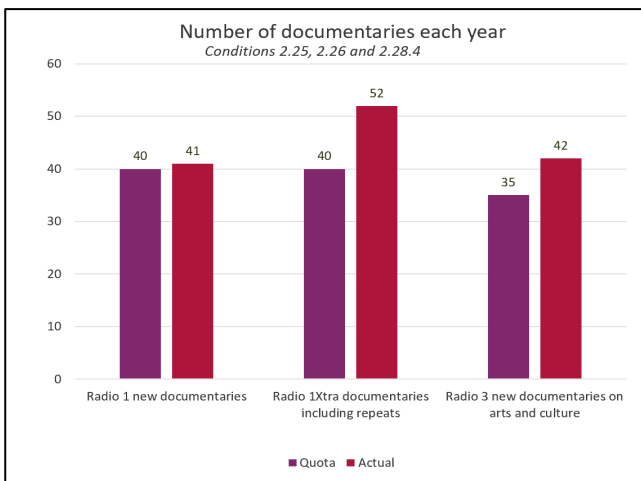
**Figure A1.6**



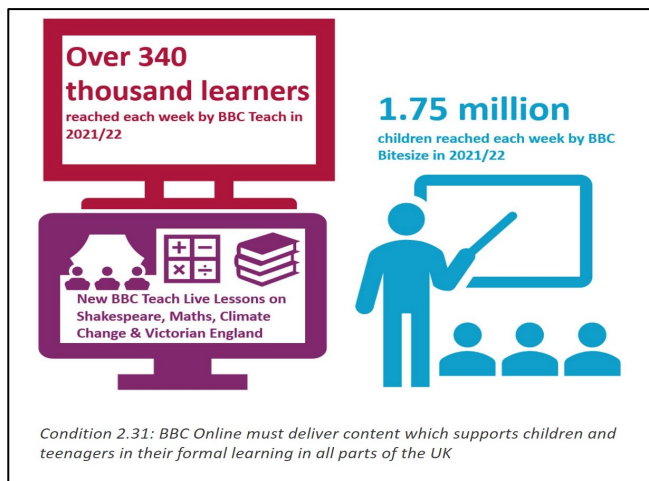
**Figure A1.7**



**Figure A1.8**



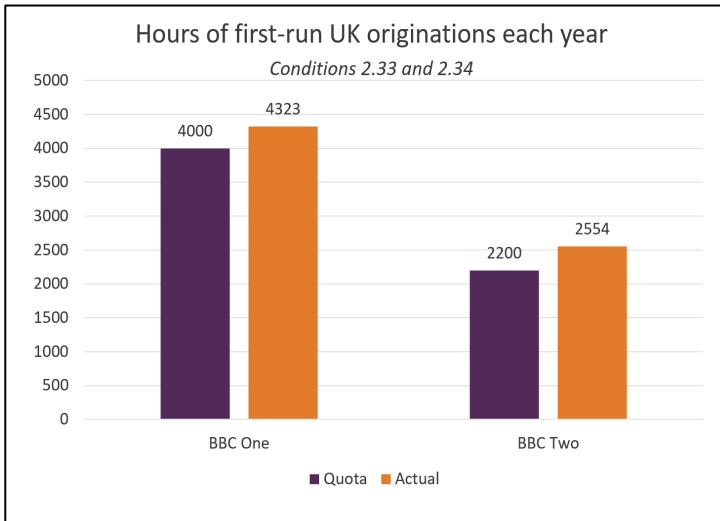
**Figure A1.9**



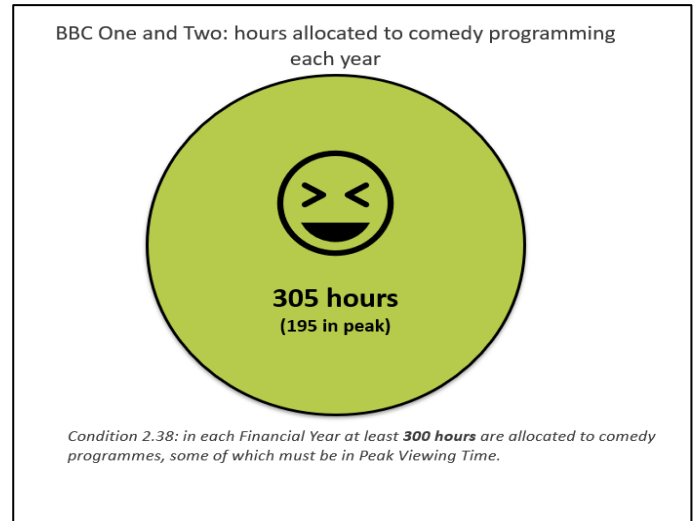
**Public Purpose 3: to show the most creative, highest quality and distinctive output and services**

A1.45 The BBC met or surpassed its obligations to provide first-run UK originations, comedy, music programming and to offer two social action campaigns.

