HOLDING THE BBC TO ACCOUNT FOR THE DELIVERY OF ITS MISSION AND PUBLIC PURPOSES

ITV PLC AND STV PLC RESPONSE

INTRODUCTION AND BACKGROUND

The BBC is a key part of the UK's national life. A strong and effective BBC is important for the UK politically, culturally and economically – it is a key anchor in the public service broadcasting system of which ITV¹ is part. Accordingly, ITV welcomes the new Charter and Licence Fee settlement for the BBC giving the BBC the freedom it needs to get on with doing what it does best, delivering something of real value to all Licence Fee payers. The key question raised in the current consultation is how the BBC could improve its delivery of public value even further.

As ITV has consistently argued, in exchange for the enormous advantage of guaranteed funding at scale, the BBC should offer services that are different to those provided by the market. By this we have always made clear that we do not mean that they should only fill in gaps left by the market but that they should, amongst other things, earn their popularity through risk taking, innovation and originality. As we set out in this submission, the BBC, audiences, the government and Ofcom all agree distinctiveness is an important objective for the BBC's services. Clearly a particularly important question in the current context therefore is how to establish a regulatory system which ensures that the BBC delivers the distinctive services that everyone agrees that they should. This is not a trivial challenge but it is one which Ofcom, as a highly sophisticated and evidence based regulator, is well equipped to meet.

Ultimately, the primary responsibility for delivering distinctive services must rest with the BBC. However, any good regulatory system needs to define in advance the clear outcomes that the BBC should be looking for and how those will be assessed. Furthermore, where those outcomes are not met, everyone should be clear about the regulatory measures that might then be taken. This sort of clarity is key to any effective regulatory system.

For a number of years in various submissions ITV has consistently advanced the position that the BBC's public services ought to be more distinctive and that there should be an effective regulatory regime in place to oversee the delivery of this. However, before commenting on Ofcom's approach to ensuring the delivery of the BBC's mission and public purposes, it is important to set out the extent of the broader consensus that the BBC should deliver more distinctive services.

1. The recent audience research by both the BBC Trust and Ofcom shows clearly that there is a desire for more risk taking by the BBC, particularly on BBC One.

¹ For the purposes of this submission, 'ITV' refers to both ITV plc and STV plc

It is striking that both the BBC Trust's research and Ofcom's more recent research both show that there is an issue with the distinctiveness of BBC TV output.

In 2010, one of the key conclusions of the BBC Trust's service review of BBC One, BBC Two and BBC Four was that BBC One and BBC Two were not meeting audience expectations in providing programmes with "lots of fresh and new ideas" and this was found to be a particular issue with BBC One.

The same concern was repeated again by the Trust in the next service review process four years later. In the 2014 review, the BBC Trust concluded:

"We also found that some BBC One viewers find the channel over-reliant on familiar programmes and believe that it has a tendency to "play safe" in programming and scheduling. Our analysis of BBC One's peak time schedule shows why some viewers might think this: nearly two-thirds of the pre-watershed weekday schedule is composed of a small number of long-established programmes, shown year-round."

In addition, the BBC Trust also expressed significant concerns about the BBC's daytime output in the 2010 review. As the Trust put it:

"One of the strongest themes from our public consultation is that some viewers believe that parts of the schedule on each channel lack quality and have become too weighted towards long-running factual entertainment strands with similar formats and covering similar areas, characterised as "collectables hunting" and property. Whilst these programmes are popular, audiences have told us that their quantity has made some parts of the BBC's daytime schedule seem too formulaic and derivative"

Ofcom's own research, conducted recently by Ipsos Mori, found that the BBC offered consistently high quality output across its different services, offering content that participants personally valued. People also associated the BBC positively with being safe and reliable . However, the research findings also echoed earlier findings in some respects, for instance:

"The BBC's perceived weaknesses included [...] a lack of risk-taking leading to too much reliance on familiar formats and programmes'

"The BBC was not generally considered distinctive in terms of being fresh, new and innovative and a creative risk-taker"

"Those who wanted to see this change felt that the BBC needed to take risks on different formats and content to be more distinctive. As described above, some areas which the BBC had been considered exceptional in the past, such as comedy, were seen as areas of particular weakness."

