

## RADIOCENTRE RESPONSE TO OFCOM CONSULTATION: MODERNISING THE BBC'S OPERATING LICENCE (SEPTEMBER 2022)

### SUMMARY

1. Radiocentre welcomes this opportunity to provide input in to Ofcom's review of the BBC's Operating Licence. Since Ofcom began its regulation of the BBC in 2017, the media market has continued to evolve and so it is important that the regulatory framework that governs the operations of the BBC is reviewed.
2. The BBC plays an important role in the UK radio and audio sector. Its best and most distinctive content provides a significant range and quality of content for audiences. Some of its services and programming would simply not be possible to provide on a commercial basis. However, not all of its radio content and services are truly distinctive, with its popular music services exhibiting the greatest level of crossover and duplication during peak times.
3. The BBC holds an extremely privileged position due to the scale of funding it receives, its unrivalled broadcast network and cross-promotion opportunities. It has been able to use these advantages to retain a dominant market position in radio with around a 50% share of audience. This is far in excess of its market share in TV of around 28%.
4. Ofcom's proposals for an updated Operating Licence include a number of welcome changes, crucially recognising that TV and radio should be treated differently, alongside rationalisation in some areas. The broadening of its scope to include online services such as BBC Sounds is also a welcome step forward. However, the proposed Operating Licence removes a significant number of quotas that are essential for ensuring the BBC is distinctive and meeting its Public Purposes. The few that remain are now over 15 years old, having been introduced by the BBC Trust, without taking the opportunity since then to encourage the BBC to provide increased levels of public service content.
5. As expected, these changes come at time when the Government is in the midst of the Mid-Term Charter Review of the BBC. We are engaging directly with the Department for Digital, Culture, Media & Sport assessment of the BBC's external regulation and look forward to further updates from the Government in due course.
6. While some of Ofcom's updates to the Operating Licence are welcome, we have serious concerns in the following areas where we believe that the proposed Operating Licence fails to adequately regulate and enhance the current provision provided by the BBC in order to deliver the greatest level of distinctive public service content as possible to audiences. In fact, taken together, these proposals appear to fall short of Ofcom's remit and obligations in terms of regulating the BBC.
7. Radiocentre's response to the main recommendations from Ofcom is summarised below.
  - **Regulatory conditions** – We are pleased that Ofcom appears to have accepted in principle the importance of retaining quotas in order to guarantee a minimum level of distinctive output. We are therefore surprised and disappointed with proposals to remove many of them, and dilute core elements of the BBC's public service broadcasting.

- **BBC Local Radio** should not have its breakfast peak speech requirements reduced from 100% to 75%. This proposed shift could lead to a fundamental change to Local Radio services and reduce their scope to offer a distinctive alternative to commercial radio services.
  - **News bulletins** on Radio 1 and Radio 2 are key for the BBC to deliver on Public Purpose 1. Proposals that risk diluting this provision are unnecessary and could create the perverse situation where news output on the BBC music radio is a less tightly regulated position than the commercial radio sector. Given its unique position as a licence fee funded public service broadcaster, the BBC should be required (through detailed conditions) to provide greater levels of news and information across its radio services and on a regular basis.
  - **BBC Sounds** to be included in the Operating Licence for the first time is welcome. However, the proposed conditions are far too broad and risk creating a mandate for the BBC to compete against services offered by commercial radio broadcasters. Updated conditions that guarantee a minimum level of distinctive content should be introduced.
  - **Niche genres** play an important role and the blanket removal of a range of genres (arts and religious programmes, documentaries, social action campaigns, live or specially recorded performances and new musical works) needs to be reconsidered.
- **Delivering greater levels of public service content** – A significant review of the Operating Licence is a unique opportunity to examine the conditions placed on the BBC and how they help to deliver the greatest level of distinctive public service content possible. We do not believe that this opportunity has been seized in Ofcom’s current proposed Operating Licence. There is significant scope for Ofcom to propose amendments that would require improved performance from the BBC across a number of core areas.
  - **Continued lack of transparency** – Despite increased expectations around transparency on the BBC from Ofcom we remain sceptical as to the likely impact given the broad requirements that have been proposed. This follows years of repeated calls from Ofcom for the BBC to improve in this area, without any real tangible results.
8. We hope that Ofcom will take on board the serious concerns raised by commercial radio as a key industry stakeholder. There is still sufficient time and opportunity to review these important issues in more detail and update the proposed Operating Licence, which is expected to come in to force in 2023, ultimately to the benefit of listeners by ensuring a distinctive complementary offering from the BBC.
  9. Unless these concerns are acknowledged, and the proposals changed, we do not believe that Ofcom will be satisfactorily discharging its obligations under Schedule 2 of the Operating Framework, that “in imposing the regulatory conditions Ofcom must have particular regard to the need for the BBC to secure the provision of distinctive output and services”, nor those relating to fair and effective competition (in particular section 3(4)(b) of the Communications Act 2003 (the “Act”) and Article 45(2)(b) of the BBC Charter. As a result, Ofcom’s proposals will fail with regard to its principal duty to further the interests of citizens and consumers under section 3(1) of the Act.

## BACKGROUND

10. BBC radio and audio services are capable of providing a huge range of high quality distinctive content for audiences, if properly regulated. However, the BBC holds a privileged position due to the scale of funding it receives, its unrivalled broadcast network and cross-promotion opportunities. It has been able to use these advantages to retain a dominant market position in radio with around 50% share of audience, much bigger than any other broadcaster and significantly stronger than its position in TV.
11. In addition, there has been a relatively light touch approach to defining and policing the activities of the BBC that most closely resemble the commercial sector (especially given the ex-post system of regulation and reliance on complaints from competitors). Traditionally the greatest overlap with commercial radio has been from the main pop-music services Radio 1 and Radio 2, but the BBC is also increasingly leveraging its dominance in radio and audio into its online activities provided on the BBC Sounds platform.
12. We recognise challenges facing the BBC have evolved over time, especially in TV and audiovisual, so it is right that Ofcom's regulation of the broadcaster addresses this with suitable proposals. It is paramount though that the inevitable evolution of the Operating Licence does not end up as a creep towards eroding the regulatory conditions on BBC radio services.
13. As the TV market has changed, we have continued to emphasise the importance of distinguishing between the regulation of the BBC's TV and radio services, therefore Ofcom's explicit recognition that "the BBC's video and audio offerings are not directly comparable. We therefore propose to take a different approach for its audio output"<sup>1</sup> is welcome.
14. The BBC accounts for around a 50% share of all radio listening in the UK, compared to around a 28% share in television. Its precise level of audience share (currently 48.1%<sup>2</sup>) has fluctuated but it has remained over 50% on an annual basis for more than 20 years up to 2021, since the current RAJAR methodology was introduced in 1999. This is especially notable given that under UK and EU competition case law, market shares above 40% are prima facie evidence of dominance.
15. The BBC spent around £691m on its UK radio services in 2021<sup>3</sup>. This is far in excess of what any of its competitors are able to invest in audio and 8.3% more than the entire commercial radio sector revenue *combined* (with net revenues of £638m in 2021 according to Ofcom). This is in stark contrast to the TV market where the BBC's expenditure does not dominate, giving commercial operators space to compete.
16. The UK audio market has not evolved in the same way as the audiovisual market in recent years. Entry by international audiovisual platforms such as Amazon Prime, Disney+, HBO, Paramount+ and Netflix certainly appears to have eroded the BBC's historic position in UK television and challenged the ways that the BBC reaches its audience. Audio markets, on the other hand, are

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<sup>1</sup> Paragraph 8.36, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/239144/bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/239144/bbc-operating-licence-june-22.pdf)

<sup>2</sup> RAJAR Q2 2022

<sup>3</sup> Ofcom Communications Market Report 2022, July 2022

less globalised and the BBC has always had a significant market share and faced less direct competition.

