



RADIOCENTRE

**RESPONSE TO OFCOM CONSULTATION:
HOLDING THE BBC TO ACCOUNT FOR THE DELIVERY
OF ITS MISSION AND PUBLIC PURPOSES**

JULY 2017

SUMMARY

The BBC plays an important role in providing high-quality and distinctive radio content for audiences in the UK. All broadcasters face challenges ensuring audiences stay connected to their content, but the BBC has a special responsibility as our publicly funded broadcaster. A strong theme of the recent Charter Review process was that in order to justify such significant licence-fee funding, the BBC would be expected to refocus its services on areas where they provide additional value (especially at peak times), as well as delivering large audiences with mainstream output.

The new BBC Charter and Agreement set out to deliver a greater range of choice for licence-fee payers, providing real benefit to the BBC and its audiences, resulting in a healthier and more diverse media industry in the UK. The Government also sought to enable other operators to compete more effectively, unimpeded by an over-mighty BBC which currently has a dominant share of the radio market. To achieve this it identified the need for a stronger framework to measure the distinctiveness of BBC services, underpinned by a measurable range of regulatory conditions.

The new regulatory structure for the BBC was widely welcomed, alongside proposals to strengthen accountability by passing responsibility for regulation to Ofcom and internal governance to a new BBC Unitary Board. Under this structure it was clear that Ofcom's Operating Licence would be a vital tool to ensure the success of the new regime, with the BBC expected to make further detailed commitments in its Annual Plan.

The draft proposals being put forward by Ofcom and the BBC do not appear to achieve that intended ambition. In its Annual Plan, the BBC has outlined a strategy for expansion and growth, with little or no serious consideration of market impact, while providing management with maximum flexibility and reducing the need for accountability. Combined with Ofcom's apparent reluctance to take a more proactive role through the use of serious, stretching targets, the result is a performance framework that is substantially weaker than the one overseen by the BBC Trust.

The main elements of Ofcom's approach are:

- minimising detailed service requirements by moving to a single licence
- setting out narrow "regulatory" issues (overseen by Ofcom) and much broader "strategic" matters (overseen by the BBC Board)
- using much narrower descriptions and definitions of BBC services
- removing many of the existing conditions that apply to BBC services
- increasing some of the existing conditions (in areas where the BBC is already over-complying)
- adding only a small number of genuinely new requirements.

In adopting these proposals Ofcom has effectively reduced the requirements with which the BBC was previously required to comply. In radio this has meant a reduction in strict regulatory 'conditions' for radio from 59 to 38 (a decrease of over 35%). In addition, over 200 other broad 'requirements' on radio, which used to be a feature of the BBC Trust service licences, have largely been ignored by both Ofcom and the BBC Annual Plan (with fewer than 60 similar commitments now being proposed). Where new or increased quotas are included they are unlikely to lead to any change in BBC output as they are all already being exceeded.

The structure of BBC regulation might have been improved with the introduction of external regulation, but Ofcom's suggested approach will mean less accountability for the BBC overall. There is serious doubt whether the outcome currently proposed successfully meets the obligations laid down by Government and Parliament in the BBC Charter and Agreement and we urge Ofcom to reconsider.

BACKGROUND

1. The BBC is one of the finest broadcasting organisations in the world. Its best radio content is unrivalled in range and quality while being valued highly by listeners. It also holds an extremely privileged position due to the scale of its public funding as well as preferential access to limited broadcast spectrum. Therefore it is appropriate for the BBC to be regulated in a different way to other broadcasters in recognition of its unique status, its mission and public purposes. As part of this process all BBC services should be required to demonstrate the additional value they are providing to audiences through the quality and distinctiveness of their output.
2. This obligation on the BBC to demonstrate the additional value of its services is especially acute given the rapid changes in technology and media consumption in recent years. In radio and audio alone the level of competition for listening has never been more intense. There has been a vast expansion in broadcast and online audio content, with on demand audio services like Spotify and Apple Music now accounting for 23% of listening according to Ofcom's Communications Market Report (with live radio accounting for 71% and a further 6% by personal music collections). For younger audiences aged 16-24 this shift is even more significant, with this age group spending almost equal amounts of time listening to live radio (29%), personal digital audio (26%) and streamed music (25%).
3. For commercial operators this fragmentation of audience has been accompanied by a huge shift in advertising revenues to online platforms. In the last 20 years digital advertising has grown from around 1% to a more than 50% share of UK ad revenue. This transition of ad-spend to online is the most significant economic trend affecting all commercially funded media, resulting in a decline in radio's share of display advertising revenue.
4. Against this backdrop it is more important than ever for the BBC to use its privileged position and significant levels of funding to serve wider communities and deliver a broader range of public service goals, rather than being allowed to shift gradually towards a broader and more mainstream audience, duplicating what is offered by the commercial sector. In recent years there have been several attempts to address these issues, most notably by the BBC Trust during the last Charter period (2006-2016) with the introduction of service licences (and reviews of performance against these remits), alongside the opportunity to consider market impact and complaints at arm's length from BBC management. These were all welcome developments, but ultimately the BBC Trust was unable to reconcile its unusual role in overseeing governance, financial management and strategy with its responsibility for regulation and compliance. This structural problem – and the fact that it was required to be both cheerleader and regulator – hampered its ability to hold the BBC to account.
5. These challenges were acknowledged by the Government during the Charter Review process in 2015-16 and were part of the background that led to a separation of the regulation and governance functions of the BBC. Specifically, the Government accepted the recommendations of the independent review by Sir David Clementi and appointed Ofcom as the BBC's external regulator, with a BBC Unitary Board responsible for governance.
6. This new framework was widely supported by commercial radio operators and other stakeholders, as it appeared to offer the prospect of genuine external oversight of the BBC and accountability for the delivery of its remit, with the power to impose remedies if it failed to achieve the performance levels required. It also provided an opportunity to build on the work of the BBC Trust by developing a clearer range of specific service obligations to drive distinctiveness.
7. The introduction of a more robust system of regulation was also seen as necessary to address the gradual shift of some BBC services towards a broader and more mainstream audience over a number of years, duplicating what is offered by the commercial sector, particularly at peak times

(for example, mainstream radio services like Radio 1 and Radio 2). This provides poor value for the public, as it limits the range and diversity of output available rather than extending choice.