What the consistent findings of audience research demonstrate is that the issues of distinctiveness and risk taking are not just abstract policy concerns but those of licence fee

payers². The challenge is how to secure change in the way the BBC operates to ensure the <u>delivery</u> of more distinctive services, something that the previous regulatory regime did not achieve.

2. The new regulatory regime for the BBC was built around a new focus on distinctiveness and a shift towards more quantitative metrics to measure it

After extensive consultation, Government published both a White Paper and a Charter and Framework Agreement describing the changes they expected to see in the way that the BBC acts and the way in which it should be regulated by Ofcom as the new regulatory body.

Given the clear views of Licence Fee payers it was perhaps not surprising that one of the most significant changes in the new regime is the strong and detailed focus on distinctiveness. As Ofcom acknowledges in its consultation:

"Beneath this picture of continuity is one of change: the new Charter changes the BBC's mission and public purposes, and places a new focus on distinctiveness." 3

The concept that the BBC should provide services that are innovative, take risks, and that are distinctive from those provided elsewhere is now firmly established as one of the BBC's five Public Purposes:

"To show the most creative, highest quality and distinctive output and services: the BBC should provide high-quality output in many different genres and across a range of services and platforms which sets the standard in the United Kingdom and internationally. Its services should be distinctive from those provided elsewhere and should take creative risks, even if not all succeed, in order to develop fresh approaches and innovative content"

Unsurprisingly, given this overall purpose for the BBC, the regime sets clear requirements on Ofcom to ensure that it secures the provision of distinctive content and services. This is set out across several specific points in the Framework Agreement, in most detail in Schedule 2 which provides 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" 5

"For the purposes of this Schedule, "distinctive output and services", means output and services, taken as a whole, that are substantially different to other comparable

² It is also instructive that the lastest data from Ofcom's own PSB tracker highlights that the lowest delivery score for BBC One was for "The style of the programmes is different to what I'd expect to see on other channels" (Ofcom PSB Annual Research Report, 2017, page 12)

³ Ofcom, 'Holding the BBC to account for the delivery of its mission and public purposes', March 2017, page 1

⁴ BBC Charter, para 6 (3)

⁵ BBC Framework Agreement, Schedule 2 para 1(1)

providers across each and every UK Public Service both in peak time and overall, and on television, radio and online, in terms of —

- a) The mix of different genres and output
- *b)* The quality of output
- c) The amount of original output produced in the UK
- d) The level of risk-taking, innovation, challenge and creative ambition; and
- e) The range of audiences it serves"⁶

In the context of the terms of the first Operating Licence, Schedule 2 goes on to say that:

"In imposing the regulatory conditions in the first operating licence, Ofcom must seek to increase the 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"

In complying with sub-paragraphs (b) and (c) above:

"In relation to television services, and in particular BBC One, Ofcom must have particular regard to the desirability of setting or changing requirements

- a) Relating to the amount and prominence of genres that provide a particular contribution to the Mission and Public Purposes, are underprovided or in decline across public service broadcasting including:
 - i. Music, arts, religion and other specialist factual content;
 - ii. Comedy; and
- iii. Children's programming
- b) To secure an appropriate balance of unique titles and long-running series both in peak viewing time and other times"8

These regulatory requirements reflect the examples the government set out in the White Paper on the future of the BBC as to how the BBC might become more distinctive:

"Commissioning more unique titles in peak and non-peak – increasing the volume of new programming on BBC One, to stimulate creativity and innovation and ensure a "fresh" look and feel to the core programming schedule"

⁷ Ibid, para 2(1)

⁶ Ibid, para 1(2)

⁸ Ibid para 2(2)

⁹ DCMS, "A BBC for the future: a broadcaster of distinction", page 38

"Fewer high-output long-term titles. There are many long-term titles that the BBC runs that are hugely popular; it would therefore be inappropriate to introduce artificial caps to average run of titles. But in light of the heavy reliance on long-run series (as noted above) there is potential to reduce reliance on long-term titles both in peak and off-peak" 10