17. Live radio listening is, and is expected to remain, the dominant form of audio consumption into the 2030s<sup>4</sup>. As a result, the BBC is still by far the dominant provider of audio content in the UK and is likely to remain so for the foreseeable future.
18. Commercial radio is funded almost entirely by advertising and operates in a highly competitive market, generating £719 million in ad revenues in 2021. It also supports £683m in gross value added to the UK economy and over 12,000 jobs. Its advertiser-funded model enables it to provide content for audiences that is high quality and free at the point of use.
19. While radio revenues recovered relatively well following the pandemic, there is significant uncertainty ahead with record levels of inflation and a wider cost of living crisis that is beginning to impact on the wider advertising market. This uncertainty is likely to continue throughout 2022 and well into next year<sup>5</sup>.
20. Digital technologies like smart speakers have created major opportunities for the radio sector. The choice of content now available to audiences has been significantly enhanced as a result of new broadcast and online audio services, now accessed easily and conveniently using voice commands. Consequently, the opportunity for innovation and collaboration that these platforms provide is increasingly important given the range of competitive pressures facing radio and audio.
21. On the other hand, the growth in radio listening taking place online and on these devices has also led to fragmentation of audiences and even greater competition for vital advertising revenue, presenting commercial radio broadcasters with a significant challenge as they seek to grow while providing a high quality and trusted service.

#### **IMPORTANCE OF REGULATORY CONDITIONS**

22. Given the continuing level of dominance the BBC retains in the audio market, it is reasonable that its regulation is, at the very minimum, maintained. Clear regulatory conditions (quotas) are absolutely essential to ensure the delivery of the BBC's public purposes. Delivering distinctive output is an area where the BBC can excel, providing audiences with content that is not catered for elsewhere in the market.
23. These conditions have been used extensively over many years as a means to define and measure expectations of distinctiveness and remain an important tool for Ofcom. With the updated Public Purposes coinciding with Ofcom's appointment as the BBC's regulator, Ofcom's first Operating Licence was tasked (by the BBC Agreement) with introducing more regulation to ensure BBC services were distinctive. In radio regulation, notable examples of such regulation were the introduction of 'broader range of music' quotas for Radio 1 and Radio 2 and a quota for

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<sup>4</sup> <https://getdigitalradio.com/wp-content/uploads/2021/10/Mediatique-Future-Audio-Consumption-in-the-UK-update-Dec-2020.pdf>

<sup>5</sup> <https://adassoc.org.uk/our-work/uk-adspend-continues-recovery-in-q1-but-real-terms-growth-in-2023-under-pressure/>

the number of different sports broadcasts on Radio 5 Live. Ofcom also deemed retaining previous BBC Trust 'new music' quotas essential to fulfilling this obligation.

24. Many quotas, such as those still used to ensure distinctive music output, have existed within the BBC's regulatory framework for decades and they still remain relevant today. When the BBC Trust expanded 'new music' quotas to BBC Radio 2, for example, they were intended to help stimulate creativity and cultural excellence, with the BBC Trust's Service Licence for Radio 2 stating the reasoning behind such quotas was ensuring "its music programmes ... cover a wide range of genres", challenge "listeners to experience the unfamiliar by providing a wide range of popular musical forms", and guarantee it broadcasts "different music to that played on other radio stations."<sup>6</sup>
25. In setting the first BBC Operating Licence in 2017, Ofcom was instructed by the terms of the BBC Agreement to keep the majority of these measures and other quantitative requirements on the BBC in place. This approach was consistent with the vision that the Government set out in the 2016 White Paper and its support for quotas for BBC radio as the most effective way of ensuring delivery against the Public Purposes. However, in practice a significant number of external quotas, such as age targets, were removed and only picked up initially by the BBC as part of its Annual Plan (before being dropped entirely at a later date).
26. Nevertheless, the logic of quotas and the Government's vision remain relevant. We support this approach and are pleased that Ofcom appears to recognise the importance of quotas (at least in principle), as a means to provide a simple, measurable, means of holding the BBC to account and delivering public value. However, we are concerned that Ofcom's actions in suggesting the removal or watering down of a considerable number of quotas as part of this current process, does not live up to this rhetoric.
27. This principle has underpinned the regulation of BBC services since before the BBC Trust took responsibility for regulating the BBC, with quotas used as the predominant regulatory mechanism by the BBC Governors and generally set at higher levels than the quotas we have now. The longevity of such quotas is testament to their enduring usefulness. They provide a mechanism by which to transparently, fairly and easily ensure BBC minimum provision, and to assess BBC performance against such minimum provision.
28. That said, there is still significant room for improvement, as we highlight in response to the specific questions below. When reviewing the BBC's performance against many of the regulatory conditions imposed by Ofcom, there is a continuing trend for them to be treated as a floor. For example, on BBC Local Radio, the daytime weekday output is set at 60%. When looking at recent performance against this quota, it has declined from 73% in 2014/15 to 64% in 2021/22.
29. While recent performance is still above the quota, there is a clear downward trajectory with the BBC increasingly substituting local speech content for other types of content. In particular, this tends to be music content which duplicates provision by commercial radio services and leads to a significant reduction in public value.

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[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/radio/2010/radio2\\_may10.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/2010/radio2_may10.pdf)

30. Similarly, looking at the performance of Radio 1 against its quota for new music it shows a steady decline in the share of airtime used to break new acts in daytime. Having given over 65% of the daytime schedule to new music in 2014/15, that share is now just 54% in 2022/22, and was only 51% in 2020/21, one percentage point above the 50% quota.

## CONSULTATION QUESTIONS

### Q1. What are stakeholder views on how Ofcom should assess and measure BBC performance?

31. Our starting point is that the best way to assess and measure the BBC's performance and the distinctiveness of its services is through clearly measurable targets. This remains the best approach for ensuring the delivery of distinctive radio services. That said, we recognise that in some areas, particularly in TV and audiovisual, greater flexibility may be required as UK media and consumption changes. However, changes aimed at facilitating this aim must be made as part of the overall package of regulation, with significantly greater levels of transparency expected of the BBC.
32. Robust external regulation of the BBC, for which Ofcom assumed regulatory responsibility in 2017 from the BBC Trust, in conjunction with governance by a new BBC Board, is essential in order to hold the BBC to account for its significant £5.3 billion income<sup>7</sup>. During the last Charter Review process in 2016, Radiocentre welcomed the new obligations on the BBC in exchange for guaranteed licence fee income, with Ofcom taking on the role of external regulator. Specifically the Charter and Framework Agreement stated that Ofcom "must seek to increase the current requirements on the BBC as a whole to secure the provision of more distinctive output and services"<sup>8</sup>.
33. As noted above, the UK audio market has not evolved in the same way as the audiovisual market, and so we welcome Ofcom's recognition of this evolution and approach to regulation in future. Consequently, we expected stronger regulatory requirements across the BBC's radio services – and were disappointed to instead see these diluted.
34. It has been a significant omission that core BBC services, such as BBC Sounds, have not up to this point been included within the formal regulatory framework. We therefore welcome the expansion of the proposed Operating Licence to incorporate the online provision of the BBC's audio services. This is necessary as online listening continues to grow, particularly on smart speakers, with the latest RAJAR<sup>9</sup> data recording 22.3% of listening now taking place online.
35. While Ofcom often lauded the Operating Licence as an organic document, in reality the changes since the original version was published on 13 October 2017 have been minor. There appear to have only been eight occasions<sup>10</sup> when relatively slight corrections or variations were made. Based on this rigid threshold for alterations, we expect that the final version of the revised Operating Licence will remain largely intact until the end of the current Charter in 2027.

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<sup>7</sup> <https://downloads.bbc.co.uk/aboutthebbc/reports/annualreport/2021-22.pdf>

<sup>8</sup> BBC [Framework Agreement](#), Schedule 2, Section 2

<sup>9</sup> RAJAR Q2 2022

<sup>10</sup> Changes to the Operating Licence, <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/bbc-operating-framework/operating-framework>

36. We also have significant concerns with regard to Ofcom’s oversight of the performance of BBC Sounds, as well as its current and potential future competitive impact and the expansion of the BBC’s podcasting activities. This is a consequence of a historical lack of appropriate regulatory oversight of the BBC’s online audio services, which has yet to be sufficiently addressed. This is combined with a continuing lack of clarity about the purpose of BBC Sounds (its scope has never been properly defined), and has seen the service steadily expand, in many cases duplicating the provision of the commercial sector. In addition, the BBC has used its substantial reach and budget to extensively promote BBC Sounds to an extent unavailable to commercial competitors.
37. Therefore, we welcome the proposal to formally expand the scope of the Operating Licence to include online services such as BBC Sounds for the first time. However, while this is a step forward as we outline below, the nature and detail of the regulatory conditions proposed for BBC Sounds require significant further development and improvement to avoid unintended consequences of mandating the BBC to use its unrivalled funding to compete further with the commercial sector.
38. Our review of Ofcom’s proposal<sup>11</sup> for what is effectively a second Operating Licence for the BBC’s UK Public Services is, at a headline level, one of serious concern. While on the one hand Ofcom appears to have accepted many of the arguments for the unique way in which the regulation of BBC radio should be considered, on the other hand the core element of delivering this, through quotas, has been eroded.
39. Ofcom’s proposed Operating Licence, which would come in to effect in 2023, continues the concerning trend of reducing the regulatory conditions across BBC network radio services. The total number of conditions (Figure 1 below) has been reduced from 59 at the time of the BBC Trust, to 38 in the current Operating Licence. However, Ofcom’s proposals for the new Operating Licence includes just 29 conditions.

