



Response to:

Commissioning for the BBC Public Services:

A consultation on Ofcom's proposed approach to assessing the BBC's compliance with its requirements

September 2018

www.audiouk.org

Introduction and Summary

1. AudioUK is the trade body representing professional audio production companies in the UK. Our c.100 members are SMEs based all around the UK, producing radio, podcasts, audiobooks, audio games, audio branding and many other types of high-quality content. Prior to its launch in July 2018, AudioUK was previously known as the Radio Independents Group.
2. We welcome Ofcom's engagement with the industry on regulating the BBC's commissioning of public service content. A key theme of the last BBC Charter was the greater element of competition to make public service content for the BBC, in order to ensure both value for money for the Licence Fee Payer (LFP) and also that the best ideas and highest-quality proposals were commissioned, as a result of more opportunities for external production companies to pitch programmes.
3. The opening up of BBC Radio programming to a minimum of 60% competition by the end of 2022 has already seen a change in the way the BBC commissions audio content, and while there are issues to be addressed we remain confident that, with the appropriate oversight by Ofcom, there will be in place in four years' time a far more lively and vibrant commissioning pattern in BBC Radio.
4. We have within this response addressed comments to specific sections of the consultation document. We would be happy to meet with Ofcom to discuss these aspects further, along with any other related matters on which Ofcom would like additional input.
5. Overall we continue to have regular dialogue with BBC Radio on commissioning issues. However it remains the case that strategically the BBC is making decisions that could have adverse effects on the external production sector's ability to compete.
6. Current concerns include:
 - 6.1. The continued lowering of BBC Radio budgets which is making it uneconomic for external production companies to bid to make programmes, thus reducing the intended growth in competition for ideas envisaged in the BBC Charter
 - 6.2. Lack of any specific initiatives to ensure a level playing field for companies in the nations and regions
 - 6.3. Inconsistent policy on acknowledging to the Licence Fee Payer the involvement of external companies in making BBC Radio programmes
 - 6.4. The need for more open commissioning briefs to allow more creativity in the BBC schedules

Responses to specific statements / sections

Radio sector context (p11 – 13)

Para 3.21 - The BBC is the biggest commissioner of independent audio content in the UK and the only live radio broadcaster to offer these opportunities to the sector [AudioUK emphasis]

7. We agree that the BBC is and is likely to remain by far the biggest commissioner and is therefore critical to the sector. However, Ofcom should note that there are welcome examples on commercial radio of live content being independently-produced. National stations such as Classic FM, Absolute Radio and Virgin Radio work regularly with external production companies.

Para 3.24 - The launch of the BBC Sounds application and the BBC's Podcasting House shows further how off-schedule listening is growing in the UK; the way in which these off-schedule opportunities are commissioned is therefore important to consider when looking at the BBC's impact on fair and effective competition.

8. There are concerns about how the BBC plans to market its podcasts and the extent to which it will allow externally-produced content to be present. We welcome that the BBC's James Purnell has stated that all of its digital-first podcast content will be open to be made by external production companies¹, however we note that the commissioning process for new commissions has begun ahead of the Terms of Trade being agreed with AudioUK for engaging external producers. At time of writing these continue to be negotiated, leaving Terms unclear and to be individually negotiated where a programme is being commissioned. In the absence of any formal agreement, ad hoc podcast commissioning to date is understood to have been done on the basis that the BBC should retain all rights. AudioUK has significant concerns with this arrangement as it directly contradicts the principle that PSBs should allow the producer to retain rights for their intellectual property. As Terms of Trade are crucial to an external production company being able to engage with the BBC on commissions, but not for in-house, we would argue that this represents putting external producers at a disadvantage.
9. Clearly where commissioning is already in operation, existing Terms of Trade can be used whilst new ones are drawn up, but in the case of a new service such as BBC Sounds this is not possible, and it means that any production company wishing to engage with the process does so without guarantees regarding agreed Terms of Trade.
10. Podcasts are the same as radio programmes in that when done professionally they are high-quality, well-produced and edited content. While podcasts can be described as 'less crafted', the production process is essentially the same. They should not be deemed as 'cut-price radio' and therefore we would expect the BBC to mirror the Terms of Trade for Radio as closely as possible, and we are conducting the negotiations on that basis.
11. There is a concern that budgets being offered are significantly lower than for similar broadcast radio content and we would not wish this to be something which is then applied back to BBC Radio commissions. There are already concerns about the reduction in the size of BBC Radio budgets (see below).

