



## Consultation response form

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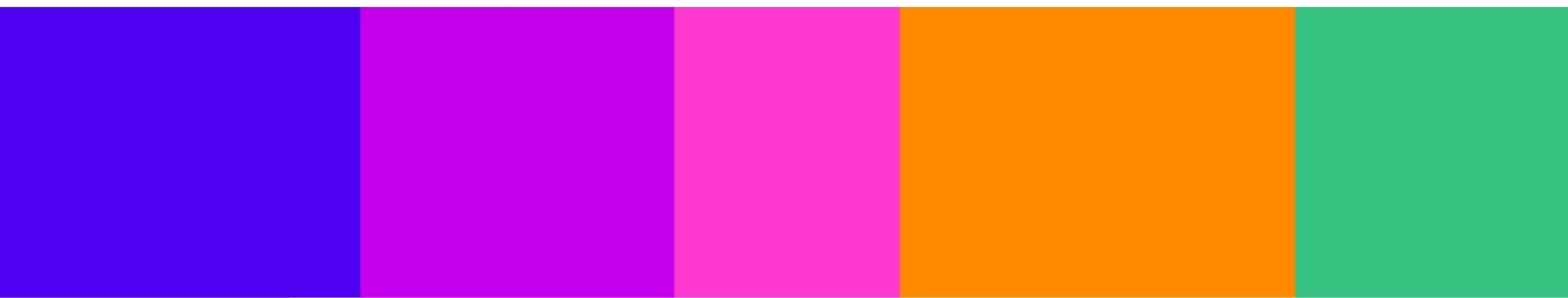
<b>Consultation title</b>	Call for Evidence: Listed events – Implementing the Media Act 2024
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## **BBC Response**

The aim of the Listed Events regime is that sporting events that have a particular national resonance are made as widely available as possible to all UK audiences, irrespective of ability to pay. The 1996 legislation created a framework which has meant that key national sporting events and moments have been broadcast on free-to-air television by the PSBs for the past 25+ years. The benefits are well documented: uniting the UK and its constituent nations and regions in ways very few other things can manage; creating national pride; promoting the nation's well-being; inspiring sports participation; growing the UK's economy and promoting the UK's standing overseas.

We welcome the Media Act 2024, including the changes to the qualifying criteria and to close the "streamer loophole".

However, the Act didn't go far enough. It failed to reflect fully the ways in which audiences access and consume content, and the direction of the sports rights market, missing the opportunity to safeguard thoroughly the policy benefits of Listed Events by protecting digital, on demand rights.

The public value of these rights is clear. At Tokyo 2020 (in 2021) the availability of on demand short-form clips on the BBC Sport website meant, in some instances where a British success happened overnight, a more than eight times increase in audience for the live TV transmission. At the Paris 2024 Olympics digital clips were accessed on the BBC Sport website 67 million times, an increase of more than two-thirds from the Tokyo Games. From May to August - across BBC Sports' portfolio - digital clips were accessed 260 million times. Without regulatory protection commercial providers will buy these types of rights for Listed Events on an exclusive basis and the policy benefits of the regime as a whole will be undercut.

In November 2022 the Government consulted industry on whether the scope of the listed events regime should cover such digital rights. To date the Government has not concluded this review, leaving the regime in limbo.

Moreover, the Media Act has, in seeking to "codify" relatively nascent forms of partnerships for multisport events, potentially undermined audience protections for important events, such as the Olympics and Paralympics.

That said, as has always been the case for the Listed Events regime, the legislation sets only a framework, with delegated authority for Ofcom to set the detail through Regulations and through its Code on Listed Events.

The implementation of the Media Act presents an important opportunity for Ofcom in making Regulations to define "live", "adequate live coverage" and "adequate additional coverage", and in rewriting the Code that underpins the regime, to ensure that, as far as possible, the regime keeps pace with audience expectations and that wide, free and convenient availability to Listed Events for audiences is maintained.

Our response is not confidential.

**Question 1:** *What matters should Ofcom take into account in defining “live’ coverage”? We’d particularly welcome views on:*

- *The existing approach treating coverage shown while the event is in progress as “live”;*
- *Where live coverage of an event begins and ends; and*
- *How the definition may need to reflect new functionalities, e.g. ‘watch from the start’*

Put simply the “live” coverage that needs protection must include everything which allows broadcasters to tell the story of the event. This is how audiences’ expectations are met and how the policy benefits of the listed events regime can be delivered universally, and to the highest number of people.