**Figure 1: Conditions on BBC network radio**

Station	Service Licence (BBC Trust)*	Operating Licence (Ofcom)**	2022 proposal
Radio 1	10	9	8
1Xtra	6	3	2
Radio 2	9	10	7
Radio 3	7	6	4
Radio 4	6	4	2
4 Extra	4	0	0
5 Live	2	3	3
5 Live Sports Extra	1	0	0
6 Music	7	2	2
Asian Network	7	1	1
<b>TOTAL</b>	<b>59</b>	<b>38</b>	<b>29</b>

<i>BBC Local Radio</i>	2	3	3
<i>BBC Sounds (core conditions)</i>	0	0	8

<sup>11</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/239145/annex-9-bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/239145/annex-9-bbc-operating-licence-june-22.pdf)

**NOTE:**

\* All specific conditions from BBC Trust Service Licences as included in BBC Annual Report

\*\* Regulatory conditions listed in Ofcom's Operating Licence (May 2022)

40. The new approach to quotas does not appear rational. It accepts the fact that service specific quotas do help ensure distinctiveness, yet at the same time Ofcom is pursuing an ambition, which includes moving away from quotas in some areas, instead shifting focus on greater transparency around plans and performance. A reduction in the overall number of quotas is not what was expected when Ofcom began regulating the BBC and should not continue still further. Moreover the low level at which the existing quotas are set which is also concerning.
41. Ofcom notes in the consultation document that the Operating Licence will also require greater transparency from the BBC. This is welcome, however as Ofcom recognises, they have repeatedly highlighted to the BBC the need to be more transparent but that it has failed year after year to do this and further improvement is still necessary.
42. As a key stakeholder we are far from confident that Ofcom's approach will achieve greater transparency based on precedent and the behaviour of the BBC to date. Indeed we are concerned at the apparent suggestion that Ofcom might step away from detailed regulation, predicated on the trade-off that the BBC must explain its strategy and plans better, be much clearer about where it is already delivering for audiences and where it can do better.<sup>12</sup> This would appear to reduce Ofcom's ability to intervene, which may be necessary even if the BBC is transparent but Ofcom or stakeholders believe there is an issue. Instead, the approach appears to be to only ask the BBC what it plans to do, rather than assess or examine the merits of its proposals. We do not believe this constitutes appropriate regulation of BBC radio.

**Recommendation summary**

- Ofcom should prioritise the use of measurable targets for BBC radio services, in order to ensure distinctiveness and the delivery of the BBC Public Purposes.
- Ofcom should periodically and systematically review the number of targets for BBC radio services (and the level of these targets), with the assumption that these targets will be strengthened in order to drive improvements in performance.
- The proposal to extend the scope of the Operating Licence to include BBC Sounds is welcome, if somewhat overdue. However, more detailed targets must be introduced, with a focus on distinctiveness, in order to better define the remit of BBC Sounds and avoid further crowding out of commercial competitors.
- Ofcom must review its approach to transparency and consultation regarding the launch of new services and changes to existing services.

<sup>12</sup>Para 1.7 (c), [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/239144/bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/239144/bbc-operating-licence-june-22.pdf)



**Q2. Do you agree with the proposals for Public Purpose 1? If not, please explain why.**

43. The BBC's Public Purpose 1, requiring the broadcaster to provide impartial news and information to help people understand and engage with the world around them, is a key aspect of the public service remit of the corporation.
44. We broadly welcome Ofcom's proposal to retain quotas to ensure that the BBC provides a substantial amount of news and current affairs across its TV and radio services. This appears to provide implicit recognition that quotas guarantee the delivery of essential distinctive output. It is also a positive shift in positioning from Ofcom, following the speeches alluding to the fact that Ofcom would not be setting quotas in future, instead leaving it to the BBC to set all of its targets with Ofcom only assuming a broad level of oversight<sup>13</sup>.
45. While the apparent acceptance of the valuable role played by quotas is positive, these regulatory conditions should not always merely describe a specific service as it currently is and should, in order to boost the public service remit, stretch the BBC to deliver greater levels of public service content.
46. As we highlighted to Ofcom in our response<sup>14</sup> to its 2021 consultation on how it regulates the BBC, while the BBC typically meets the requirements set by its quotas, for a significant number BBC delivery of the content in question has either consistently fallen closer to its quota, or it consistently only just delivers against the quota. This is a clear indication that the quotas are an important and effective means of regulating the BBC, and also that in the absence of such quotas the BBC's behaviour would change.
47. For almost all radio services, the BBC's delivery against its quotas in news has been either consistently at the quota level or falling towards the quota over time. In most areas the BBC, both historically and currently, only just delivers against its quotas in news, which illustrates that these targets are playing a vital role in ensuring that the BBC delivers news content and subsequently delivers against its public purpose to provide impartial news and information to the public.
48. The BBC's decision to deliver only the bare minimum of news content in most cases means that there is little scope to further reduce provision under the current regime. For example, there is a clear declining trend for Radio 1 and Radio 2, where the number of hours of news provision was previously slightly above the quota, but has reduced to only just deliver against its quotas across the last three years<sup>15</sup>.
49. Ofcom's own research<sup>16</sup> for this consultation highlighted that the most important issue for audiences was that the BBC should be providing more trusted and accurate UK news. It was therefore a surprise, in spite of this evidence, that Ofcom is proposing to relax news requirements on some BBC radio services in a way that would make them less prescriptive than those on commercial radio broadcasters.

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<sup>13</sup> <https://www.broadcastnow.co.uk/bbc/bbc-to-get-to-set-own-quotas/5157327.article>

<sup>14</sup> <https://www.radiocentre.org/wp-content/uploads/2021/09/Radiocentre-submission-to-Ofcom-on-BBC-regulation-FINAL-submitted.pdf>

<sup>15</sup> See for example page 127, <https://downloads.bbc.co.uk/aboutthebbc/reports/annualreport/2020-21.pdf>

<sup>16</sup> Page 27, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0031/239179/2-Exploration-into-audience-expectations-of-the-BBC-in-the-current-media-environment.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0031/239179/2-Exploration-into-audience-expectations-of-the-BBC-in-the-current-media-environment.pdf)

