

**RADIOCENTRE RESPONSE TO DCMS CONSULTATION ON CHANGES TO OFCOM'S STATUTORY
DUTIES AND FUNCTIONS**

INTRODUCTION

1. RadioCentre is the industry body for UK commercial radio. It exists to maintain and build a strong and successful commercial radio industry, and to help promote the value and diversity of the sector. It represents radio groups and stations of all sizes, from rural, small scale ventures, to household names serving major metropolitan areas. Its member stations together represent 90% of commercial radio listening.
2. The role of RadioCentre is to maintain and build a strong and successful commercial radio industry in terms of both listening hours and revenues. RadioCentre operates in a number of areas including working with advertisers and their agencies, representing commercial radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio.

SUMMARY

3. RadioCentre welcomes the consultation on changes to Ofcom's statutory duties and functions. In particular we support the amendment of Section 27 (1) and (2) of the Communications Act 2003 (through powers granted in the Public Bodies Act 2011) to finally remove the burdensome duty for Ofcom to promote training and undertake equality monitoring for the radio industry.
4. RadioCentre had called for the removal of these additional requirements for broadcasters some time ago, as we viewed this requirement as an unnecessary administrative burden for radio stations and other broadcasters, given this is in addition to equality and training obligations on all employers. Therefore we were pleased that Government indicated its agreement with this approach and began the process of withdrawing these obligations, which led to enabling legislation in the Public Bodies Act and the decision to close the Broadcasting Equality and Training Regulator (BETR) in 2011.
5. Since the abolition of BETR in 2011, Ofcom has continued this equal opportunities and training monitoring on an interim basis. We believe that Ofcom's resources (and those of radio stations) are likely to be better deployed dealing with other issues, rather than devoting additional time and effort to equality and training monitoring and promotion. This can be done, and is being done, within stations and the industry bodies. Moreover, the responsibility on Ofcom to promote equality and training, and monitor to the broadcast industries was always over and above the requirements on other employers. As such it was an unnecessary additional requirement with no clear benefit. This relaxation will benefit both Ofcom and the radio stations.
6. However Government and Ofcom should consider additional measures to enable regulatory flexibility for commercial radio, to ensure that stations remain economically viable; to protect the public value of commercial stations; and to support the efforts of industry and Government to prepare for a digital radio switchover.

EQUALITY AND TRAINING IN THE COMMERCIAL RADIO INDUSTRY

7. All businesses are subject to meeting robust standards of the Equality Act 2010. Commercial radio operators are no different from any other business in that regard. As employers they are

required to meet UK law on employment standards and practices, they strive to recruit equitably and provide equal opportunities to training and development for staff.

8. RadioCentre believes that effective employer-led initiatives by the industry are not only a practical measure, but also better suits the small-scale structure of commercial radio. The sector tends to be fairly self-reliant in how it works together towards identifying areas for improvement and action to tackle equality. Equal opportunities and training schemes are undertaken internally at stations, but also externally promoted by other bodies that work in collaboration across the whole radio industry.
9. From the largest groups to the smallest radio stations, there is a demonstrable commitment to meeting equality standards. Many radio employers have recruitment statements on diversity action and equality policies; provide equal opportunities and diversity awareness training and mentoring schemes. These all demonstrate real action undertaken by our member groups to benefit and strengthen their workforce¹.
10. RadioCentre works on behalf of commercial radio in collaboration with Creative Skillset, the licensed Sector Skills Council for entertainment media, fashion and textiles, publishing and advertising, marketing and communications. Andrew Harrison, CEO of RadioCentre represents commercial radio on the Board of Directors for Creative Skillset, to foster policies and practices which promote equality of access to training and development opportunities for people seeking to enter or progress within the industry².
11. RadioCentre also contributes to the promotion and completion of Skillset's annual census of the creative industries by commercial radio companies. By promoting this to members and encouraging their participation in the census, radio is better represented in the statistics and gives us a broader understanding of areas needed to take action to improve³.
12. The findings of Skillset's Employment Census provide an accurate picture of equality and training standards across the industry. This feeds into work strands within Skillset and beyond in the wider radio industry. In recent years findings from Skillset reports have prompted industry recognition and action on the scale of under-representation of gender, ethnic diversity and disability.
13. The radio industry has also taken the initiative and started to make positive progress to tackle equality issues in a number of areas. One example of this has been the work of the 'Moving on up' project and the Radio Industry Diversity Group (RIDG). This group brings together the BBC, commercial broadcasters, unions and other radio organisations to host regular networking events for black and ethnic minority people working in radio to meet senior figures to help their career development. Its aim is to ensure that radio in the UK reflects the full diversity of the population, in its programmes and in the people who make them. The 'Moving on up' project is chaired by RIDG and BECTU, the UK's media and entertainment trade union, its work is promoted by Radio Academy and Skillset⁴.

