

Ofcom Consultation Response

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

July 2017

Executive Summary

1. In 2016, the government set out its vision for the BBC to be “A Broadcaster of Distinction”. The resulting Royal Charter and Framework Agreement outlined a new responsibility for the BBC to embrace distinctive content and creative risk-taking, with Ofcom tasking with “[seeking] to increase the current requirements on the BBC as a whole to secure the provision of more distinctive output and services”¹.
2. In July 2017, the BBC articulated its own strategy for its services with the publication of its 2017/18 Annual Plan. In relation to its speech radio services, particularly its plans for BBC Radio 5 live, the BBC’s internal goals in terms of distinctiveness appear to be at odds with the vision that government tasked Ofcom with securing. There is, in summary, a clear disconnect between the objectives set out in the Charter and Agreement, and the BBC’s own ambitions as outlined in its Annual Plan.
3. Judging from the Annual Plan, the BBC’s strategy for Radio 5 live appears to be to: deploy its superior financial muscle to hold more exclusive Premier League football rights than any other broadcaster; de-emphasise its historic contribution to the BBC’s overall provision of news; offload minority sports commitments onto 5 live sports extra; remove remit safeguards that were established to protect commercial services; and extend BBC dominance of spoken word audio in an online and on-demand world
4. The BBC’s failure to embrace any enhanced distinctiveness for its speech radio services is of real concern. Speech radio is a sector in which Wireless Group takes a particularly close interest, given its own investment in speech radio services (including nascent channels talkRADIO and talkSPORT 2). Given the scale of the BBC’s dominance in this market, its activities have major consequences for independent provision, not least due to the BBC’s ability to materially distort the prices of key production inputs (such as on-air talent and sports rights) or the risk that consumers of spoken word audio become locked into a BBC walled garden.
5. The BBC Executive’s natural tendency to protect its speech radio dominance highlights the importance of the new regulatory arrangements being developed by Ofcom. Whilst supportive of Ofcom’s preference for light touch regulation, our preference above all is for regulation which is effective. In speech radio, the current draft of the Operating Licence appears unlikely to secure the objectives anticipated by the new BBC Charter and Framework Agreement, such as a focus on high quality news and distinctive sports output.
6. Wireless Group has considered carefully Ofcom’s proposal to retire the previous BBC Trust service licence regime, replacing it with a single BBC Operating Licence. Whilst the previous regime offered a number of advantages, we consider that its replacement with a single BBC Operating Licence can be made consistent with the requirements of the Charter

¹ DCMS, ‘A BBC for the future: a broadcaster of distinction’, May 2016; BBC Framework Agreement, December 2016

and Agreement. However, we believe that in relation to BBC Radio 5 live and 5 live sports extra, Ofcom has gone too far in reducing, rather than increasing (or at the very least maintaining), the number of distinctiveness obligations imposed on these services.

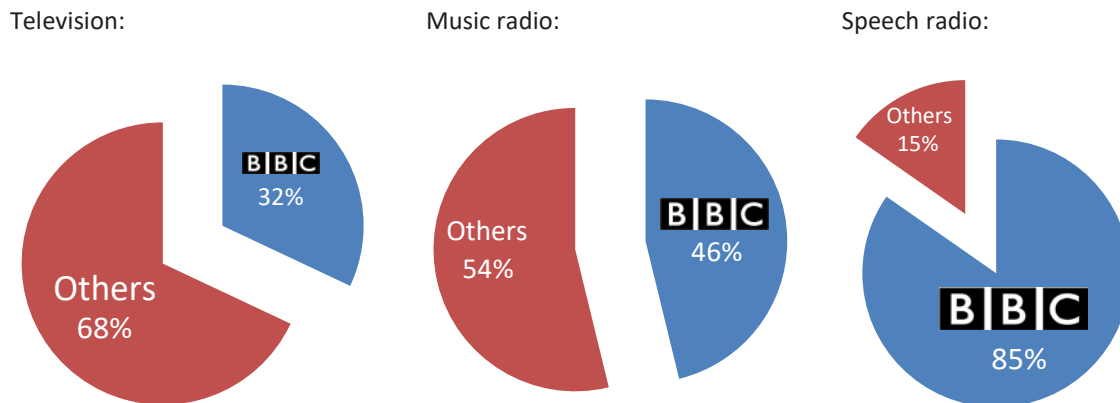
7. As drafted, the new Operating Licence removes important safeguards originally put in place by either the Secretary of State or BBC Trust that worked to prevent BBC practices such as anti-competitive sports coverage; or the underperformance in BBC Radio 5 live's delivery of 75% news output; or the lack of peak-time coverage of underexposed/minority sports. These safeguards must be re-introduced into the Operating Licence.
8. A key objective which runs through our response is to ensure that each BBC speech radio service fulfils a unique and distinctive role. Given the scale of the BBC's dominance in speech radio, we emphasise the need to consider the UK speech radio market as a distinct market, and to balance the BBC's actions against the positive contributions made by independent providers.
9. It remains our conviction that if the BBC actions are contained in a way so as not to choke off the development of the independent speech radio sector, then the beneficiaries will be all consumers, who will experience an expansion in the availability of varied and high-quality spoken word audio content on a free-to-air basis.

Reviewing the BBC's 2017/18 Annual Plan in the context of the BBC's current dominance of the UK speech radio market

10. As Ofcom notes in its consultation document, the BBC is the UK's most widely used media organisation, occupying a special place in the UK media landscape. Yet of all the sectors in which the BBC operates, it is within speech radio that it enjoys its most dramatic position of market dominance. Whereas the BBC accounts for only 32% of television viewership and 46% of music radio listening, its equivalent audience share in speech radio is 85%².
11. Speech radio is a unique sector, providing a major contribution to the provision of news and current affairs, as well as arts, cultural and sporting content and factual content. It is distinguished from music radio not just by its specific product characteristics, but also by elements such as production inputs (e.g. talent and sports rights) and digital distribution considerations (e.g. the disaggregation opportunities presented by social media and podcasting).

² This conservative estimate understates the BBC's share of speech radio listening, since it excludes listening to standalone speech programmes broadcast as part of the BBC's Local and Nations radio services

Figure 1: The BBC's audience shares within television, music and speech radio



Source: RAJAR Q1 2017 / BARB June 2017

BBC speech radio consists of Radio 4, Radio 4 Extra, 5 live, 5 live sports extra and BBC World Service

Commercial speech radio consists of City Talk, LBC, LBC News, Share Radio, talkSPORT, talkSPORT 2 and talkRADIO

12. The BBC's unprecedented audience share lead in speech radio is underpinned by its inherent structural advantages. These include:

- £184m of guaranteed annual funding (excluding the £250m annual spend on BBC World Service) – estimated to be at least five times larger than the combined funding of the independent speech radio sector³;
- An unrivalled network of domestic and international news bureaux;
- Daily cross-promotion from the UK's most-watched and most-listened to TV and radio channels;
- A preferential allocation of national FM and AM frequencies;
- Exclusive access to world's best DAB transmission network;
- Dominant online offerings such as iPlayer Radio which is closed to independent providers and deployed for the sole benefit of BBC services; and
- A revenue model which does not require the insertion of advertising interruptions.

13. In light of Ofcom's emphasis on the role of the BBC's Annual Plan in setting its strategy and creative direction, Wireless Group carefully reviewed this document for evidence of the BBC's regard for the wider market and for the public purposes. Our conclusion was that, in relation to speech radio, the Annual Plan amounts to a charter for diminished BBC distinctiveness and extended dominance over the wider spoken word audio market.

14. An example of this tendency can be found in the BBC's description of its sports strategy. This popular genre receives considerable attention in the document. Yet rather than acknowledging the BBC's dominant position and the responsibilities that this brings when

³ BBC Annual Report 2016/17

applied to a mainstream and commercially attractive subject area like sport, the Annual Plan features a series of competitive positioning statements which place emphasis on achieving pre-eminence over commercial sports radio broadcasters. These include:

- “We run the most popular TV, radio and online sport services in the UK”;
 - “We will ... provide live radio commentaries of 144 Premier League matches this season, more than any other radio broadcaster in the UK, part of BBC Radio 5live's unparalleled commitment to the nation's favourite sport”;
 - “No other UK provider comes close to matching the BBC's reach or breadth of cross-platform offer”;
 - “On radio, 5live and 5live sports extra offer a wider range of sports than any other UK broadcaster”;
 - Reference to the UK's leading cricket programme which is underpinned by a series of exclusive rights agreements that exclude commercial rivals: “Test Match Special will cover every England cricket match of the summer”;
 - Plans for “unprecedented coverage” of the FA Cup which will leverage the BBC's privileged ability to combine radio coverage with TV and online content; and
 - Reference to the BBC's exclusive radio coverage of Wimbledon: part of “the longest-running partnership in sports broadcasting”⁴.
15. The BBC is able to make these statements as a result of its privileged market position, including a radio sports rights portfolio that independent operators cannot realistically aspire to replicate. Yet the Annual Plan claims that the BBC is a victim of “exceptional competition in the sports broadcasting market”. This characterisation demonstrably cannot be applied to sports radio, given the imbalance in the BBC's favour.
16. Elsewhere, reference is made to “the effect of super-inflation in areas such as sports rights”, a statement which fails to acknowledge the BBC itself is by some distance the largest customer of radio sports rights in the UK, and therefore the greatest determinant as to their cost.
17. We discern in these statements a tendency by the BBC to conflate markets such as television (where it competes with large pay-TV providers as well as new disruptors such as Netflix) with speech radio (where it is the dominant broadcaster and its competitors deliver their content to licence fee payers on a free-to-air basis). This disregard by the BBC for applicable competitive contexts leads in turn to failures by the BBC to tailor the delivery of its public purpose mission towards ensuring the best overall outcome for the market and for listeners.
18. As the operator of talkSPORT, Wireless Group is the UK's leading independent operator of speech radio stations. We are proud of the contribution to listener choice and diversity that our speech services have made and were pleased to extend this contribution last year through the launch of talkRADIO and talkSPORT 2. As shown in Figure 2, our new channels [X] will remain dependent on further [X] net investment [X] to move them towards

⁴ BBC Annual Plan 2017/18

commercial sustainability. [3<] the recent failure of independent speech radio operator Share Radio should encourage further caution in this area.