50. Looking back at news requirements on Radio 1 and Radio 2 there have been only very minor changes since Ofcom took over from the Trust in 2017. For example, on Radio 1, the 1 hour daily weekday condition on news that was in place at the time of the Trust was simply transposed by Ofcom without any further obligations on Radio 1 to develop this vital public service element. The current proposal seeks to move away from a weekly quota to an annual requirement, but again without any challenge to boost the news output for listeners, in spite of evidence commissioned by Ofcom that this is an important area for listeners.
51. With the previous conditions under the BBC Trust, in the Radio 1 2007<sup>17</sup> Service Licence the station was required to broadcast at least 310 hours of news, sports and current affairs each year. In 2008 the Service Licence was changed, moving to its more recognisable current form and updated to a condition of “1 hour of news during daytime each weekday, including two extended bulletins and to provide regular bulletins during daytime at weekends”<sup>18</sup>.
52. Ofcom’s latest proposal with the new Operating Licence of 280 hours has been exclaimed as essentially maintaining the level current delivered by Radio 1, yet remains at a lower level than previously required by the Trust. Another important element to consider is that these quotas are a conditional minimum that the BBC is expected to deliver. The Operating Licence, and Service Licences before, preface the condition with the qualification ‘at least’. From reviewing the latest (2021-2022) BBC Annual Report<sup>19</sup> the BBC has met the news condition on Radio 1 and Radio 2 but failed to deliver greater levels of performance against this quota.
53. With Radio 2, the Trust’s weekly news and current affairs requirement of 16 hours was raised to 17 hours by Ofcom in its first Operating Licence (notwithstanding the fact that Radio 2 was already delivering 18 hours of this content each week at that point). However, again when rationalising the quota from a weekly requirement to a new annual requirement, Ofcom has kept the quota at the same level. This is a missed opportunity for Ofcom to set the BBC new stretching obligations that would deliver greater public value content to its audiences for the remaining period of the Charter.
54. On the proposal to replace certain daily and weekly news and current affairs quotas that apply to some BBC radio services with annual quotas, we fail to understand the rationale to provide the BBC with fewer requirements, with Ofcom noting that “there is a potential risk that by moving to annual quotas the BBC could provide news less frequently than now.”<sup>20</sup> This cannot and should not be the outcome of a process that is purported to be concerned with improving the performance and distinctiveness of BBC services in future.
55. As noted above, this is an opportunity for Ofcom to review the overall level of the conditions and consider stretching the BBC in order to delivery more public service content in line with

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[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/radio/radio\\_ser\\_vicelicences/radio1\\_servicelicense\\_30apr2007.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/radio_ser_vicelicences/radio1_servicelicense_30apr2007.pdf)

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[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/radio/2008/radio1\\_Apr08.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/2008/radio1_Apr08.pdf)

<sup>19</sup> <https://downloads.bbc.co.uk/aboutthebbc/reports/annualreport/ara-2021-22.pdf>

<sup>20</sup> 6.27 [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/239144/bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/239144/bbc-operating-licence-june-22.pdf)

public demand, rather than simply maintaining the status quo, or worse by potentially risking a reduction in the levels of news and information, which could be the impact (even if unintended) of changing the BBC's current weekly requirements to new annual quotas.

56. With regard to the frequency of bulletins, a sensible way to mitigate against a reduction in bulletins would be for Ofcom to place the same obligations on the BBC that most commercial radio operators have under the Localness Guidelines. These require news bulletins to be broadcast at least hourly during daytime on weekdays, and throughout peak-time at weekends<sup>21</sup>.
57. While Ofcom seeks to provide additional clarity with regard to transparency from the BBC in this area, a lack of detail means that stakeholders do not have a clear understanding of the new expectations on the BBC. For instance, the new transparency requirements for the BBC within its Annual Plan (6.34<sup>22</sup>) highlight Ofcom's expectation that the BBC is expected to set out any 'significant changes' it plans to make to its provision on TV and radio where relevant. However, this new requirement provides limited insight into what might constitute a significant change in either the eyes of Ofcom or the BBC.
58. Similarly, the new corresponding requirement (6.35<sup>23</sup>) on BBC to report on whether it has taken the steps it set out within its Annual Plan, including whether it made significant changes from those plans and the reasons for those changes, is somewhat opaque with very broad, undefined definitions. Moreover, it does not include any provisions requiring the BBC to explain the consequences of deviations from its plans to Ofcom and stakeholders. This is an unfortunate oversight and should be rectified.
59. Finally, it is also unclear what the new discoverability requirements on the BBC, to make news and current affairs available and easily discoverable on their online platforms, including BBC Sounds, would mean in reality to a typical listener. This could be read as increased algorithmic prominence of certain news and current affairs content. It is not clear what the scope is of this requirement and how the BBC's delivery against this new obligation will be measured. Ofcom should ensure the publication of further details explaining these requirements and their implications.

#### **Recommendation summary**

- We welcome Ofcom's support for targets to ensure the delivery of impartial news and information on BBC radio. However, its specific proposals risk weakening this provision and should be revised.
- Ofcom should not sanction changes to the Operating Licence that it believes could result in news being provided less frequently than at present, or less news overall. Therefore the existing Operating Licence conditions for the main music radio services should be retained (para 2.8 to 2.10).

<sup>21</sup> Local news provision, <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/radio-broadcasters/localness>

<sup>22</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/239144/bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/239144/bbc-operating-licence-june-22.pdf)

<sup>23</sup> Ibid

- An additional obligation should be introduced for BBC radio services, requiring news at least hourly during daytime.
- If Ofcom goes ahead with the proposals in the consultation document, it will create a perverse situation where commercial radio is required to provide news more regularly than the publicly funded BBC. While it is not our preference, the logical conclusion of this approach will be the removal of the corresponding hourly news requirements on commercial radio.

**Q3. Do you agree with the proposals for Public Purpose 2? If not, please explain why.**

60. Given the importance and prominence of the BBC's second public purpose set out in the Charter<sup>24</sup> to support learning for people of all ages, it appears to be a significant omission that its radio services are not required to deliver specific requirements in this area in Ofcom's latest proposals.
61. BBC radio should make an important contribution to this public purpose. It is therefore a surprise that Ofcom has proposed to remove the quotas on Radio 1 and Radio 2 around providing a certain number of documentaries, arts programming and religious output. This downgrading in regulatory oversight is in addition to the removal of requirements on Radio 3 to broadcast a minimum specific number of live or specifically recorded performances, as well as documentaries on arts and cultural topics.
62. Previously, the BBC Trust Service Licences for Radio 1<sup>25</sup> and Radio 2<sup>26</sup> consistently highlighted the important and significant contributions that the stations should make to this public purpose. For example, the last Radio 1 Service Licence stated that, "BBC Radio 1 should make a significant contribution to this purpose amongst its audience, primarily through its social action output, a regular advice programme, its documentaries and its vocational initiatives."<sup>27</sup>
63. The Radio 2 Service Licence went further, noting that, "Radio 2 should make an important contribution to this purpose amongst its audience. It should actively support pan-BBC learning and social action initiatives and work with partners on its own social action campaigns to increase impact. It should also promote informal learning throughout its music programming and through commissioning documentaries that provide an understanding of the context in which music is created and its cultural impact. It should stimulate learning and participation in

<sup>24</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/2016/charter.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/charter.pdf)

<sup>25</sup> [https://www.bbc.co.uk/bbctrust/our\\_work/services/radio/service\\_licences/bbc\\_radio\\_1.html](https://www.bbc.co.uk/bbctrust/our_work/services/radio/service_licences/bbc_radio_1.html)

<sup>26</sup> [https://www.bbc.co.uk/bbctrust/our\\_work/services/radio/service\\_licences/bbc\\_radio\\_2.html](https://www.bbc.co.uk/bbctrust/our_work/services/radio/service_licences/bbc_radio_2.html)

<sup>27</sup> Page 5,

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/radio/2016/radio1\\_apr16.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/2016/radio1_apr16.pdf)

music through workshops and online interactivity and through awards and support for new performers and songwriters.”<sup>28</sup>

64. As noted earlier, rather than removing quotas on delivering specific objectives on public service content, Ofcom should look to enhance these conditions on BBC services. It is not clear whether any additional relevant research was carried out by either the BBC or Ofcom to provide any evidence of listener preferences.
65. The BBC’s 2021-2022 Annual Report<sup>29</sup> highlights that in this area stations, in most cases, exceed the level of the quotas that have been set which suggests that these could in fact be increased in order to stretch BBC network stations to deliver more public service content that would contribute to the delivery of Public Purpose 2. Most of these obligations have not been changed since the inception of the BBC Trust, and respective Service Licences, in 2007.

#### Recommendation summary

- It is not sufficient to rely entirely on the BBC’s own commitments to deliver learning for people of all ages on its radio services. Ofcom should revisit previous commitments in this area, especially on Radio 1 and Radio 2, with a view to incorporating clear external targets within the Operating Licence.