¹ See examples below:

<http://jobs.thisisglobal.com/life/diversity#global-take>

<http://www.bauermedia.co.uk/jobs/training-equal-opportunities>

<http://www.realandsmooth.co.uk/company/diversity-policy-and-practice/ea59f>

² http://www.creativeskillset.org/creativeskillset/diversity/useful_links/

³ http://www.creativeskillset.org/uploads/pdf/asset_14487.pdf?5

⁴ <http://www.bectu.org.uk/events/move-on-up>

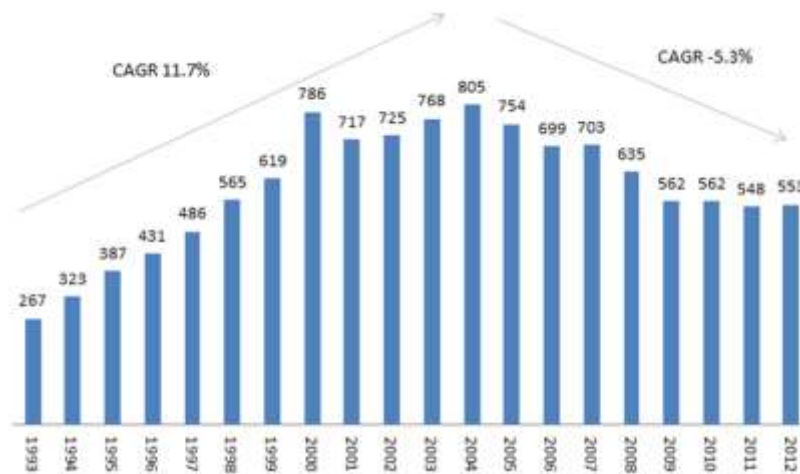
14. Identifying other key areas for improvement in the radio industry has also been championed by the recent establishment of Sound Women, who are a networking and development group for women working in UK audio and radio. They aim to build the confidence, networking and leadership skills of women in audio to reach their full potential. Sound Women are a non-profit group who arrange events, networking seminars and training to raise the profile of women to become more influential and make the industry more representative. RadioCentre has worked to support them in their recent 'inspiration' conference held in May 2013⁵.
15. These examples demonstrate how commercial radio stations are tackling equality issues proactively and contributing to the monitoring of training opportunities. This work is in addition to the compliance of each radio company with the strict legal requirements for their employees on equality. There are still areas that need attention, but the industry welcomes the relaxation of the burden to provide details to Ofcom and instead gives time to focus on the operational practicalities of ensuring the workforce is diverse and has an equal provision of training.

