



Response to Ofcom Consultation:
Holding the BBC to account for the delivery of
its mission and public purposes

July 2017

www.radioindies.org

Introduction

1. The Radio Independents Group (RIG) is the trade association for the independent audio-led production sector, representing nearly 100 SMEs based around the UK. RIG provides business affairs support, policy representation, and negotiates terms of trade with the BBC. RIG also produces the annual Audio Production Awards¹, which uniquely recognise and celebrate the production skills of radio and audio producers across the whole industry.
2. RIG also runs the RIGtrain² programme which since November 2014 has provided 1,959 learner days to 1,089 individual learners. Of those attending around 58% are women, 22% rate themselves as other than white British, and 3% have a registered disability. In addition RIG has now established a Black Asian & Minority Ethnic (BAME) and disabled mentoring scheme to further help increase diversity in the sector³.
3. The radio/audio indie production sector is at an exciting time in its history, with the opportunity to bid to make a greater amount of BBC radio content - a minimum 60% by the end of 2022. On the assumption that it wins a reasonable amount of these commissions, this will in turn help to grow the sector. Independent audio producers are working with an increasing variety of commissioners, including platforms such as Audible, Acast and others. Our members continue to work with corporates, institutions and others on a variety of audio-based content, which can and often does extend into multimedia and TV productions.

Ofcom and the BBC

4. During BBC Charter Review, like many others RIG supported the idea that Ofcom should become the external regulator of the BBC. RIG welcomes the general approach that Ofcom has taken to carry out its new regulatory duties, as set out within this and the other consultations that preceded it. We also welcome some of the specific measures contained within the draft operating licence.
5. Nevertheless there are some areas that Ofcom has not addressed consistently. Key among these is the decision to remove many of the quotas for the individual radio networks, which existed in the previous licences agreed with the BBC Trust. Genres such as drama on Radio 3 (which the BBC Trust stated in its 2015 review of the service was at its 'minimum viable level') and drama and comedy on Radio 4 have as much significance in achieving the BBC's public mission as news, and we would like to see them continue to be given the same prominence on BBC Radio networks.
6. RIG therefore urges Ofcom to rethink its approach and adopt a strategy involving BBC Radio quotas that takes a starting position of retaining all pre-existing quotas. Ofcom should only remove any pre-existing quota where there is a clearly-stated and logical reason to do so. Even then it should only do so after due consultation.

¹ <http://www.audioproductionawards.co.uk/>

² <http://www.rigtrain.co.uk/>

³ <http://www.rigtrain.co.uk/index.php/diversity-scheme/diversity-mentoring>

Answers to questions

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

BBC Radio Networks' quota requirements

7. We agree it makes sense to give the BBC an overall operating licence, and for it to include quotas for certain types of programming where it is necessary for the BBC to fulfil its public purposes.
8. However some very important genres have been dropped from individual BBC Radio services' requirements, including for Radio 3 drama and for Radio 4 drama and comedy⁴. Whilst it is always worthwhile ensuring that the BBC is not subject to excessive regulation under the new regime, RIG's concern is that this risks losing some core elements of network programming which are highly valued by listeners, and areas where independent radio production companies play a key role.
9. These genres are also extremely important in terms of being places where new writing and performing talent in drama and comedy can develop, talent which often goes on to enrich the UK talent base overall, working across TV, theatre, film and audio production.

The Proposed Operating Licence Arrangements

10. The Draft Operating Licence states that: 'This Licence sets out Regulatory Conditions to ensure that the BBC continues to provide a mix of key genres and high quality output across television, radio and online'⁵. However it has removed many of the specific measures which were used previously by the BBC Trust to ensure this was the case for the BBC's radio services. Ofcom's justification is that: 'We have retained most of the quantifiable conditions contained within the BBC's existing service licences, but have removed the extensive qualitative requirements which were a feature of them. In our view, these served more of a governance or strategic function than a regulatory function'⁶.
11. We disagree strongly that this is a 'governance or strategic function', and would point to other areas where Ofcom has decided that regulatory intervention is needed. An example of this is requirements around news provision: 'We propose retaining most of the regulatory conditions currently in place in relation to news and current affairs ... This will ensure that the BBC continues to provide news and current affairs that audiences value across a wide range of services. In addition, we are proposing new, peak-time conditions for news on BBC Radio 1, and news and current affairs on BBC Radio 2'.
12. Here Ofcom is clearly stating that prescribing detailed requirements 'will ensure' the BBC meets its stated purpose on news provision. We question why Ofcom does not apply the same reasoning to many of the other key aspects of BBC Radio provision, and retain or even strengthen them.
13. Ofcom even has clear requirements for other BBC services for the same genres which in radio it regards as a 'governance or functional' matter. So for CBBC there is a requirement that it broadcast 1,000 hours of drama per year⁷. Another example is the

⁴ see Appendix 1 for further examples

⁵ Draft BBC Operating Licence. Ofcom, March 2017, p4, para 1.17

⁶ Holding the BBC to Account for the delivery of its mission and public purposes - Consultation, March 2017, p4, para 1.15

⁷ Draft BBC Operating Licence. Ofcom, March 2017, p11, para 2.22.1

setting of specific measures to Radio 1, Radio 2 and Radio 5 Live in terms of distinctiveness, but none for Radio 3 or Radio 4⁸.