#### Q4. Do you agree with the proposals for Public Purpose 3? If not, please explain why.

66. We very much agree with Ofcom’s assertion that distinctiveness must be at the heart of the BBC. It is the distinctiveness of the output on BBC radio services that should differentiate it from the content provided by commercial radio broadcasters.
67. In our response<sup>30</sup> to Ofcom in September 2021, we emphasised that a shift away from quotas or quantitative measures across all BBC services would not be in the interest of licence fee payers or the health and diversity of UK radio. Moreover, such a move could cause significant and long-term damage to commercial competitors.
68. In considering the application of regulatory conditions to BBC services both now and in future, Ofcom must also be clear that the BBC should not be able to meet its licence obligations through content that exists solely on BBC Sounds or during off-peak hours. For quotas and commitments to be meaningful they must apply to the largest and most popular services, so that the associated public value content is actually reaching audiences in a significant way. This is also

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<sup>28</sup> Page 5,

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/radio/2015/radio2\\_aug15.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/2015/radio2_aug15.pdf)

<sup>29</sup> Page 140, <https://downloads.bbc.co.uk/aboutthebbc/reports/annualreport/ara-2021-22.pdf>

<sup>30</sup> Page 16, <https://www.radiocentre.org/wp-content/uploads/2021/09/Radiocentre-submission-to-Ofcom-on-BBC-regulation-FINAL-submitted.pdf>

vital given the material adverse competitive impact on the commercial sector if BBC output duplicates the content of commercial services at peak times.

69. Of significant ongoing concern is the BBC's track record regarding its own additional quotas and performance measures as captured in its Annual Plan, referred to formerly as 'additional BBC commitments'. In the first BBC Annual Plan (for 2017/18) these commitments were set out in some detail alongside the Operating Licence conditions for each service. However, they have been gradually watered down year on year and in some cases disappeared altogether, often replaced by a broad narrative description and statements or assertions regarding the delivery of the public purposes.
70. This shift in the focus and content of the Annual Plan in a few short years has meant its role in holding BBC radio services to account has been weakened. This experience does not give us great confidence that the Annual Plan can serve as a tool to set meaningful requirements, without the backstop of regulatory conditions set by Ofcom through an Operating Licence.
71. As Ofcom will be aware, to help demonstrate why it is right for BBC radio and audio services to be regulated, and the potential consequences of a continued relaxation in the approach to regulating the BBC, our response to Ofcom in September 2021 considered what the BBC's provision could look like were restrictions removed. The modelling<sup>31</sup> drew on bespoke consumer research and provided an illustration of what this could mean for the commercial sector and associated impact on consumer choice.
72. The modelling tested two scenarios to illustrate the potential impact on the development of BBC services. The evidence from this analysis clearly suggests that fewer restrictions on BBC content would harm commercial radio listening, with an associated impact on revenues and viability. Because the BBC's new services in these scenarios would only crowd out commercial content, they would lead to a reduction in listening options available to consumers and be a net loss to the UK's audio ecosystem.
73. The model concluded that the loss of clear targets, followed by measures to drive audiences to Radio 1 and Radio 2, would lead to a significant drop in commercial radio listening time, translating to a £44 million pa loss in revenues by the end of the current Charter Period in 2027 (a cumulative loss of £192 million by then). Crucially, this amounts to around 27% of modelled revenues for the main competitor stations, which would likely become uneconomic as a result, ultimately leading to job losses and reducing consumer choice. In addition, the model showed that a drive from the BBC to launch new online radio services would have a direct negative impact on commercial radio listening, leading to a £50 million pa loss in revenues by the end of the Charter Period in 2027 (a cumulative loss of £215 million by then).
74. Ofcom's broad recognition in this consultation of the necessity of clear targets is welcome, with the core quotas for Radio 1 and Radio 2 retained. However, looking at the existing delivery of BBC performance against its quotas, it is clear that these regulatory conditions are acting as a backstop for guaranteeing a minimum level of distinctive output. For example, for Local Radio the daytime weekday output is set at 60%, yet when looking at recent performance against this quota, it has declined from 73% in 2014/15 to 64% in 2021/22.

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<sup>31</sup> Page 19, Ibid

75. For Radio 1, against its quota for new music there is a steady decline in the share of airtime used to break new acts in daytime. Having given over 65% of the daytime schedule to new music in 2014/15, that share is now just 54% in 2022/22, and was only 51% in 2020/21, one percentage point above the quota. This low level delivery against the BBC's existing quotas does not instil confidence that when setting its own targets that it will deliver anything other than the lowest levels acceptable to Ofcom.
76. It is also unclear, where the BBC is expected to set its own expectations for areas where quotas were previously set by Ofcom, what Ofcom will realistically deem acceptable as it expects planned output levels to "stay broadly the same and would require the BBC to provide detailed reasoning for any significant changes to its plans.", nor how Ofcom will intervene should it not accept proposed changes.<sup>32</sup> There is also a lack of clarity around the ways in which the detailed reasoning would be published for any significant changes to the BBC's plans.
77. Furthermore, allowing the BBC to change the output (format) of its stations by merely informing Ofcom would afford them more flexibility than commercial radio stations, who must go through a rigorous and evidence-based process that requires Ofcom approval before varying their formats.
78. We would urge Ofcom to reconsider this approach and its implications for the distinctiveness of BBC radio services. It has not provided any convincing evidence that any change of this nature will be beneficial or provide support to the BBC in delivering its public purposes. However, if Ofcom is determined to push ahead with this approach we would at the very least suggest a more transparent approach. In these circumstances, Ofcom must look to introduce a new mechanism whereby the BBC would be required to apply to Ofcom on an annual basis to vary its output expectations in arts and religious programming, documentaries, and social action campaigns. As part of this application the BBC would need to demonstrate detailed reasoning as to why these changes will help them to deliver their public purposes. After a short public consultation with stakeholders, Ofcom would then be in an informed position in order to accept or reject the proposed changes. Any relaxed obligations on the BBC must also be mirrored by reduced format change requirements for commercial radio.
79. Below is an illustration of the existing quotas that will be removed from the proposed Operating Licence if Ofcom's proposal goes ahead in its current form.
- **Radio 1:** Annual quota of first-run documentaries (40 hours)
  - **Radio 1Xtra:** Annual quota for number of documentaries (40 hours)
  
  - **Radio 2:** Annual quota for arts programming (100 hours)
  - **Radio 2:** Annual quota for documentaries (130 hours)
  - **Radio 2:** Annual quota for religious output from a broad range of faiths (170 hours)
  
  - **Radio 3:** Annual quota for live or specially recorded performances (440)
  - **Radio 3:** Annual quota for new documentaries on arts and cultural topics (35)
  
  - **Radio 4:** Annual quota for original documentaries covering range of subjects (375 hours)

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<sup>32</sup> 8.46, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/239144/bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/239144/bbc-operating-licence-june-22.pdf)

- **Radio 4:** Annual quota for original religious programming (200 hours)
- **6Music:** Weekly quota for speech-based features, documentaries and essays (10 hours, on average across each Year)

80. Our concerns with the BBC retreating from delivering in areas where it has greater autonomy are based on tangible illustrations. For instance, in drama production the BBC reduced its provision once its quota was removed. Under its last BBC Trust Service Licence, Radio 4 had a condition to broadcast at least 600 hours of original drama and readings each year. However, Ofcom's first Operating Licence in 2017 removed these conditions, along with those for Radio 3.
81. The latest (2022/23) BBC Annual Plan outlines that Radio 4 will now broadcast just 300 hours<sup>33</sup> of drama. This is a huge 50% decline over the past five years. Ultimately the BBC has over that time slowly reduced its delivery in this highly distinctive area and while a relatively small reduction each year may not appear significant, the end result is that five years on the content available to licence fee payers has been drastically cut.
82. This kind of reduction in the provision of distinctive content is far from the intention of Government during the Charter Review, and in an assessment that was made by Sir David Clementi in his review of the governance and regulation of the BBC in March 2016. In that report Sir David said that "The second way in which the Operating Licences would be different from the Service Licences is in moving towards a more clearly regulatory document. This means that they should have a greater focus on measurable quantitative obligations that specify the desired outputs and outcomes, rather than the more qualitative approach of the existing Service Licences."<sup>34</sup> This sentiment was subsequently included with the Framework Agreement (as noted above).
83. As we have highlighted throughout this response, quotas on BBC services should seek to stretch the broadcaster to deliver enhanced levels of public service content, not merely set an objective that meets the status quo or provides little to no emphasis on the BBC to improve its delivery to audiences.
84. With regard to the transparency requirements related to the BBC's plans for ensuring each of its services are distinctive, including BBC Sounds, there is a lack of detail on what this requirement will mean in practice.
85. Similarly, the regulatory conditions that now cover BBC Sounds in the proposed Operating Licence, while broad in terms of output, do not in any way guarantee the delivery of distinctive content. Ofcom has recognised that the BBC's position in radio is different to that of TV, and given the BBC's dominant position in radio and audio it is important that this is recognised in Ofcom's regulation of BBC Sounds.