OFCOM AND THE NEED FOR RADIO DEREGULATION

16. Commercial radio is a relatively small sector, and yet continues to have a disproportionate amount of burdensome regulation and red-tape. We welcome the opportunity to respond to this consultation as it provides a further opportunity to highlight other administrative burdens imposed by Ofcom as where DCMS might also be able to take the lead in the context of 'cutting red-tape'. Indeed, we believe that there is an imperative to act and extend this approach to other areas of Ofcom's powers, which are in danger of constraining commercial radio's flexibility to operate and its ability to invest in its digital future.
17. These changes would not necessarily require legislative change (in the same way that was required in the case of equality and training obligations). Instead they could be taken forward at Ofcom's discretion using its existing powers, although no doubt they would be more likely to happen following the consideration and support of Government.
18. There are several key reasons why Government should support additional measures to enable regulatory flexibility for commercial radio, in particular to ensure that stations remain economically viable; to protect the public value of commercial stations; and to support the process of a digital radio switchover.
 - **Economic viability**
19. In recent years the revenues have been under increasing pressure. In 2012 commercial radio revenues were £553m (down 32% in real terms since 2003 Communications Act). This is due to a combination of structural changes in advertising as more revenue shifts online, difficult economic conditions and outdated regulation. This pattern in recent years is illustrated in the chart below, showing a compound annual growth rate (CAGR) of -5.3% since 2004.
20. This pressure on revenue is forecast to continue, due partly to cyclical reasons, as economic growth has slowed. It has also been a result of structural changes and more intense competitive pressures – with an expansion in the number of commercial radio stations, pressure from the BBC and the emergence of online music services. As a result revenues are in long term decline.

⁵ <http://www.soundwomen.co.uk/>

UK commercial radio advertising revenues, 2012 prices, £m⁶



21. Radio has high fixed costs (such as transmission, production and talent), estimated to be around 83% of the total. This means declines in top line revenue drop almost entirely to the bottom line. In addition, commercial radio will be expected to fund significant investment in digital radio coverage expansion in the coming years.

- **Public Value**

22. Commercial stations provide a valuable function in communities, by producing local content and contributing to the plurality fundamental to our democracy, alongside its range of entertainment, music, sport and comedy programming. Information collected from RadioCentre member stations demonstrates the scale and impact of this contribution⁷. This demonstrates the range of local and national news, local charity and community initiatives, the support for local economies, as well as the role in supporting the success of the UK music industry.

23. Overall commercial stations broadcast an average of around 8½ hours of public service content each week. We estimate that the value of this public service activity is equivalent to more than £2.5m per week across the whole commercial radio industry – or around £130m pa.

- **Digital Radio Switchover**

24. At the end of 2013 Government is expected to make an announcement regarding its plans for a digital switchover for large radio services, and provide an indication of expected switchover dates. The implications of this decision will be far reaching and are likely to signal a significant shift in the shape of the radio industry. At this point it will not be sustainable to continue with a system of regulation (originating from the Broadcasting Act 1990) designed for an era of spectrum scarcity.

25. Moreover, assuming that the decision is to proceed towards a switchover, it will signal the start of an extensive infrastructure build out, funded by the BBC, Government and commercial radio. Without the necessary regulatory flexibility and relief such investments will become even more challenging.

⁶ Radio Advertising Bureau (gross incl agency commission, but excl production costs), rebased to 2012 prices using CPI

⁷ RadioCentre, 'Actions Stations: The Output and Impact of Commercial Radio' 2011

26. Therefore, if Government and Ofcom wish to encourage and support a successful commercial radio industry, which is economically viable; continues to generate significant public value; and is able to support the programme of digital switchover, it should seek to examine further areas of flexibility that may assist the sector. In the absence of a new Communications Act to change the legislative framework, we would like to see Ofcom exercise this discretion to support the long-term future radio sector

PROPOSALS FOR REGULATORY CHANGE

27. Ofcom has significant discretion to provide greater regulatory flexibility in radio. Given the apparent lack of momentum behind a new Communications Act (which would be required to change the legislative framework), we would like to see Ofcom exercise its discretion and support the long-term future radio sector. It has significant flexibility in three main areas:

- Local production rules
- Music formats
- Radio licensing

• Local Production Rules

28. Current legislation requires Ofcom to consider the local output of commercial stations. It does this by determining the amount of local material (and how much must be locally-made), and by considering local tastes and interests when awarding licences. As a result stations must produce a minimum quota of 7 hours in daytime on each weekday from a particular location or 'approved area' determined by Ofcom⁸.