Furthermore, the White Paper specifically dismissed arguments that distinctiveness was too ephemeral a concept to be measured, by explicitly calling for a greater focus on quantitative metrics as good proxies to drive a more risk taking, distinctive approach:

"[The new regime] would also be different from the current model in two respects: Greater focus on quantitative metrics – the new regime should be moved towards a more clearly regulatory approach with a greater focus on measurable quantitative obligations that specify desired outputs and outcomes rather than the more qualitative approach of the existing service licences"¹¹

"The Government will do this [reflect the reformed Mission and Purposes, particularly in relation to the focus on distinctiveness] in two ways:

Building on the existing system, require the licensing of the BBC to include content requirements that provide a set of measurable outputs to which the BBC can be held, the majority of which will be at service level. The BBC will be obliged to report against these content requirements, and the regulator will enforce against them, ultimately with the ability to sanction the BBC if required. In the light of the need for a more distinctive set of BBC services there will be a strengthening of overall requirements"12

What is very clear is that a central focus of the new regulatory regime for the BBC must be on securing the provision of greater distinctiveness from the BBC's output and services, with more precise obligations and metrics to measure progress.

ASSESSMENT OF THE PROPOSED OFCOM REGIME AND BBC ANNUAL PLAN

There are clearly a number of ways in which the new relationship between Ofcom and the BBC might work to deliver the overall objectives of the Charter and Framework agreement to deliver more distinctive BBC services. Ultimately, of course it is the BBC itself that will have to deliver a more distinctive set of TV services and the more that it does that without intervention from Ofcom the better. However, such delivery is clearly far more likely if the BBC believes that Ofcom is prepared to impose obligations and quotas on the BBC if required and that Ofcom has a robust agreed framework for assessing the BBC's performance in delivering more distinctive services. In those circumstances, it is reasonable to think that the BBC itself would be likely to come up with its own measures and metrics so it could demonstrate the progress it was making.

¹¹ Ibid, page 54

¹⁰ Ibid, page 38

¹² Ibid, page 54

We have looked carefully at the proposed Ofcom Operating Licence for the BBC together with the BBC's own draft Annual Plan for 2017/18. The latter document helpfully summarises both the Ofcom requirements <u>and</u> the "additional commitments" made by the BBC. The section of the table that relates to BBC One (approaching half the entire licence fee and a particular focus in the debate on distinctiveness) is perhaps the most helpful illustration of the new proposals:

4.1. Television services



BBC One is the channel that reaches more people than any other regardless of age, socioeconomic group, or Nation or region. In the UK, it has an unparalleled range of programming, with extensive specific programming in the Nations and regions, and a huge variety of genres with arts, science, current affairs, religion and history regularly in peak time.

Its distinctive mix of high-quality programmes informs, educates, entertains, surprises and inspires audiences, tackling universal subjects through the stories that people care about most. BBC One also offers British talent from every genre the biggest stage in Britain to showcase their very best work.

BBC One's role is more important than ever before in reaching out to audiences who consume BBC content and services the least. It will continue to connect with young and diverse audiences, opening up more space in the schedule for programming that appeals to them and with talent that reflects them.

It will also increase its focus on the needs of audiences across the Nations and regions of the UK, via network programmes and through an enhanced range of national opt-outs across a range of genres.

We will aim to maintain BBC One as the nation's favourite daytime television service and increase its quality, distinctiveness and range. In mornings, the onus is on factual formats and documentary series that can actively engage audiences — we will be prioritising new ideas in current affairs, consumer, religion, crime, history or other areas that can offer a distinctive alternative to commercial channels.

