

BECTU response to the consultation on the Ofcom 2018 annual plan

The Broadcasting Entertainment Communications & Theatre Union, a sector of Prospect, has approximately 45,000 members which include staff, freelance and self-employed workers across the broadcasting industry.

We wish to focus our response on Ofcom's proposed plans with regard to diversity.

We welcome the substantial change in Ofcom's approach to diversity that has taken place since the arrival of the new chief executive. In particular we welcome Ofcom's new commitment to transparency and accountability. The regulator's decision in 2006 to make the broadcasters' licence conditions to report equality monitoring data effectively optional led to a lost decade during which minority ethnic employment in broadcasting actually fell and thousands left the industry, according to research by Creative Skillset.

Ofcom's 2018 annual plan includes the commitment to publish its second annual report on the UK TV industry and its first report on the UK radio industry, to provide a comprehensive picture on how well individual broadcasters - and the industry as a whole - are performing on equality of opportunity, diversity and inclusion in employment.

There are several aspects of Ofcom's first annual report on the UK TV industry that we wish to single out for praise:

- That it sends a message that the regulator is far more determined than it has been to bring about the necessary changes to facilitate equality of opportunity;
- Ofcom's setting the top five broadcasters' overall diversity data in the context of the national (16%) and London (40%) BAME population which links their data to the society in which they operate;
- stating that the broadcasters should set diversity targets;
- stating that comprehensive diversity policies need to be embedded from the top down with senior diversity champions leading the agenda, appraisals of senior employees against diversity objectives, and unconscious bias and diversity training;
- informing broadcasters where their arrangements to promote equal employment opportunities are inadequate, working with them to improve; and
- taking enforcement action with regard to the 57 licence holders that failed to supply any data.



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We also warmly welcome Ofcom's commitment to publish the first ever report on diversity in the radio industry. BECTU has argued since the inception of Ofcom 15 years ago that the new regulator should extend its equality remit into commercial radio and, although this comes many years later than it should have done, it is a welcome move nevertheless.

However, BECTU urges Ofcom to make the following changes when publishing its second report on the UK TV industry, and its first report on radio.

1. In order to gain the most accurate picture, equality monitoring data should be published not merely by broadcaster but by licence. We welcome the fact that at the stakeholders' event on January 10th 2018, Tony Close said that Ofcom would try to do this.

Ofcom's first report shows a concentration of licences among a small number of large operators. One major issue raised for many years by BAME broadcasting professionals is their pigeonholing, or ghettoising, into areas that are focussed on minority ethnic communities or issues, and underrepresentation within 'mainstream' licences. If Ofcom's equality monitoring data is published licence by licence such practices can be identified and addressed. If it is only published by broadcaster then licences in which BAME workers are concentrated may be pooled with licences that have gross under-representation and consequently provide a distorted picture of BAME representation. This would prevent the industry from addressing the issue raised by BAME professionals.

A clear example of this was highlighted many years ago when the BBC integrated equality monitoring data from the World Service into its overall data across the corporation: the BBC's BAME staffing level suddenly jumped from 16% to 21%. In commercial radio, Global for example has the lion's share of licences including both of London's two flagship commercial radio stations LBC and Capital. Global also holds the licence for what used to be the black community's favourite radio station, Choice FM (now known as Capital Xtra), which had a substantial BAME staff. To date London's 40% BAME population has not been permitted to know the diversity of LBC and Capital, nor for that matter Capital Xtra. Were Ofcom's first radio report to aggregate the data across Global's many licences, the public would still not be permitted to have this information. BECTU believes that as all broadcasting licences have been awarded by the regulator on behalf of the public, the public has the right to know to what extent these radio stations reflect the diversity of those they serve. And Ofcom should recognise that in London, and other cities where there are large BAME populations, there is a very substantial public interest in this data being public, and presented with sufficient detail to give the picture for individual radio stations.

BECTU recognises that some radio licences individually are too small to reach Ofcom's reporting threshold of 20+ staff. Nevertheless where licences do cross this threshold there is no reason why Ofcom should not report on those by name in the same way that the Arts Council of England compiles a list of data for all of

its qualifying clients, in addition to data collected more widely including the smaller clients. Ofcom does not regulate by broadcaster, it regulates by licence, and so it is logical that their reporting regime mirror its licencing regime. It is also likely that the different licences within the same broadcasting company may make their own hiring decisions, so individual licence reporting would make sense and be more relevant in pinpointing where action needs to be taken.