8. We continue to believe that this new framework for BBC regulation has the potential to tackle these issues and provide real benefits to the BBC and its audiences, while resulting in a healthier and more diverse media industry in the UK. However, we are concerned that the approach to implementation that is currently being proposed by Ofcom means that the new system is likely to fall short of the ambitions laid out by Government.
9. The draft Operating Licence proposed by Ofcom includes a narrower range of regulatory conditions on BBC services; makes no in-depth attempt to describe what these services are supposed to do or what audience they should serve; and provides the BBC much greater leeway to set and change key elements of their radio stations.
10. While it is not Ofcom's role to set detailed strategy for the BBC, the apparent reluctance to impose a stronger set of regulatory conditions is disappointing. Much of the debate around BBC Charter Review focussed explicitly on the need for a stronger set of content obligations on the BBC, leading specific references in the BBC Agreement to there being 'a presumption against removing any of the current requirements' and even a consideration of 'clearer average age targets for the mainstream radio services'¹. This followed an independent review into market impact and distinctiveness of the BBC commissioned by Government, which found that there would be significant benefits for audiences and the broader radio market if Radio 1 was to focus more on under 25s, Radio 2 on over 50s and Radio 5 Live on more hard news and minority sports².
11. Despite this direction to more clearly segment audiences, backed up by a greater range of regulatory conditions, Ofcom focuses on a much narrower range of requirements and provides the BBC with the flexibility to use its Annual Plan to set and define its own target audiences. These commitments will not be subject to enforcement in the same way as Ofcom's regulatory conditions, with the BBC able to change, amend or remove any of its self-imposed targets at will. Indeed there would appear to be nothing in the current Operating Licence that would stop any of its stations from explicitly seeking the most commercially sensitive audience (25-44 year olds) if they wished to do so. This would limit choice for listeners and be highly damaging for commercial competitors.
12. The limited level of external regulation advocated by Ofcom under the new framework is especially disappointing because there is evidence that regulatory and demographic targets can have a real impact. In particular, the focus on the age of the Radio 1 audience as one of the defining elements of its remit has led to changes in output and approach, requiring BBC management to take strategic and operational decisions (on presenters, music output, speech content). Similarly the BBC Trust was clear that the age of the Radio 2 audience must not come down further and that its demographic focus should be over 35s, supported by the broadest possible range of music. The BBC Annual Plan now refers to broadening Radio 2 to target a younger audience.
13. While the BBC's total market share for radio is still too high it is clear that the introduction of service licences and clearer public service targets for BBC radio coincided with a slowdown and eventually a slight reversal in the BBC's share of audience. Audience figures are obviously influenced by a broad range of factors, but it is certainly worth noting the changes in market share from when the BBC Trust introduced the first service licence in 2008 (56% BBC and 43% commercial radio – a gap of 13%) to 2016 when the Trust was effectively dissolved (53% BBC and 45% commercial radio – a gap of 8%).

¹ BBC Agreement, Schedule 2

² [O&O/ Oxera Report](#) for DCMS, 'BBC television, radio and online services: An assessment of market impact and distinctiveness', February 2016

14. Unless Ofcom takes the opportunity to radically amend its current proposals for regulating the BBC, some of the progress in driving distinctiveness of BBC radio and limiting its market impact risks being reversed.

BBC CHARTER AND FRAMEWORK AGREEMENT

15. It was clear throughout the Charter Review process that the Government accepted the need to drive greater distinctiveness across BBC services. This led to a White Paper with a much greater emphasis on distinctive BBC output and several specific commitments on ways in which this was to be translated into the new framework.

16. The draft Charter and Framework Agreement, which was then debated and approved by Parliament, included requirements on distinctiveness within its new mission statement and public purposes for the first time. These were supplemented by guidance and comments on the requirements that would be expected of some individual services.

17. A small selection of the most relevant extracts from the Government's White Paper³ on the future of the BBC as well as Schedule 2 of the Framework Agreement⁴ between Government and the BBC appear below. Where appropriate the key elements are emphasised in bold.