Distinctiveness criterion	Relevant Ofcom conditions	Additional BBC commitments for 2017/18
A mix of different genres and output	 News programmes at intervals throughout the day 1,520 hours of news per calendar year and 280 hours in peak 45 hours of current affairs in peak 45 hours of arts and music, with some in peak 4,300 hours of Nations and regions news throughout the day, with 2,200 in peak Together with BBC Two, broadcast 450 hours of current affairs, of which 106 in peak Together with BBC Two, broadcast 115 hours of religious programmes, with some in peak Together with BBC Two, 6,300 hours of national or regional interest, including: A suitable range of programmes Not less than 95% made in relevant nation or region 700 of non-news in peak 335 of non-news just before or after peak On BBC One Scotland, broadcast 290 hours of news and current affairs, and 155 hours of non-news On BBC One Wales, broadcast 275 hours of news and current affairs, and 65 hours of non-news On BBC One Northern Ireland, broadcast 310 hours of news and current affairs, and 90 hours of non-news 	BBC One will continue to broadcast a demonstrably broader range of genres in peak time than any comparable channel BBC One will continue to broadcast arts and music in peak this year, including The Big Painting Challenge, Fake or Fartune and The Proms BBC One will continue to broadcast more news in peak time than any other comparable channel
UK original output	75% original production and 90% original production in peak 4,000 hours of first-run UK originations	
Risk-taking, innovation and creative ambition		As part of a programme of creative renewal, BBC One will continue to launch new titles in daytime, re-commissioning those which are successful BBC One will broadcast a new Nations strand at 7.30pm called Our Lives which will reflect diverse voices from across the country BBC One will refresh its mix of new and returning dramas, including a substantial number of new drama titles in peak time
Range of audiences		BBC One will aim to be the channel that reaches the most 16-34 year olds BBC One will aim to reach more than half of BAME audiences each week

We examine the impact of these proposed requirements in two sections: the Ofcom conditions and the 'additional BBC commitments'.

Ofcom conditions

The Ofcom conditions designed to drive greater distinctiveness on BBC One focus exclusively on genre quotas and a requirement on first-run originations.

There do not appear to be any new proposed genre quotas for BBC One that didn't exist under the BBC Trust regime, though we recognize that Ofcom has decided to increase many of the quotas from the levels last set by the Trust. However, most of those increases are set at levels which are substantially lower than the BBC's most recent performance. For example, Ofcom has set a condition that BBC One must broadcast 45 hours of current affairs in peak. This represents an increase of 5 hours from the previous quota under the old regime, but it is nevertheless 7 hours (12%) lower than the BBC's most recent performance 14. Accordingly, most of the proposed quotas cannot reasonably be expected to secure any increase in the provision of the particular genre in question, i.e. a change from the status quo.

As Ofcom rightly notes in its consultation:

"Additionally, we are required when carrying out this duty in relation to television services (and in particular BBC One) to have particular regard to: the desirability of setting or changing requirements relating to the amount and prominence of genres that provide a particular contribution to the mission and public purposes. These genres which are considered underprovided or are in decline across the PSB channels, including music, arts, religion and other specialist factual content; comedy; and children's programming. We must also have regard to securing an appropriate balance of unique titles and long-running series both in peak-time and at other times." 15

Against this backdrop, we were surprised to note that Ofcom has not yet proposed any genre quotas relating to either specialist factual or comedy (the latter is particularly surprising given the findings of Ofcom's own research on the lack of distinctiveness in BBC comedy, which found it to be 'an area of particular weakness' 16). Ofcom does not provide a rationale as to why these genres are not included within the requirements.

¹³ BBC Annual Plan 2017-18, page 35

¹⁴ The position is similar for arts and music and the new condition requiring 115 hours of religion programming across BBC One and BBC Two is 44 hours (28%) lower than the most recent performance.

¹⁵ Ofcom, 'Holding the BBC to account for the delivery of its mission and public purposes', March 2017, p.32

¹⁶ 'BBC Distinctiveness' report prepared for Ofcom by Ipsos MORI, p. 32

Overall, therefore the proposed Ofcom genre obligations therefore could allow scope for the BBC to <u>reduce</u>, not increase, its provision across the full range of PSB and underprovided genres. Given that the BBC itself suggests that the key to distinctiveness is the spread of genres on BBC One, this latitude is perhaps surprising.

