

OFCOM

**Holding the BBC to account for the delivery of
its mission and public purposes**



July 2017

Introduction

1. Ofcom became the first external regulator of the BBC in April 2017 and has been undertaking a series of consultations covering the operating framework it is developing which will cover performance, content standards and competition as they relate to the regulation of the BBC. Global welcome the opportunity to contribute to this important consultation process.
2. Global is one of the UK's leading media and entertainment groups and is the UK's biggest commercial radio company and home to the country's biggest commercial radio brands Capital, Heart and Classic FM. Together with Capital XTRA, LBC, Smooth, Radio X and Gold, these brands reach 24 million people every week on the radio, 10 million unique users every month on Global's digital platforms and 6 million people on Global's social media channels.
3. Global responded in some detail to the Government's consultation on the BBC's Charter renewal and were supportive of Ofcom taking on responsibility for regulating the BBC.
4. We firmly believe that clearly defined remits, processes and measurable outcomes are the most effective methods to ensure that the BBC is held to account in fulfilling its public purposes.
5. This is especially pertinent when considering the dominant position and 53% share of the radio market that the BBC enjoys, compared with its 32% share of the television market. There is even more of a responsibility to ensure that all BBC radio services, especially Radio 1 and Radio 2, offer the most distinctive, market enriching content, especially during those day parts with the largest audiences.
6. We were heartened that Government recognised this position and that the need to ensure the music content is distinct to that of other broadcasters was reflected so specifically within the BBC Framework Agreement.
7. We were therefore very concerned to read that Ofcom was proposing to disregard "the case for clearer average age targets for the mainstream radio services"¹. The inclusion of this statement in Schedule 2 would suggest that Government understands the link between setting a clear age target and delivering distinctive output. A clear demographic target is the single most important factor in shaping the output of a radio station and despite the fact that Radio 1, 2 and Local Radio services regularly failed to meet their

¹ Schedule 2, Paragraph 2 (4)

previous age targets at least it was clear who the services *should* have been aimed at.

8. Ofcom were instructed to ensure output and services which are “substantially different to other comparable providers across each and every UK Public Service both in peak time and overall”². We believe that the only way to achieve this for the BBC to have a clear statement of purpose which sets out what each service is, who it is targeted at and what makes it distinctive, as is the case with the existing service licences. It is then for Ofcom to ensure that this is delivered.
9. We understand that Ofcom are keen to have a generic overarching licence but without a defined remit for each radio station it isn't possible to accurately assess market impact. This can only be determined at individual service level, not as a whole across all BBC services.
10. Ofcom's rationale that it should be for the BBC to set its own demographic profiles does not provide us with any reassurance. It has been acknowledged by Government that its most popular music services were not distinct enough and that was *with* targets set by the BBC Trust. In its Annual Plan, the BBC have selectively chosen age targets, most notably not for BBC Local Radio but these aren't enforceable. They are described as maintaining 'an editorial focus' but it isn't clear what this will mean in practice. This ambiguity is not acceptable.
11. The BBC is currently responsible for maintaining the list of UK Public Services which includes a brief description of each of the services. A decision has clearly been made by the BBC not to include demographics as part of the descriptors for each already and the sentences that remain are too broad and vague. There is a real danger that responsibility for this falls between Ofcom and the BBC with neither wanting to provide the level of specificity that is required to measure market impact. We believe that this list should be within the remit of Ofcom, form part of Schedule 2 of the Operating Licence and that the descriptions should be expanded to give a clear remit of each of the services.
12. Having now had a short window to consider the BBC's Annual Plan for 2017/18 we are no more reassured that BBC Radio Services are committed to delivering a distinctive service. The Annual Plan lacks the details required to understand exactly what each service will be delivering and how that will be measured. We remain firmly of the view that a clear remit should be contained

² Schedule 2, Paragraph 1 (2)

within the operating licence in order that Ofcom retains responsibility for ensuring the remit, and the related public purposes, for each service are met.