**Figure A1.10**



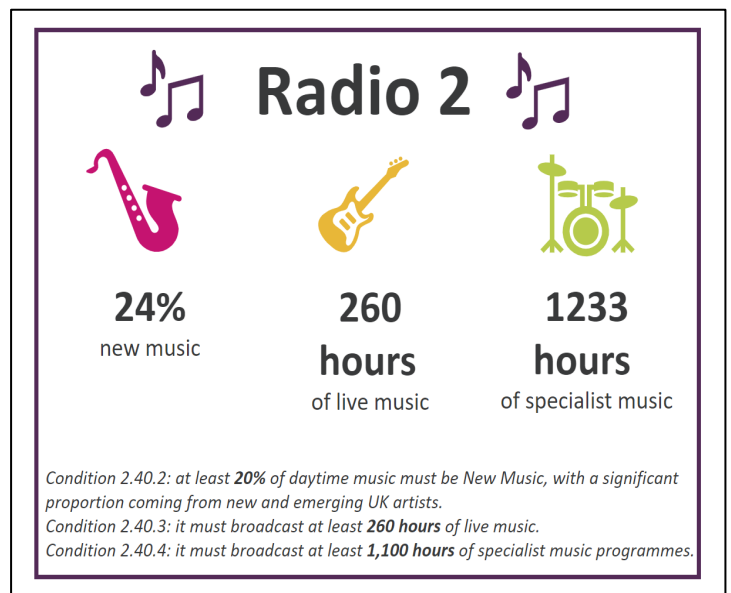
**Figure A1.11**



**Figure A1.12**



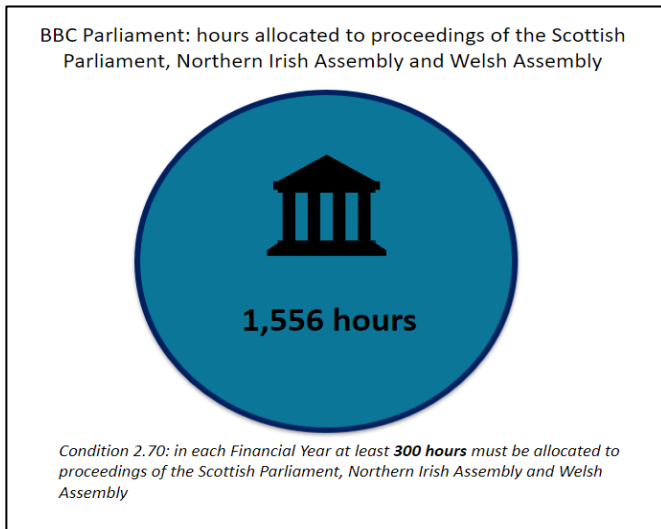
**Figure A1.13**



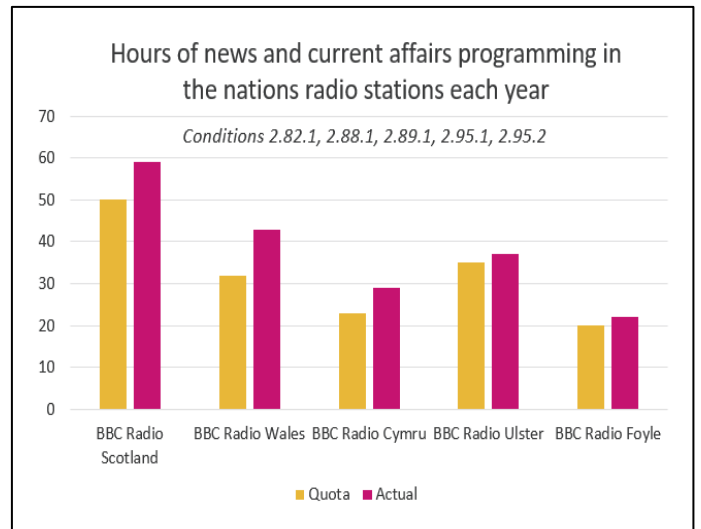
**Public Purpose 4: to reflect, represent and serve the diverse communities of all the United Kingdom's nations and regions and, in doing so, support the creative economy across the United Kingdom**

A1.46 The BBC met or exceeded its obligations for online content and radio and television programming to serve the nations and regions of the UK.

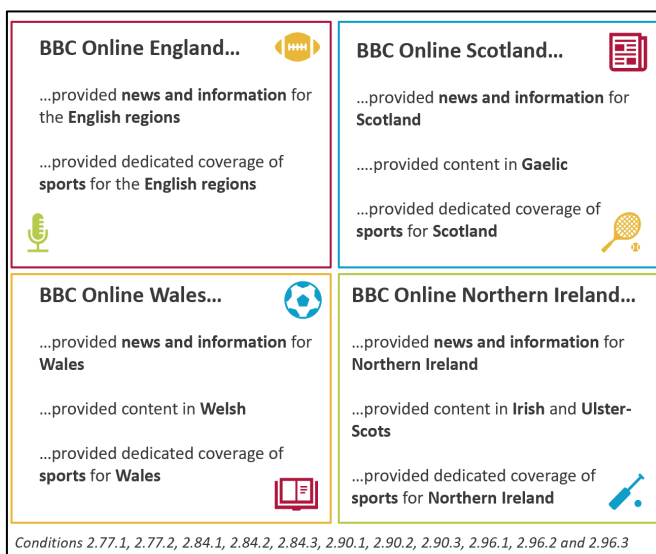
**Figure A1.14**



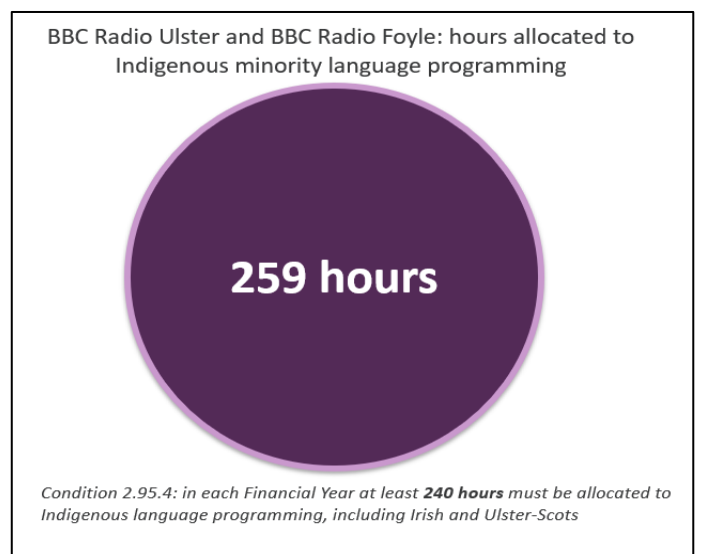
**Figure A1.15**



**Figure A1.16**



**Figure A1.17**



## Schedule 3 obligations

- A1.47 The following section sets out our assessment of the BBC's compliance in 2021/22 with the applicable regulatory obligations in Schedule 3 of the Agreement. Paragraph 2 of Schedule 3 to the Agreement is not a specified requirement on which Ofcom must report – see Clause 59 of the Agreement.
- A1.48 **Table 1** contains the relevant regulatory obligations in Schedule 3 of the Agreement and our assessment of the BBC's compliance with them. We have found that the BBC was compliant with all the applicable regulatory requirements in Schedule 3 of the Agreement. We also provide further detail on Schedule 3 Paragraph 7, which is about competition in commissioning, at the end of this section.