Apart from the relatively modest proposed increases in baseline quotas, which appear unlikely to drive any change, Ofcom appears to be focusing its efforts to secure greater distinctiveness on a requirement around first-run UK origination:

"Greater focus on first-run UK originated content will help ensure the BBC's services are distinctive, creative, and reflect the diverse communities of the UK." ¹⁷

"Our evidence suggests that original productions, and first-run UK originations contribute significantly to the overall distinctiveness of the BBC in terms of both its content and its position in the UK broadcasting market." 18

It is hard to see why it necessarily follows that new content is bound to contribute to making the BBC's services more distinctive. A first-run UK origination is simply, as Ofcom's glossary points out, any programme episode commissioned by or for a UK TV service that has not previously been shown on TV in the UK. Therefore any new series of very long-running programming will count as a first-run UK origination, as will programmes that are entirely derivative and unoriginal, only repeats would not.

The broader market context also makes it clear why the level of investment in first-run UK originations is not the way in which the BBC can be considered to be distinct from its closest competitors. Investment in first-run UK productions is still key for PSB channels – ITV has a schedule which is almost entirely comprised of first run programming which is shown for the first time on UK television on ITV.

We are not suggesting that Ofcom ignores the level of investment in first-run originated content entirely – it is an important basic requirement for a PSB channel, particularly one that is publicly funded. However, it is will not, on its own, drive increases in risk taking, innovation or genuinely novel programming.

'Additional BBC commitments for BBC One'

We understood from the meeting we had with Ofcom as part of the current consultation process that there were a number of areas relating to performance and distinctiveness where Ofcom was looking to the BBC to develop proposals and measures. In principle, we agree that it would be better for the BBC to propose specific ways in which they will make their services more distinctive for scrutiny by the regulator, rather than obligations being imposed on them. However, for such a system to work, the regulator needs to have a view about what the key components of distinctiveness might be and how they might be

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 $^{^{17}}$ Ofcom, 'Holding the BBC to account for the delivery of its mission and public purposes', March 2017, p. 5

¹⁸ Ibid, p. 36

assessed in order to have a framework to assess the suitability and adequacy of proposals from the BBC.

However, looking at the table for BBC One that the BBC has published (set out above) it is not easy to determine what, if anything, is any different to the past few years under those proposals. The proposals could best be summarized as promises to continue to do what the BBC is currently doing as though there had been no change in the overall focus of the regulatory regime. For example, the first three 'additional BBC commitments' for BBC One are simply about continuing to do things the BBC is already doing, though even then, definitionally, the "commitments" are imprecise.

The BBC's proposals around risk-taking, innovation and creative ambition appear to simply describe the business as usual process of running a significant television channel such as BBC One:

"BBC One will continue to launch new titles in daytime, re-commissioning those which are successful"19, and

"BBC One will refresh its mix of new and returning dramas, including a substantial number of new drama titles in peak time"²⁰

It is difficult to imagine any mainstream PSB channel functioning without launching at least some new titles in daytime, and simply as a matter of course it would re-commission those that are successful. Similarly, no mainstream PSB channel could function without refreshing its mix of new and returning dramas, and given the majority of new drama titles are launched in peak the proposal to launch an unquantified number in that daypart does no more than describe the status quo. There is nothing in these two proposals that represent anything incremental to business as usual, or that would necessarily secure any increase in distinctiveness on the channel compared to the past few years, again despite the fact that the focus of the regulatory regime has changed.

The final BBC proposals relate to the range of audiences it serves. However, again, the bar they are proposing looks low. It not only cannot be expected to secure improvements, it would potentially allow for substantial decline. For example, the BBC is committing to "aim to reach more than half of BAME audiences each week". However, the BBC Trust's End of Charter Review illustrated that BBC One reached 63% of BAME adults in 2016, compared to 77% of all adults, and a decline from five years ago when it reached 67% of BAME adults²¹. In this context, an 'aim' to reach only 'more than half' does not represent an improvement. Similarly, its other proposal in this area is to 'aim to be the channel that reaches the most 16-34 year olds' – something that BBC One has achieved by a considerable margin in every year since 2002 including by a 15% margin in the most recent year²².

¹⁹ BBC Annual Plan 2017-18, page 36

²⁰ Ibid, page 36

²¹ BBC Trust End of Charter Review, p.9

²² Ofcom, PSB Annual Research Report 2016, TV Viewing Annex, page 27, Figure 12

HOW WILL BBC ONE BECOME MORE DISTINCTIVE AND HOW WILL THAT BE ASSESSED?