Figure 2. Profit and loss accounts for talkRADIO and talkSPORT 2 FY 2016 – FY 2019 (£000s)

[3<]

19. Notwithstanding our willingness to invest in adding additional choice and competition to the speech radio market, we remain a small player when compared with the BBC, with significantly lower funding and attainable audience levels. As a consequence, our ability to develop and operate commercially viable services has been closely related to the agreed scope of the BBC's services as determined via the UK public service broadcasting policy process.
20. A 2015 ruling by the BBC Trust in the area of radio sports coverage highlighted the BBC's poor grasp of its potential to negatively impact on independent speech radio provision. The BBC had introduced a proposal to extend 5 live Sports Extra's remit to offer a regular schedule rather than operating as an "overflow" station. It was envisaged that the revamped service would launch just weeks before talkSPORT 2 and that it would similarly provide coverage of a broad range of sporting action. In its October 2015 ruling, the Trust concluded "there are a number of areas where we think there is potential for the impact on audiences to be greater than the BBC projects", declining to approve the proposal⁵.
21. The willingness of commercial operators to invest in new speech radio services can be seen as a strong vote of confidence in the value of speech content in a digital age. However it also raises important questions about the scale of the BBC intervention in this important sector, and the BBC's role in ensuring that – whether by accident or design – these new stations are not denied the opportunity to attract an audience and achieve commercial viability.
22. Seemingly not content with its already strong position, the Annual Plan sets out renewed BBC plans for expansion, seeking again to "broaden the range of sports coverage broadcast on 5live sports extra including a range of podcast content." With talkSPORT 2 just over a year old, incurring ongoing operational losses and reliant on further audience and revenue growth if it is to break even, any attempt by the BBC to revive plans for the expansion of 5 live sports extra reveals a lack of sensitivity towards the BBC's dominant market position and the desirability of increased choice and diversity in the UK free-to-air speech radio market.
23. This approach also contradicts the Agreement, which defines 5 live sports extra as "a part-time extension to BBC Radio 5 live providing additional live coverage of sporting events" – a remit that excludes pre-produced, non-event-based programming and acknowledges its absence of a full-time schedule.

⁵ BBC Trust, Assessment of proposed changes to BBC Radio 5 live sports extra, October 2015, p. 7

Responses to Ofcom's consultation questions

Questions about the Operating Licence

Q.1 Do you agree with our overall approach to setting the Operating Licence?

24. With the BBC's 2017/18 Annual Plan indicating a clear disconnect between the public policy objectives set out in the Charter and Agreement, and the BBC's own ambitions, it will inevitably fall to Ofcom through the new BBC Operating Licence and regulatory performance framework to ensure that the relevant requirements of the BBC Charter and Agreement are upheld. We also note a risk that unless the Operating Licence provides appropriate clarity and scope definition, both Ofcom and the BBC governance team risk becoming drawn into frequent competition investigations and distinctiveness reviews as independent providers seek recourse via the new complaints framework.
25. A key concern arising from Ofcom's proposed approach relates to the removal of key regulatory safeguards which previously sought to ensure the provision of key distinctive public service programming on 5 live and 5 live sports extra and to guard against competitive scheduling. These excisions are seemingly coupled with an absence of enhanced distinctiveness commitments for news and sports coverage.
26. In total, Ofcom is proposing three regulatory conditions for 5 live (75% news, extensive elections coverage and live commentary of 20 sports per year), each of which was present in its existing BBC Trust service licence. It is proposed that 5 live sports extra is not subject to any regulatory conditions at all. This compares with fifteen regulatory conditions for BBC One Television, eight for Radio 1 and ten for Radio 2 – despite the BBC's lower market shares and risks of negative market impacts in the TV and music radio sectors.
27. Bearing in mind the current uncertainty about how the new regulatory framework will be interpreted and applied in practice by the BBC (as highlighted in the previous section of this response), and indeed evidence that its goals are not aligned with the objectives set out in the Charter and Agreement, we perceive a clear justification for Ofcom in exercising a more cautious approach in finalising the Operating Licence.

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?

28. Within speech radio, evidence shows that whereas Radio 4 is considered a high quality and distinctive service, 5 live places a disproportionate emphasis on genres which support commercial business models – such as live sports coverage and personality driven talk. This has come at the expense of support core public service genres such as domestic and international news.
29. Evidence of this skewed approach comes in the section of the BBC's Annual Plan which sets out the BBC's strategy to deliver impartial news and information. Surprisingly, this section omits any reference to BBC Radio 5 live, despite 5 live historically being considered as the BBC's primary radio news service. In contrast, the section dealing with the BBC's sport strategy is peppered with references to 5 live. The Annual Plan also presents a pessimistic view of radio's contribution to the provision of impartial news and information, arguing

that “Consumption of news is shifting from traditional TV and radio to online and social platforms, and continues to fragment among a large number of providers”⁶.

30. This absence of emphasis on the importance of 5 live’s news contribution is in stark contrast to 5 live’s perceived primacy under the previous regulatory regime. Its most recent BBC Trust service licence requires it to be the BBC’s “main outlet for breaking news by bringing its audience major news stories as they happen”, tasked with making a “very important” contribution to the BBC’s first public purpose (previously called “Sustaining citizenship and civil society”) by “providing accurate, impartial and independent coverage of UK and world events in an accessible style”⁷.
31. Wireless Group would also challenge any inference that changes in user behaviour support a dilution in 5 live’s contribution to the BBC’s delivery of news. RAJAR data shows that radio remains a powerful platform despite the increases in audio choice presented by the digital age. The success of LBC and our own investment in launching talkRADIO in 2016 offer further evidence of the medium’s health as a platform for news and current affairs output. In view of the BBC’s advantageous market position, as well as the emphasis placed on news by its Charter, the BBC has a unique opportunity but also a clear duty to raise the bar in broadcasting high quality news programmes with major audience impacts.
32. In the context of the BBC’s apparent failure to grasp 5 live’s potential as a platform for ground-breaking journalism, it is concerning that whilst Ofcom is proposing to retain 5 live’s longstanding requirement for 75% of programming time to consist of news, it is proposing to detach this condition from the important interpretative context previously provided by various qualitative commitments set out in its service licence.
33. Rather than this reduction in regulatory conditions relating to news, the new BBC Charter and Framework Agreement appeared to pave the way for the imposition of enhanced distinctiveness requirements – such as to address current skewed perceptions of 5 live as a sports radio station by boosting popular awareness of its news commitment (an issue previously identified by the BBC Trust). In particular, Part 2 of Schedule 2 of the Framework Agreement states:

“In imposing the regulatory conditions in the first Operating Licence, 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-

- *have a presumption against removing any of the current requirements which would result the provision of less distinctive output and services;*
- *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;*
- *consider the case for setting requirements in areas where an improvement in performance would secure the provision of distinctive output and services;*

⁶ BBC, Annual Plan 2017/18, July 2017

⁷ BBC Trust, 5 live service licence, April 2016

- *consider the need for the BBC to reflect, represent and serve audiences taking into account the needs of the diverse communities of the United Kingdom's nations and regions."*
34. The reference to securing "an improvement in performance" is highly relevant in respect of 5 live's news contribution, with previous BBC Trust service reviews highlighting shortcomings in how 5 live's 75% news commitment is delivered in practice. In particular, certain topics appearing within "news programmes" (and therefore counted towards this quota) were shown to be inconsistent with a reasonable definition of news content.
 35. The BBC Trust concluded that 5 live needed "clearer commitments" in relation to news, that it should initiate a reduction in "'non-news' features" and that it "should be better known for its news output". It recommended that news should represent the "*core of the service*" and that the balance of content expenditure, which had become skewed towards sport, would be rebalanced towards news.⁸
 36. Based on these conclusions, the BBC Trust added important qualitative requirements for 5 live programmes counted towards its 75% news quota. These included the following - all of which appear to have fallen away in the draft Operating Licence:
 - "[5 live] should be BBC Radio's main outlet for breaking news by bringing its audience major news stories as they happen"
 - "The service should give a broader perspective on current affairs through original and investigative journalism"
 - "The weekday peak hours at breakfast and evening drivetime should comprise high-quality news programming covering the main news agenda of the day"
 - "All 5 live news programmes should clearly reflect the BBC's mission to provide the best journalism in the world"
 - "When major international stories break, BBC Radio 5 live should present live from the scene if possible with access to a network of BBC radio news reporters and producers"⁹
 37. As Ipsos Mori has identified in its qualitative research for Ofcom consultation, 5 live is not typically listed amongst the BBC's most unique radio services, with participants seemingly making a distinction between 5 live and other speech services such as Radio 4. Ipsos Mori found that "Radio 4 was seen as exceptional in its production of high quality, engaging news, current affairs, dramas and other types of speech content", however participants do not appear to have made similar statements in respect of 5 live.¹⁰
 38. Ofcom's research matches conclusions by the BBC Trust in 2015, which reported that "listeners are more likely to come to the station for live sport (73%) than regular news programmes (53%), and our Audience Councils found that listeners and non-listeners believe that 5 live is primarily a sports station"¹¹. This provides clear evidence that the

⁸ BBC Trust, 'Service Review of 5 live and 5 live sports extra', January 2012

⁹ BBC Radio 5 live service licence, April 2016

¹⁰ Ipsos Mori, 'BBC Distinctiveness: Research Prepared for Ofcom', June 2017

¹¹ BBC Trust, 'Service Review of Radio 4, Radio 4 Extra, Radio 5 live and Radio 5 live sports extra' August 2015, p. 29

BBC’s efforts to re-establish its news credentials remain a matter for continued regulatory oversight.