Figure 1: Government commitments to BBC distinctiveness (White Paper)

'ensure the more mainstream services of BBC One, Radio 1 and Radio 2 are **more differentiated** from the rest of the market' (p.12)

'the new Charter will **retain and strengthen** the existing system of content requirements' (p.37)

'there will be a **presumption against removing any of the current requirements**, which would result in a weakening of the distinctiveness of the BBC' (p.38)

'The case for **clearer average age targets** for the more mainstream radio services will also be considered further to ensure the BBC is serving distinct audiences' (p.38)

'a **focus on peak time** programming, so that valued public service content is more directed towards periods of the day when the greatest number can benefit' (p.38)

Figure 2: Operating Licence Regulatory Conditions (BBC Framework Agreement)

2. The first Operating Licence

(1) In imposing the regulatory conditions in the first Operating Licence, **Ofcom must seek to increase the current requirements on the BBC** as a whole to secure the provision of more distinctive output and services. In particular, Ofcom must-

(a) have a **presumption against removing any of the current requirements** which would result in the provision of less distinctive output and services;

(b) consider the case for **increasing the current requirements** in areas where the BBC has exceeded those requirements or where this would support the provision of distinctive output and services;

³ DCMS White Paper, 'A BBC for the future: a broadcaster of distinction', May 2016

⁴ BBC Agreement, December 2016

(c) consider the case for **setting requirements** in areas where an improvement in performance would secure the provision of distinctive output and services; and
(d) consider the need for the BBC to reflect, represent and serve audiences taking into account the needs of the **diverse communities** of the United Kingdom's nations and regions.

(2) In complying with subparagraph (1)(b) and (c) in relation to radio services, Ofcom must have particular regard to the desirability of setting or changing requirements-

(a) to improve **focus on promoting UK talent**, particularly new UK acts, on Radio 1 and Radio 2;
(b) to ensure Radio 1 and Radio 2 **music output in particular is more distinct** from those of other broadcasters, taking into account number of plays not just size of playlist at both peak listening and other times;
(c) to **increase the amount of news, information, current affairs and social action** issues on Radio 1 and Radio 2, particularly at peak listening time; and
(d) to **broaden sports coverage**, to better support sports which currently receive less broadcast coverage.

(3) In complying with paragraph 1(1) in relation to radio services, Ofcom must consider the case for **clearer average age targets** for the mainstream radio services.

BBC ANNUAL PLAN 2017/18

18. The final important piece of the context to the BBC's new regulatory and governance framework is the BBC's interim Annual Plan for 2017/18 which was published on 4 July 2017. The BBC is required to use this document to outline how it intends to deliver the vision set out in the Charter and Agreement.
19. The Plan provides some useful insight into the strategy of the BBC and identifies some sensible priorities. In particular, it is right for the BBC to seek to 'reinvent itself for a new generation' while recognising the changing ways in which people access and consume content in a digital age. However, the detail provides a serious cause for concern for the BBC's competitors, as it appears to outline an ambition to maximise audiences (with little apparent consideration of potential market impact) and minimise any regulatory obligations.
20. For example, the Plan states that a major strategic focus for 2017/18 is personalisation to 'encourage people to choose the BBC more often and spend longer with us, thereby increasing the value audiences get from us and the public value we create'⁵ with particular focus on reinventing and growing audio. It could be argued that this is simply updating the BBC's commitment to provide something for everyone, but the limited consideration on the market impact of the BBC's growth (or any indication of when such changes might be considered 'material' and a matter for a Public Interest Test being triggered by the BBC Board) appears to reveal an intention to expand further without any consideration of the wider impact.
21. This strategic positioning by the BBC is made all the more concerning by the absence of any meaningful additional commitments on individual services, which fall short of what was previously required by the BBC Trust and in some cases even appear to seek to dilute the requirements proposed by Ofcom in the new draft Operating Licence.
22. Therefore while there are some broad age related commitments for Radio 1 (15-29 year olds) and Radio 2 (over 35s) these relate to 'editorial focus' not target audience, which is easier to justify and less measurable. Meanwhile previous age targets for BBC Local Radio (over 50), BBC 1Xtra (15-24) and Asian Network (British Asians under 35) have been removed entirely.

⁵ BBC Annual Plan 2017/18, p.53

23. As far as music output is concerned, the BBC's further pledges on music for Radio 1 and Radio 2 ('a daytime playlist that features a greater range of songs') appears weaker than Ofcom's requirement. Where there were previously a number of specific quantitative commitments on the music output of other BBC radio stations these have been replaced by much broader descriptions. For example, the obligations on BBC Local Radio (previously no more than 15% recent chart hits) simply become 'a broad mix of content genres relevant to local audiences'; 1Xtra (previously 60% new music in daytime and at least 35% UK music in daytime) becomes 'support for UK artists and new music in daytime'; and 6 Music (previously no more than 30% new music, 400 hours of archive concerts, 6,500 concert tracks or sessions, and 300 new sessions a year) becomes simply 'alternative and specialist music'.
24. Commitments to BBC radio's distinctive speech output are also reduced in many places. Specific requirements on social action for Radio 1 (minimum of two campaigns a year) are replaced with broad support for campaigning on mental health issues this year; support for comedy and developing new performing and writing talent on Radio 2 are not even referenced; a commitment to constantly updated news, religious output, outside broadcasts and local sport on BBC Local Radio is replaced with a vague promise to cover stories that matter to local audiences; and the assurance that output of 5 Live Sports Extra will be 100% live sports coverage is also absent.
25. This approach would appear to reflect the BBC's view that 'regulatory conditions should be used only where absolutely necessary and that they should not unduly restrict creative freedom or the Board's ability to set the BBC's strategy'⁶. While this sounds reasonable in isolation the net result is that the BBC is giving itself maximum leeway to avoid regulatory requirements, with fewer specific considerations on how to achieve a distinct range of services and avoid an adverse market impact.

QUESTIONS ABOUT THE OPERATING LICENCE

26. Against this background there are a number of specific concerns in relation to the terms of the draft Operating Licence and performance measurement framework. These are outlined in response to the consultation questions below.

Q.1 Do you agree with our overall approach to setting the Operating Licence?

