

**RESPONSE TO: “HOLDING THE BBC TO ACCOUNT FOR THE DELIVERY OF ITS MISSION AND PUBLIC PURPOSES” WITH SPECIFIC REFERENCE TO SECTIONS 4.128 - 4.134 ON DIVERSITY**

**By Lenny Henry**

**Answer to the consultation question: “Do you agree with the approach we have proposed for public purpose 4, including the high-level objectives and regulatory conditions we are proposing?”**

## **INTRODUCTION**

We are concerned that Ofcom has prioritised on-screen diversity and the qualitative perception of diversity by the audience over diversity of the content providers and content producers. We believe it is the diversity of the content producers that will lead to “authentic” diversity both on-screen and behind the camera. We believe Ofcom’s approach will lead to “fake diversity” giving the appearance of diversity but not actually genuinely reflecting the lives, concerns, values and stories of Britain’s diverse communities.

## **SPECIFIC AREAS OF CONCERNS**

### **Emphasis on on-screen diversity**

Ofcom’s proposed approach prioritises on-screen portrayal and does not put enough emphasis on diversity behind the camera. The Department for Culture Media & Sport have stated that “The BBC should be at the forefront of representing diversity both on and off screen and this is set out in a new general duty on diversity in the Charter... that means by which its output and services are delivered (including where its activities are carried out and by whom)”. The DCMS consistently puts equal weight on diversity both on-screen and behind-the-screen. Ofcom’s vastly different approaches to looking at setting targets for one and not the other seems not to uphold this value.

Considering a programme to be “diverse” just due to its on-screen casting and not consider who created the programme will lead to “Fake Diversity”.

We believe that this approach would be similar to considering a programme being Scottish or Welsh if there were people of those nationalities on-screen and Scottish and Welsh audiences, unaware of how the content was produced, were happy with the final product. We do not believe the nations and regions would consider this acceptable.

## **Ghettoising diverse production staff to work on output about diversity**

Where diversity behind the camera is mentioned in Ofcom's proposals it is either explicitly or implicitly in reference to producing output that will enhance on-screen diversity and/or appeal to diverse audiences.

If a programme maker's output is only considered "diverse" if s/he produces programmes which are explicitly about diversity this could lead to them only working on "diversity specific" subject matter.

We believe it is the life experiences and values of a broad range of diverse staff that will bring true diversity to the BBC's output. For example a mixed gender, mixed racial, mixed class production team will produce a different programme than an all-male, all-white, exclusively middle-class production team even if the final programme is not explicitly about gender, race or class.

Ofcom and the BBC recognize "out-of-london" productions irrespective of whether they are about the region they are being produced. The same principle must be applied to diversity programmes.

## **BBC's diversity approach should help the creative economies of diverse communities**

We also believe that just as Ofcom and the BBC recognises the need to "support the creative economies of the UK" as stated in section 4.113 when it comes to the diversity of the Nations and Regions it would be perverse not to recognise this as being important to the other diverse communities of the UK.

There is no acknowledgement in Ofcom's proposals to help support the creative economies of the diverse communities in the UK. Unless this is explicitly recognised we believe that any short-term gains in diversity will not be sustained in the long-run.

***It should be remembered that many of the diverse communities under consideration - such as disability and BAME - are disproportionately affected by unemployment and other economic problems.***

## **Taking BBC targets as a benchmark**

Ofcom's approach explicitly takes the BBC's own targets regarding diversity. These are vague at best and achieving them will not have the desired effect of increasing "authentic" diversity on-screen or increasing diversity of the staff responsible for commissioning and creating content aimed at a British audience.

The BBC consistently states staff wide diversity targets (currently 15% for BAME staff by 2020) and managerial diversity targets. The BBC has never identified a target for staff producing content for a domestic audience.

For the last three years the BBC has been able to hit its proposed targets for overall BAME diversity. However on closer examination only 4 of its 16 departments hit the target and none of these four produce content for a British audience.

### **Systematic structures to receive feedback and advice on diversity**

We are also concerned the current approach will also have the effect of marginalising the input and advisory capacity of people from diverse backgrounds to both the BBC and Ofcom. Ofcom has efficient structures in place for the different nations to regularly input and give advice on the running of the BBC and how Ofcom should regulate the corporation. Similar structures should be put in place for diversity.