13. To ensure a truly distinctive output, Global's recommends the following:

- Every service must have a clear remit and strategy
- There must be specific demographic targets for each service and clear measures for what constitutes compliance

BBC Radio 1

- The target audience should be 15 – 29 year olds (currently this age group makes up only 44% of the audience and the average age of a Radio 1 listener is 35)
- 50 - 60% of tracks in peak and daytime should be new tracks from UK artists. This should be measured monthly
- A minimum of 2 hours of news per weekday in daytime
- At least 75 new documentaries a year, with at least half to be broadcast in peak or daytime
- At least 3 social action campaigns a year

BBC Radio 2

- It should be targeted at an older audience of 45-65 year olds, with a particular focus on over 55s
- The music mix as proposed by Ofcom
- At least 20 hours of new and current affairs programming a week
- At least 100 hours of arts programming a year, with at least half in daytime
- At least 150 hours of documentaries a year, with at least one third in peak and daytime
- At least 170 hours of religious programming a year, with at least 25% in daytime

BBC Local Radio services

- The target audience should be over 50's
- A broad music playlist, limited to 20% of tracks from within the past 2 years
- Annual quota for speech content (60% in core hours, 100% at breakfast peak)
- Locally made programming should be at least 105 hours a week

14. We have responded to the questions within the consultation as they impact on Global and the wider radio industry but as we have set out above, our ability

to comment on the detail is restricted without each service having clear remits.

Questions about the operating licence

Q.1 Do you agree with our overall approach to setting the operating licence?

15. In the BBC's response to the Charter Review consultation, they questioned whether Service Licences have a role in the regulation of the BBC going forward, arguing that they are "unnecessarily detailed and prescriptive, based more on inputs than outcomes, and insufficiently flexible and dynamic to fit with the evolution of service provision for licence fee."
16. We very strongly disagreed at the time and continue to do so. Without Service Licences there will be no effective means of defining what the objectives of a BBC Service are or of calling BBC Management to account of proper use of public monies. We believe that Service Licences are an essential element in the effective regulation of the BBC and would like to see them *more* tightly defined so there is absolute clarity on what is expected. We therefore disagree with Ofcom's decision to move from service licences to a single operating licence.
17. It is difficult to comment on the specifics when fundamentally disagreeing with the overall approach but we have the following comments to make on the approach as outlined within the consultation document.
18. We accept that it is not the role of a regulator to determine how the BBC delivers creative content or manages itself, as set out in paragraph 4.17 and agree that using the four public purposes to focus output is the most sensible approach. However, in the absence of Service Licences for each individual service, this focus means that important details are lost and we are all then reliant on the BBC to fill in the gaps, which the Annual Plan fails to do.
18. Ofcom's approach to proposing regulatory conditions is slightly confusing. Section 2 of Schedule 2, The First Operating Licence states:

(1).....Ofcom must seek to increase the current requirements on the BBC as a whole to secure the provision of more distinctive output and services. In particular, Ofcom must-

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

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

(c) consider the case for setting requirements in areas where an improvement in performance would secure the provision of distinctive output and services;

19. On reading this, we would expect to see an increase in the requirements placed upon Radio 1, 2 and Local Radio, especially given that the BBC have exceeded the majority of the original requirements by some margin as set out in the table below. What we have however, is the status quo on most of the requirements, especially on Radio 2. Where there are new and improved requirements on music and documentary provision on BBC Radio 1 and 2, these have been set at levels far lower than were achieved last year.