27. No. There are a number of significant concerns regarding Ofcom's approach to setting the Operating Licence for the BBC. This is because it appears that the changes will lead to fewer conditions or regulatory requirements on the BBC overall, providing it with greater flexibility to operate than under the previous regime overseen by the BBC Trust.
28. Ofcom has included a number of measures designed to drive distinctiveness and improve public value of BBC services in some areas, this action only seems to have been taken in cases where Ofcom was specifically required to do so by the BBC Agreement (most notably in Schedule 2). As it stands the draft Operating Licence is a disappointing document which requires significant changes if it is to be an effective tool for holding the BBC to account. This is due to Ofcom's overall approach, summarised below.
- **Single Operating Licence**
29. There is no requirement on Ofcom to continue with the same framework as the BBC Trust and operate 26 different service licences. Instead it proposes a single Operating Licence for all BBC services, structured around the new public purposes with specific regulatory conditions and definitions relating to individual services. This approach has a number of potential advantages, as

⁶ BBC Annual Plan 2017/18, p.35

it enables Ofcom to set clear themes and requirements for BBC services overall and avoids repetition and unnecessary overlap between services.

30. This structural change also makes it easier to remove and reduce the number of specific regulatory requirements on BBC services. Requirements may be seen as being covered by another service, or simply viewed by Ofcom as matters of strategic or creative judgement rather than valid regulatory targets. The move to a single licence is therefore likely to lead to narrower range of regulatory requirements on BBC services, which is not the outcome anticipated in the Charter and Agreement.

- **Distinction between ‘regulatory’ issues (overseen by Ofcom) and ‘governance’ matters (overseen by the BBC Board)**

31. The consultation document outlines an entirely reasonable argument that there should be a clear distinction between the role and responsibilities of the BBC Board and those of Ofcom. This desire to avoid duplication and confusion is in line with the findings of the Clementi Review, which recommended that matters of governance and regulation be handled separately (instead of jointly by the BBC Trust).

32. However in applying this approach to the draft Operating Licence, Ofcom appears to take a relatively narrow view of its own responsibilities to set and monitor regulatory conditions. In contrast its view of what constitutes governance and strategy – matters for the BBC Board – seems to be broader than anticipated by most observers (and goes further than outlined by the terms of the Framework Agreement).

33. This approach could indicate a reluctance on behalf of Ofcom to play the sort of active role that is required and expected of the external regulator of the BBC. The result of Ofcom ceding too much responsibility to the BBC Board for setting targets and performance measures will be fewer requirements on BBC services overall, with a number of indicative targets set by the BBC itself within its Annual Plan, rather than being imposed and enforced externally.

34. Of course, there is a need to distinguish between governance and regulatory functions but Ofcom should reconsider the way it is proposing to apply this approach at present, which will potentially lead to a significant reduction in regulation on BBC services and limit Ofcom’s own power as an external regulator.

- **Narrower descriptions and definitions of BBC services**

35. Under the previous regime the BBC Trust published service licences that featured several different types of obligation. These included licence ‘conditions’ that usually consisted of strict and quantifiable quotas; a number of broader commitments referred to as ‘requirements’ (see attached Annex); and an overall description of the service.

36. Ofcom explains its approach to these elements of the previous regime in the following way: ‘we have retained most of the quantifiable conditions contained within the BBC’s existing service licences, but have removed the extensive qualitative requirements which were a feature of them. In our view, these served more of a governance or strategic function than a regulatory function’ (para 1.15).

37. This statement not only gives the misleading impression that Ofcom has mostly retained quantifiable conditions, which it has not done in relation to radio (see below), but it also passes the responsibility for many other regulatory matters that formed part of the previous service licences to the BBC Board.

38. While Ofcom is correct that some of the wording that formed these ‘requirements’ amounted to qualitative descriptions of the individual services, they also included a range of important

obligations (including a number of quantitative measures) that have played a vital role in holding the BBC to account. In total we estimate there were 213 such requirements on BBC network radio and have listed them all in the Annex attached, alongside the much smaller list of service descriptions being proposed by Ofcom and the BBC Board (a total of 53).

39. By sweeping so many requirements away entirely and introducing shorter and more generic descriptions, Ofcom has also reduced pressure on the BBC to meet targets that drive distinctiveness of its services. Most notably, Ofcom appears to be effectively relinquishing much of its role in setting and monitoring target audiences for BBC radio services. The limited inclusion of some target audience commitments by the BBC Board (e.g. on the editorial focus of Radio 1 and Radio 2) and removal of these in other areas (BBC Local Radio, 1Xtra, Asian Network), which will not be enforced by Ofcom, demonstrate the level of flexibility that is now available to the BBC.

- **Removal of existing conditions that apply to BBC services**

40. The loss of service descriptions and the range of commitments they contain is not the only way in which the draft Operating Licence reduces the requirements on BBC services. There are also fewer direct regulatory conditions being proposed compared to the existing regime.

41. This is surprising, because as noted above the BBC Agreement (building on the Government’s White Paper) is very clear that all current requirements should stay in place where they support distinctiveness. It states explicitly that when setting the terms of the first Operating Licence Ofcom must ‘have a presumption against removing any of the current requirements which would result in the provision of less distinctive output and services’⁷.

42. However the draft Operating Licence includes multiple examples of existing conditions being dropped completely, often with scant justification other than the high-level position adopted by Ofcom that it wants to avoid setting strategy for BBC services. At a headline level for BBC network radio this means a proposed reduction in the number of regulatory conditions that apply to specific services of 36% (down from 59 to 38). This refers only to service level conditions and is broken down in this summary table.