Of course, the big talking points often come down to key moments: the <10 seconds it takes to run the 100m final, the winning goal in the final of the World Cup etc. For some audiences this is enough. But, for many, for these moments to have meaning and shared value depends on context, of the skilled construction and development of a narrative. The build up, the progress of a rivalry across a season or career etc.

Listed Events are of particular importance to the BBC given our mission to serve all audience and be universal. These events retain a unique power to bring large numbers of people together and attract audiences across a range of demographics. Such events continue to attract audiences to PSB content well beyond traditional “heartland audiences” or just “sports fans”, as can be seen by the level of interest among all audiences in the recent Olympics and Euros.

In the following sections, we outline the key considerations which we believe should inform Ofcom’s approach to determining what coverage should be protected as “live” coverage. Within this framework, we encourage Ofcom to maintain some flexibility given how practices may vary and develop across different events within the List.

1. **The starting point should be the contemporaneous (i.e. as it happens) action.** At a minimum, this is everything included in the world feed of the “event” from the time at which that feed starts being produced to the time it ceases to be produced. For these purposes, “world feed” means the action at the event being recorded with the authority of the relevant rights body for transmission by its licensees. As is clear from the list itself, the “event” is the sporting event in its entirety, e.g. The World Cup, The European Championships – not just the “matches at the European Championships etc.” For the purposes of this document, we refer to this as the “Contemporaneous Live World Feed”. The Contemporaneous Live World Feed would ordinarily cover all “competitive play” as it happens (the “competitive play” being the period of competitive play as determined by the relevant sport’s rules, e.g. from starting whistle to final whistle or from starting gun to crossing the finish line). In addition, the Contemporaneous Live World Feed has, to date, included:

- Quasi-official organised action- ceremonies, singing the national anthem and trophy/medal awards;
- Action involving players outside competitive play but manifestly part of “the event”– teams walking on, teams and official reacting from the sidelines, post trophy award celebrations; and
- Surround sound/build up within the venue immediately before and after competitive play.

2. **The Contemporaneous Live World Feed must be comprehensive.** We caution against any approach that assumes that the Contemporaneous Live World Feed of any listed event will always, and in future continue to, include all of these elements. Ultimately there is a risk to the value of Listed Events for audiences – and for qualifying broadcasters considering whether to bid for rights - if the Contemporaneous Live World Feed does not permit the action as it happens to be conveyed effectively.
3. **Assessing the comprehensiveness of the Contemporaneous Live World Feed.** Overall, in assessing the comprehensiveness of the Contemporaneous Live World Feed, Ofcom should ensure it includes the following alongside all “competitive play”:
  - Quasi-official organised action (e.g. ceremonies, singing the national anthem and trophy/medal awards)
  - Other build up to the action (e.g. introductions, tunnel, dressing room)
  - Crowd involvement and reactions
  - Player, athlete and coaching team reactions
  - Analysis of the action, before / during / immediately after the action
  - Commentary/punditry during any planned / unplanned stoppages during the action (e.g. half time, unexpected pauses in play).
4. **A (comprehensive) Contemporaneous Live World Feed is only the starting point.** There remain further barriers to audiences’ ability to follow and engage with the “live” action in a meaningful way. Those barriers, which are beyond the audiences’ control can be considered in terms of (i) convenience of viewing (i.e. timing and mode of delivery) and (ii) an editorial offer which is engaging for them. Ofcom has the ability and flexibility here<sup>1</sup> to ensure that these barriers are surmountable. As such, we expect Ofcom’s approach to protection of “live” coverage to ensure that:
  - Protection should continue to include different rounds/stages of an event while the competition is ongoing - for example, in the Olympics, the preliminary rounds/heats/finals for each discipline form part of that event. Audiences cannot fully engage with the Men’s 1500m for example without coverage of the heats and semis as well as the final, and so free to air broadcasters need the ability to show these to build the narrative and to repeat them as necessary in the lead up to the final itself. The same is true of tournaments, e.g. the football World Cups, European Championships. Lots of the audience want to engage with a whole tournament, the progression of their national team across multiple matches and moments, as a journey. They want free to air broadcasters to show recaps / key moments from all games (e.g. the Lioness’s path to the World Cup Final 2023 in Australia, the England men’s team path to the Euros Final in 2024).
  - Time zone considerations are accounted for - “contemporaneous live” may be in the middle of the night. In which case watching “contemporaneous live” is not a realistic possibility for many of the UK audience. There is scope for flexibility here – Ofcom note at para. 3.3 of the call for evidence they can make such provision.