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<sup>33</sup> Page 62, <https://www.bbc.co.uk/aboutthebbc/documents/bbc-annual-plan-2022-2023.pdf>

<sup>34</sup> Para 44, Page 53,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/504003/PDF\\_FINAL\\_20160224\\_AM\\_Clementi\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/504003/PDF_FINAL_20160224_AM_Clementi_Review.pdf)



86. Within Ofcom’s proposal, requirements on BBC Sounds are extremely broad with the proposed Operating Licence placing a condition for BBC Sounds to “provide a wide breadth of output covering a range of genres and content types, including music, arts, religion, ethics and other specialist factual content, comedy, and children’s programming.”<sup>35</sup> As a result, the BBC is effectively compelled to compete against commercial radio services.
87. Ofcom should review these general conditions and instead place requirements on the BBC to enhance its distinctive offering. For example, Ofcom could amend requirement 3.2.1, inserting a specific condition on distinctiveness in order that it must instead “provide a broad range of *distinctive* original UK content.”
88. With the broad requirement in 3.2.3, as seen above, this could also be more detailed so that BBC Sounds provides “a wide breadth of *distinctive* output covering a range of *specialist* genres and content types *that are not well served by the commercial sector.*” Should Ofcom not make adjustments to the proposed Operating Licence there is a significant risk that over the remaining period of the Charter BBC Sounds, under such a broad regulatory structure, will not end up as the distinctive platform that should be expected of the BBC, instead seeking to mirror the type of content provided by commercial operators.

#### Recommendation summary

- Existing quotas of public service content on BBC radio should be retained in the Operating Licence (including specified hours of arts programming, religious content, documentaries, social action, live or specially recorded performances and music).
- If Ofcom goes ahead with the proposals in the consultation document, it will create a perverse situation where then BBC has significantly fewer regulated requirements than at present, despite its significant public funding and spectrum advantages. As with news requirements, this would seem to make corresponding relaxations in commercial radio inevitable.
- Proposed conditions for BBC Sounds are far too broad and risk creating a mandate for the BBC to compete against services offered by commercial radio broadcasters. Updated conditions that guarantee a minimum level of distinctive content should be introduced.

**Q5. Do you agree with our preliminary view on the BBC’s request to change Operating Licence conditions 2.21 and 2.32 for BBC Four, including our proposal to remove BBC Four’s peak original productions quota and set the ‘all hours’ quota at 65% instead of 60% as requested by the BBC? If not, please explain why.**

89. The specific focus of this question on BBC Four and TV is beyond the direct remit of Radiocentre. Therefore, we will not provide a response to this question.

<sup>35</sup> 3.4.3, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/239145/annex-9-bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/239145/annex-9-bbc-operating-licence-june-22.pdf)

**Q6. Do you agree with the proposals for Public Purpose 4? If not, please explain why.**

90. The BBC's speech radio services are amongst the most distinctive provided by the broadcaster. Alongside Radio 4 and 5 Live, the speech programming across the 39 Local Radio services play a valuable role in providing local communities with an unrivalled service of local news and information. This also applies, while less locally, to the national radio services in Scotland, Wales and Northern Ireland.
91. We welcome the proposals<sup>36</sup> to retain the quotas for production in the nations and regions on radio, as well as for BBC Local Radio in England given the importance of the BBC's role in this area. We also recognise the rationale behind the move to allow content for BBC Sounds to count toward the delivery of the network radio production quota for the Nations and regions. However, it is not clear how Ofcom's monitoring on the BBC's delivery in this area will be measured, particularly around the proportion of the quotas. Greater detail on what threshold is acceptable would be helpful.
92. The proposal to retain the existing news and current affairs quotas on the BBC's radio services for the Nations and regions is welcome. In its justification Ofcom cites research<sup>37</sup> that demonstrates the value to listeners, albeit the *quality* of the news. However, as highlighted in response to question 2 with regard to public purpose 1, Ofcom's research<sup>38</sup> into audience expectations of the BBC in the current media environment found that the most important issue for audiences was that the BBC should be providing more trusted and accurate UK news. This is another missed opportunity for Ofcom to increase the regulatory conditions on the BBC to deliver increased levels of highly valued news output.
93. Somewhat irrationally, Ofcom appears to have taken a different view on the necessity of speech quotas on the BBC's radio services for the Nations than with Local Radio services in England. We welcome the move to retain all speech quotas in the Nations and believe that this, for the same reasons, should be the case for Local Radio as well.
94. Our greatest concern with the proposed changes for Public Purpose 4 is the radical shift away from 100% speech during the breakfast peak (07:00am – 08:30am) across all 39 BBC Local Radio services in England, with Ofcom proposing a seemingly arbitrary reduction of speech during this key time to 75% – with the ability to broadcast music for the remaining 25% of the time.
95. Commercial radio broadcasters across the UK provide an excellent mix of entertainment, music, news and information. Up to this point BBC Local Radio has largely complemented the offering provided by commercial stations, providing listeners across England with significant local speech output that reflects the unique characteristics of local regions.

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<sup>36</sup> Para 9.47, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/239144/bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/239144/bbc-operating-licence-june-22.pdf)

<sup>37</sup> Para 9.70, Ibid

<sup>38</sup> Page 27, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0031/239179/2-Exploration-into-audience-expectations-of-the-BBC-in-the-current-media-environment.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0031/239179/2-Exploration-into-audience-expectations-of-the-BBC-in-the-current-media-environment.pdf)

96. Given the BBC's tendency to use quotas as either a floor or target we expect that, should this proposal be adopted in a new Operating Licence, Local Radio stations would be likely to utilise the entire new 25% music allowance.
97. The justification for this change is unclear, which is surprising given that it is such a significant change to the Local Radio service. On the one hand, the BBC cites<sup>39</sup> old research conducted in 2018 (before the pandemic) that listeners to BBC Local Radio stations in England consider that the lack of music at breakfast negatively impacted their perceptions of the Local Radio stations.
98. On the other hand, the BBC claims that financial pressures have made it increasingly difficult to deliver 100% speech during the breakfast peak while maintain quality levels across all news and features. We note in the BBC's 2021/22 Annual Report<sup>40</sup> that content spend for BBC Local Radio dropped from £124m in 2020/21 to £117m in 2021/22. This fall in funding comes at a time when the BBC has placed a significantly increased focus on the content and promotion of BBC Sounds.
99. The BBC's now dated listener research also presents a different narrative to newer research conducted by Global in July 2021 that assesses listener attitudes to potential changes around the core elements of BBC Local Radio. Global's survey<sup>41</sup> found that speech is the most important and valued element of BBC Local Radio, with speech at breakfast being particularly valued. The following key headlines highlight that:
- Only 29% of listeners say they want more mainstream music on BBC Local Radio, falling to less than one in ten (8%) of over 55's
  - Just 3% of listeners wanted to hear less news and information about their local area at breakfast
  - Only one in ten (12%) of breakfast listeners want less presenter discussion and chat on BBC Local Radio.
100. Ofcom's proposed acceptance of the BBC's request to move away from 100% speech during the breakfast peak is ostensibly justified in order to allow the BBC to "better meet audience needs"<sup>42</sup>, yet such a fundamental shift in the programming of the BBC's 39 Local Radio services should justify greater, up-to-date examination and consultation. Without such scrutiny it is almost inevitable that valued speech output will be replaced by music content, which is already very well catered for by commercial broadcasters.
101. We do not agree with the relevance of the way in which listening data has been used to support<sup>43</sup> the removal of the 100% speech condition. The assumption that a long-term decline in listening is a result of the lack of music on Local Radio services is not supported by wider analysis of listening data. For example, pre-pandemic listening data shows that breakfast peak hours (which currently have 100% speech requirements) have fallen at a comparable rate to hours during the rest of the day where the speech requirement is only 60% (see Figure 2 below).