39. In preparing this submission, Wireless Group has also reviewed the quantitative research recently undertaken by Ipsos Mori on behalf of Ofcom. Unfortunately, whilst this research includes specific questions about the BBC’s popular music services, it excludes any specific findings in relation to its speech radio services. We have therefore referred to previous quantitative research for relevant insights in this area.

40. In 2015, Wireless Group commissioned YouGov to undertake an in-depth study of the speech radio market. This came as we prepared to launch talkSPORT 2 and talkRADIO. The research also informed our engagement with DCMS’s Charter Review public consultation. Figure 3 sets out one of the key findings, which was that 5 live was associated by audiences above all with “sport” and specifically “football” – a term which has never appeared in 5 live’s BBC Trust service licence and does not appear in Ofcom’s draft Operating Licence.







Figure 3. “Thinking specifically about BBC Radio 5 live’s programming, what word(s) first come to mind?”



Source: YouGov, speech radio market research, January 2015; Base: Aware of Radio 5 live (909)

41. As shown below in a further finding from this study, the primary reason as why to listeners chose to listen to Radio 4 was that it “provides factual content”, closely followed by its “high quality international news coverage” and “high quality domestic news coverage” whilst for Radio 4 Extra it was that it “provides arts & drama programmes”. For both 5 live and 5 live sports extra (and also for talkSPORT) the primary reason given by audiences for listening to each of these stations was that it “provides coverage of football”.

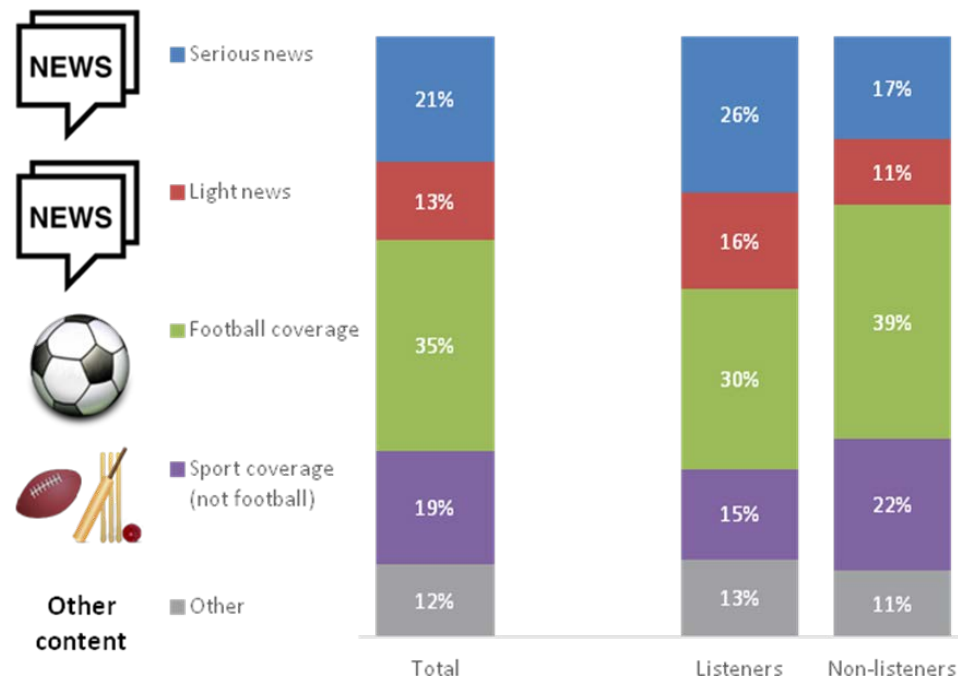
Figure 4. Top 5 reasons for listening to speech radio stations

						
1	75% Provides factual content	75% Provides arts & drama programmes	68% Provides coverage of football	66% Provides coverage of football	82% Provides coverage of football	66% Provides a platform for debate and interaction
2	74% high quality international news coverage	51% It is a station for people like me	56% Has professional presenters	62% Provides coverage of sports other than football	47% I know exactly what I'm getting when I tune in	54% Provides traffic news/updates
3	72% high quality domestic news coverage	46% It keeps me company	55% I know exactly what I'm getting when I tune in	40% It is a station for people like me	35% It is a station for people like me	53% I like the presenters
4	71% Has professional presenters	36% I know exactly what I'm getting when I tune in	54% It is a station for people like me	38% Has professional presenters	35% Provides coverage of sports other than football	52% It is a station for people like me
5	66% Provides leading views on the latest issues	30% Has professional presenters	53% I like the presenters	33% I like the presenters	32% I like the presenters	50% Has professional presenters

Source: YouGov, speech radio market research, January 2015; Base: Listeners of speech radio stations (varies by station)
 Q. You mentioned that you listen to the following speech radio station(s). For what reasons do you listen to this station / these stations? Please select all that apply for each station.

42. As noted above, 5 live's key quantitative service licence commitment is for 75% of total programming airtime to consist of news. However according to YouGov findings shown in Figure 5, listeners estimated news to account for just 42% of broadcast time on 5 live, compared with a service licence requirement of 75%. This estimate fell to 28% amongst non-listeners – a finding which raises questions about the emphasis placed on news output in 5 live's external marketing and cross-promotion. In answer to a separate question, only 17% of respondents agreed that 75% of programming output on 5 live consisted of news programmes, only 21% considered 5 live to be the BBC's primary destination for news on the radio, and only 37% agreed that 5 live delivered journalism that was both ambitious and original.

Figure 5. Perceived breakdown of 5 live broadcast time by different content areas (average)



Source: YouGov, speech radio market research, January 2015

Base: Listeners of Radio 5 live or non-listeners who are familiar (excluding DK) (310), (Listeners=144, Non-listeners=166)
 Q. Now, please take a look at the following types of content. Approximately, what proportion of BBC Radio 5 live's broadcast time is dedicated to the following areas? Please enter a number in to each box (a rough estimate is fine), ensuring that the percentages add up to 100%.

43. YouGov's research findings crystallise 5 live's drift away from the distinctive objectives that underpinned its launch in 1994. This was for the station to deliver something unique: the BBC's first on-demand news service. The station sought to meet the gap for a dedicated home for news on the radio, with Tony Hall, then MD of News and Current Affairs, enthusing at the novelty of licence fee payers being able to access news "whenever you like"¹². An early reviewer wrote of "proper news properly presented"¹³, whilst another noted that 5 live afforded "more time for detail and explanation" than Radio 4¹⁴.
44. The drift in priorities over subsequent years can also be charted by reviewing changes in the total volume of programming output provided by the BBC. BBC internal reporting shows that sports coverage on BBC radio increased by 16% during the last Charter period from 4,731 hours per annum in 2006 to 5,483 hours in 2016 (in 2017 – a non Olympic year – the figure was 5,117 hours). Over the same period, there was an 18% decrease in news, weather and current affairs from 16,112 hours in 2006 to 13,188 hours¹⁵.
45. It is in this context that the BBC has conspicuously failed to set out proposals to reimagine and reinvigorate 5 live's news output in its Annual Plan. In the section of the Annual Plan setting out BBC services' contribution to distinctiveness, the BBC simply argues that BBC

¹² Alexandra Frean, 'Radio's new voice greets the dawn', The Times, 29 March 1994

¹³ Peter Barnard, 'All the news that fades', The Times, 30 March 1994

¹⁴ Robert Hanks, 'Radio newcomer gets familiar in the small hours', The Independent, 29 March 1994

¹⁵ DCMS, 'BBC Charter Review Public consultation', July 2015; BBC Annual Report 2016; BBC Annual Report 2017

Radio 5live represents “a unique combination of news and sport”, seemingly confusing the novelty of its split remit (and the audience confusion that this entails) with distinctiveness.

46. This statement is followed by a suggestion that 5 live’s distinctive contribution to news can be found in the fact that it “covers more stories in more categories than commercial radio, including expanded business and science output, investigative journalism and new digital innovations”. The document also cites some examples of its forthcoming news programmes. Story count appears to us an entirely insufficient measure of distinctiveness, and notably there are no proposals to enhance the quality and impact of 5 live’s journalism or to address the failings evident in audience research.

RECOMMENDATIONS – PUBLIC PURPOSE 1:

- (a) The BBC’s Operating Licence should reinstate appropriate regulatory conditions to secure increases in the quality, impact and originality of 5 live’s news coverage
- (b) 5 live should become defined above all by the strength of this news provision, with exacting benchmarks set for the content of news programmes counted towards its 75% quota

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?

47. Public purpose 2 deals with the BBC’s activities to support learning for people of all ages. We note that the BBC’s speech radio services are not expected to make specific defined contributions to this public purpose. It is unclear why this is the case, given the significant volume of factual programming covering topics such as science, history, business and politics.

RECOMMENDATIONS – PUBLIC PURPOSE 2:

- (c) The BBC’s Operating Licence should include appropriate provisions to ensure that the factual programmes carried on Radio 4 and 5 live are capable of making a measurable contribution towards the BBC’s learning and education objectives

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?

48. Our response to this question focuses on sports radio programming – an area which is subject to substantially diminished regulatory conditions in the draft Operating Licence. As we have seen, this is an area of the BBC’s operations which gives rise to heightened risks of negative competitive impacts, with the BBC’s Annual Plan highlighting the Corporation’s

ability to deploy its superior financial muscle to hold more exclusive Premier League football rights than any other broadcaster, alongside other premium rights for events such as Rugby Six Nations, Formula 1, Wimbledon and Test Match cricket.