Figure 3: Number of regulatory conditions on BBC network radio (BBC Trust vs Ofcom)

Station	Service licence (BBC Trust)	Draft Operating Licence (Ofcom)
Radio 1	10	8
1Xtra	6	3
Radio 2	9	10
Radio 3	7	6
Radio 4	6	4
4 Extra	4	0
5 Live	2	3
5 Live Sports Extra	1	0
6 Music	7	2
Asian Network	7	1
UK public radio	0	1
TOTAL	59	38

⁷ BBC Agreement, Schedule 2

43. This is clearly not the only gauge of the level of regulation of BBC services, as it does not take into account the nature of these conditions, the range of overarching requirements in the draft Operating Licence or areas where the current requirements have been enhanced. But since it actually excludes the numerous requirements and measures that existed under the service licences that Ofcom is not proposing to include in the new Operating Licence, it offers a reasonably accurate impression of the scale of the regulatory obligations now being required of BBC radio services.
44. The Government (and indeed Parliament when it approved the Charter and Framework Agreement) would hardly have expected such a dramatic reduction in the number of regulatory conditions on BBC services given the explicit direction to Ofcom to have a presumption against removing any of the current requirements. Ofcom should take the opportunity to revise its approach and look again at the suggested regulatory conditions included in the Annex to this document in order to comply more closely with the requirements of the Royal Charter and Framework Agreement.
- **Increase in quotas for some existing conditions**
45. The draft Operating Licence also includes some increases in the quotas for certain types of output, as well as some changes to the definitions and terminology that are designed to drive distinctiveness of BBC services. For example, Radio 1 has seen its annual quota for UK acts played in daytime rise from 40% to 45% and its requirement for new music in daytime has risen from 45% to 50%, with a significant proportion of this from new and emerging UK acts. Similarly, Ofcom is proposing Radio 2 increasing its weekly quota for news and current affairs programming from 16 hours to 17 hours, with the additional requirement that at least 3 of these hours are at peak listening time (between 06.00 and 10.00 or 16.00 and 19.00 on weekdays, or between 07.00 and 10.00 at weekends).
46. These increases in the requirements on BBC services are a step in the right direction at first glance. However only a relatively small number of conditions represent an increase in the quota required. Many of the existing targets remain unchanged where they could have been increased, for example the conditions on Radio 1 for specialist music (60 hrs per week) and documentaries (40 pa); quotas on Radio 2 for specialist music (1,100 hours pa), UK acts in daytime (40%), live music (260 hours pa), arts programming (100 hours pa) and religious programming (170 hours pa); as well as annual quota for news on 5 Live (75% of output) and average hours of speech based features on 6 Music (10 hours per week).
47. Where increases have been proposed to existing quotas it would appear that the BBC is already over-delivering against these new targets in every single area, often by a very significant margin (see Figure 4, below). Therefore the act of increasing the quotas by the levels that are proposed – generally by a flat rate of around 10% in each case – is likely to have no discernible impact on BBC services, as they will not be required to make any changes to the existing output in order to continue to meet and exceed these quotas.
48. Ofcom should revisit the proposed new quota levels outlined in the draft Operating Licence and increase them on a case by case basis, rather than applying an across the board figure of c.10%. A minimum level for the new quotas should be equalling achievements during recent years of operation as reported in the BBC Annual Report. Given the BBC has already achieved these levels there is little point requiring quotas that are any lower (unless there are exceptional circumstances) and indeed a strong argument in some cases to push them higher.

Figure 4: Increased quotas for BBC radio and levels achieved (2016/17)

	BBC Trust	Ofcom	<i>Achieved 2016/17*</i>
Radio 1			
UK acts in daytime (pa)	40%	45%	47%
New music in daytime (pa)	45%	50%	60%
Number of new sessions (pa)	160	175	221
Radio 2			
Weekly hours of news/ current affairs	16	17	18
Radio 3			
Live of specially recorded music (pa)	40%	45%	59%
New musical works	20	25	31
New arts/ cultural documentaries	30	35	52
Radio 4			
Hours of news and current affairs (pa)	2,500	2,750	3,364
Documentaries (pa)	350	375	392

*Source: BBC Annual Report 2016/17

- **Addition of new requirements**

49. As well as the increase in quota levels Ofcom is also proposing a small number of additional requirements, or has reframed some of the existing commitments to provide greater clarity and drive distinctiveness. One of the most important additions is the inclusion of a requirement on Radio 1 and Radio 2 to play a 'broader range of music (number of plays and size of playlist) than comparable providers during Peak and Daytime'. This is underpinned by the requirement for new music on Radio 1 (50%) and Radio 2 (20%), a significant proportion of which must come from new and emerging UK artists.

50. This new requirement reflects the strong view of Government (expressed in the Framework Agreement) that BBC radio has a responsibility to ensure that its music output is distinct from other broadcasters, taking into account the number of plays at peak and other times, not just the size of the playlist. It is therefore an issue that Ofcom should monitor closely and on which it should provide regular reports. It should also clarify what obligation it believes that this requirement puts on the BBC, for example how will it define a 'broader range' and 'comparable providers'. Ofcom should resist any attempt by the BBC to water down the requirements on music output for Radio 1 and Radio 2 by accepting its proposal to define distinctiveness as 'a daytime playlist that features a greater range of songs'⁸. This definition is insufficient to deal with the issue identified in the White Paper that such an approach fails to take into account the number of times that such songs are played and what is actually heard by the majority of listeners.

