

## OFCOM CONSULTATION ON REGULATING THE BBC

The transfer of responsibility for regulating the BBC to Ofcom - some might say for regulating the performance of the BBC Board - could be regarded as a tidying up operation as far as the general regulation of broadcasting and communications in the UK is concerned. But for the BBC it does represent a major change in accountability mechanisms. Although the transfer does not represent a total change since, by virtue of the existence of the Royal Charter and Licence and Agreement, parliament and government will have continuing roles in the regulation process.

Regulators can be seen to have two distinct functions, one of which might be described as 'negative' or 'protective', in that it is focused on dealing with poor performance, avoidance of responsibility and the like. Some of Ofgem's work, for example, might be seen in this light, since that organisation is expected to ensure consumers are protected against excessive price rises or are not faced with baffling tariff schedules, and the like. And there are aspects of Ofcom's work in broadcasting which are comparable, dealing, for example, with infringements of the requirement to ensure news programming is impartial, or with complaints about breaches of its rules on the depiction of violence.

The second regulatory function can be regarded as 'positive', since it involves encouraging best practice by setting a framework which allows the organisations being regulated to provide as good a service as it is possible to provide. In broadcasting this aspect of regulation is paramount, and if the BBC is indeed the cornerstone of public service broadcasting - as is often said - then the approach Ofcom takes to its regulation will ultimately be judged by the quality of programme output across the Corporation's services. Ofcom's record in regulating the other public service broadcasters is a mixed one: ITV's retreat from the provision of a range of children's programming, for example, does not redound to the credit of either broadcaster or regulator.

In the consultation document there is frequent reference to the distinctiveness of the BBC. This takes its cue from the government's Charter Renewal process. But the danger here is that when it comes to distinctiveness too much might be asked of the Corporation and too little of other PSBs.

Then there is the difficult question of money. In an extraordinary departure from previous practice, without recourse to parliament, the coalition government in 2010 required of the BBC that it finance operations such as the World Service from licence fee revenue. And as a result of the recent Charter Renewal process, the BBC now finds itself shouldering the cost of free television licences for the over 75s. The danger is that the Corporation is not only held to a higher standard than other PSBs but that this is happening at a time when its financial position is weaker than it would otherwise have been. A national broadcaster financed by a compulsory tax needs to ensure its continuing legitimacy, and therefore it has to operate across a range of programming genres - as suggested in previous Royal Charters by the phrase 'information, education and entertainment'. Doing so

effectively, it can be argued, is what constitutes its distinctiveness, rather than the number of hours given over to particular kinds of programming. But doing so at a time of imposed financial stringency will be very challenging.

The way in which Ofcom's consultation document sets out the proposed approach to regulating the BBC is detailed and comprehensive, and the questions asked of would-be respondents are fair. However I should like to focus my own response on Schedule 3.

This is a seven page document and contains 114 separate regulatory conditions. Of course this total reflects the number of BBC services involved, and follows on from the modus operandi of the now defunct BBC Trust, but one is a little anxious about how much time, energy and money will have to be expended by Ofcom, the BBC Board, senior executives and station managers to ensure that these conditions are met. Even if Ofcom's approach is indeed 'flexible' as well as 'rigorous', and aspires to be 'manageable and proportionate', there is a very real danger of operational overload, which within the Corporation could lead to far too much energy being devoted to ensuring the conditions are met to the letter ( this at the same time as the National Audit Office will also be scrutinising the Corporation's performance).

So, while it is pleasing to note the emphasis, for example, on increasing first run content on television, the requirements for more arts and children's programming, more productions emanating from the nations and regions, a broader range of music on Radio 2, ' content and music of particular relevance to Wales' on Radio Wales, and so on, one starts to become anxious that Ofcom is running the risk of becoming the BBC's scheduler in chief. Therefore, might some way be found of distinguishing between a limited number of regulatory 'conditions' and a wider range of 'programming expectations'? Thus the BBC, its Board and its staff would be judged by broad adherence to these conditions rather by the extent to which the suggested 114 conditions had been met.

*David Hutchison, Honorary Professor of Media Policy, Glasgow Caledonian University and former member of the BBC's General Advisory Council.*