49. Sports coverage is also an area which Ofcom’s distinctiveness research for this consultation has highlighted as a specific “weakness” – specifically in relation to the range of programming provided. Ofcom’s research provider Ipsos Mori identified “a perception that minority sports not covered elsewhere could be given more priority on the BBC”. Ipsos Mori also reports that “Participants who valued sport felt the coverage on BBC 5 live was good, but that there could perhaps be greater coverage of non-UK or more niche sports events”¹⁶. These findings suggest that this is an area of underperformance for the BBC which could benefit from enhanced regulatory supervision.
50. Our response to this question addresses three aspects of the BBC’s sports radio operations:
- Protecting 5 live’s commitment to providing prominent and impactful coverage of underexposed sports
 - The importance of maintaining a distinctive remit for 5 live sports extra
 - Developing an internal protocol to govern the BBC’s approach to acquiring radio sports rights

Protecting 5 live’s commitment to underexposed sports

51. A longstanding service licence commitment for 5 live requires it to “cover sports not widely accessible on UK radio”. In 2012, the BBC Trust also introduced a requirement that its “Sports output - including in peak listening hours - should aim to cover a wide range of sports, including those of minority interest”¹⁷.
52. These key requirements are not replicated in the new Operating Licence; nor does the BBC’s Annual Plan suggest that the BBC has embraced them as continuing objectives. Instead, the BBC document highlights a pre-occupation with football and with out-competing commercial rivals. Most notably, the BBC trumpets its ability to “provide live radio commentaries of 144 Premier League matches this season, more than any other radio broadcaster in the UK, part of BBC Radio 5live’s unparalleled commitment to the nation’s favourite sport”¹⁸.
53. In addition, the Annual Plan declines the opportunity to revise up its historic requirement to provide live commentary on at least 20 sports per year, by committing to broadcast additional live coverage of sports of minority interest at peak listening times. This 20 sport target is unchanged from the BBC Trust era.
54. Instead, the BBC’s desired direction of travel appears to be in the opposite direction, to be achieved by offloading 5 live’s responsibilities for underexposed sports coverage onto 5 live sports extra. Notably, the Annual Plan reports on 5 live and 5 live sports extra’s regulatory and distinctiveness contributions within a single table – as if they were a single service – stating “Together 5live sports extra, [5 live] represents over 50 different sports from men’s

¹⁶ Ipsos Mori, ‘BBC Distinctiveness: Research Prepared for Ofcom’, June 2017

¹⁷ BBC Radio 5 live service licence, April 2016

¹⁸ BBC Annual Plan 2017/18, July 2017

and women's football to cycling" adding that "5 live and Sports Extra will broadcast a broader range of sport than any comparable service".

55. This attempt to conflate regulatory conditions across multiple services and to discharge one of its primary network's distinctiveness obligations via a secondary digital network directly departs from the Charter and Agreement that gives each BBC service a distinct remit. It also departs both from the historic service licence regime which gave them separate service obligations and from Ofcom's draft Operating Licence. We suggest that the BBC should be expressly instructed to correct this approach in its finalised Annual Plan in order to acknowledge the appropriate differences between BBC services' objectives, service budgets, audience compositions, potential for beneficial public purpose impacts and platform availability¹⁹.
56. We would also query how it is possible for the BBC to cover an additional 30 sports on 5 live sports extra which are not covered on 5 live, given the overflow channel's inability to acquire its own sports rights, and requirement to function solely as a platform for live sports rights originally acquired and intended for broadcast on 5 live. These constraints function as important competitive safeguards to ensure that the BBC's market dominance in speech radio does not increase further, to the exclusion of independent provision.
57. The new Charter and Agreement had led Wireless Group to anticipate an extension of these distinctiveness safeguards, rather than the apparent diminution. In particular, the Agreement states that in relation to radio, "Ofcom must have particular regard to the desirability of setting or changing requirements ... to broaden sports coverage, to better support sports which currently receive less broadcast coverage."
58. Attempts to encourage the BBC to broaden its sports output or not new – and neither are BBC assertions that they are doing so. In 2012, 5 live was directed by the BBC Trust to "develop its provision of a range of sports, including those of a minority interest", on the basis that "other sports should receive more representation" and "there is scope for 5 live to provide more coverage of other sports and sometimes focus less on football in its discussion programming and sports news". The service licence was amended to stipulate that coverage of minority interest sports should feature at "peak listening times". The Trust also directed BBC management to "signpost and increase the awareness of the wide variety of sports that [5 live] covers". The Trust also ruled that these obligations should be met by 5 live itself, rather than sports extra.²⁰
59. To assess the BBC's progress, YouGov's 2015 speech radio research study asked listeners to estimate what percentage of 5 live's total sports content consists of football. In 2011, listeners responding to an identical research question estimated the proportion to be 67%²¹. Figure 5 (above) shows that listeners' estimate of the proportion of sports output which consists of football was unchanged at 67% (as denoted by 30% of all output perceived to comprise football versus 15% non-football).
60. The BBC Trust continued to seek to address this issue, with its August 2015 speech radio review noting that "[5 live's] sports discussion programmes represent a good opportunity to mix minority interest sports with mainstream sports in order to grow listener awareness

¹⁹ The BBC has also conflated Radio 4 and 4 Extra, whereas other BBC digital services including 6Music and 1Xtra rightly receive their own sections.

²⁰ Extracted from BBC Radio 5 live service licence and BBC Trust, 'Service Review of 5 live and 5 live sports extra', January 2012

²¹ BritainThinks, April 2011

and interest in the former”²². Two years on, a review of 5 live’s schedule indicates that little has changed. As well as broadcasting significant live football commentary across weekends and weekday evenings, 5 live also devotes significant airtime to football at times when it does not have any live rights. This includes dedicated football chat shows such as The Monday Night Club (7-9pm on Mondays) and the Friday evening edition of 5 live Sport (Fridays 7-10pm).

61. We recommend that Ofcom reinstates requirements for 5 live to “cover sports not widely accessible on UK radio” and to provide coverage of sports of minority interest at peak listening times, given 5 live’s unique ability to deliver a major public purpose impact in its coverage of such sports in light of its budgetary resources, ubiquitous platform availability and substantial audience reach. We also recommend that the proposed new BBC commitment for live commentary on 50 sports per year should apply solely to 5 live given the important prohibition on 5 live sports extra acquiring its own rights.

Maintaining a distinctive remit for 5 live sports extra

62. The attempting conflating of 5 live and 5 live sports extra’s remits and regulatory commitments has potential to result in a similar diminishment of the BBC’s contribution to speech radio distinctiveness. Key safeguards which appeared in the historic BBC Trust 5 live sports extra service licence but are omitted by Ofcom from the new Operating Licence include the following:
 - “5 live Sports Extra should exploit sports rights owned by the BBC that cannot be accommodated by BBC Radio 5 live or Radio 4 Long Wave. However, it should not provide an additional outlet for which the BBC would bid for rights against commercial broadcasters.”
 - “It should offer commentary based coverage of all the events and matches it covers.”²³
63. It is important to note that each of these historic safeguards has come about in spite of – rather than as a result of – internal BBC strategy. Whether imposed by the Secretary of State as conditions of 5 live sports extra’s statutory approval in 2001, or reinforced by the BBC Trust’s 2015 decision in 2015 not to approve an extension in 5 live sports extra’s service remit – these commitments have helped to maintain service distinctiveness and to ensure that the development of independent speech radio provision is not undermined.
64. Seeking to dispatch its minority sports commitments via 5 live sports extra would place the BBC in conflict with 5 live sports extra’s historic service licence, which requires it to act as an overflow service for rights already held by 5 live and Radio 4. It would also contradict the historic position taken by the BBC Trust, who in 2012 required that 5 live’s commitments to minority sports coverage should be met by 5 live, rather than by 5 live and 5 live sports extra in combination²⁴. More recently, the Trust blocked a second attempt in four years to expand 5 live sports extra’s remit to include additional sports coverage²⁵.

²² BBC Trust, ‘Service Review of Radio 4, Radio 4 Extra, Radio 5 live and Radio 5 live sports extra’ August 2015, p. 32

²³ BBC 5 live sports extra service licence, April 2016

²⁴ BBC Trust, ‘Service Review of 5 live and 5 live sports extra’, January 2012

²⁵ BBC Trust, Assessment of proposed changes to BBC Radio 5 live sports extra, October 2015

65. We recommend that Ofcom’s finalised Operating Licence should increase the number of regulatory obligations for 5 live sports extra from the current zero, to include appropriate safeguards against a dilution of its distinctive remit and direct competition with independent speech radio broadcasters for finite sports rights. Specific recommendations are provided at the conclusion of our answer to this question.