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<sup>1</sup> New section 104ZA(1)(a) allows the Regulations made by Ofcom to determine “the circumstances in which the coverage of listed events generally, or of a particular listed event, is or is not to be treated as live coverage.” The current Code on Listed Events recognises that “given the different nature and length of events, no single definition [of “live”] is possible.

- The approach to what is protected as “live” coverage recognises the value proposition for public service broadcasters whilst performing their role of covering listed events to create shared national moments. This is intrinsically linked to the points above (i.e. to meet audience expectations the coverage mustn’t be artificially truncated) but also the rights available to the PSB must allow it to efficiently produce (given the significant sunk costs of rights deals) and deliver an attractive editorial offer.
5. **Ofcom’s definition should include a minimum “flex” offer to complement the “contemporaneous live”.** Given the considerations outlined above and the discretion granted to Ofcom, this is how audiences’ interests will be best served. We suggest that “live” coverage of any event should mean, at a minimum, coverage (whether contemporaneous or flex) during the period commencing from the date on which the comprehensive Contemporaneous Live World Feed of the overall event starts to be produced to the end of the day on the date on which the Contemporaneous Live World Feed of the overall event ceases to be produced **plus** an additional minimum number of hours immediately after (e.g. 48 hours).
  6. **The “flex” captured within this definition could comprise a range of forms of coverage** - delayed coverage (e.g. “watch from the start” - see further below on this), repeated coverage to explain/build narrative through the stages of the event and a short “catch up window” at the end to harness and capitalise on moments of shared national unity. Such types of coverage have long been a standard part of the BBC’s live offer to audiences. [Any flex coverage will be naturally limited – by relevance for the audience, by available outlets and by duration (i.e. during the period of the overall event save for a short number of hours immediately after). Significant opportunities would remain for non-qualifying services to provide coverage during this period and beyond].
  7. **In terms of “watch from the start” specifically, this functionality forms part of the BBC’s strategic distribution model and it is not straightforward to switch on or off for individual programmes.** It has a role to play in enabling audiences to engage with Listed Events as demonstrated at Paris 2024 and Euro 2024. We therefore recommend Ofcom to incorporate such functionality into its approach to defining “live”. However, we remain of the view, as set out above, that it represents just one sub-set of the complementary on-demand offer that must be protected.

**Question 2:** *What factors should Ofcom take into account in defining adequate live coverage? We’d particularly welcome views and evidence on:*

- *The ways in which audiences engage with coverage of multi-sport events and how this has changed over time, and*
- *The considerations that underpin arrangements where both PSBs and providers of non-qualifying services acquire live rights (including from rightsholders).*

First, we think Ofcom should state clearly which events the list multi-sports provisions apply. From the current List we think the Olympics and Paralympics, winter and summer are the Group

A events which count as “multi-sports events”, but it would be helpful for Ofcom to remove any ambiguity on this point.

More substantively, and as raised throughout the legislative process, we have concerns around the potential erosion of protections for audiences to coverage of multi-sport events. We note that under the Media Act there will be automatic authorisation (i.e. no need for Ofcom scrutiny and prior consent) for a non-qualifying service to provide the principal (and perhaps in parts “exclusive”) coverage of a multisport event (potentially entirely behind a paywall) where only “adequate live coverage” is available on a qualifying service. Seeking to codify and pre-authorise partnerships for multisport events in this way, when such deals are relatively new and their value still under evaluation by audiences, PSBs and commercial broadcasters, poses the risk of bad regulation. Ofcom has the ability in defining “adequate live coverage” to ameliorate this risk.

In particular we have serious concerns about the potential consequences of determining “adequacy” by reference only to the “live” coverage available, especially if a narrow construction (i.e. non-comprehensive “contemporaneous live”) is adopted (see response to Q1 above as to why only an expansive definition of “live” is appropriate for today’s audiences.)