**Table 1: Schedule 3 obligations**

Regulatory obligation	2021/22 assessment
Paragraph 1: No charge to be made for reception of UK public services and associated content	We required the BBC to report to us if, and in which cases, it charged for reception. It confirmed in its response to the 12 July 2022 Notice that it made no such charges.
Paragraphs 3 – 5: Content standards, fairness code and party-political broadcasts	These are reported on separately in the content standards section of our 2021/22 Annual Report on the BBC.
Paragraph 6: Programmes to be reserved for independent production	<p>The BBC has an obligation that 25% of the hours of qualifying programming in each year across its television public service channels are allocated to broadcasting a range and diversity of independent productions. It must also meet similar quotas for each of BBC One and BBC Two.</p> <p>The BBC reported that it exceeded each of these quotas (achieving 31% of hours across all channels in 2021 and 27% and 46% of hours on BBC One and BBC Two respectively). The BBC provided these figures to Ofcom in response to a formal information notice as part of our annual broadcaster data returns process, as well as in its BBC Commissioning Supply report.<sup>14</sup></p>
Paragraph 7: Television, radio and online production – securing competition between BBC producers and external producers	There were no specific obligations for the reporting period. Further detail on our assessment of the BBC's compliance with Paragraph 7 is provided below this table.
Paragraph 8: Code relating to programme commissioning	The BBC confirmed it has not made any revisions to its <a href="#">Code of Practice</a> during the relevant period. The BBC has been discussing with Ofcom and other stakeholders some potential changes to its programme release policy which the Code of Practice requires the BBC to publish. It will report on this in next year's annual report. It

<sup>14</sup> This has been updated based on data from page 21 of: <https://downloads.bbc.co.uk/commissioning/site/bbc-commissioning-supply-report-202122.pdf>

	has provided the data fulfilling the reporting requirements under section 13.1 of the Code to Ofcom.
Paragraph 9: Code relating to provision for the hearing and visually impaired	In 2021, BBC channels continued to meet or exceed their requirements to provide access services. As set out in the <a href="#">Ofcom Television Access services report 2021</a> the BBC maintained and applied the Code on Television Access Services and achieved all of its annual quotas for subtitling, signing and audio description and also promoted the availability of access services on the EPG.
Paragraph 10: Retention and production of recordings	Ofcom has set the periods of time that the BBC must retain recordings in its published <a href="#">complaint handling procedures</a> . On the basis that the BBC has generally provided recordings to Ofcom upon request, we are satisfied that it has complied with this requirement. However, see the Content Standards section of our main report for further detail on this area.
Paragraph 11: International obligations	We have not specifically notified the BBC of any international obligations during 2021/22.
Paragraph 12: Equal opportunities	The BBC provided information setting out actions it has taken to meet its obligations to promote equality of opportunity, including information on progress it has made towards delivering its 10 commitments that it set out in its Diversity and Inclusion Plan 2020–23, and initiatives it has introduced to help improve the representation and inclusion of disabled staff within its workforce. Having assessed this information, we are satisfied that the BBC has complied with this obligation in 2021/22.
Paragraph 13: Training	The BBC has provided information regarding how it met these obligations on pages 59 – 62 of its Annual Report and Accounts and has provided additional information in response to the 12 July Notice, including information relating to its partnerships with other organisations in the audio-visual industry. Having assessed this information we are satisfied that the BBC has complied with this obligation for 2021/22.
Paragraph 14: General provisions about arrangements under paragraphs 12 and 13	The BBC has reported on the arrangements under paragraphs 12 and 13, including in its Annual Report and Accounts, Equality Information Report and the Diversity Commissioning Code of Practice progress report. In addition, the BBC has provided information to Ofcom that sets out how it has reviewed the arrangements and has ensured that those affected by the arrangements are aware of them. Having assessed this information we are satisfied that the BBC has complied with this obligation for 2021/22.