Developing a protocol to govern the BBC’s approach to acquiring radio sports rights

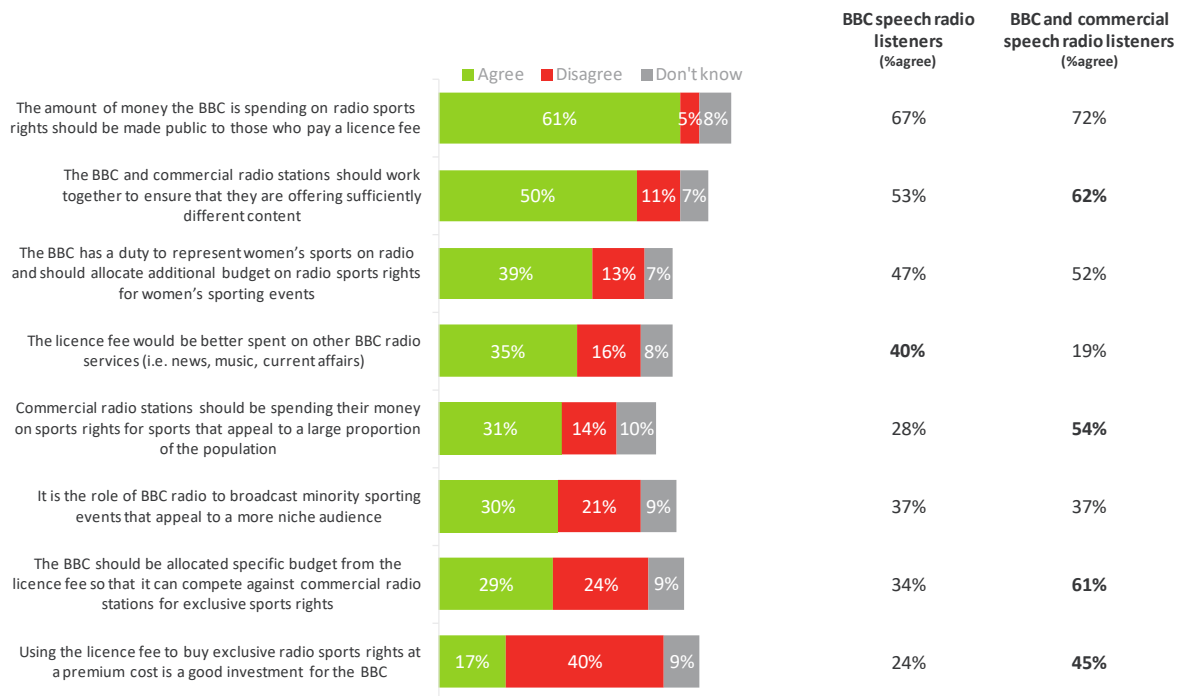
66. As the operator of talkSPORT, Wireless Group frequently finds itself in an unequal contest with BBC Radio in seeking to acquire commentary rights for premium sporting events. Unlike equivalent music radio production inputs, sports rights are in finite supply and the level of competitive demand has a material impact the cost of acquisition. The availability of similar coverage on another channel also affects achievable audience levels – with many listeners preferring ad-free coverage on the BBC where this is available.
67. Historically, the principal area of competition for radio sports rights between the BBC and smaller providers has related to football (for example men’s Premier League, Champions League and England International football), however with the launch by Wireless Group of talkSPORT 2 in 2016, this has been extended to other sports such as cricket, rugby, tennis, motorsport, golf and horseracing. In general terms, the sports rights procurement strategy for talkSPORT 2 has been to target events which can boast a certain level of UK audience interest and which are ideally not the subject of significant coverage on BBC services.
68. According to financial information previously published by the BBC Trust, 5 live’s radio sports rights budget is larger than the combined programming budgets of talkSPORT and talkSPORT 2. In 2011, a previous Controller of 5 live described its sports rights budget as “extremely large”. The BBC Trust reported 5 live’s sports rights budget in that year as totalling £13m and by 2015 it appeared to have grown to £16m²⁶. It is also worth noting that this may exclude sports rights expenditure related to Test Match Special. Our historic understanding is that Premier League rights account for a large share of this expenditure.
69. The general budgetary disparity between the BBC and independent speech radio providers has clear competition implications, since it presents a clear barrier to independent providers in seeking to operate on a level playing field with the BBC. The financial data also suggests that the BBC has led the way in spurring sports rights cost inflation within the speech radio sector.
70. In addition, the BBC’s extensive television and online operations give rise to a potential ability for the BBC to reallocate budgetary resources between different services. We have low visibility as to how the BBC behaves in practice this regard, however we note that it regularly announces acquisitions of radio rights in tandem with accounting the acquisition of association TV rights. Such approaches are unavailable to independent speech radio operators and if not handled appropriately they have the potential to distort significantly the valuations ascribed to radio sport rights.
71. At times, 5 live’s preoccupation with premium sports rights appears to be part of a calculated strategy to keep sports fans within a BBC walled garden, rather than enabling complementary independent provision to flourish. A good example of this came earlier this month, when Roger Federer secured an historic 19th Grand Slam title at Wimbledon,

²⁶ Adrian Van Klaveren on Victoria Derbyshire, 15 September 2011; BBC Trust, ‘Service Review of 5 live and 5 live sports extra’, January 2012; BBC Trust, ‘Service Review of Radio 4, Radio 4 Extra, Radio 5 live and Radio 5 live sports extra’ August 2015, p. 36

yet faced the ignominy of the exclusive radio rights-holder the BBC being unable to accommodate continuous live coverage on either 5 live or 5 live sports extra, due to conflicting rights commitments to Formula 1 and Test Match cricket for the first part of the Final.

72. Similarly questionable is the conduct of 5 live on those rare occasions when a premium sporting event is taking place for which 5 live does not hold rights. On occasions when talkSPORT holds exclusive commentary rights for a Premier League match, and 5 live does not have conflicting commitments such as Formula One, we have noted a tendency of the BBC station to provide an extended studio chat programme focused on the football match carried on talkSPORT. This will include extended updates from the stadium, thereby giving the impression of continuous coverage.
73. These examples of rights warehousing or of seeking to duplicate coverage on independent channels diminish the variety of speech radio programming available on a national basis in the UK. Research suggests that this runs counter to the wishes of licence fee payers. 50% of those asked by YouGov in 2015 agreed that the BBC and commercial radio stations should work together to ensure that they are offering sufficiently different content and just 11% disagreed. Agreement increased to 62% amongst people who listened to both BBC and commercial speech radio stations. Such examples also clearly highlight the BBC's capacity to accommodate additional diverse sports coverage on its main channel rather than seeking to discharge its commitment to underexposed sports on sports extra.
74. YouGov's 2015 speech radio research identified audience concerns with the BBC's radio sports rights procurement approach. In particular, only 17% of respondents agreed that using the licence fee to buy exclusive sports rights at premium cost is a good investment for the BBC. 39% agreed that the BBC has a duty to represent women's sports on the radio and that it should allocate additional budget to women's sporting events. This increases to 47% amongst those who listen to BBC speech radio, and to 52% amongst those who listen to both BBC and commercial speech radio stations. There was also support for a notion that the BBC should broadcast more niche sporting events – findings that mirror Ofcom's distinctiveness research for this consultation. These findings are set out in Figure 6.

Figure 6. Attitudes towards radio sports rights

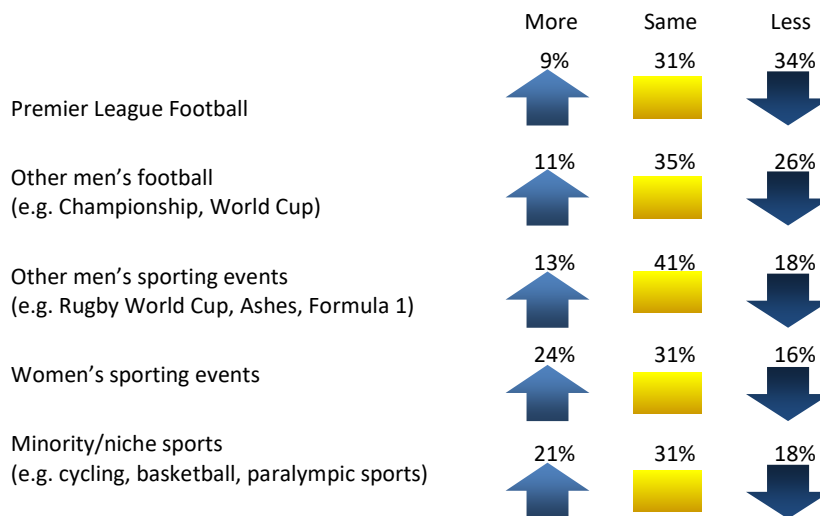


Source: YouGov, speech radio market research, January 2015

Base: All Nat Rep (1087); Listeners of BBC (non-commercial) only (464), Listeners of BBC and commercial (57)
 Q. Please take a look at the following statements and tell us to what extent, you agree or disagree with each

75. YouGov's research also revealed support amongst the UK population for a reduction in the resources allocated by BBC radio to football (including Premier League), with a balancing redistribution towards other sporting events, including women's and niche sports. Whilst men would like to see more or the same amount of resource put towards football, women would like to see more allocated to women's sporting events. The findings summarised in Figure 7 suggested that 5 live's current expensive focus on Premier League and other premium sports rights acts as a barrier to non-listeners who could be attracted by a fresh approach.

Figure 7. Attitudes towards allocation of BBC resources (budget/broadcast time)



Source: YouGov, speech radio market research, January 2015

Base: All Nat Rep (1087)

Q. Now thinking about the different sports that the BBC could spend its radio sports rights budget on; in your opinion should it allocate more, less or the same amount of resources to the following areas, compared to what it is doing currently? This could be in terms of budget and/or broadcast time.

76. In relation to rights exclusivity, there would be clear benefits in requiring the BBC to waive exclusivity provisions if these are inserted into rights contracts by rights owners. This simple step would go a significant way towards arresting historic inflation in radio sports rights costs and increasing access to live sports coverage by independent providers. Currently BBC management tend to hide behind sports governing bodies in defending their acquisition of exclusive rights, for example arguing that “the Premier League determine how they want that process to run”²⁷.
77. We also suggest that the BBC should be required to publish its total sports radio rights expenditure by individual service, and also that it should break out individual expenditure on events costing more than £150k per annum – in line with the Charter threshold for talent pay disclosures. Such disclosure of radio rights fees will also ensure a consistent approach with television. For example the £179.7m spent to renew the BBC’s Premier League highlights agreement for Match of the Day was disclosed in a news article on the BBC’s own website²⁸.
78. YouGov’s research revealed that 61% of people believe that the amount of money the BBC is spending on radio sports rights should be made public to those who pay a licence fee. Just 5% disagreed, and agreement levels increased amongst BBC speech radio listeners, as well as BBC & commercial speech radio listeners. A precedent has been set for BBC radio sports rights expenditure to be published in the context of the BBC Trust’s service reviews, and so we advocate that this should be formalised on an ongoing annual basis.