### **Defining a minimum standard for the BBC to fulfill its charter requirement**

Finally we believe that the proposed approach is fundamentally unfair to the BBC by not providing clear and transparent criteria as to what success or failure looks like in the corporation delivering on this Charter requirement.

While we believe quantitative measures would be better than some of the qualitative measures proposed, even the way the qualitative measures are set out are inadequate.

For example we understand that Ofcom wish to use the qualitative measure of how audiences feel the BBC are measuring up to their stated purposes; this results in a final number known within the BBC as the “purpose gap”.

While we believe this measure is useful Ofcom has not provided the BBC with any transparency as to what would be an acceptable or unacceptable “purpose gap” number. It is only fair that people should know beforehand the standard by which they are being measured.

Ideally we would want Ofcom to set out quantitative measures such as programme spend and minimum programme hours as it sets out in other areas. But if it insists on solely using qualitative measures it must set out *beforehand* what the BBC needs to do in order to have fulfilled its Charter requirement.

## **HOW CAN OFCOM INCREASE DIVERSITY?**

### **Background – Ofcom’s current contribution to increasing diversity**

- Under the Communications Act 2003, Ofcom is required to take the steps it considers appropriate to ensure that broadcasters make arrangements to promote equal opportunities. Ofcom licensees are required to make these arrangements as a condition of their licenses. In addition, television and radio broadcasters must:
  - take steps to make those affected by the arrangements aware of them;
  - review their arrangements from time to time; and

- publish observations on the operation and effectiveness of their arrangements, at least annually, in a form the broadcaster considers appropriate.

In 2009, Ofcom handed these duties to the Broadcast Equality and Training Regulator (BETR). Once in existence, BETR published annual diversity reports (along with recommendations of how to improve diversity). However, the BETR was closed in 2011. No annual reports have been published on this topic since by Ofcom.

- Ofcom also has a statutory duty to take into account in its decisions the views and interests of those who live in different parts of the UK. Ofcom therefore has advisory committees in each Nation who provide Ofcom with detailed and expert insights into the particular challenges faced by citizens and consumers. Regional interests are also represented by members of Ofcom's Content Board and the Communications Consumer Panel.
- Ofcom have set standards to help ensure regional representation. In particular, over 10 years ago, Ofcom provided a definition of an “out of London” production. The BBC and other broadcasters now uniformly use this definition.
- In 2013, Ofcom carried out a “capacity assessment” of skills and indies in the Nations – in order to determine whether existing quotas for programmes produced outside England (in (i.e. in Scotland, Wales and Northern Ireland combined) were appropriate. On the basis of this assessment, on 11th March 2014 Ofcom decided that Channel 4's quota for programmes produced outside England should triple from 3% of volume and spend to 9% by 2020.
- In September 2015, Ofcom, with ECHR produced “Thinking outside the box: Supporting the television broadcasting industry to increase diversity” – a set of guidelines for what can and can't be done by individuals working in the industry to increase diversity within current laws in the UK.

### Ofcom's potential future contribution to increasing diversity

- There are five main ways in which Ofcom could play a more **systematic** role in increasing diversity – which draw on precedent Ofcom has undertaken with regards to regional diversity as well as other types of diversity. They are also synergistic and not mutually exclusive:

#### 1. MINIMUM DIVERSITY STANDARDS MUST BE SET

First Ofcom must set minimum standards for the BBC to fulfil in order to meet its diversity duties. This must include minimum requirements for programme spend and staff working on content creation. Currently the BBC earmarks £2.1 million in development money for diverse programmes. Danny Cohen (Director of Television) described the fund to the Culture, Media & Sport Parliamentary Committee on 15th July 2014 as the same as Lenny Henry's proposal for

ring-fenced diversity programmes but further “upstream” in the production process. We believe that it is results (finished programmes) that are important not the best of intentions (development that might not go anywhere). As the BBC have already implicitly accepted the idea of ring-fenced programme funds, according to Danny Cohen, Ofcom should set how much this should be and move it away from development funds and into actual number of programme hours and programme spend. In exactly the same way it does for the Nations and Regions.

The BBC have also never formally defined how a programme qualifies to be considered “diverse” to be eligible for this money. We believe this must be clearly defined, with any definition giving equal weight to both behind-the-camera diversity as on-screen diversity.