Radio 1

Condition	Previous	Achieved in 15/16	Actual % change	Proposed by Ofcom	Proposed % change
UK Music daytime	40%	53%	+13%	45%	+5%
New music daytime	45%	61%	+16%	50%	+5%
Specialist music	60 hours	68	+13%	60 hours	No change
New sessions	160	225	+40%	175	+9%
News	1 hour	1 hr 6	+10%	1 hour	No change
Documentaries	40	40	0%	40 hours	N/A
Social Action	2	2	0%	0	-100%

Radio 2

Condition	Previous	Achieved in 15/16	Actual % achieved	Proposed by Ofcom	Proposed % change
UK Music daytime		40%	+40%	40%	
New music daytime		20%	+20%	20%	
Specialist music	1100 hrs	1,100	0%	1100 hrs	No change
New sessions	260	260	0%	260	No change
Arts	100 hrs	100	0%	100 hours	No change
News	16 hrs	16	0%	17 hours	No change
Documentaries	130 hrs	130	0%	130 hours	No change
Religious	170 hrs	170	0%	170 hours	No change

20. It isn't just about increasing quotas though. BBC radio services need to not just produce more distinctive content but schedule it at a time when people are more likely to be listening. We set out a series of recommendations in the Charter Review consultation of how this might be achieved but not one has been accepted. These focused on increasing the non-music output (which hasn't happened) and ensuring a percentage of this output was during daytime hours (which hasn't happened).
21. In paragraph 4.21 of the consultation, Ofcom states the quotas they have set are the 'bare minimum', which the BBC are expected to exceed yet in paragraph 4.23 Ofcom are proposing to increase quotas. It isn't clear. Ofcom should set more challenging detailed requirements, based on what the BBC achieved last year as a bare minimum, with the sole purpose of increasing distinctiveness, as required under the Charter and Agreement. It is telling that even with achieving higher percentages against the service licence targets that Government noted that the content was not distinctive enough. This would suggest that the targets aren't the right ones.
22. In the same paragraph, Ofcom states it expects the BBC to "set out clearly its intentions for each genre and service". We do not believe that this has been achieved in the Annual Plan and as such Ofcom would not be able to hold them to account for their declared delivery on the information provided.

Public purpose 1: to provide impartial news and information to help people understand and engage with the world around them

Q2. Do you agree with the approach we have proposed for public purpose 1, high level objectives and regulatory conditions we are proposing?

23. In our response to the BBC Charter Review consultation, we said that the remit of Radio 1 should be amended so it offered a true mix of music, news, information, current affairs, social action and entertainment. We also made the point that Radio 2 needed to offer more of this type of content during peak and daytime hours.
24. We therefore welcomed Government's clear instruction to increase the amount of news, information, current affairs and social action issues on Radio 1 and Radio 2, especially at peak time.
25. The requirement for news on Radio 1 however have not been increased, as per Schedule 2 to the Charter Agreement. It remains an hour, albeit with the introduction of a peak-time element. We do not believe that this goes far enough in meeting Government's intentions.

26. We are not convinced by the argument (paragraph 4.39) that because younger audiences are more likely to consume news via social media rather than radio that this has impacted on Ofcom's decision not to increase news requirements on Radio 1. The station has a substantial audience and with considerable sums of public money comes the responsibility to provide news and information to that audience, irrespective of where else they might source news and information.
27. In the same paragraph (4.39) Ofcom state you will monitor the BBC's extended bulletin during peak to determine if it is delivering for listeners. It would be helpful to understand how Ofcom will assess this.
28. We welcome the proposal to significantly increase the proportion of peak time news, information and current affairs on Radio 2.

Public purpose 2: to support learning for people of all ages

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

29. With its unique funding model, the BBC has not only an obligation but also a real opportunity to enrich the market and provide unique high quality content that commercial operators who are dependent on advertising revenues cannot offer, especially during peak and day time.
30. It is however another area where not having a clearly defined remit for a service means that output previously deemed integral, such as social action campaigns, are deprioritised and could disappear in the absence of clearly-stated regulatory requirements. The current service licence states that Radio 1 should offer at least 2 major social action campaigns. Schedule 2, paragraph 2(3)(c) states that Ofcom must have particular regard to increasing the amount of social action issues on Radio 1 and 2, yet there is no regulatory condition in relation to this. We were disappointed that the BBC have reduced its output this year to one campaign and therefore reduced this important distinctive public value content.
31. In our view, the balance between entertainment on the one hand and distinctive public service content on the other is out of kilter, particularly as regards Radio 1 and Radio 2. The BBC's most popular radio stations broadcast negligible amounts of public service content, which is mostly scheduled in off-peak hours. Whilst the increase in requirements on documentaries on Radio 1 is to be welcomed, we would have expected to have seen a requirement for some of this content to be during daytime and peak to provide truly distinctive content.

