

**Supplementary Evidence to Ofcom Consultation on the Draft BBC Operating Framework (July 2017) from Simon Albury, Chair, Campaign for Broadcasting Equality CIO**

**Ofcom should not have excluded Article 14 Diversity from the Ofcom Consultation on the Draft BBC Operating Framework**

This supplementary submission addresses the Draft BBC Operating Framework in relation to BAME diversity. What it proposes in relation to BAME might be applied to other under-represented groups.

**Holding the BBC to account for the delivery of its mission and public purposes – Consultation <sup>1</sup>**

The Ofcom consultation document says:

“4.123 While on-screen diversity is not an issue unique to the BBC, this purpose makes clear that the BBC should be at the vanguard of efforts to improve diversity by ensuring that its output and services reflect, represent and serve the diverse communities of the whole of the UK. We note that the Charter and Agreement also places further diversity related obligations on the BBC, which are outside the scope of this consultation.<sup>66</sup>”

The footnote to which it refers says:

“66 Article 14 of the Charter also requires the BBC to reflect the diverse communities of the whole of the UK in the content of its output, the means by which its output and services are delivered (including where its activities are carried out and by whom) and in its organisation and management. Schedule 3 of the Agreement also places specific equal opportunities (in relation to gender, disability, or race) and training requirements upon the BBC.”

Ofcom has taken the view that Article 14 Diversity should be outside the scope of its Consultation on the Draft BBC Operating Framework.

But:

**BBC Charter**

Among the Articles in the BBC Charter are these:

Article 44. Ofcom

(1) It shall be a function of Ofcom, pursuant to section 198 of the Communications Act 2003 (functions of Ofcom in relation to the BBC), to the extent that provision for them to do so is contained in this Charter and the Framework Agreement, to regulate the BBC. References in this Charter to the functions of Ofcom are references to the

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<sup>1</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/99519/bbc-performance-consultation.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99519/bbc-performance-consultation.pdf)

functions contained in or under the Charter and the Framework Agreement.

#### Article 45. General duties

“(1) The general duties of Ofcom in section 3 of the Communications Act 2003 (general duties of Ofcom) apply to the carrying out of their functions contained in this Charter and the Framework Agreement.

(2) Ofcom must have regard, in carrying out their functions, to such of the following as appear to them to be relevant in the circumstances—

.....

(c) the requirement for the BBC to comply with its duties under the Charter, including its general duties (set out in articles 9 -18).”

Article 14 Diversity appears within the range indicated by 45 (1) (c)

#### Article 14. Diversity

Charter Article 14 says:

*(1) The BBC must ensure it reflects the diverse communities of the whole of the United Kingdom in the content of its output, the means by which its output and services are delivered (including where its activities are carried out and by whom) and in the organisation and management of the BBC.*

This is emphasised and repeated again in the Article

*4) In complying with this article, the BBC must have particular regard to the need to reflect underrepresented communities.*

*(1) The BBC must ensure it reflects the diverse communities of the whole of the United Kingdom in the content of its output, the means by which its output and services are delivered (including where its activities are carried out and by whom) and in the organisation and management of the BBC*

“the means” must mean all suppliers of programmes within and outside the BBC including independent producers

the “by whom” must include those with a diversity of protected characteristics

This means that BAME people must no longer be under-represented in the suppliers of content and services or in the organisation and management of the BBC.

In the consultation, Ofcom has failed to include any reference to Article 14 other than to seek to exclude it from consideration.

#### **Ofcom’s duty**

Given the above, Ofcom had a duty to consult about Article 14 in relation to its consultation on the Draft Operating Licence.

In failing to do so Ofcom, again, demonstrates a woeful lack of resolve to fulfil its own statutory duties.