51. In addition Ofcom is suggesting new conditions for 5 Live, including formalising an annual quota for live commentary and other programming covering 20 sports and extensive coverage of elections as well as European and international politics. It is not clear how this will encourage greater distinctiveness, given it requires no significant change to current levels or type of output. Ofcom should reject any attempt to conflate these targets across both 5 Live and 5 Live Sports Extra so that this could be provided by the two services combined (rather than purely for 5 Live), as implied in the BBC's Annual Plan.

⁸ BBC Annual Plan 2017/18, p.41-42

Q.2 Do you agree with the approach we have proposed for public purpose 1, including the high-level objectives and regulatory conditions we are proposing?

52. The BBC plays a very important role in providing accurate and impartial news, current affairs and factual content to help ensure UK citizens are well informed. This is arguably the most important of all the public purposes of the BBC and runs across each service in some way. Ofcom has taken the right approach in outlining the description of this public purpose in the draft Operating Licence. The high-level objectives provide a reasonable backdrop to the BBC's obligations in this area.
53. Consumption patterns for news are changing, with greater fragmentation in media platforms leading to an increase in multi-sourcing of news rather than a reliance on a single medium or news provider. This phenomenon has been noted by Ofcom and the BBC in recent years⁹. In this environment it is vitally important for the BBC to continue to play a leading role and remain a reliable and trusted source of news and information.
54. The particular role that radio plays in delivering trusted information should not be underestimated. At a time when the integrity of news and information sources are increasingly being questioned, radio is consistently found to be the most trusted medium in the UK. Ofcom previously found that 66% of people trust radio content (compared to 60% for TV, 35% social networks, 34% for newspapers)¹⁰. These findings are echoed across Europe where radio is considered the most trusted of all media and where audiences say they tend to trust radio output in 26 out of 33 countries (79%)¹¹.
55. Therefore the maintenance of high quality news output on BBC network radio services, supported by specific news requirements, is extremely important for audiences. In particular the extension of the regulatory conditions on Radio 1 to include one of its extended bulletins in peak time, along with the increase in news and current affairs hours for Radio 2 to a minimum of 17 per week (including 3 hours in peak times) sends an important message. The increase in news and current affairs on Radio 4 and political and election coverage on 5 Live are also welcome.
56. Since these quotas are generally being achieved comfortably by the BBC at present, they will do little to drive distinctiveness or encourage the BBC to do anything more that it does at present. In fact the removal of all current aspects of the service descriptions (replaced by short generic descriptions) and reduction in the overall number of regulatory conditions, creates an impression of deregulation rather than an increase in measurable requirements aimed at improving and expanding news output and driving distinctiveness of BBC services.

Q.3 Do you agree with the approach we have proposed for public purpose 2, including the high-level objectives and regulatory conditions we are proposing?

57. The BBC has an important role to play in supporting learning for people of all ages. This is encapsulated by Ofcom in its description of this public purpose and in the proposed high-level objectives. That said there are a number of disappointing omissions from the regulatory conditions that follow.
58. For example, the current requirement on Radio 1 to offer at least two major social action campaigns covering topics relevant to teenagers and young adults (as well as a regular advice programming) is absent from the draft Operating Licence, along with any reference to social action on Radio 2. This is particularly surprising given that the Framework Agreement states specifically that Ofcom should consider an increase in social action on Radio 1 and Radio 2 (alongside news,

⁹ Ofcom [report](#), 'News consumption in the UK', December 2015
BBC [report](#), 'The future of news', January 2015

¹⁰ Ofcom, Adults' Media Use and Attitudes Report', 2014

¹¹ Eurobarometer Survey, 2016

information and current affairs)¹². Ofcom should revisit this issue and include both a minimum requirement for social action on Radio 1 and Radio 2. In addition it should restore the obligation to feature a regular advice programme on Radio 1.

59. Apart from these measures the core contribution of BBC radio to this public purpose in the draft Operating Licence appears to be by virtue of the regulatory conditions requiring a minimum level of documentaries. However most of these annual requirements are unchanged, including Radio 1 (40 pa); 1Xtra (40 pa); Radio 2 (130 hours pa); and 6 Music (10 hours a week speech based features).
60. Where the quota for documentaries is increased the BBC is exceeding this new level comfortably, for example on Radio 3 (a new target 35 documentaries on arts and cultural topics – against delivery of 52 in 2016/17) or Radio 4 (a new target of 375 documentaries pa – against delivery of 392 in 2016/17). Therefore these increases are not likely to have any discernible impact on these services and their delivery of content that fulfil this public purpose.
61. There generally appears to be very little guidance on the nature of these documentaries and the public value that they are expected to provide. While it is not Ofcom's role to make specific programming decisions there currently appears to be a presumption that any hour of documentary output will help fulfil the public purpose of supporting learning for people of all ages. It would therefore be helpful if Ofcom made more explicit reference to the overarching requirements for distinctiveness and the responsibility of the station to meet the needs of a particular audience when commissioning and broadcasting new documentaries.

Q.4 Do you agree with the approach we have proposed for public purpose 3, including the high-level objectives and regulatory conditions we are proposing?