All the considerations outlined in Q1 regarding “live” apply, but some are perhaps even more pertinent in the case of multisport events. Most notably:

- Time zones can have a huge impact on audience engagement with the Olympics, as can be seen for example in the differences in viewing figures between the men’s 100m final at Tokyo and Paris.
- The ability for audiences to follow the event in a meaningful way. There are multiple rounds (heats, semi-finals, finals etc.) in each event within the Olympics/Paralympics as well as multi-discipline events (e.g. Heptathlon, Decathlon etc.). Each bit of action must be protected for audiences, including the ability to see action from earlier rounds in the build up to any later rounds/ finals.
- Action is happening in many venues and events simultaneously making “contemporaneous live” viewing an impossibility for audiences (and for broadcasters given scheduling/distribution considerations). Delayed coverage, highlights and clips whilst the Olympics are ongoing are strictly necessary.
- The concept of “watch from the start”, even as a sub-set of on-demand coverage, does not so easily translate onto Olympic/Paralympic events.

For these reasons, we consider it necessary and appropriate for Ofcom to adopt a broad definition of live within its concept of “adequate live coverage”. As per Question 1, the “live” coverage should, at a minimum, include coverage (whether contemporaneous or flex) during the period commencing from the date on which the comprehensive Contemporaneous Live World Feed of the Games commences to be produced to the end of the day on the date on which that Feed ceases to be produced **plus** an additional minimum number of hours immediately after.

If a different definition of “live” for the purposes of multisport events is adopted, it could never be “adequate” for the only coverage freely available to audiences to be in one format (linear TV). This is not how partnership deals are made. It is not how audiences experience the events. It is a

recipe for incomplete regulation which will cause uncertainty in the sector and could lead to a severe mismatch between what audiences expect from free to air coverage, and what PSBs are able to deliver.

Put another way, a narrow interpretation of “adequate live coverage” of the Olympics and other multi-sports events free-to-air, would effectively put these events into a new class (an “A minus” event). Without protection for any alternative coverage (including delayed/replayed coverage or in other formats, e.g. audio) as there is for Group B events, if the event occurs overnight, there is nothing to stop coverage at convenient times for UK audiences being entirely behind a paywall. Again, this belies the purpose of Listed Events, and will negatively impact certain audience groups who can’t afford to pay, undermining the aim of the regime and the ability of public service broadcasters to meet audience expectations.

On the question of the “adequacy” more widely, we make the following observations and provide illustrations from our deal with WBD for the Olympics (details of which we have previously shared with Ofcom):

- The legislative intent behind the Media Act is clear in terms of (i) the ability for Ofcom to increase the coverage protected for PSBs above the minimum two streams and (ii) that PSBs need full editorial freedom.<sup>2</sup>
  - These events happen only every four years, and for some minority sports it is the golden opportunity to showcase their sports, a rare opportunity to engage and inspire people to take them up. It seems hard to justify denying audiences coverage of these sports on the grounds that there is “adequate” coverage of an entirely different Olympic sport, especially when it may be difficult to predict in advance which sports what might peak audience’s interests. A British gold medallist or emerging talent in a “new” Olympic sport can cause a huge spike in audience engagement.<sup>3</sup>
  - The Olympics/Paralympics are unique in terms of the breadth of sports, participants and venues involved. The story-telling through coverage therefore transcends the events (heats/finals of a single event etc and rivalries, e.g. Ingerbritsen v Kerr), extending into narratives about the emergence of new sports and talents, the rise and fall of nations in the medal table and political/global issues (e.g. boycotts, refugee teams etc.) It is impossible to develop these narratives for audiences without full editorial freedom as to the events and moments shown, and how they are sequenced and presented.
- It would be inappropriate for any deal with elements of “exclusivity” for the non-qualifying service to escape Ofcom scrutiny through a “pre-authorisation” gateway. That would go against the grain of the whole listed events regime.

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<sup>2</sup> See Explanatory Notes to the Media Act at paragraph 105 “To protect audience interests, and in keeping with previous deals, adequate live coverage will have to consist of at least two live broadcasts on PSB television programme services. OFCOM are given the power to set this higher if they deem it necessary or appropriate, and could also set requirements around percentage of coverage, or other considerations. OFCOM will be able to ensure editorial freedom for all parties, which would provide PSBs with the flexibility to programme their coverage of listed multi-sport events to show the moments that are the most important to UK audiences.”

<sup>3</sup> In the month or so following Sky Brown’s bronze at Tokyo there was a 30 per cent increase in traffic to the Skateboard GB website with people searching for skateboard lessons and a 200 per cent growth in skatepark searches on the MySkate App.