14. RIG would therefore argue that there is an inconsistency in Ofcom's approach to setting quotas for specific genres across the BBC's different services. Ofcom acknowledges in the draft Operating Licence that in the BBC Agreement there are over-arching commitments for BBC Radio to deliver certain objectives. For example, Radio 4 must be 'a speech-based service including news, current affairs, factual programmes, drama, readings and comedy'⁹.
15. We would argue that in this context it is crucial to retain the specific requirement, present in the previous BBC Trust Operating Licence for Radio 4 to 'Broadcast at least 600 hours of original drama and readings each year'¹⁰. Likewise Ofcom should retain the requirement for Radio 3 to 'Broadcast at least 20 new drama productions each year'¹¹.
16. There are also very few commitments listed for the BBC's digital stations. With increasing levels of listening on DAB, to have no music commitments for 1Xtra and 6 Music, and no commitments at all for 4 Extra, appears to be a significant oversight in terms of ensuring these services deliver distinctive content to the listener.
17. Ofcom states that: 'We believe our proposals will strengthen the regime for holding the BBC to account for its performance in delivering its public purposes'¹² but failing to protect levels of drama and comedy could over time lead to a watering-down of the BBC's commitment to these crucial genres which have few other markets and for which the BBC remains the first port of call for most listeners.

What the BBC Trust said

18. The BBC Trust clearly reached the conclusion that such quotas were highly important. Its last review of Radio 4 showed that: 'Evidence from our research is very positive, with 71% of listeners saying the station has engaging drama programmes and 60% wanting the station to do more drama'¹³.
19. The report went on to say that: 'Radio 4's comedy and drama are highly appreciated by audiences. We consider that, given ongoing budget pressures, the quality and range of these genres should be protected, as they are not generally offered by other UK radio station ... It is important that future budget plans do not affect the quality of Radio 4's output, particularly in new drama and comedy, where it has a unique role on UK radio'.
20. For Radio 3, the Trust's last review of the service reported that: 'Radio 3 offers a different type of longer-form drama than Radio 4, and adds to the BBC's range in this genre overall. Listener feedback in our consultation and research was positive about Radio 3's speech programming, seeing it as a strength of the station and very distinctive. They told us that the programmes are of a high quality and are informative, challenging and interesting'¹⁴.
21. On this basis, while the BBC Trust agreed to BBC proposals to a slight lowering of BBC Radio 3 drama to 20 new dramas, it stated clearly that: 'We have agreed to a further

⁸ Draft BBC Operating Licence. Ofcom, March 2017, p14

⁹ BBC Agreement. HM Government, 2016, Part 1, Schedule 1. Reproduced in: Schedule 4 of the Draft BBC Operating Licence. Ofcom, March 2017, p33, para 2(e)

¹⁰ Radio 4 Service Licence. BBC Trust, April 2016, p5

¹¹ Radio 3 Service Licence. BBC Trust, April 2016, p4

¹² Holding the BBC to Account for the delivery of its mission and public purposes. Ofcom, March 2017, p4, para 1.19

¹³ BBC Trust Service Review: Radio 4, Radio 4 Extra, Radio 5 live and Radio 5 live Sports Extra. BBC Trust, August 2015, p12

¹⁴ BBC Trust Service Review: Radio 1, Radio 1 Xtra, Radio 2, Radio 3, 6Music and Asian Network. BBC Trust, March 2015, p57