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<sup>39</sup> Para 9.72, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/239144/bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/239144/bbc-operating-licence-june-22.pdf)

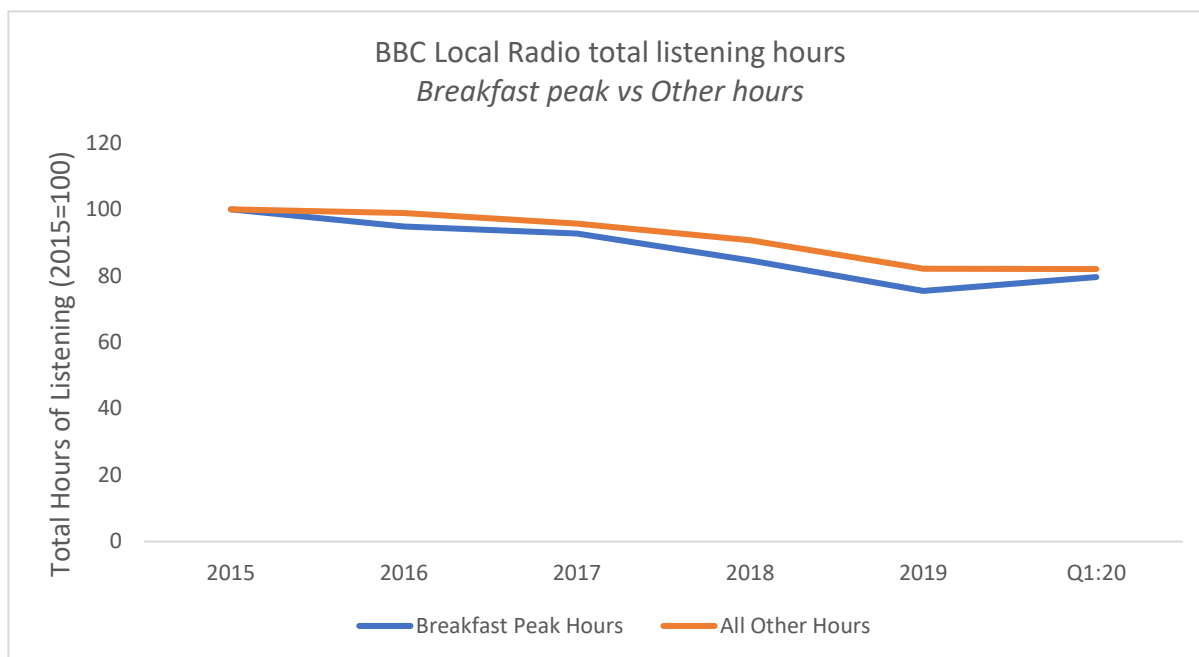
<sup>40</sup> <https://downloads.bbc.co.uk/aboutthebbc/reports/annualreport/ara-2021-22.pdf#page=6>

<sup>41</sup> Made up of representative sample of over 1,000 adults

<sup>42</sup> Para 9.74, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/239144/bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/239144/bbc-operating-licence-june-22.pdf)

<sup>43</sup> Para 9.73, Ibid

**Figure 2: BBC Local Radio breakfast peak hours vs other hours**



102. The decline in listening during breakfast peak hours compared to the decline during other hours of the day has been less acute in BBC Local Radio than it has for all other BBC radio services, illustrating that audiences do not appear to have an aversion to the 100% speech requirement. For BBC Local Radio (illustrated in Figure 3 below), breakfast peak decline was 2 percentage points lower than decline in listening over the rest of the day, compared with a 5 percentage point variation for all other BBC radio services where similar levels of music are played throughout the day.

**Figure 3: BBC Local Radio decline in listening vs other BBC radio services**

Listening Hours	2015	Q1 2020	Change
<b>BBC Local Radio</b>			
Breakfast peak	9,747	7,759	-20%
Other times of day	66,773	54,773	-18%
Relative decline			-2%
<b>Other BBC radio services</b>			
Breakfast peak	53,986	46,499	-14%
Other times of day	419,730	382,034	-9%
Relative decline			-5%

Source: RAJAR. Data shown pre-pandemic to avoid noise from the impact of changing listening habits across the whole market

103. Curiously, the justification that Ofcom has used against reducing the breakfast peak speech quotas on the BBC's Nations' radio services applies in the same way to Local Radio services in England. Ofcom states that these quotas will be left at 100% speech "to ensure they continue to deliver news and current affairs and content of national interest at popular listening times"<sup>44</sup>

<sup>44</sup> Para 9.75, Ibid

and continues, highlighting the offering of commercial broadcasters by noting that “These conditions will also help ensure the nations’ radio stations are distinctive from commercial services which tend to play more music.”<sup>45</sup>

104. With such a significant shift in programming proposed, it is important to understand what a new allowance of 25% non-speech content might mean in reality. Given the BBC’s request to drop the quota in its entirety, it may be safe to assume that if the proposed Operating Licence is adopted Local Radio services would implement changes quickly and start delivering at the ceiling of the quota.
105. A lack of detail around the proposed change means that it is also unclear if this revised condition would allow music to be played back to back or if there is an expectation that the non-speech output should be spread across the breakfast peak. With breakfast peak made up of 90 minutes of airtime, a 25% allowance of non-speech content would afford Local Radio stations to play around 6.5<sup>46</sup> tracks across this period.
106. It is helpful to put this proposed change into perspective. For example, commercial radio stations such as Absolute Radio and Radio X typically play around 12 and 6 songs respectively over the breakfast peak period. While these stations are not direct competitors to BBC Local Radio, this is illustrative of the fact that popular commercial radio music services can be programmed with a comparable average number of songs (and provide high quality output on a significantly lower content budget than BBC Local Radio services). Therefore the expansion of music output on BBC Local Radio into breakfast peak clearly opens up the potential for less distinctive services that are more comparable to commercial radio.
107. Should Ofcom proceed with the proposal to reduce speech output at breakfast peak it is crucial, in order to preserve the distinctiveness of Local Radio output, that the type of music content that is permitted by Ofcom is limited. As listeners have no expectation (or, as we have highlighted, desire) of music on their BBC Local Radio services it is vital that its introduction allows Local Radio to deliver on the important objectives of Public Purpose 4.
108. In order to guarantee this obligation, Ofcom should place a requirement on BBC Local Radio services that any music content is permitted is solely from local artists and bands. Local Radio services have a very important role to play as a bastion of local talent. Local Radio services should not be playing current, recent chart or classic hits.
109. In order to assess the impact of any changes Ofcom should, after a period of no longer than one year, review whether the reduction in distinctive speech content is having an impact on BBC Local Radio listeners, as well as on other local commercial radio services.
110. Further clarity is also necessary around the new requirement<sup>47</sup> for ‘significant’ amount of news and information in breakfast peak. The current wording is highly ambiguous and it is unclear what Ofcom’s expectations are of a ‘significant’ amount, whether this is also held by the BBC to be the same thing and how the success of delivery in this area will be measured.

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<sup>45</sup> Ibid

<sup>46</sup> Based on 25% of 90 minutes and an average track length of 3.5 minutes.

<sup>47</sup> 4.40.4, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/239145/annex-9-bbc-operating-licence-june-22.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/239145/annex-9-bbc-operating-licence-june-22.pdf)

### Recommendation summary

- Ofcom should not allow the introduction of music at peak breakfast time on BBC Local Radio. This is likely to reduce distinctiveness (Public Purpose 3) and its reflection of the diversity of regions of the UK (Public Purpose 4).
- If Ofcom goes ahead with its proposals to introduce music and reduce speech output at breakfast peak on BBC Local Radio, this must focus on distinctive music performed by artists local to the area and not current chart hits from the past five years.
- Ofcom should introduce a quantifiable news and information requirement that stretches BBC Local Radio stations to deliver more speech content relevant to their respective local areas.