## 2. ANNUAL DIVERSITY REPORT

Ofcom should position itself as an **impartial source and collator of industry wide information**, to inform and guide industry-wide debate and action. In particular, Ofcom should pick up from where the BETR left off in 2011 by publishing an annual report (ideally with recommendations) on diversity. The report would set out detailed diversity statistics. The categories and level of detail required for the statistics would be defined by Ofcom in order to ensure transparency, objectivity and consistency. The report would also have a qualitative element - summarising the BBC’s practices and initiatives and examining their impact on different types of diversity – for example looking for causal relationships and possible correlations, and sharing examples of what is working and what is not.

The reason this is important is to instill trust throughout the industry in the published statistics, as various numbers are bandied around, with the general public and the industry often finding it difficult to know which numbers to trust. There is confusion as to what the BBC’s published figures mean and how they relate to people actually producing content.

## 3. DEFINE DIVERSITY

Third, Ofcom could continue to position itself as an **impartial source of guidance and definitions for individuals trying to address diversity** – building on the “Thinking outside the box” publication. This would also be similar to the role Ofcom has played for regional representation (see above). The first standard to consider would be to define a “diverse production”, as was done for regions and nations, as currently there is a lack of transparency for people working in the industry, because every broadcaster defines diversity in a different way. For instance, the BBC has a £2.1 million “diversity development fund” but does not explicitly define what sort of programmes will be delivered from that fund or any on the /behind the screen criteria for applying for the fund.

This lack of clarity means that individuals and independent production companies have not had clear guidance and allows for broad definitions that have not been useful. Ofcom could contribute

to streamlining and slowly ratcheting up practice. It would also enable productions and companies to properly plan for the future in trying to address diversity.

We would hope that any definition of a diverse production would be flexible enough to enable a programme to be considered diverse irrespective of its subject matter if it was able to meet strict behind the camera criteria. Similar to out-of-london definitions.

#### 4. BAME ADVISORY BOARD

Fourth, Ofcom would ensure that **the BAME population would have a systematic process to have their views and concerns heard by the industry** by setting up a BAME advisory board. This would be based on exactly the same model as the existing advisory committees in each Nation which currently provides Ofcom with detailed and expert insights into the particular challenges faced by citizens and consumers in different parts of the UK. BAME interests would also be ensured by representation on Ofcom's Content Board and the Communications Consumer Panel. Currently the UK BAME community make up a larger proportion of the UK population than any specific nation (with the exception of England) and yet they can often make up less than 12% on any advisory board meaning that their voices are not heard as clearly as the people of Scotland, Wales and N. Ireland.

#### 5. INDUSTRY CAPACITY ASSESSMENT

Finally, Ofcom could provide **clear bench marking of the state of the industry** to enable broadcasters to understand how ambitious or otherwise their diversity goals and initiatives are. Broadcasters, the government and regulatory bodies have conflicting information relating to the industry – and the UK's – potential to really deliver in this area. This means that, for instance, they have no objective means of assessing whether their initiatives – e.g. the BBC's £2.1 million diversity fund – is too large, too small, or just about right. Therefore, the first step would be for Ofcom to deliver a one-off, independent "capacity analysis" of diversity skills and indies. This would build on the similar report done by Ofcom with regard to regional representation (see above).

### CONCLUSION

Ofcom must give behind-camera diversity equal importance to on-screen diversity. Any other approach runs the risk of creating "fake diversity" and will not provide sustainable results in the long run.

Ofcom must set out clear and transparent minimum standards that the BBC must achieve in order to fulfill its diversity requirements under the Charter. These measurements must be objective therefore we would recommend quantitative measurements (such as programme spend, programme hours and staff levels) as opposed to qualitative measurements such as the audiences' perceived "purpose gap".

The consultation process of how the BBC is performing must be systematic and not ad hoc therefore diversity specific Content Boards and Communication Consumer Panels should be established.

Diverse communities have been told for far too long to be patient. To take a “wait and see” approach to initiatives and schemes that have failed to deliver or to be patient while broadcasters and regulators need to “gather more information” before they can act. We believe that Ofcom can act now, that it has all the information necessary to make tough decisions and enforceable targets for both on-screen and behind-the-camera is the only way.