Given the clear reorientation of the regulatory regime around securing greater distinctiveness with a bias towards quantified metrics, our expectation was that either Ofcom or the BBC (or both) would propose a range of KPIs around distinctiveness together with a framework to assess whether each of the BBC's services, including BBC One, was becoming more distinctive.

Although discussions around distinctiveness often appear to focus on the challenge of measuring it, as Government itself pointed out, there are some measures that could helpfully quantify the BBC's progress in this area. For example, building on thinking put forward by ITV, the White Paper suggested a possible metric around:

"Commissioning more unique titles in peak and non-peak – increasing the volume of new programming on BBC One, to stimulate creativity and innovation and ensure a "fresh" look and feel to the core programming schedule"²³

Measuring the number of genuinely new programmes on BBC One in peak and non-peak would seem to be a straightforward and helpful exercise, and it would be targeted squarely at the BBC's duty to be innovative and to use the Licence Fee as the risk capital for the UK's creative industries.

Taking this example, we recognise that there would be a piece of work to be done to determine the definition of a new programme. This should be achievable. For instance, one possible methodology (which we described in our submission to the Charter Review process) would be to identify the complete list of programme titles, then exclude any repeats, then strip out any titles that appeared in the schedule in previous years or that were direct spin-off of other titles, e.g. The Great British Bake Off: An Extra Slice. Alternatively, Ofcom could ask the BBC to create a methodology in the first instance, to be scrutinized and consulted on.

Given the context of the White Paper, Charter and Framework Agreement we believe that Ofcom should set targets against this metric. However, even if it were to choose not to do so, we would expect that it would want to agree on definitions and then measure current performance and track it over subsequent years, such that it could inform future policymaking.

Another example of desirable change, in the viewer interest, described in the White Paper was around the reduction of long-running titles in both peak and off-peak. To be fair, this is an issue around which Ofcom has set a high-level aspiration:

"In relation to TV services, we have carefully considered the Schedule 2 requirement to have regard to the desirability of setting or changing requirements to secure an appropriate balance of unique titles and long-running series. both in peak-time and at other times. We have included a high-level objective to reduce the number of long-

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²³ DCMS, "A BBC for the future: a broadcaster of distinction", page 38

running series over time. However, we consider that determining the appropriate ratio within the TV schedule is a scheduling matter for the BBC. We will gather evidence in this area through our performance measurement framework and may revisit the possibility of setting conditions in the future."²⁴

Given that Ofcom <u>has</u> chosen to set this as a high-level objective, we would be interested to understand how progress against this objective will be measured, using what definitions, against the status quo position? If there isn't clarity in these areas, this is not an obligation that can be enforced.

Alternatively, of course, Ofcom could ask the BBC to create a definition of a long-running title. However, not only does this not appear to have happened but the BBC Annual Plan actually includes no mention at all of a reduction in long-running titles.

CONCLUSION

It is not clear to us how Ofcom will oversee the delivery of more distinctive BBC TV channels, particularly BBC One on the basis of the Ofcom and BBC frameworks that have now been published. It does not appear from the recently published Annual Plan that the BBC will do this by itself given its imprecise proposed additional commitments which, at best, will maintain the status quo.

The question is therefore what in the new proposals would bring about a change to the level of distinctiveness in the BBC's output and services. In our view, further work is required before the proposals can be reasonably expected to secure greater distinctiveness.

We completely appreciate that Ofcom does not want to run the BBC, nor would it be appropriate for it to even try to do so. However, given that the Director General himself asked, in the run up to the new Charter, for a regulatory system that "holds our feet firmly to the fire on distinctiveness" ²⁵ we would ask Ofcom to look again, in the light of this submission, at the further work that is now required if the system it is proposing is one which will achieve that objective. We feel that this would also chime with the aspirations of the BBC's programme makers and creative leaders.

 $^{^{24}}$ Ofcom, 'Holding the BBC to account for the delivery of its mission and public purposes', March 2017, p. 38

²⁵ Tony Hall speech, 23rd November 2015, Cardiff Business Club