²⁷ Neil Midgley, ‘Jonathan Wall: ‘Our future is not in doubt partly because Hall set us up’, The Observer, 23 March 2014

²⁸ <http://www.bbc.co.uk/sport/0/football/18205519>

79. Aside from competitive considerations, a potential benefit of defining the BBC's radio sports rights procurement approach would be in addressing the skewed perceptions of 5 live as a football dominated channel which were highlighted in Figure 2. Wireless Group is not suggesting that the BBC should be prohibited from acquiring football commentary rights, however the lack of a strong news identity for 5 live does indicate that its focus on premium men's football events has constrained the BBC's ability to deliver other public purpose objectives.
80. We recommend that the BBC be required to develop and publish an updated protocol for the acquisition of radio sports rights, with measures to include benchmarking of expenditure levels; a commercially rigorous process for valuing radio sports rights; an emphasis on acquiring rights which are of lower interest to independent broadcasters; transparency on rights fees paid; and a requirement to waive exclusivity provisions in the event that these are inserted into radio sports rights contracts by rights owners.

RECOMMENDATIONS – PUBLIC PURPOSE 3:

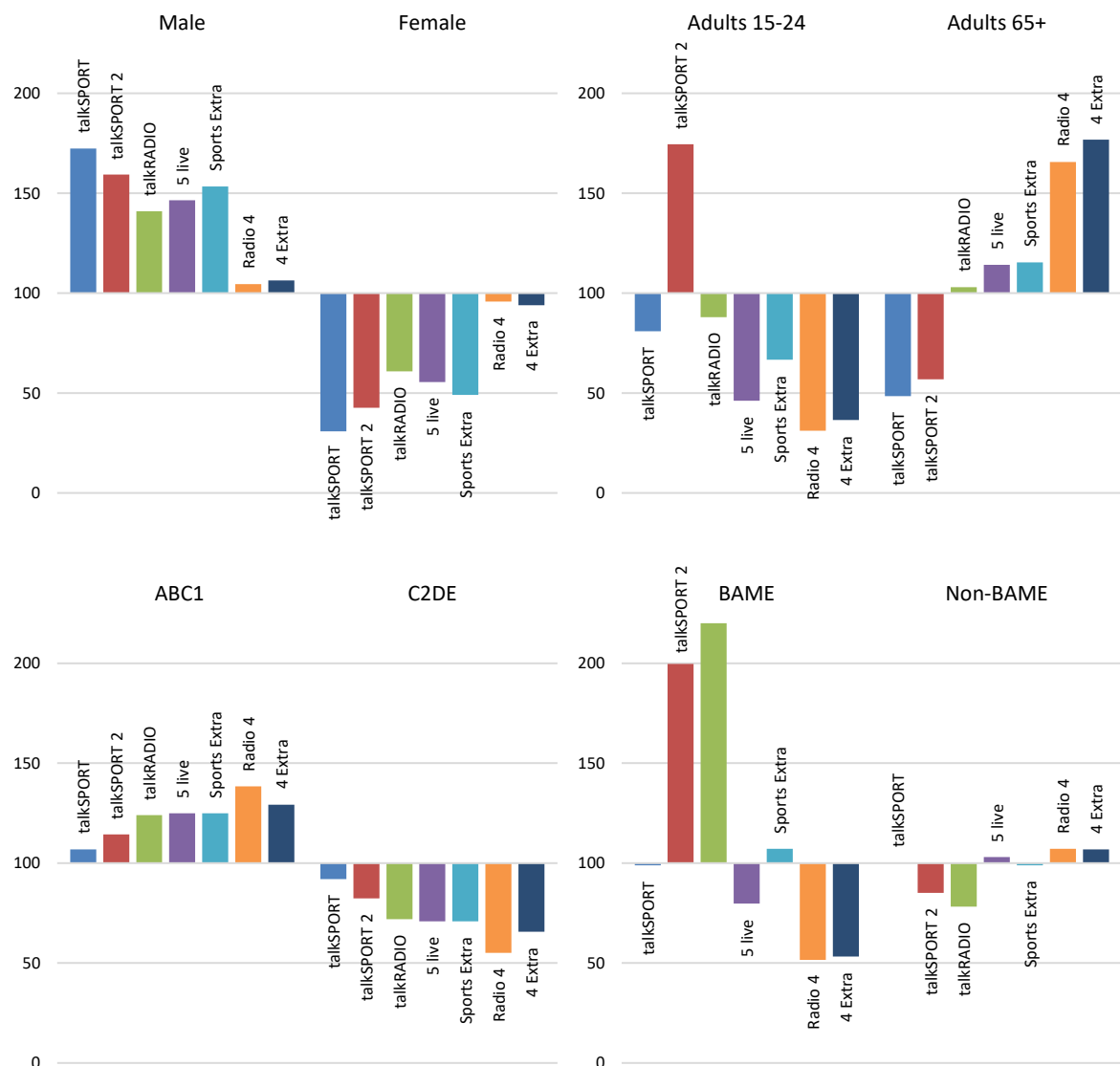
- (d) The finalised Operating Licence should include enhanced requirements for coverage of underexposed sports on 5 live, in line with DCMS's Framework Agreement recommendation, to include:
- i. clarity that the BBC's mission of providing underexposed sports coverage must be fulfilled by 5 live – given its strong distribution arrangements, budgetary resources, wide availability and audience reach;
 - ii. a requirement for 5 live to provide full event live commentary on a minimum of 50 sports per annum (the figure given by the BBC in its Annual Plan), up from 20 per annum;
 - iii. a requirement to avoid audience perceptions of the station as football-dominated, thereby ensuring that it provides an effective platform for coverage both of news and of other sporting events.
- (e) The Operating Licence should also maintain appropriate definition concerning 5 live sports extra's remit to enable independent provision to flourish, to be achieved via:
- i. Maintenance of the prohibition against 5 live sports extra acquiring its own sports rights;
 - ii. Maintenance of the prohibition against 5 live sports extra providing programming other than live sports commentary;
 - iii. Making its primary function to act as a part-time overflow service from 5 live during major sporting events (such as the upcoming 2018 Winter Olympic Games);
 - iv. Maintenance of the prohibition against scheduling recurring programmes in consistent timeslots or seeking to become "the home of" specific sporting events.
- (f) The BBC should be required to develop and publish an updated protocol for the acquisition of radio sports rights, with measures to include

- i. Annual radio rights spending to brought into line with equivalent expenditure by independent free-to-air speech radio providers;
 - ii. A commercially rigorous process for valuing radio sports rights, so as to ensure that the BBC does not overspend or contribute towards price inflation in the market;
 - iii. An emphasis on acquiring rights which are not of interest to independent broadcasters, or which are likely to be commercially challenging for other broadcasters to exploit;
 - iv. A requirement to waive exclusivity provisions in the event that these are inserted into radio sports rights contracts by rights owners;
 - v. Annual disclosure of the BBC's annual expenditure on sports rights by service, along with an itemised list of all events subject to radio rights expenditure of more than £150k per annum
- (g) Ofcom should prohibit the BBC from conflating multiple services in reporting on the delivery of its regulatory obligations in its Annual Plan and other BBC documents, requiring each service to be considered individually as befits their separate remits, budgets and distribution arrangements and in line with the approach in the Charter and Framework Agreement

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?

81. Audience data demonstrates that the BBC's current speech radio offering does not evenly reflect, represent and serve the diverse communities of all of the UK's nations and regions. The Annual Plan also omits any obvious strategies to address this, with the Annual Plan stating in relation to 5 live and 5 live sports extra that they "will continue to review their schedules, talents and on-air contributors to reflect the diversity of the UK". There is no reference to how Radio 4 and Radio 4 Extra will respectively improve the breadth of their respective audience appeal.
82. RAJAR analysis set out in Figure 8 clearly demonstrates the BBC's failure to provide speech radio services whose aggregate audience appeal reflects the UK population. Compared with the wider population, BBC speech radio listeners are more likely be male, aged 65+ and ABC1 social grade.

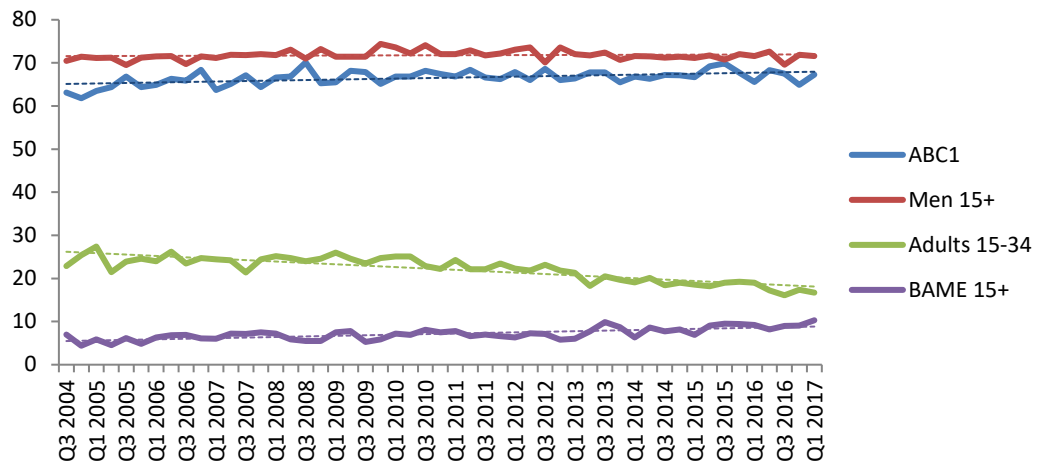
Figure 8. The BBC's speech radio audience profile does not reflect the UK population (Index = 100)



Source: RAJAR Q1 2017

83. Of particular concern is the skewed audience appeal for 5 live, given that it is supposed to act as BBC Radio's primary home of continuous news coverage. As shown in Figure 9, 5 live has been unsuccessful in attempts to increase its appeal amongst women and those in C2DE socio-economic groups. 5 live's appeal to younger listeners is also in decline, and although there has been an increase in listeners from BAME backgrounds, this also reflects changes in the population profile over this time. The BBC's unbalanced appeal towards more affluent listeners also makes it harder for independent speech radio providers to attract audience groups sought after by advertisers.