### Q7. Taken together, do you agree with the proposals for a new Operating Licence? If not, please explain why.

111. Overall, while some of the changes proposed by Ofcom are a step in the right direction, much more must be done in order to improve the performance and distinctiveness of BBC radio services. We raised significant concerns in our submission to Ofcom in September 2021 that a wholesale shift away from regulatory conditions would have a devastating impact on commercial radio broadcasters. We are pleased therefore that many of our recommendations have been acknowledged – but disappointed that the proposals still significantly dilute Ofcom’s oversight of the BBC.
112. While an update to the BBC’s Operating Licence is long overdue, Ofcom’s proposals are still not comprehensive enough to hold the BBC to account and deliver distinctive content – indeed they are likely to result in a less regulated BBC with less distinctive BBC radio output. We have serious concerns that BBC radio has been afforded more freedom to reduce its distinctive public service content, with regulatory conditions in a number of key areas removed and/or reduced.
113. As we highlighted earlier on in this submission, it was clearly not the intention of the architects of the new Framework and Agreement that when regulation moved away from the BBC Trust to Ofcom, and new Service Licences were introduced, that fewer obligations would be placed upon the BBC. The Mid-Term Charter Review is an important milestone in Ofcom’s regulation of the BBC and remains as an opportunity for Ofcom to enhance the expectations of the BBC’s delivery of public service content, including the minimum levels of distinctive output.
114. Unfortunately it is clear from this review that Ofcom is suggesting that it places fewer quantitative obligations on the BBC, in addition to granting the broadcaster greater latitude around its output. This is in parallel to removing vital regulatory backstops which, as we have seen from the BBC’s performance across a range of services, is the only mechanism that guarantees a minimum level of delivery in important areas of distinctive public service content.

115. Perversely, Ofcom’s proposals for a new Operating Licence would result in the BBC having fewer regulatory conditions around its news content than many commercial radio broadcasters, along with more flexibility to set and change the format of its radio output than is afforded to commercial radio. This should not be the outcome of this process, especially given the funding and operational advantages benefitting the BBC, as well as the important role that it plays in delivering high quality trusted news to listeners. Ofcom should reconsider this proposed change and look to ensure that the BBC guarantees a minimum service level to listeners that is commensurate of a lauded national public service broadcaster and its privileged position.
116. Alone these aforementioned concerns are a serious disappointment. Yet Ofcom is also proposing to grant the BBC the opportunity to radically alter its Local Radio breakfast peak shows by diluting its obligation to currently deliver 100% speech. This proposal was based on opaque, dated listener research and ostensibly financial constraints. If not abandoned or, at the very least, significantly altered the changes will end up eroding the distinctiveness of Local Radio and offering a service that is already well catered for by commercial broadcasters.
117. Should this iteration of the Operating Licence be adopted next year Ofcom would appear to be at risk of failing to fulfil its duties listed in the Operating Framework around appropriate regulatory conditions for requiring the BBC “to secure the provision of distinctive output and services”<sup>48</sup> as well as Article 45(2)(b) of the BBC Charter for Ofcom to have regard to “the desirability of protecting fair and effective competition in the United Kingdom.”<sup>49</sup>
118. With regard to ongoing issues with transparency, despite repeated calls from Ofcom since it began its regulation of the broadcaster, the BBC has failed to provide enhanced levels that are satisfactory. The BBC therefore needs to significantly improve in this area in order to assist stakeholders in evaluating proposed changes and how well the broadcaster is performing against its regulatory conditions. Ofcom should continue to review progress in this area and outline steps that it will take if the BBC does not make tangible improvements to its reporting in 2023.
119. With listening increasingly shifting to online platforms, it is important that the BBC’s delivery in this area is sufficiently distinctive from that of its competitors. We welcome the inclusion of BBC Sounds in the Operating Licence, but the conditions placed upon it are limited, broad and should be expanded in order for it adequately facilitate the delivery of the BBC’s public service obligations and to ensure that it does not have a detrimental impact on competition.
120. We hope that Ofcom will take on board our serious concerns with the proposed Operating Licence and will consider these as it produces the final Operating Licence ahead of its implementation in early 2023. In the meantime, we are of course very happy to discuss our response and positions with officials.

## ABOUT RADIOCENTRE

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

[www.radiocentre.org](http://www.radiocentre.org)

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<sup>48</sup> 2.15, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/99408/bbc-framework.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/99408/bbc-framework.pdf)

<sup>49</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/2016/charter.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/charter.pdf)

## ANNEX – CURRENT AND PROPOSED REQUIREMENTS FOR BBC RADIO AND AUDIO SERVICES

### Question 2

Operating Licence condition changes

Service	Current requirement	Proposed requirement
Radio 1 & Radio 1Xtra <i>(2.8 / 1.8; 2.9 / 1.9<sup>50</sup>)</i>	At least one hour is allocated to news during Daytime each weekday (except for Public Holidays)	280 hours allocated to news in each Financial Year
	Bulletins at regular times during Daytime at weekends	Bulletins at intervals throughout the day
Radio 2 <i>(2.10 / 1.10)</i>	At least 17 hours are allocated to news and current affairs programming each week, of which at least 3 hours must be in Peak Listening Time	At least 867 hours are allocated to news and current affairs programming each Financial Year, of which at least 153 hours must be in Peak Listening Time

### Question 4

Operating Licence condition changes

Service	Current requirement	Proposed requirement
Radio 1 & Radio 1Xtra <i>(2.25 / 3.14.5.1)</i> <i>(2.39.3 / 3.9.3)</i> <i>(2.39.6 / 3.9.6)</i>	40 new documentaries	None ( <i>BBC must set out planned hours of new documentaries each year</i> )
	At least 60 hours of specialist music in each week	3,129 hours of specialist music each year
	Offers at least two major social action campaigns	Offers major social action campaigns
Radio 2 <i>(2.27.1 / 3.14.5.2)</i> <i>(2.27.2 / 3.14.5.1)</i> <i>(2.27.3 / 3.14.5.4)</i>	100 hours allocated to arts programming	None ( <i>BBC must set out planned hours of new arts programming each year</i> )
	130 hours allocated to documentaries	None ( <i>BBC must set out planned hours of new documentaries each year</i> )
	170 hours allocated to religious output	None ( <i>BBC must set out planned hours of religious programming each year</i> )
Radio 3 <i>(2.25 / 3.14.5.5)</i> <i>(2.28.3 / 3.11.2 &amp; 3.14.5.6)</i>	440 live or specially recorded performances	None ( <i>BBC must set out planned number of live or specially recorded performances</i> )
	25 new musical works	The BBC must ensure that it commissions and broadcasts new musical works. The BBC must set out the number of new musical works it plans to commission and broadcast on Radio 3

<sup>50</sup> Note: Original licence condition number / proposed licence condition number shown in brackets



(2.28.4 / 3.14.5.3)	35 new documentaries on arts and cultural topics	None ( <i>BBC must set out planned hours of arts documentaries</i> )
Radio 4 (2.29.1 / 3.14.5.1)	At least 375 hours allocated to original documentaries	None ( <i>BBC must set out planned hours of new documentaries each year</i> )
(2.29.2 / 3.14.5.4)	At least 200 hours allocated to original religious programming	None ( <i>BBC must set out planned hours of religious programming each year</i> )
BBC 6 Music (2.30 / 3.14.5.1)	On average 10 hours or more per week allocated to speech-based features, documentaries and essays	None ( <i>BBC must set out planned hours of new documentaries each year</i> )
BBC Sounds (NA / 3.14.1; 3.14.2)	None	BBC must explain its plans for ensuring that BBC sounds is distinctive and explain the role that acquisitions will play in delivering these plans
(NA / 3.2)	None	Must provide a broad range of original UK content; Support new UK talent and creative innovation, including commissioning new titles and output from a wide range of independent producers; Provide a wide breadth of output covering a range of genres and content types, including music, arts, religion, ethics and other specialist factual content, comedy, and children's programming; Make original UK content easily discoverable

### **Question 6**

Operating Licence condition changes

<b>Service</b>	<b>Current requirement</b>	<b>Proposed requirement</b>
BBC Local Radio England (2.71 / 4.40.2) (2.74.1 / 4.40.3)	100% speech content during the breakfast peak	75% speech content during the breakfast peak
	Provides news bulletins and information of particular relevance to the area and communities it serves at intervals throughout the day	Provides news bulletins and information of particular relevance to the area and communities it serves at intervals throughout the day
(NA / 4.40.4)	<i>None</i>	Provide a significant amount of news and information of particular relevance to the area and communities it serves during the breakfast peak