29. However, these quotas of locally-made content are a poor proxy for local *output* and do little to protect locally-relevant content. This is because this type of 'input' regulation only considers the location where the content is produced - and fails to consider the 'output' of what listeners actually hear.

30. Considerable flexibility exists for Ofcom to remove or reduce these quotas, or to reconsider the way in which it uses the approved areas (for example, by permitting relocation and programme sharing across broader areas or Nations). Yet Ofcom has been reluctant to act on this issue to date. Instead it has chosen to continue with the narrow approach of measuring localness by the number of locally-made hours from its approved areas. This would appear to be due to a misguided belief that this ensures local output, and as a means to help it to consider how to determine licence awards (or 'beauty contests').

31. Ofcom could be significantly more flexible in how it interprets these rules and we would urge Government to ask it to examine ways to exercise its discretion in this area. These current rules constrain commercial radio's freedom to operate and compete. Local content should instead be protected by regulating the relevant local *output* of radio stations.

• Music Formats

32. Ofcom has general duties to ensure range and diversity of radio station output. As a result each station must comply with a range of licence conditions and its own music format, which is subject to enforcement and can only be amended with Ofcom's approval

⁸ http://stakeholders.ofcom.org.uk/binaries/consultations/radio/statement/Approved_areas_annex.pdf

33. No other medium is subject to this degree of regulation. Stations can only change the genres of music played with the permission of Ofcom. This can prevent stations from reacting to the needs and demands of listeners in a fast changing music and entertainment market.
34. Ofcom has the discretion and flexibility to implement a significant simplification to music formats. In 2009⁹ Ofcom itself acknowledged that it could reduce the music categories in the existing formats down to a single 'broad music' category, as it recognises that current formats do little to promote diversity.
35. Significant simplification is clearly possible, as long as it doesn't jeopardise diversity and variety overall. Ofcom has indicated previously that it would require case studies, data submissions or evidence to ensure it could have confidence that any changes would not have a negative impact on this diversity. However, the complete removal of any reference to music formats is unlikely without some legislative change.

- **Radio Licensing**

36. There are two key issues relating to licensing where Ofcom could exercise discretion:
 - a) Longer licence terms for analogue stations (i.e. FM only)
 - b) Simpler licence conditions
37. On licence terms, Ofcom currently awards analogue-only licences for 7 years, even though it has the power to provide these licences for up to 12 years and longer licences provide the best chance of viability and stability for radio stations. However, Ofcom has claimed that longer 12 year periods would reduce its regulatory flexibility.
38. Ofcom could introduce 12 year licences relatively swiftly under the existing legislation. There is no debate about its power in this area, simply its willingness to move ahead.
39. On licence conditions (and the process of awarding licences), Ofcom focuses heavily on local production quotas and music formats. It uses these conditions as part of the 'beauty contest' process to determine the award of licences. Yet it is possible for the statutory duties (stemming from the Broadcasting Act 1990) to be met in different ways, which do not necessarily require the use of such strict quantitative measures or quotas.
40. RadioCentre has proposed a simpler approach to categorising and allocating licences, which could be delivered under the current legislation¹⁰. This would involve more pro-active monitoring on localness output by Ofcom, alongside the allocation of licences to broad categories, reducing administrative burdens while protecting valuable output.

CONCLUSION

41. RadioCentre welcomes the commitment from DCMS to reducing red tape for UK businesses. The removal of the duty for Ofcom to promote training and undertake equality monitoring for the radio industry is welcomed by the commercial radio industry who already undertake these facets as part of their business.

⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/radio/summary/condoc.pdf>

¹⁰ http://www.radiocentre.org/files/rc_response_to_comms_review_2012_final_draft_submitted.pdf

42. However, as we have outlined in this response, there are a number of additional areas where Ofcom has significant discretion regarding the regulation of commercial radio. We would welcome the support of DCMS in encouraging Ofcom to review the current interpretation of these rules, particularly in the context of the need to transition from a framework designed for analogue radio to one that is fit for a digital future.

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