## Competition in commissioning

A1.49 Ofcom has two roles in relation to competition in the BBC's commissioning activity. First, to consider whether any additional intervention is necessary in the Operating Framework to protect fair and effective competition. Second, to consider the BBC's compliance with the requirements placed on it under Schedule 3 Paragraph 7 of the Agreement, and if necessary, to enforce them. Those requirements mean that during the Charter period the BBC must open up more commissioning opportunities to competition between producers and that, where it does so, competition must be on a fair, reasonable, non-discriminatory and transparent (FRNDT) basis.

### Schedule 3 Paragraph 7 requirements

A1.50 The specific quota requirements imposed on the BBC under Schedule 3 Paragraph 7 of the Agreement are, firstly in relation to making relevant television programmes,<sup>15</sup> that it must:

- secure competition for the commissioning of at least 40% of the in-house guarantee for drama, comedy, entertainment and factual programmes by 31 December 2018, alongside maintaining existing levels of competition;
- remove the in-house guarantee for children's, sport and non-news related current affairs programmes by 31 December 2019; and
- secure competition for 100% of relevant TV programmes by 31 December 2027.

A1.51 There are separate quotas for radio and online public services. The BBC must secure competition in commissioning for at least 60%<sup>16</sup> of relevant radio programmes<sup>17</sup> by 31 December 2022, and it must secure competition for the commissioning of 100% of relevant online material<sup>18</sup> by 31 December 2027.

### BBC's progress in meeting quota requirements

A1.52 In its [TV Commissioning Supply Report for 2021/22](#), the BBC reported that the percentage of hours of relevant TV programmes which were contested had fallen from 64% in 2020 to 62% in 2021. In the BBC's Annual Report and Accounts, the BBC states that *'this is due to major sporting events moving from 2020 to 2021 (e.g. the Olympics and Euros which are not contested). This meant last year's figures were greater because of their absence and balanced through to this year's figures'*. We will continue to monitor its progress on contestability in TV commissioning over the years leading up to the target.

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<sup>15</sup> 'Relevant television programmes' means all television programmes included in the UK public services except: (a) Programmes reserved for independent productions; (b) News and news-related current affairs programmes; (c) Any programme where the BBC considers that complying with the obligation would not secure value for money

<sup>16</sup> Of the total time allocated to broadcasting relevant radio programmes on the UK public broadcast services

<sup>17</sup> 'Relevant radio programmes' means all network radio programmes included in the UK public services except: (a) news programmes; and (b) repeats, continuity, simulcasts, EBU material and autplayed music

<sup>18</sup> 'Relevant online material' means all online material included in the UK public services except: (a) programmes included in the UK public on-demand programme services; (b) news and news-related current affairs material; and (c) any material where the BBC considers that complying with the obligation would not secure value for money

- A1.53 The BBC has continued to work towards its target to secure competition in commissioning for at least 60% of relevant radio programmes by December 2022.<sup>19</sup> In its Annual Report and Accounts 2021/22 it reported contesting 55% of relevant broadcast hours, a slight increase on the previous year.
- A1.54 The BBC also reported that in 2020/21, 72% of its spend on relevant online material had been contested. This is a significant increase in the percentage of relevant spend on content that has been contested from the 59% reported last year.
- A1.55 We will continue to monitor and report on the BBC's progress in working towards its upcoming quota requirements.

### **The fair, reasonable, non-discriminatory and transparent (FRNDT) requirement**

- A1.56 Schedule 3 Paragraph 7 is clear that, in meeting the quota, the BBC is required to ensure that there is genuine competition between BBC producers and external ones (whether independent producers or not) on a FRNDT basis.
- A1.57 Ofcom has not received any complaints from stakeholders about those processes failing to meet the requirement to be FRNDT and we have not opened any investigations into non-compliance.
- A1.58 We have met a range of producers as part of our ongoing stakeholder engagement. While they did not express significant concerns about the FRNDT requirement, they raised a number of points about the commissioning process. In particular, some producers wanted to see more information about the BBC's longer-term commissioning plans and the outcomes of commissioning rounds. Information about the BBC's commissioning plans and outcomes allows producers to pitch the most appropriate ideas to support the BBC's objectives, regardless of whether they are a BBC producer or an external one. We will discuss with the BBC whether more information about its plans for commissioning and the outcomes of commissioning rounds could be made available. No other significant issues about the FRNDT nature of the BBC commissioning process were raised with us.
- A1.59 We will continue to monitor whether the BBC is meeting its obligations regarding FRNDT commissioning. This will include ongoing engagement with production companies to understand more about the BBC commissioning process.