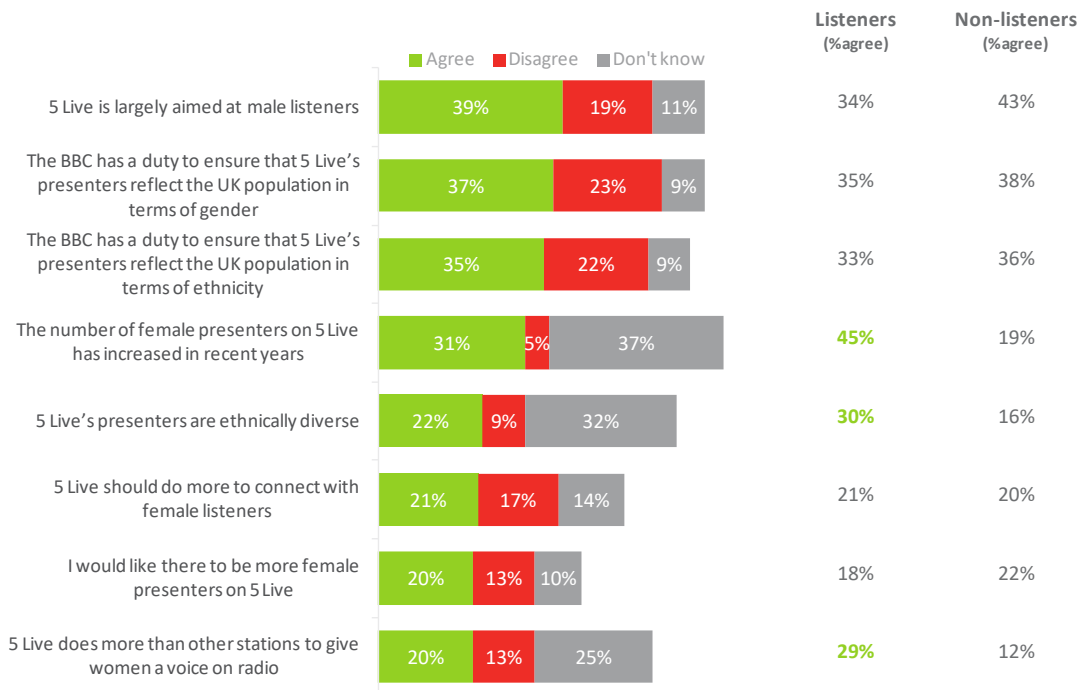
Figure 9. 5 live's male and ABC1 audience profile over time (linear trends added)



Source: RAJAR Q3 2004 – Q1 2017

84. 2015 speech radio audience research by YouGov revealed strong support for the notion that 5 live should be more representative of the UK population as a whole – whether in terms of gender or ethnicity. The relevant findings are shown in Figure 10. Further analysis enclosed within YouGov’s full report also revealed that perceptions of 5 live as male-orientated were particularly prevalent amongst women – and that female listeners were particularly likely to support steps being taken to achieve more balanced appeal.

Figure 10. Perceptions of 5 live’s presenter line-up and breadth of audience appeal



Source: YouGov, speech radio market research, January 2015

Base: Listeners of Radio 5 live or non-listeners who are familiar (317), (Listeners of Radio 5 live=144, non-listeners who are familiar=173)

Q. And to what extent do you agree or disagree with the following statements about BBC Radio 5 live’s presenters / listeners?

85. The BBC Trust similarly found that the BBC’s speech radio offering delivers unbalanced audience appeal and that 5 live is afflicted by engrained perceptions as to its predominant male focus amongst the general public.
86. The BBC Trust’s August 2015 speech radio review concluded that “Whilst sport is clearly an essential part of 5 live’s proposition and is highly valued by its listeners, we feel that regular on-air promotion of the station as ‘the home of football’ might help to weaken the perception of the station as a news outlet amongst listeners.” The Trust also urged 5 live management to “continue to find ways to appeal to women and BAME listeners, particularly within news programmes and to improve participation from women in phone-ins and as expert contributors.”²⁹
87. These are challenges which the BBC has hitherto failed to address to any measurable extent.

²⁹ BBC Trust, Review of the BBC’s speech radio services, August 2015

RECOMMENDATIONS – PUBLIC PURPOSE 4:

- (h) The Operating Licence should specifically task the BBC with bringing the overall audience appeal of its speech radio services into closer alignment with the demographic make-up of the UK population
- (i) Specific actions should be taken to achieve measurable increases in 5 live's appeal to young, female, C2DE and BAME listeners

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?**

- 88. We note that Ofcom has not committed to consulting on every occasion that it amends the Operating Licence. Wireless Group considers that Ofcom should have a presumption towards consulting on such changes, and that changes that could affect sectors in which the BBC has a discernible market impact should be consulted upon as a matter of course.

Questions about performance measures**Q.7 Do you agree with our proposed overall approach to performance measurement?**

- 89. Wireless Group's response emphasises the need for the BBC regulatory framework to take a holistic view of the needs of the wider speech radio market, and to consider the net contribution to public purpose objectives made by independent providers. In line with this approach, it is important that Ofcom develops a performance measurement framework capable of weighing BBC public purpose contributions against any negative competitive consequences.
- 90. It remains our conviction that if the BBC places a heightened emphasis on distinctiveness and provides space for the independent speech radio sector to develop, then the beneficiaries will be licence fee payers, who will experience an expansion in the availability of varied and high-quality spoken word audio content on a free-to-air basis.

RECOMMENDATIONS – OFCOM’S PERFORMANCE MEASUREMENT APPROACH:

- (j) Ofcom’s performance framework should be capable of taking a holistic view of the wider speech radio market
- (k) Additional performance considerations should include:
 - a. The net public purpose contribution provided by individual BBC services having taken account of any negative impacts on independent provision;
 - b. The value for money exhibited by specific programming spend when compared with independent providers (emphasis on cost benchmarking);
 - c. The BBC’s success in exposing audiences to high quality speech radio programming available from independent broadcasters.

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

- 91. Ofcom’s proposed measures of availability, consumption, impact and contextual factors should be considered holistically, with regard to the wider market. Our submission has already emphasised the importance of distinctiveness and the risks of negative consequences to the BBC’s actions. In addition, we wish to address three further aspects of the BBC’s operations in which considerations as to the wider market are of significant importance in determining overall levels of performance.
- 92. In a sector such as speech radio, where the BBC enjoys an 85% audience share, there is a risk that the BBC’s advantages could engrain a structural dominance that lock listeners into a BBC walled garden and thwart the delivery of appropriate choice and plurality on behalf of listeners. Accordingly three additional areas that merit additional consideration are:
 - The BBC’s online audio strategy;
 - Cross-promotion of independent speech audio content; and
 - Value for money and cost benchmarking.

A BBC online audio strategy which is developed in the broad interests of the wider industry

- 93. A potential key area of concern arising from the BBC’s Annual Plan relates to its stated intention to “reinvent and grow audio”.
- 94. Wireless Group agrees that the BBC can play a leadership role in the development of the UK audio market on connected devices, however it is important that this is approached with a view to benefitting the whole sector. An example of how this can work well came in 2011, with the launch of the UK Radioplayer project between the BBC and commercial radio. This was described as “a pan-industry world first by bringing radio together online in

one place”³⁰. This included functionality to allow listeners of – for example – BBC Radio 5 live to discover complementary content from providers such as talkSPORT (and vice versa).

95. In contrast to the collaborative and responsible approach that underpinned UK Radioplayer, the BBC’s subsequent online strategy has placed minimal emphasis on initiatives that benefit independent providers. In particular, the online proposals set out in the Annual Plan – plans which were also trailed in the BBC’s Charter Review submissions – appear to envisaged for the exclusive use of BBC services. The BBC’s emphasis is on developing its proprietary iPlayer Radio platform, rather than the pan-industry UK Radioplayer.
96. Yet there is also contradiction at the heart of the Annual Plan, since whilst outlining a platform strategy for audio based on excluding independent content providers, its online strategy for sports content refers to the possibility of accessing third party content (although it is unclear whether this includes independent speech radio operators). The BBC states “We will aim to include some more third-party content on BBC Online, giving a broader range of sports and national leagues the ability to live-stream their sporting events, and building on the potential opportunity for niche interest sports to reach a wider audience. We will assess if this change is material.”
97. Elsewhere, and not referenced directly in the Annual Plan, a recent blogpost by BBC Director of Radio and Education James Purnell cited the BBC Board’s decision to relax restrictions on podcasts, with the Corporation to release original commissions in the format for the first time. Purnell is quoted as saying: “I’m sure there were good reasons for the regulation that limited us doing podcasts that weren’t for broadcast. But it had a consequence; it stopped us innovating. Having been first into podcasts, the BBC had to narrow its focus. Now we’ve been given scope to experiment.”³¹
98. The BBC already has a significant presence on podcast platforms, and is by some distance the UK’s leading provider of such content. It does not appear that the BBC has properly considered the potential market impact of the further expansion in spoken word audio content. Given the BBC’s already considerable market share and unrivalled funding, the BBC needs to ensure that it does not choke off opportunities for independent providers by flooding the market with ad-free speech content.
99. In terms of wider market development, it is also unlikely that the BBC will be able contribute towards tackling the greatest obstacle to the development of a successful UK podcast market, which stimulating increased interest in the format amongst agencies and advertisers. Instead the development is likely to engrain expectations amongst consumers that podcasts will not include advertising interruptions or commercial messaging.
100. Underpinning each of these BBC online initiatives is a recognition that consumers are experiencing a rapid expansion in the availability of audio content delivered through streaming and download services. Advances in connected device functionality and fixed line and mobile internet networks are altering user behaviour and the distribution models available to audio content producers.