62. The aspiration outlined in public purpose 3 is admirable and of course the BBC should seek to provide the most creative, high quality and distinctive output across a range of platforms and services. As Ofcom notes in the consultation document, the Charter and Agreement provided some guidance of what this should mean in practice and what it meant by distinctiveness of BBC services, which it takes into account when outlining the important areas for delivering distinct output and services (para 4.71).
63. These high-level requirements provide a reasonable basis for delivering distinctiveness. However crucially there appears to be an over-reliance on the BBC itself to set out in its Annual Plan how it will secure the provision of distinctive output, rather than a clear set of regulatory conditions from Ofcom designed to shape this outcome. This is disappointing.
64. The inclusion of the specific conditions designed to underpin distinctiveness on Radio 1 and Radio 2 is welcome but unfortunately the quotas included are generally a reflection of the existing requirements (e.g. 60 hours of specialist music on Radio 1) or where they have been increased are already been exceeded (e.g. 45 % UK music on Radio 1 – against a delivery of 47 % in 2016/17) so will have no meaningful impact. These quotas should be increased further, to at least match the level of performance reported in recent years.
65. The absence of conditions that would contribute to distinctiveness across radio should be reviewed and where possible reversed. For example, the absence of any live music requirements on Radio 1 and 6 Music; music policy requirements on BBC Local Radio, 6 Music and 1Xtra; support for comedy on Radio 2; and opportunities to support interaction and debate across all stations. The absence of any specific requirements on 5 Live Sports Extra, which was previously obliged to deliver a relatively narrow remit of part-time sports commentary is a cause for concern.

¹² BBC Agreement, Schedule 2, 3(c)

66. There is a serious attempt to hold both Radio 1 and Radio 2 to account against their obligation to play a broader range of music than comparable providers. Once again this is a reflection of the clear guidance to Ofcom from the Framework Agreement which states that it should consider requirements ‘to ensure Radio 1 and Radio 2 music output in particular is more distinct from those of other broadcasters, taking into account number of plays not just size of playlist at both peak listening and other times’¹³.
67. The specific inclusion of this issue in the Framework Agreement was a reflection of the fact that Government was unconvinced with the arguments put forward by the BBC, which claimed that Radio 1 and Radio 2 were already sufficiently distinctive because they happen to play a broader range of tracks across the schedule than individual commercial stations. The BBC’s approach to demonstrating the distinctiveness of music of these services ignored the number of times that particular tracks were played and when they were played, so failed to take into account the prominence of mainstream popular music on these stations. As the Government stated in the White Paper ‘the average daytime listener will experience a much higher degree of overlap’¹⁴ than the BBC approach might suggest. Therefore measures are required to ensure that these services are sufficiently distinctive.
68. The specific requirements now included within the draft Operating Licence appear to be an a clear attempt to address these concerns by considering distinctive music output at peak times, not just the size of the playlist. This is an improvement on the existing requirement, but we would welcome greater clarity from Ofcom regarding the way in which it plans to define ‘a broader range of music than comparable providers’ (para 4.76). For example, the commitment in the BBC Annual Plan that Radio 1 and Radio 2 will have a ‘daytime playlist that features a greater range of songs’¹⁵ will not necessarily provide any improvement in distinctiveness or address the concerns identified during the Charter review process.
69. The Government White Paper recommends that the case for clearer average age targets for the more mainstream radio services should be considered further to ensure the BBC is serving distinct audiences. Against this background it is surprising that Ofcom takes the view that ‘it would not be appropriate to set average age targets for the BBC’s mainstream radio services’ (para 4.94) as it considers this a strategic matter for the BBC. When Ofcom was asked to give special consideration to this issue, it surely cannot have been the intention of Government or Parliament to see average age targets removed as an external regulatory requirement and left for the BBC to determine.
70. Although this public purpose refers to the BBC’s obligation to provide distinctive and high quality content across its services and platforms, there no longer appears to be any obligation on BBC radio stations to play a role in the support and promotion of digital platforms, including DAB digital radio. This was previously a requirement of all terrestrial radio services (Radio 1, Radio 2, Radio 3, Radio 4 and Radio 5 Live). The absence of any reference to this support for DAB in either the Ofcom Operating Licence or the BBC Annual Plan is a concern for commercial radio broadcasters, given the importance of the BBC’s role in the continued growth of this platform (and requirements on digital radio in clause 45 of the BBC Agreement).

Q.5 Do you agree with the approach we have proposed for public purpose 4, including the high-level objectives and regulatory conditions we are proposing?

71. A public purpose that focuses on the need to reflect, represent and serve diverse communities of all the UK’s nation and regions is welcome. Ofcom has sought to provide separate high-level objectives for nations and regions, as well as additional objectives designed to drive improvements in diversity.

¹³ BBC Agreement, Schedule 2, (2) (b)