- Ofcom should recognise that the “adequacy” of coverage from an audience perspective will change over time as audience expectations and behaviours evolve. The fact that rights deals for multisport events are concluded many years in advance exacerbate this. Its framework for assessing adequacy should have in-built flexibility to adapt to audience expectations.

Adequacy must also be assessed against the backdrop of regulatory frameworks within which qualifying services are operating. For example, where it is the BBC (as a “qualifying service”) acquiring rights to deliver “adequate live coverage”, we must ensure the overall value proposition to audiences is appropriate. That value may be entirely different than for non-qualifying services with their greater freedoms, including to gate and monetise content.

Regarding our partnership with WBD for the Olympics:

1. BBC can show two streams at any one time – only one of those can be a linear “television” channel (e.g. BBC One), the other has to be a digital “non television” platform e.g a stream on Red Button or iPlayer (note these streams can show contemporaneous live or delayed coverage). We can clip (i.e. provide extracts) or provide full coverage of anything on demand on our digital platforms- as long as it has been broadcast first on one of those two streams.
2. Discovery can show anything via their channels – behind a paywall (with a limited amount of free to air content for promotional and news purposes).
3. For the contemporaneous live parts, the BBC has complete editorial freedom to show what we want, when we want. There is no limitation on any access to any sport.
4. For clarity, Ofcom consent was not required for this partnership arrangement because neither “side” has exclusivity over any or all of the listed event.
5. We note that Ofcom (in reaching a conclusion that consent was not required for the 2022 winter games) stated they “have taken into account that the rights package acquired by the BBC from Discovery for the Winter Olympics does not impose any limitations on which events the BBC is able to show contemporaneous live or the number of hours of contemporaneous live coverage that it can show on its two streams. If, for example, the rights package had reserved certain events to Discovery, or otherwise rendered the BBC’s ability to cover the same events ineffective, Discovery would have required Ofcom’s consent for its contemporaneous live coverage of those events.”
6. The linear coverage is just one aspect to the partnership and how audience expectations are met. For Ofcom to consider such a deal purely through the lens of the linear coverage is incomplete and inadequate.
7. Because the BBC can transmit delayed linear coverage which, along with contemporaneous live, can be used for on-demand services, including full replay, digital clips and packages of clips etc, significantly influences the value of the deal (especially for



overnight games and simultaneous high interest events) and the degree to which the BBC can meet audience expectations.

8. If the BBC had no or very limited digital rights then audiences would very likely consider 2 contemporaneous live channels/streams inadequate. Specifically, it would not enable them to view the event(s) they are interested unless both (a) the BBC was able to transmit it Contemporaneous Live (i.e. the BBC was not simultaneously transmitting two other events Contemporaneous Live) and (b) it was possible and convenient for the viewer to watch it Contemporaneous Live. Therefore the policy benefits of the Listed Events regime, as set out by Parliament, would not be delivered.

We think this will require muscular oversight from Ofcom and for Ofcom to adopt a broad definition of live, as per Question 1, and a thorough framework for assessing “adequacy”, taking account of all the considerations outlined above. By doing so, Ofcom would be giving effect to the aims of the regime as they must be intended in the interests of future UK audiences.

**Question 3:** *What factors should Ofcom take into account in defining adequate alternative coverage for Group B events? We’d particularly welcome views and evidence on:*

- *The minimum duration and maximum delay provisions;*
- *The requirement for live radio commentary for Group B events; and*
- *The ways in which audiences engage with highlights and radio coverage for Group B events and how this has changed over time.*

As a preliminary point, we note that the new provisions in the Media Act around restrictions on coverage of Group B events<sup>4</sup> do not distinguish between qualifying and non-qualifying services. Nor do they otherwise require that adequate alternative coverage of Group B events be provided on a free-to-air/access basis. We note that the Explanatory Notes to the Media Act suggests that the “adequate alternative coverage” must be on a service in the other category.<sup>5</sup> We consider it important that Ofcom clarify in its Regulations – as it is empowered to do<sup>6</sup> – that where primary coverage of a Group B Event is to be on a non-qualifying service, a key requisite for “adequate alternative coverage” is that it is provided for free by the provider of a qualifying service.

Beyond this, we consider that Ofcom’s definition of “adequate alternative coverage” should be modernised from the current Code provisions and made fit for purpose.