¹ James Purnell speech to the EBU, 19 Jun 2018. <https://www.bbc.co.uk/mediacentre/speeches/2018/james-purnell-ebu>

How the BBC commissions its radio programmes (p13-14)

The Commissioning Framework

12. Following the adoption of 'Compete or Compare' in Radio, the BBC designed a new Commissioning process which with the intention of ensuring there was a level playing field in commissioning for in-house producers and external production companies. This 'Commissioning Framework' is the Code of Conduct under which the BBC is commissioning productions. It is the BBC's chosen methods of implementing, but does not equate to, the target of 60% by 2022, which applies only to the UK BBC Radio networks in the BBC Agreement.
13. We note from the parallel Ofcom consultation on BBC commercial activities that there is a proposed BBC annual report on separation of public and commercial activities. In radio there is still a large in-house department so a similar exercise needs to be conducted to ensure there isn't a continuation of the 'corridor-pitching' etc. that can occur if there is not the appropriate separation. Concerns have also been raised by members that senior staff involved on the in-house commissioning side are also involved in making strategic decisions for BBC Radio.

Increasingly Inadequate Budgets

14. AudioUK members have reported to us that in some cases it is now unsustainable to make certain programmes for the BBC on the budget available. This is not because the producer takes any kind of significant profit but because the budgets simply do not support the necessary costs on a production-by-production basis.
15. Given that the BBC would maintain that its in-house department is able to make the programme within the same budget, this suggests that there may be a disparity between allocation of overhead costs between budget allocation for in and out of house, and therefore an uneven playing field.
16. We have learnt recently of several highly experienced producers that have retired due to the fact that they can no longer economically compete for commissions. One example is Mukti Jain Champion, who recently informed the sector that she was no longer going to pitch for Radio 4 commissions due to the fall in budgets meaning she could no longer produce content of the quality she believes is sufficient to maintain the network's standards. It is particularly unfortunate that such a well-known producer and champion of diversity in the sector should feel as though she can no longer remain in business to supply content to the BBC².
17. As we have informed Ofcom in our briefing meetings, external audio production companies survive on narrow margins. The 'profits' gained from the productions made are in reality the money used to pay company directors and for financing development ideas for new programmes.
18. We think closer examination of the above is required in terms of the composition of in-house radio budgets. If it is possible for in-house to make programmes which meet commissioning briefs and also the budgets, then it needs to be understood how in-house producers are able to cover the cost without resort to other internal finance or support, for example in terms of being able to make use of extra in-house staff or facilities without payment.

² As reported in The Times: See: <https://www.thetimes.co.uk/article/radio-review-jake-yapps-media-circus-beyond-our-ken-the-compass-living-with-nature-s8szxt3d7>. Accessed 14 Sep 2018

19. An additional factor in the budgets being challenging is the regular requirement for having high-profile presenting talent involved. Our members would like to see a greater realism among commissioners and controllers about the talent they can expect to be recruited on diminishing and small budgets. Despite the BBC's public purpose commitment to new voices, BBC Radio commissioners often request the involvement of high-profile talent which clearly has a significant impact on a programme budget. More consideration needs to be given to the need for such high-profile presenters in genres such as documentaries. A good production can intrinsically make a story compelling and hold the listener's interest. Our members would question the extent to which having a 'big name' actually adds to the story or assists with the narrative, especially if the main focus of the programme is the subject matter itself. Members have reported incidents where the requirement for a high-profile presenter has led to the use of one-third of the budget on that recruitment, leading to reductions in staff and production in order to meet the budget.
20. Radio programme budgets have not been subject to inflationary rises in recent years, leading to a decline in real terms. This impacts on sustainability and in turn ability to develop new talent and improve diversity and representation. As Radio 4 in particular moves increasingly towards scripted returning series and serials, this is also inflationary as writer(s) and actors expect to be paid the same, if not slightly more, to recognise the success of the project. The time taken to reassemble the cast each time and work round their other work obligations is also not recognised in the budgeting.