32. It is disappointing that there was no change to the documentary requirements provided by Radio 2 and that it also avoided having any peak or daytime obligations placed on it.
33. The proposal to add obligations to BBC One and Two to schedule some public service content in peak hours should be extended to include Radio 1 and 2 as the same arguments apply to arts, religious and documentary programming. This would also support the requirement to secure more distinctive content. Currently peak listening hours on radio services are reserved for popular music programmes which compete directly with commercial services. This was acknowledged by Government in the framework agreement through the inclusion of a new requirement to ensure that the music output is distinctive to that of other broadcasters, Schedule 2, paragraph 2(3)(d).

Public purpose 3: to show the most creative, highest quality and distinctive output and services

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

34. Our position, as we have said previously in BBC Trust consultations, is that many BBC radio programmes generate significant public value. The concern that we have is that far too often these programmes are marginalised within the schedule at the expense of populist shows, designed to appeal to mass markets which are already well served by the commercial sector.
35. We do not believe that the peak time scheduling of Radio 1 and Radio 2 are sufficiently distinctive so as to offer a real public broadcast service for listeners. To demonstrate this, we commissioned independent research for our Charter Review consultation and undertook extensive analysis of the BBC music playlists to underpin this argument.
36. For example, we compared the output of Radio 1 to Capital during day time hours (6am – 7pm) in September 2015 and taking into account the number of times each track was played, 31% of the plays on Radio 1 were of tracks also played by Capital FM. In May 2017, this has now risen to 35%. Taking into account also the relative size of the audience at the times of day the tracks were played, 43% of tracks listened to on Radio 1 in May were tracks also played on Capital FM, up from 39% in September 2015.
37. Over the past 6 months, 5 out of the top 10 tracks on Radio 2 were also played on Radio 1, 25 (50%) of the top 50 tracks on Radio 2 were also played

on Radio 1 and 41 of the top 100 tracks on Radio 2 were also played on Radio 1. With this level of crossover, neither can be described as distinctive.

38. BBC Local Radio used to be targeted at an audience of over 50's with speech and music tailored accordingly. The new descriptor simply says "a number of local radio stations for audiences in different parts of England and the Channel Islands, providing a mixture of music and speech output". This would appear to give the BBC free reign to provide almost any conceivable mix of output as without demographics or a public purpose relating to playlisting (as per Radio 1 and 2), BBC Local Radio services can play whatever music they like, duplicating services already provided by commercial operators. This would permit the BBC to change the character of the service in almost any direction it saw fit without any regulatory oversight or intervention.
39. We believe that with the privilege of guaranteed licence fee funding comes the obligation to provide programming to audiences which is distinctive and which does not simply replicate that which the commercial sector provides.
40. We believe that the BBC has an obligation to enrich the market by providing services that the commercial sector do not offer, and that each and every BBC service must be able to demonstrate how it does so. We also believe the BBC has an obligation to provide this distinct content in peak and daytime hours, not just off peak as is largely the case today. We believe that this concept of market enrichment is the right way to assess the output of BBC services, and provides a powerful framework by which to judge whether an appropriate balance is being struck between providing popular and entertaining content on one side, and delivering distinctive programming and real public value on the other.
41. Peak listening hours on Radio 1 and Radio 2 are currently almost exclusively reserved for popular music programmes which compete directly with commercial services, with a music mix which is too similar to that of leading commercial stations, and in fact to each other, as demonstrated above in paragraphs 36 and 37. We made a number of recommendations in our submission to Government on the new Charter and Agreement to enhance the distinctiveness of output on these stations in peak and daytime, including:-
 - The peak and daytime scheduling of Radio 1 and 2 revolves around popular music programmes which compete directly with commercial radio. The music mix needs urgent revision.
 - at least 50-60% of music in peak and daytime on Radio 1 should be tracks not played on commercial radio in the previous week