- slight reduction in the volume of new drama, but think this is now at the minimum viable level'¹⁵.
22. The Trust made no further change in these policies up to its being replaced by Ofcom earlier this year. In fact, its 2016 annual performance report stated that 'Audience appreciation of BBC radio remains high, and has increased slightly this year'. The Trust concluded that this meant that 'the BBC should continue to offer high quality content to radio audiences'¹⁶ and it made no suggestion that there should be a lightening of requirements on such genres as comedy and drama.
23. RIG would like to make clear that it welcomes the commitments expressed in the BBC's draft Annual Plan that 'Radio 3 will maintain its role in unique and challenging drama'¹⁷ and that 'Radio 4 will sustain its commitment to drama and comedy'¹⁸. However such commitments fall short of specifying actual figures in terms of hours and the concern is that we could see a significant reduction in numbers of hours of drama on Radio 3 and drama and comedy on Radio 4. These are precisely the concerns expressed by the BBC Trust in its reviews, and provides a clear rationale of why the Trust chose to keep in place the requirements for drama and comedy on Radio.
24. It is not clear why important quotas for radio drama and comedy should be dropped, as they would appear to be good measures to enable Ofcom to measure public value and the extent to which the BBC's radio services are remaining distinctive. RIG calls upon Ofcom to rethink its approach and adopt a strategy involving BBC Radio quotas that takes a starting position of retaining all pre-existing quotas. Ofcom should only remove any pre-existing quota where there is a clearly-stated and logical reason to do so. Even then it should only do so after due consultation.

Revenue raised from financial penalties

25. Another point we wish to raise is in connection with Ofcom's power in certain circumstances to impose financial penalties upon the BBC. As the paper notes, Ofcom is currently required to pass on any such payment to HM Treasury. However RIG would argue that the BBC is a special case, as its funds are sourced from the TV Licence Fee, which is paid by every household in the UK, rather than from commercial revenue. This Licence Fee money is paid by the public on the understanding that it will go towards public service broadcasting. We therefore feel it is inappropriate for such funds to be passed to HM Treasury for general use.
26. Instead we ask Ofcom to seek a new requirement that the money is instead passed to an appropriate body for the use of creating public service content. A suitable body could be the Government's proposed public service contestable fund, which currently has earmarked £60m to carry to a 2-3 year pilot¹⁹.
27. Passing on any sums collected from the BBC passed to this content fund will enable the provision of additional public service content across a range of platforms. On this note RIG is asking the government to allow bids for radio production within the fund, in order that commercial radio and independent producers can work together to create suitable content, which we hope and believe would lead to a greater diversity of content across the commercial sector.

Q.2 Do you agree with the approach we have proposed for public purpose 1, including the high-level objectives and regulatory conditions we are proposing?

¹⁵ BBC Trust Service Review: Radio 1, Radio 1 Xtra, Radio 2, Radio 3, 6Music and Asian Network. BBC Trust, March 2015, p57

¹⁶ Annual Report and Accounts 2015-16. BBC, 2016, p23

¹⁷ Annual Plan for 2017/18. BBC, July 2017, p43

¹⁸ Annual Plan for 2017/18. BBC, July 2017, p44

¹⁹ <https://www.gov.uk/government/consultations/public-service-broadcasting-contestable-fund-pilot-phase>. Accessed July 10, 2017

28. We agree that it is highly important to impose specific requirements for news provision and would urge Ofcom to apply this approach consistently for the entirety of the BBC's public purposes and mission.

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. We agree that it is highly important to impose specific requirements for arts provision and would urge Ofcom to apply this approach consistently to include quotas for genres such as drama, which are also highly important to education through their ability to teach through storytelling.

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?

30. We note from the IPSOS MORI research of audience perceptions of the BBC that, published by Ofcom, that: 'Most [of those surveyed] were very positive towards BBC Radio, suggesting no significant changes to improve distinctiveness'²⁰. Clearly having specific quotas, such as existed in the previous BBC Trust licences, can ensure that such distinctiveness is preserved, and prevent any changes being made in terms of a reduction in genres such as comedy and drama.

The BBC's competition requirements

31. Previous BBC Radio service licences contained the obligation to 'Contribute to BBC Radio's commitment to commission at least 10% of eligible hours of output from independent producers', which was a requirement of the previous BBC Agreement.

32. This 10% quota has now been exchanged for a minimum level of 60% of 'relevant' hours across the BBC Radio UK networks to be open to competition from external production companies by 2022, as a requirement in the new BBC Agreement²¹. However there is no reference to this new obligation anywhere in the new draft Operating Licence.

33. We feel this is a significant oversight. There are several places where this would be applicable to cite as a criterion in terms of monitoring the BBC's performance against its public purposes. The process of creating more competition in BBC programme-making competition was clearly explained by Lord Hall, "I want our commissioners to be able to choose from the best ideas, from independent producers and BBC Production."²² RIG would like to see the principle espoused by Tony Hall explicitly recognised in the Operating Licence, to be applied across all the BBC's radio services.

34. The importance of this is demonstrated by the concern expressed by RIG members that the BBC has indicated to RIG that it does not feel that there should be competition from external producers to make programmes for Radio 1 and Radio 2 in the daytime during the week. RIG feels that to exclude the independent sector from this important part of the schedule runs contrary to the spirit of the competition requirements in the Agreement.