### **Operating Framework requirements**

- A1.60 Ofcom is required by Article 46 of the Charter to set an Operating Framework to secure effective regulation of the BBC's activities as set out in the Charter and Agreement.
- A1.61 The Operating Framework must include requirements to protect fair and effective competition in relation to:
- material changes the BBC proposes to the UK public services and non-service activities;
  - the effect of UK public services, trading activities and non-service activities on fair and effective competition; and

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<sup>19</sup> Of the total time allocated to broadcasting relevant radio programmes on the UK Public Broadcast Services

- agreements with, and conduct affecting, third parties in relation to UK public services, trading activities and non-service activities.

- A1.62 We must also include requirements about the relationship between the BBC and its commercial and trading activities. These are described in more detail below.
- A1.63 In March 2017, we published a statement (updated October 2017), [Introduction to Ofcom's Operating Framework for the BBC](#). In it, we explained our and the BBC's roles under the new regulatory scheme and detailed how our Operating Framework is structured.
- A1.64 We have set out the Operating Framework in a series of documents which impose requirements on the BBC and provide guidance on our regulatory approach. Most of these applied from 3 April 2017. **Table 2** below summarises the position in relation to the requirements we have set in the Operating Framework.

**Table 2: Operating Framework requirements**

Relevant Charter/ Agreement provision	Operating Framework requirement	Assessment of BBC compliance
The impact of proposed changes to the BBC's public service activities (Articles 11 and 20 of the Charter and Clauses 7 to 11 and 15 to 20 of the Agreement)	Specified requirements contained within: <a href="#">Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance</a> <sup>20</sup>	We have set out in this annex and the main body of this report more detailed comments on what we and the BBC have done in these areas
The impact of the BBC's ongoing public service activities (Article 11 of the Charter and Clauses 12, 15, 21 and 22 of the Agreement)	Specified requirements contained within: <a href="#">Assessing the impact of the BBC's public service activities: Ofcom's procedures and guidance</a>	
The impact of the BBC's commercial and trading activities (Clauses 23 to 27, 28, 31 and 32 of the Agreement)	Specified requirements contained within: <a href="#">The BBC's commercial and trading activities: requirements and guidance</a> <sup>21</sup>	
The impact of the distribution of BBC public services (Article 11 of the Charter and Clauses 15 and 61 of the Agreement)	Specified requirements contained within: <a href="#">Distribution of BBC public services: Ofcom's requirements and guidance</a>	

## Commercial and trading activities

- A1.65 As set out in our main report, in June we published our review of how the BBC has implemented its trading and separation requirements and guidance (BBC Studios review). This involved us requiring significantly more information from the BBC than it usually provides as part of its reporting requirements and looking in detail at the processes and procedures the BBC has put in place to ensure it is meeting its

<sup>20</sup> We are publishing a [consultation](#) on proposed changes to this guidance alongside this document.

<sup>21</sup> This is the unofficial consolidated version of the trading and separation requirements and guidance. For the avoidance of doubt, in the case of any difference between texts, the text set out in the 11 February 2019 publication and any subsequent documents published on Ofcom's website shall take precedence. Modifications were made to the trading and separation requirements in the BBC Studios' line of business statement, 30 April 2021. The trading and separation requirements should be read alongside the subsequent documents published on Ofcom's website.

requirements in relation to operational separation, transfer pricing and rate of return. We found two areas of concern as set out in full in our [Statement](#). The BBC is making changes to its processes to respond to our findings. In principle these changes should address our concerns, but we will monitor their implementation to ensure this is the case. We are also proposing some minor changes to the trading and separation rules.

## Other specified requirements and relevant matters

A1.66 We are also required to report on the BBC's compliance with the additional specified requirements set out in **Table 3** below. We have found that the BBC complied with all of these obligations between 1 April 2021 and 31 March 2022. We have provided more detailed comments on the BBC's approach to complaints handling in our main report. We have also provided further information regarding complaints made to Ofcom at the end of this section.