- Radio 2 should broadcast a broader range of music than any other major UK radio station taking into account number of plays as well as breadth
- Radio 1 should be required to play a minimum percentage of music plays by emerging UK artists through the entire schedule including peak and daytime.
 - At least 50-60% of tracks in peak and daytime should be new tracks from UK artists
- The percentage of speech content on Radio 1 should be rebalanced away from entertainment driven content with a significant increase in news, current affairs, documentaries and social action programming across the schedule.
 - A minimum of 2 hours of news per weekday in daytime
 - At least 75 new documentaries a year, with at least half to be broadcast in peak or daytime
- Radio 2's higher public value speech content should feature through out the schedule, not just in the evening as is the current position.
 - At least 100 hours of arts programming a year, with at least half in daytime
 - At least 20 hours of new and current affairs programming a week
 - At least 150 hours of documentaries a year, with at least one third in peak and daytime
 - At least 170 hours of religious programming a year, with at least 25% in daytime

It is disappointing that none of these proposals have been taken up.

Public purpose 4: to reflect, represent and serve the diverse communities of all the UK's nations and regions

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

42. We agree with Ofcom's approach to ensuring spending on radio services is spread more equitably across the UK, although we are unclear as to why the proportion should be less than that of television services and why 6 Music and the Asian Network should be excluded from this requirement.
43. As highlighted above in paragraph 38, we are incredibly concerned about the impact of not having age targets for Local Radio, the lack of which for example, could enable the BBC to play chart music based output on local stations with no recourse.

44. Paragraph 2.57 sets out local production requirements. BBC Local Radio Services do not feel particularly local when 44% of the output does not have to be original, locally made content. The proposed average 85 hour quota of locally made programmes is also not stretching enough, given that last year the result was 109 hours.
45. The amount of networking should also be limited to ensure the content is local and distinctive. The definition of 'neighbouring stations' also needs to be clarified as without this, Local Radio could create super-regions, undermining the core purpose of the network.

Question about setting and amending the operating licence

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

46. We are in general agreement with Ofcom's approach to setting and amending the operating licence and would offer the following observations:
 - Commercial broadcasters should be consulted as standard on all amendments which have the potential to impact on their business
 - We welcome Ofcom's ability to propose changes to the licence based on evidence of the BBC's performance.
 - As outlined above (insert) we do not believe that responsibility for UK Public Services should rest with the BBC. It does not seem appropriate that changes to them, driven by the BBC, should be able to require amendments to be made to the operating licence.

Questions about performance measures

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

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

47. The proposed framework would appear to offer Ofcom the necessary rigour and flexibility to assess the BBC's performance against its public purposes. The BBC's own internal performance measures are not yet developed for radio so it isn't possible to comment on how Ofcom will ensure delivery of these.
48. We welcome the principles of measurement that underpin the proposed performance measure. It is absolutely right that benchmarking is done against

other commercial operators and whilst Ofcom is not proposing to ‘exhaustively measure all aspects of each purpose against each and every service or parts of the day’ we would expect this to be done where specific concerns have been raised. For radio this would be analysing music content during peak and daytime and explicitly capturing number of plays.

49. The proposed annual playlist analysis isn’t sufficient and should be at least monthly to provide useful comparable data. Whilst the radio sector will be monitoring this aspect much more closely it isn’t, and shouldn’t be, commercial radio’s responsibility to ensure that Radio 1 and 2 are complying with this requirement. Only reviewing playlists annually after the fact will mean that this will inevitably be the case.

Question about the operating framework for the performance measures

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

50. We agree with Ofcom’s approach to setting and amending the performance measures, in line with its general Consultation Principles. We note that Ofcom and the BBC must ‘respectively consult each other and any person they consider appropriate’ and would ask that commercial operators have the opportunity to contribute to any such decisions both as part of, and separate to, more formal consultation processes.