²⁰ BBC Distinctiveness: report prepared for Ofcom. IPSOS MORI, June 2017, p7

²¹ BBC Agreement. Schedule 3, 7(1)(b):

²² Lord Hall. Speech at City University, 10 July 2014

35. We therefore ask Ofcom to include under this purpose a requirement that the 60% requirement should mean that all parts of the schedule are open to competition from independent producers, and that the BBC should produce annually evidence to demonstrate that no part of the schedule has been excluded en masse from competition from external production companies.

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?

36. RIG welcomes the requirement that 'In respect of the UK Public Radio Services, the BBC must ensure that in each Year at least one third of relevant Expenditure is incurred outside the M25 area'²³. Many RIG members are based in the nations and regions of the UK and will welcome this requirement.

37. However there is still an inconsistency in Ofcom's approach, with a removal of some quota requirements for BBC nations stations. For example, requirements for arts programming from BBC Radio Scotland and comedy programming from BBC Radio Ulster are no longer present. These genres have a great importance in terms of portraying those nations, and also as a pathway of development for talent in the UK nations. We therefore call upon Ofcom to reinstate these requirements.

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?

38. We would ask Ofcom to set out in greater detail its approach to deciding who to consult and in which instances. Currently paragraph A5.5 states that: 'Where Ofcom is considering an amendment to a Licence, Ofcom will consult the BBC, and Ofcom will decide on a case by case basis which other persons (if any) it is appropriate to consult, having regard to the nature and significance of the proposed amendment'²⁴.

39. A proposed alteration to a Licence could have knock-on effects to the BBC's suppliers in the independent production sector, in terms of what types of programmes were required to be made in the future. RIG would therefore like there to be a predilection towards key players (to be defined by certain criteria) being consulted on a change to a Licence.

40. The criteria used to determine which other persons Ofcom chooses to consult should be made public, to avoid the impression of a lack of transparency.

41. Any proposed change to a Licence should be published, for the purpose of giving key players in the production sector, as well as the Licence Fee Payer, due notice of the intention to change the Licence.

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?

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

²³ Draft BBC Operating Licence. Ofcom, March 2017, p4, para 2.46

²⁴ Holding the BBC to Account for the delivery of its mission and public purposes - Consultation, March 2017, p64, para A5.5

42. We agree with the proposed inclusion, as part of the proposed 'Availability' measure for Purpose 3, the following: 'Commissioning analysis: types and range of production companies used by the BBC'.
43. This is an important criterion to consider a measurement of diversity and use of the creative economy. We would however ask Ofcom to provide additional detail on how it intends to define 'range' and 'type' of company. This is important to understand how Ofcom plans to assess whether the range and type of company used by the BBC was adequate to satisfy its mission and purposes.

Appendix 1**Previous obligations for BBC Network Radio services**

Below we list some examples of quota obligations for BBC radio which are being removed under Ofcom's proposed operating licence

Below we have listed the requirements that have been dropped, and highlighted in bold the ones that are our members' primary concern.

Examples of previous BBC Trust service licence commitments for UK network stations:	
Radio 1	<ul style="list-style-type: none"> • Feature coverage of at least 10 festivals and significant live events⁸ in the UK and abroad each year • Offer at least 2 major Social Action campaigns, supported across daytime output and online each year, together with a number of other initiatives
1Xtra	<ul style="list-style-type: none"> • Ensure that at least 60% of the music played on the station in daytime is new each year • Ensure that at least 35% of all music played in daytime is from the UK each year
RADIO 3	<ul style="list-style-type: none"> • Broadcast at least 20 new drama productions each year
RADIO 4	<ul style="list-style-type: none"> • Broadcast at least 600 hours of original drama and readings each year • Broadcast at least 180 hours of original comedy each year
Radio 4 Extra	<ul style="list-style-type: none"> • Broadcast at least 55 hours of comedy each week • Broadcast at least 55 hours of drama each week • No more than 15% of output across the year should be Radio 4 catch up programming
6 MUSIC	<ul style="list-style-type: none"> • Ensure that no more than 30% of all music played each year is new • Broadcast at least 400 hours of archive concert performances each year • Broadcast at least 6,500 concert tracks or sessions from the BBC's music archive each year, with at least 1,150 in daytime • Broadcast at least 300 new sessions each year
ASIAN NETWORK	<ul style="list-style-type: none"> • Ensure that content is approximately 50% music and 50% speech during daytime each year • BBC Asian Network should ensure that in daytime across the year: <ul style="list-style-type: none"> • at least 30% of its music output is from UK artists • at least 30% is new music (released within the last 2 months) • at least 10% of music is South Asian
RADIO SCOTLAND	<ul style="list-style-type: none"> • Broadcast at least 200 hours of arts coverage each year
RADIO ULSTER	<ul style="list-style-type: none"> • Broadcast at least 20 hours of new comedy each year