**Table 3: Other specified requirements**

Relevant Charter/ Agreement provision	Requirement	Assessment of BBC compliance
Provision of information to Ofcom (Article 47, the Charter)	The BBC must provide information that Ofcom formally requires under Article 47.	The BBC responded to all the Article 47 requests we made in 2021/22
BBC complaints handling (Clause 56, the Agreement)	<p>In September 2017, Ofcom published its <a href="#">determinations in relation to the BBC's complaints handling</a> which set out:</p> <ul style="list-style-type: none"> <li>- the period for which the BBC must retain records of its handling of relevant editorial complaints;</li> <li>- the form and intervals at which the BBC must report editorial complaints to Ofcom; and</li> <li>- the form and intervals at which the BBC must publish information about the operation and effectiveness of its procedures for editorial complaints.</li> </ul> <p>Ofcom published revised determinations on 3 July 2020 and 22 June 2022, requiring more transparent publication of BBC Executive Complaints Unit findings on relevant editorial complaints.</p> <p>In October 2018, Ofcom published its equivalent <a href="#">determinations in relation to the BBC's non-editorial (competition and other regulatory) complaints handling</a>.</p>	The BBC has complied with the determinations Ofcom set in relation to editorial complaints handling and non-editorial (competition and other regulatory) complaints handling. We have set out in the main body of this report more detailed comments on what Ofcom and the BBC have done in the area of the BBC's approach to complaints handling more generally.

## Complaints made to Ofcom

- A1.67 In enforcing compliance by the BBC with 'competition requirements'<sup>22</sup> and other 'relevant requirements'<sup>23</sup>, Ofcom may consider complaints and carry out investigations into compliance as we consider appropriate.
- A1.68 In 2021/22, we received three complaints related to these requirements. The first related to BBC Pitch, which is an online system used by producers to submit programming ideas to BBC commissioners. The second related to the BBC's decision to trial making certain of its radio programmes available exclusively on BBC Sounds for 28 days before they are made available on other platforms. In both instances the complainant had not attempted to resolve the issue with the BBC, and therefore in line with our enforcement procedures we advised that they must seek to do so before we could consider the complaint. In relation to the BBC Sounds trial, we noted that on completion of the six-month trial, if the BBC decided to proceed with the change to BBC Sounds on a permanent basis, it had committed to carrying out an assessment of the trial's impact on audiences and on other providers. The complaints were not subsequently referred to Ofcom.
- A1.69 The third complaint was about the way the BBC had applied its distribution policy in relation to its decision in 2019 to withdraw its live radio streams from TuneIn on certain service platforms in the UK. The complaint had already been assessed by the BBC before being referred to us.<sup>24</sup> Although we appreciated the inconvenience that some listeners had experienced as a result of the BBC's decision, given that none of the companies involved had raised concerns with us about the impact on fair and effective competition, we decided it would not be appropriate to open an investigation into compliance with our BBC distribution requirements and guidance.<sup>25</sup>

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<sup>22</sup> A 'competition requirement' is any requirement placed on the BBC by Ofcom to regulate the impact of the BBC's activities on competition. These requirements are set out in Ofcom's [Procedures for enforcement of BBC competition requirements](#).

<sup>23</sup> A 'relevant requirement' is a specified requirement placed on the BBC by Ofcom or the Charter and Agreement, which is not covered by a more specific Ofcom enforcement procedure. These requirements are set out in Ofcom's [Procedures for enforcement of requirements in the BBC Agreement and compliance with Ofcom enforcement action](#).

<sup>24</sup> We received several complaints about this decision in 2019-20 – see paragraph [A1.58 of the compliance annex](#) to our Annual Report on the BBC for 2019-20 – and a similar one in 2020-21 – see paragraph [A1.54 of the compliance annex](#) to our Annual Report on the BBC for 2020-21.

<sup>25</sup> The decision was made in line with our [enforcement procedures](#) and our guidance for the [Distribution of BBC public services](#).