¹⁴ BBC White Paper, July 2016

¹⁵ BBC Annual Plan 2017/18, p.41-42

72. First, with regard to nations and regions, the high-level objectives outlined appear to provide a reasonable basis to support the delivery of content that meets the needs of audiences in all parts of the UK. However, in common with other sections of the draft Operating Licence, the specific regulatory conditions that have been included risk falling short of the level required to secure this outcome.
73. In respect of BBC radio services, it appears that a number of the regulatory conditions regarding programme-making in the nations and regions have been retained. For example, the requirement that one-third of relevant expenditure by its radio services is incurred outside the M25 area, with the higher level of 40% of relevant expenditure remaining in place for Radio 3. In addition no change is proposed to the quotas for speech content on BBC Local Radio and nations services (60% on core hours, 100% at breakfast peak). Weekly quotas for news on the nations' radio services are also unchanged.
74. The draft Operating Licence also includes some continued guidance on the expected output of BBC Local Radio, such as ensuring each station provides news, information and other content of particular relevance to the area and communities it serves. Unfortunately a number of other important characteristics of the BBC Local Radio service licence have been lost, such as 'champion the local area', 'call to account decision makers', 'encourage participation' and support for 'events across the local area' and 'local sports teams'.
75. It is also disappointing that there are no conditions relating to music output on BBC Local Radio. The current service licence includes the specific requirement that 'current and recent chart hits should represent no more than 15% of weekly music output'. This condition has been removed along with the obligation to provide opportunities for new and emerging musicians from the local area and include specialist music from the local area in off-peak hours. Once again the BBC Annual Plan provides no reassurance simply referring to 'a broad mix of content genres relevant to local audiences'¹⁶.
76. The draft Operating Licence also includes requirements for original, locally-made programming and increases the quota from 85 hours to 95 hours for BBC Local Radio. The modest increase in this target is unlikely to have any impact on these services given that it is significantly lower than the level achieved by BBC Local Radio in 2016/17 (108.9 hours). It is cause for concern that this element of locally-made programming includes that shared with neighbouring stations with no limit on such pooling.
77. This would appear to provide flexibility for the BBC to merge two or more BBC Local Radio stations, provided the respective regions were covered adequately as part of a broader editorial agenda. Indeed, much larger regions or a whole network might be merged, provided inserts of local news and features were injected throughout the day. While the BBC Trust licence already arguably enabled greater programme-sharing than has been implemented, this new licence seems to facilitate more sharing thanks to diminished content requirements which can be dispensed with ease in programmes serving a larger patch.
78. Ofcom's proposals and regulatory requirements for supporting diversity have also been widely criticised. Ofcom should require the BBC to provide diversity data on all people employed in the provision of its output and services; in the categories of the main production centres, nations and regions; and for at least the top ten programmes in each genre. Ofcom should set and publish minimum standards which need to be met by the BBC, setting the clear expectation that the BBC will make significant progress on improving diversity.

¹⁶ BBC Annual Plan 2017/18, p.49

QUESTION ABOUT SETTING AND AMENDING THE OPERATING LICENCE

Q.6 Do you agree with Ofcom's approach to how we will set and amend the Operating Licence, as set out in Annex 5?

79. Ofcom seeks further comments on the proposed procedures and considerations for setting and amending the Operating Licence. There are no extensive comments on these matters, but they do reflect some of the broader concerns.
80. As far as its procedures are concerned we agree that it would be appropriate to consult publicly on any proposals to set a new licence or replace an existing licence. There should be a strong presumption that a public consultation should take place where an amendment to a licence is proposed, rather than a case by case decision based on the significance of the amendment.
81. Ofcom may not wish to consult on every minor change to the Operating Licence, but it does need to consider the fact that a minor change for the BBC could be very significant in some markets (including radio, where the BBC commands the majority of audience and funding). Therefore Ofcom's starting point should be that a public consultation takes place and is only avoided in exceptional cases. The BBC should be required to set out its arguments in public (as well as to Ofcom directly) when making a request to amend the existing Operating Licence.
82. The legal and regulatory considerations that Ofcom must take into account alongside this process are fairly clear and are outlined in the final section of Annex 5. However, we are not entirely convinced that Ofcom has fully satisfied the requirements of the Framework Agreement. In particular we question whether it has satisfied the obligation in Schedule 2 to increase the current requirements on the BBC or if it has given sufficient regard to UK talent, distinct music, news output and average age targets.

QUESTIONS ABOUT PERFORMANCE MEASURES

Q.7 Do you agree with our proposed overall approach to performance measurement?

Q.8 Do you agree with the proposed framework of: availability; consumption; impact; contextual factors?

Q.9 Do you agree with Ofcom's approach to how we will set and amend the performance measures?

83. Ofcom outlines a proposed framework for assessing BBC performance against each of the main public purposes. In each case it suggests applying a range of performance measures under the headings of availability; consumption; impact; and contextual factors. While this seems a reasonable approach to monitoring performance it does appear to prioritise a 'bigger and better' BBC, at the expense of measures of distinctiveness, output that addresses market impact or deals with market failure. As such this seems like another missed opportunity to hold the BBC to account.
84. In addition, because these performance measures are not themselves enforceable (unlike regulatory conditions) it remains unclear exactly how they will be used to drive distinctiveness of BBC services or encourage achievement of the public purposes. Ofcom states that this framework should act as a warning sign of underperformance, informing decisions about the need to change an Operating Licence or identify issues of focus for an ad hoc review. If performance measures succeed in providing the necessary data to inform such action then they may ultimately be a useful tool, but at this point their value is at best unproven.
85. As far as the illustrations in Annex 6 are concerned, some specific radio-related concerns are worth highlighting. First, it is curious that radio and audio appears to be exempt from any performance monitoring regarding learning for children and teenagers (p.69). This seems to be at odds with the role of Radio 1 and 1Xtra in particular. Secondly, it would be helpful if Ofcom would clarify the

measures related to radio playlists on Purpose 3 (p.71) regarding creative, high quality and distinctive output and services.

86. With regard to setting or amending performance measures in future, as in the points made in response to Question 6, there should be a presumption of public consultation in these cases.

ABOUT RADIOCENTRE

Radiocentre is the industry body for commercial radio in the UK. We work on behalf of over 50 stakeholders who represent 90% of commercial radio in terms of listening and revenue.

We perform three main functions on behalf of our members:

- Drive industry revenue by promoting the benefits of radio to advertisers and agencies through a combination of marketing activity (e.g. events, advertising, PR, and direct mail), research, and training
- Provide UK commercial radio with a collective voice on issues that affect the way that radio stations operate, working with government, politicians, policy makers and regulators to secure the best environment for growth and development of the medium
- Ensure advertising messages on commercial radio stations comply with the necessary content rules and standards laid out in the BCAP Code of Broadcast Advertising and the Ofcom Broadcasting Code.

www.radiocentre.org

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