Opportunities for Out-of-London companies

21. Production companies outside London need to see evidence of a systematic approach to ensuring they have equal access to commissioners. Currently there is an absence of guarantees of a level playing field for out-of-London producers. The Operating Licence requirement for the BBC to spend one third of radio programme spend³ outside London does not include any specific measure relating to that spend being allocated to external production companies.
22. We would like Ofcom to consider extending the practice of having formal Out-of-London production guidelines for PSB TV commissions (currently being reviewed) to PSB (i.e. BBC) radio commissions. This would help to ensure that companies commissioned outside London are ones are genuinely embedded in their local community and invest in local talent and facilities.
23. Ofcom should require the BBC to demonstrate it has given equal opportunities to out-of-London producers. We recognise it may be difficult to physically base commissioners in locations all around the UK on a permanent basis, but there needs to be a regular timetable of meetings in centres such as Manchester, Cardiff, Birmingham, Glasgow etc. of network commissioners. In the longer term, as vacancies arise among BBC Radio commissioners, consideration should be given to hiring replacements based outside London.
24. Further to this, commissioning meetings which are held in London must be held in the middle of the day to allow travel in one day from outside London, ideally including a live AV feed online so people can engage remotely with commissioning briefings, including the ability to ask questions.
25. Overall the BBC should publish a stated policy which includes the above recommendations, to show how it plans to systematically ensure out-of-London companies have fair access to commissioning opportunities, and which can be used to measure its success in doing so.

³ BBC Operating Licence, para 264

Prescriptive Commissioning Briefs

26. Currently commissioning briefs are often very prescriptive, which puts restraints on production companies' ability to apply the creativity of which the competitive process was intended to make maximise. We would like to see the BBC required to apply more open briefs to a certain number of schedule slots, in order to encourage more fresh ideas and better reflect the changing nature of the UK.
27. We note the following conclusion of Peter Johnston, Director of BBC Northern Ireland, made following his 2017 review of the tendering process⁴: "The BBC should consider more decommissioning-based opportunities where that makes sense from an audience point of view. Contestable opportunities released in this way will offer a more creative opportunity for all potential producers and will help BBC Content to refresh its portfolio in the right way over time". Clearly we agree and would like to see that approach applied to BBC Radio.
28. On occasion, applicants for pitches are pre-selected, where specific experience is required (recent examples include BBC 6 Music and BBC Asian Network) – however it is understood this will always include in-house production teams. We would also argue that new entrants who meet appropriate criteria should not be excluded from any process, to allow development of the sector.

Commissioning Timetable

29. Since 2010, when the BBC Trust introduced a requirement for BBC Radio to have a closer working relationship with the external production sector, there have been regular liaison meetings between our trade association and the BBC. During this time on many occasions we raised this lack of co-ordination among BBC Radio networks concerning commissioning rounds. This lack of coordination led to various rounds coinciding, meaning production companies simply did not have the capacity to develop ideas within the allowed time frame. This practice is still continuing. For example one leading company recently had to turn down an invitation to pitch ideas to a network, as they were already fully-stretched putting together proposed programme ideas to two other networks.

Unequal access to audience data

30. There also needs to be parity in terms of access to audience Appreciation Index (AI) data and all other audience data. We welcome the BBC's recent decision to make RAJAR briefing documents available to production companies, but it is still the situation that some data is withheld as 'only licensed for BBC use'. This means that currently in-house producers may be able to see this data but external ones cannot, leading to an uneven playing field in which the in-house producers have more information on which to base their creative decisions.

⁴ Lessons from the first round of tenders – conclusions and recommendations. BBC Commissioning website, November 2017. www.bbc.co.uk/commissioning/news/articles/peter-johnston-conclusions-tenders-november-2017 Accessed 18 Sep 2018

Limited opportunities for smaller programme makers

31. There has been an issue with the manner in which some BBC commissioners have interpreted the introduction of the 'Compete or Compare' target of 60%. The BBC Agreement stipulation was designed to bring a greater diversity for ideas and talent to the audience, and clearly using external production companies can help with achieving that aim. However some smaller producers have noted to AudioUK that some commissioners have interpreted the new requirement by increasing the practice of commissioning programming in large batches.
32. This increase in 'batch commissioning' can have benefit as it gives a production company a scale of commission which it can use to grow its business (i.e. hire and develop new production talent) and invest in new ideas. However for smaller specialist production companies, many of whom are based outside London, this has meant in an overall reduction in the opportunity to pitch and make programmes. We would question whether this is a process which is going to allow sufficient 'trying out' of newer companies or emerging talent. In response to concerns raised by AudioUK, the BBC has already taken some steps to correct its approach, which we welcome as it is vital for the BBC to ensure that opportunities remain available for new-entrant and smaller companies, who may not seek to produce content in the scale required for batches.

Commissioning information provided to Ofcom – Radio and online (p31-32)

Para 6.30 Historically, the BBC has not collected and provided to Ofcom the same amount of detail regarding the programmes and materials it has broadcast or generated for radio. However, the BBC has agreed to work with us to develop an appropriate set of information to be provided to Ofcom.