³⁰ BBC Media Centre, ‘BBC and commercial radio in world first with launch of Radioplayer’, March 2011, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2011/03_march/31/radioplayer.shtml

³¹ See <https://medium.com/bbc-radio-education/getting-the-space-to-innovate-ba5af9ed8e19>

101. However whilst the technology and user behaviour insights that have given rise to these initiatives may be well founded, they exhibit an undeveloped awareness of the BBC's potential for negative market impact as well as its responsibility – in the words of the historic BBC Online service licence – to aid discovery of “content from other providers”³².
102. In its current form, the BBC's proposal to develop iPlayer Radio appears to entail leveraging the dominant strength of the BBC's content offering and cross-promotional clout in order to secure consumer adoption a platform that excludes the BBC's competitors. It bears many of the hallmarks of anti-competitive practice by a near-monopolist and Ofcom must ensure that its performance measurement framework does not inadvertently incentivise and reward such approaches.

Cross-promotion of independent speech audio content

103. Another strategy which the BBC should deploy if it wishes to maximise the availability, impact and consumption of public purpose focused content is to extend its internal cross-promotional activities to include noteworthy free-to-air speech radio content from independent providers. For example, this could include a high quality factual programme broadcast by talkRADIO or a sporting event not available on BBC radio which is carried on talkSPORT 2.
104. In addition to advantages of funding and distribution, one of the key structural benefits enjoyed by the BBC's speech radio stations is access to significant cross-promotion from other BBC services. For example, 5 live receives major promotion across other BBC channels for its football commentary. Aside from reinforcing skewed audience perceptions of the station, this activity also extends the BBC's dominance by locking speech radio listeners into a BBC walled garden.
105. Types of cross-promotional support received by 5 live include promotions via BBC television (e.g. news bulletins, weather bulletins and sports programming such as Match of the Day), BBC radio (e.g. sports news and features on network and BBC local radio) and BBC online (e.g. the BBC Sport website). Examples are shown below and in each case the fixture promoted was also the subject of full match live commentary on talkSPORT under official rights arrangements with the FA and FIFA respectively.

³² BBC Trust, BBC Online Service Licence, April 2016



Example BBC Television screengrab



Example BBC Online screengrab

106. These cross-promotional tactics have contributed towards the situation seen in Figure 11, which is taken from YouGov's 2015 speech radio research, which is that the BBC overwhelmingly dominates top of mind unprompted associations for speech radio amongst the UK population.

Figure 11. “Which brands/stations first come to mind when you think of speech radio (non-music content)?”



Source: YouGov, speech radio market research, January 2015
Base: All Nat Rep (1087)

107. The second example, above, also highlights contradictions between the preferential cross-promotion reserved for the BBC’s own services in radio, and its willingness to provide relevant cross-promotion for third party television channels. As the image shows, the BBC was happy to signpost the availability of World Cup television coverage on competing channels (including the TV channel operated by talkSPORT’s then parent company UTV), but drew the line at signposting the availability of competing radio coverage.
108. This example reinforces the need for “more consistency” in the BBC’s approach to providing links to third parties – an issue highlighted by the BBC Trust’s 2013 online service review but seemingly not yet embraced by BBC management³³. Our proposal is that the BBC should actively look for opportunities to provide relevant cross-promotion for independent speech radio content across all of its platforms and services.
109. Such an approach would also serve to meet audience needs identified in Ofcom’s distinctiveness research. Ipsos Mori noted potential interest in the BBC providing a “Greater range of sports coverage, such as sports that involve non-UK teams”, and yet there was no recognition that the launch of talkSPORT 2 in 2016 has significantly extended the range of sports coverage available on national radio, including coverage of non-UK sporting events.
110. One of the participants in the research specifically quoted interest in the availability on national radio of Indian Premier League cricket, which is actually one of the sporting events broadcast live on talkSPORT 2. We suggest that the BBC should give consideration to how

³³ BBC Trust, Service Review of BBC Online, May 2013

it can play a role in signposting the free-to-air availability of content like this from providers such as talkSPORT 2:

“I find BBC 5 Live Extra frustrating. If you’ve got Sky, people can watch cricket whenever they want to but, with BBC 5 Live Extra, you can only listen to a match the if UK are involved. Sometimes they’ll have finals. For example, there’s the Indian IPL, there’s a lot of interest in the world, if it was on 5 Live, I’m sure people would be interested but they’re not covering it.”³⁴

111. In addition, and given the significant negative impact of BBC cross-promotion for its live sports radio coverage on independent providers, as well as need to address skewed audience perceptions of the station, we advocate a shift in cross-promotional emphasis towards 5 live’s news coverage. This is also consistent with the following action for BBC management set out in the BBC Trust’s August 2015 speech radio service review:

“In order for listeners and stakeholders to have greater clarity about the role and remit of 5 live, which is primarily as a news service, we ask the BBC to consider the positioning of the station, both in cross-promotion from other services and within the station itself, in order to challenge the perception that its role is primarily as a sports broadcaster.”³⁵

Value for money and cost benchmarking in speech radio production

112. The Annual Plan notes the importance of the BBC’s “efficiency agenda”, and we suggest that in measuring levels of programming spend by the BBC, Ofcom should monitor levels of value for money delivered by the BBC, whilst also ensuring that it actively seeks opportunities to benchmark its speech radio costs against those of independent providers. This will ensure that the performance measurement framework does not inadvertently reward inefficient or market-distorting content investments.
113. A direct comparison of the budgets available to BBC and Wireless Group speech radio stations highlights the scale of the publicly-funded intervention in speech radio, and goes a significant way towards explaining the BBC’s overall listening share. [X]. This is despite talkSPORT’s programming budget [X] funding renowned presenter talent as well as sports rights.

³⁴ Ipsos Mori, ‘BBC Distinctiveness: Research Prepared for Ofcom’, June 2017

³⁵ BBC Trust, ‘Service Review of Radio 4, Radio 4 Extra, Radio 5 live and Radio 5 live sports extra’ August 2015, p. 29

Figure 12. Comparative cost base for BBC and Wireless Group speech radio services (£m)

[REDACTED]

[REDACTED]

Source: BBC Annual Report and Accounts 2016/17; Wireless Group management accounts.

114. Historically, a major reason for 5 live's inferior value for money to other speech radio stations has been its expenditure on sport programming. In 2010/11, despite a requirement for 75% of 5 live's programming to consist of news, news received just 46% of attributable programming spend, compared with 54% for sport. As a result in 2012 the BBC Trust recommended that BBC Radio 5 live rebalance expenditure away from sport and towards news³⁶.
115. In the subsequent years, the BBC made negligible progress, with the BBC Trust reporting sport expenditure at 52% of attributable programming spend in 2014/15, against 48% for news. The failure to achieve a more significant realignment was the result of an increase in 5 live's sports rights budget from 29% to 32% of total programming spend, amounting to an estimated £16million per annum in 2015 compared with £13m in 2011³⁷.
116. With sports output making up just 25% of programming time, compared to 100% on talkSPORT and talkSPORT 2, and with 5 live's total sports programming expenditure considerably higher than the independent commercial station, [REDACTED]. It is difficult to account for this disparity, which comes despite the BBC station enjoying a base in Salford where labour costs are typically lower than in talkSPORT's studio home of London. This finding suggests strongly that there are opportunities for increased efficiency on the part of the BBC station.
117. Given the high cost of 5 live's content, and the resulting efficiency and competitive implications, Wireless Group has made a number of offers to collaborate with the BBC on a speech production costs benchmarking exercise. This followed a 2012 call by the BBC Trust following its review of BBC Radio 5 live and 5 live sports extra for BBC management "to continue its work to benchmark the costs of its radio services"³⁸.
118. [REDACTED]. We suggest that the future performance measurement framework should incentivise and reward participation in such exercises in the new Charter period and can confirm Wireless Group's willingness to contribute.

³⁶ BBC Trust, 'Service Review of 5 live and 5 live sports extra', January 2012

³⁷ BBC Trust, 'Service Review of Radio 4, Radio 4 Extra, Radio 5 live and Radio 5 live sports extra' August 2015, p.36

³⁸ BBC Trust, 'Service Review of 5 live and 5 live sports extra', January 2012

RECOMMENDATIONS – PERFORMANCE MEASUREMENT:

- (l) Ofcom’s approach to considering the “availability”, “consumption”, “impact” and “contextual factors” associated with the BBC’s performance should take account of whether the BBC’s actions are benefitting the market as a whole, or being more narrowly pursued in the specific interests of the BBC
- (m) Ofcom should monitor the extent to which the BBC’s online audio strategy is developed to serve the interests of the wider market
- (n) The BBC should be required to provide relevant cross-promotion for independent speech radio content
- (o) Cross-promotion for BBC speech radio services should be aligned with core public service objectives and must not be allowed skew audience perceptions of BBC services
- (p) Ofcom’s performance measurement framework should discourage inefficient or market-distorting programming investments
- (q) BBC speech radio services should be subject to regular cost benchmarking against independent channels in order to support improved value for money and cost efficiency

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?

- 119. Mirroring our response to question 6, Wireless Group suggests that Ofcom should have a natural bias towards consulting on any proposed changes to the BBC performance measures.