The key point here is that Ofcom should not take too narrow a view of what is “adequate alternative coverage” because, assuming all other coverage (exclusive live TV, TV highlights and digital on-demand is sold to a non-qualifying service and put behind a paywall) it is important that audiences can still follow and engage with Group B events in a range of convenient and attractive ways.

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<sup>4</sup> New s.101(6) BA 1996 inserted by s.22 Media Act 2024

<sup>5</sup> Paragraph 104 of Explanatory Notes

<sup>6</sup> New s.101(6)(d) BA 1996, inserted by s.22 Media Act 2024

It is also important that Ofcom continues to recognise there is not a one size fits all policy, that some Group B events lend themselves more readily to some formats than others.

The notable shift in recent years is towards digital, on demand clips, and away from more traditional TV highlights shows. For some sports audiences are increasingly accessing content in on demand clip or curated clip package form both because of those formats' own editorial merits, and because of suitability for viewing on mobile devices and whilst "on the move".

But Ofcom's approach should recognise that whilst, generally speaking, audience value of traditional TV highlights shows has declined, this is not true for all sports (and even for those that lend themselves more to on demand clips etc, the migration is not complete). TV highlights remain an important outlet for some audiences. We also know that radio commentary of Group B events continues to be important as a means of access for some audiences to Group B sports such as international cricket.

We therefore ask that Ofcom's regulations have the effect of requiring a combination of these rights to be offered to PSBs in such a way that they can provide compelling, value for money secondary coverage for audiences across their free-to-air services.

If not, and the regulations operate so that a package which is limited only to a daily TV highlights show will likely end with some Group B events not getting any free to air coverage, live or delayed.

In terms of the holdbacks currently set out in the Code for Highlights Programmes, we believe these remain broadly appropriate. However, as stated above, we would suggest that the footage allowance apply also in respect of on-demand clips.

**Question 4:** *What matters should Ofcom consider when revising the listed events Code? We'd particularly welcome views on:*

- *Ofcom's approach and process for giving and revoking consent;*
- *Ofcom's approach and process for giving and revoking consent to televise an event designated by an EEA State or other CTT State;*
- *Ofcom's approach to enforcing compliance with restrictions on showing live coverage of a listed event without authorisation; and*
- *Any additional comments on revising the Code.*

We understand that the pre-authorisation gateways introduced by the Media Bill<sup>7</sup> mean it likely that more deals will be pre-authorised and will not require consent from Ofcom under the Code.

But the Code remains an important underpinning of the regime, and a regulatory backstop where rights have been acquired exclusively by providers in one category (or almost exclusively, as coverage on the second service is less than "adequate"). Indeed, the role played by the Code may be pivotal should the Regulations required by s.104ZA BA 1996 fall short of what is necessary to protect audiences (as outlined in response to Q1, Q2 and Q3 above).

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<sup>7</sup> New sections 101(2), 101(3), 101(4) and 101(6) Broadcasting Act 1996 inserted by the Media Act 2024

For these reasons, the remainder of this response focuses at high level on the approach to be taken to the Code. We welcome the opportunity to comment more substantively on the proposed revisions to the Code in due course.

Firstly, the Code needs to be clear and unambiguous about the circumstances in which Ofcom will need to give consent and the circumstances in which it doesn't.

Secondly, the Code should provide more clarity on the circumstances where Ofcom will require extra information from broadcasters in order to determine whether consent is needed. The more clarity Ofcom can include in the Code, the more certainty broadcasters and rightsholders have about the rules and how to comply with them. This, in turn, will provide more stability and security to the sector as a whole and make investment decisions easier to assess.

Thirdly, we anticipate Ofcom taking a proportionate approach to use of its regulatory powers as regards matters under the Code. When the provider or providers who have secured the primary or exclusive rights are qualifying services, Ofcom may consider that a protracted process to grant consent is disproportionate - it is clear that the aims of the regime are met - i.e. wide and free availability on a PSB. For instance, would all non-qualifying services (under the new scope) be consulted individually, or in general? Further guidance from Ofcom here would be welcome. Conversely, where coverage is exclusive to a non-qualifying service (or the coverage available to qualifying services is less than "adequate") it seems reasonable that Ofcom's regulatory focus is higher.

Finally, more clarification would also be welcome over how qualifying services can raise concerns over a tender process, especially where those participating in the tender are expecting to be authorised under one of the new gateways introduced by the Media Act.