Hours versus Value

33. We have long argued that data should be available which shows the value of commissions allocated to in-house versus out-of-house producers. It was recognised in the BBC Trust Review of 2010 that value was a valid indicator of commissioning patterns, however the Trust did not impose a strict requirement upon the BBC to produce such information in its reporting.
34. Given the greater emphasis on competition and a level playing field in the current Charter, it should be a requirement upon the BBC that it provides a breakdown of in-house versus external spend on productions.
35. We can see no practical reason why this cannot be done. As the BBC already needs to manage its commissioning spend, data concerning the amount allocated to specific programmes must already be collected, and it should be a simple matter to record alongside this data whether or not it was an in-house or out-of-house commission.
36. Such data must be able to be collected within the BBC. Given the importance of this to the question of ensuring a level playing field it is crucial that it includes data on hours vs value of commissions, also showing how much is spent on indies outside the M25.
37. Bearing in mind that Ofcom's BBC Operating Licence is less prescriptive than the previous BBC Trust Service Licences regarding quotas for radio genres, detailed reporting of hours commissioned of genres on each network is crucial, as well as spend.

Production company acknowledgements

38. Related to the issue of publishing information is that of production company acknowledgements. We should be clear that in this context we are talking about the BBC in all circumstances making a production company's involvement known to a programme's audience. It can be assumed that if a member of the public hears a programme on BBC Radio, or sees it listed on the BBC website, they will assume unless told otherwise that it was made by the BBC itself.
39. This can lead to the impression that there is much less externally-produced content on the BBC than there is, and prevents the names of individual companies being associated with certain types of genres or indeed award-winning programmes.
40. Therefore appropriate audible and where relevant visible acknowledgement of the production company which made a specific BBC production is an important way of ensuring a level playing field.
41. As companies live or die depending on their reputation, such company acknowledgement is extremely important, and yet currently there appears no uniform comprehensive methods of identifying an individual radio programme with its creator. There is therefore a clear opportunity cost to a company not being acknowledged as having made a particular programme or series.
42. Examples of the current uneven state of affairs are highlighted by the BBC's own guidance⁵, reproduced below. As noted, Radio 1 and 1Xtra will not generally permit credits for production companies:

'Individual BBC radio stations make their own decisions on indie credits:.

- *Radio 1/1x: station sound asks for no indie credits except on documentaries, where the indie may add a credit to the final voice over line if they wish: 'This has been an XXX production for BBC Radio 1'.*
- *Radio 2: A credit for the production company is expected. Credits for Producers, APs etc are on a case by case basis.*
- *Radio 3: A credit for the production company is expected. Up to two credits for production staff e.g. producer and presenter.*
- *Radio 4/4 Extra: A credit for the production company is expected. Up to two credits for production staff e.g. producer and presenter.*
- *Radio 5 live: A credit for the production company is expected.*
- *Radio 6: A credit for the production company is expected. Credits for Producers, APs etc are on a case by case basis.*
- *Asian Network: A credit for the production company is expected. Credits for Producers, APs etc are on a case by case basis.*
- *Exceptions: drama and some readings may require additional credits.'*

43. AudioUK members additionally note that Radio 4's style guide states: "We do not credit technical contributions including sound design, recording, mixing, engineering or production 'teams' which include Broadcast Assistants or Production Co-ordinators"⁶, even where these "technical contributions" play a vital creative role in the programme. Meanwhile, while the UK networks listed above allow full credits on the station website, BBC World Service does not generally permit any accreditation online, further increasing inconsistency.

⁵ Source: Information for suppliers to Radio: Credits and publicity - Production credits:

<http://www.bbc.co.uk/programmes/articles/58829RFPFQKmxF6FJznmIPQ/credits-and-publicity>

⁶ BBC Radio 4 Style Guide. BBC, Sep 2016, p7. <https://downloads.bbc.co.uk/radio/commissioning/radio-4-style-guide.pdf>

44. In response to a call for input from the BBC in 2017, we submitted a paper to the BBC at the time, including the following recommendations:
- Within network guidelines, greater flexibility should be permitted, with the production company being able to decide which roles are credited.
 - This should permit acknowledgement of key production roles, e.g. sound designer
 - Credits should be delivered consistently across platforms and promotional material, with particular flexibility online. BBC World Service should permit online credits
 - Consideration should be given to introduce a policy of credits always being included within the delivered programme, to avoid the credits being lost on iPlayer or in re-versioning
45. At the time of writing, AudioUK has begun consulting with members on a proposal from the BBC for BBC networks to introduce a standard system for credits and acknowledgements, however this does not currently include BBC Radio 1, BBC Radio 1 Xtra or BBC World Service, and therefore falls short of a standard comprehensive policy.