BECTU also recognises the argument put by broadcasters that many of their staff work across more than one licence. Nevertheless it is not beyond the capability of a highly sophisticated industry with revenue of around £20-billion to find a way to resolve this, such as by having a category of 'cross-licence' in addition to licence-specific staffing, or by allocating a portion of staff time to each relevant licence.

BECTU also urges that the next report covers all qualifying broadcasters rather than merely covering the five largest. Many professionals cut their teeth working for the smaller broadcasters before moving to the top five. Publishing data across the board might also enable broadcasters to identify sources of BAME talent that they had not to date considered, and perhaps form new relationships with those running small licences.

2. BECTU urges Ofcom to take firm action with regard to freelancers. According to Creative Skillset, over half of all workers in the independent production sector are freelancers. The regulator's own report indicated that nearly 40% of the broadcasting workforce are freelance – 28,442.

BECTU believes that the freelance sector is lagging furthest behind and this is borne out by Ofcom's own report that just 4% of freelances are from a BAME background. As CEO Sharon White says, "among freelancers working for broadcasters, half remain unmonitored and those who are monitored are overwhelmingly male, white and don't self-define as disabled". Failure to include freelancers therefore will leave a gaping hole in any strategy for equal opportunities.

Section 27 of the Communications Act states that it is Ofcom's duty "to take all such steps as they consider appropriate for promoting equality of opportunity in relation to... employment by those providing television and radio services." We welcome Ofcom's commitment in their first report *Diversity and equal opportunities in television*, September 2017, that: "We will shortly be updating our guidance on how broadcasters can better promote equal opportunities and monitor their progress for freelancers." Requiring broadcasters to monitor freelancers is an essential step.

3. BECTU urges Ofcom to introduce contract compliance to the broadcasters. Broadcasters determined to adopt active diversity strategies including publishing their own monitoring data, setting targets and reviewing hiring practices to increase the employment of under-represented groups, should use their

commercial power in the market to require their contractors, the independent production companies, to follow suit. The Oliver & Ohlbaum study for Ofcom *Trends in TV Production* highlights the importance of this: it states that in 2014 59% of public service broadcasters' commissioning spend was external.¹

4. In furtherance of this BECTU urges Ofcom to insist that Project Diamond monitoring data is published at qualifying programme level. Three national trade unions are currently boycotting Project Diamond because in its current form the unions do not believe that it will achieve positive change. If data on programmes with greater than 50 in the workforce was published it would enable the industry to learn from those productions succeeding in employing a diverse workforce, and take those lessons to those where further action needs to be taken.

Historically there has been very little pressure on independent production companies to embrace modern, fair, employment practices. We have seen from Ofcom's last decade how leaving employers to voluntarily embrace diversity resulted in 57 broadcasters breaching their licence conditions by failing even to provide mandatory data on gender, racial group and disability, a net loss of thousands of BAME professionals from the industry plus blighted careers of those who remained. There is no reason to conclude that leaving the independent sector to its own devices will produce any different result.

We note that one of the three aims of the UK Independent Production Quota is to "Promote cultural diversity and open up the production system to new energies and voices". The lesson of the last decade is that the opposite has happened. As regulator, it is Ofcom's duty to reverse this trend, and this can only be done by taking an active role in monitoring the employment of freelancers. Project Diamond has the potential to do this, but only if it publishes programme level data.

5. BECTU further urges Ofcom in its discussions with broadcasters to insist that action is taken to enable the large group of mature, experienced BAME professionals to progress in their careers. In its report *Diversity and equal opportunities in television – Steps taken by broadcasters to promote equal opportunities* Ofcom noted the lack of initiatives with regard to BAME workers. Of the few they reported there was an overwhelming focus on apprenticeships and internships. BECTU has seen over many years that short-term initiatives have had the tendency to be a revolving door with young professionals coming in for a spell under the initiative, then departing, leaving the organisation unchanged. The initiatives that should be developed are those aimed at changing the way workers are hired, adopting best practice including setting targets, and improving management of programme commissioning to give productions sufficient time to crew up instead of being forced into last-minute scrambles.

¹ excluding sport, news and feature film. *Trends in TV Production*, Oliver & Ohlbaum, December 2015

Finally, we welcome Ofcom's decision to focus its first BBC thematic review on the BBC's public purpose to reflect and represent the diverse communities of the UK's nations and regions. As the UK's biggest broadcaster including in terms of the number it employs, progress at the BBC inevitably ripples across the industry. As the BBC is itself a public broadcaster then it should be the first to embrace contract compliance with regard to the many independent production companies that it employs.

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*Prepared by Janice Turner, BECTU Diversity Officer
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