

The NMA response to Ofcom's [Consultation](#): How Ofcom Regulates the BBC

1. Background

- 1.1. The News Media Association (“**NMA**”) is the voice of UK national, regional and local newspapers in all their print and digital forms - a £4 billion sector read by 49.2 million adults every month in print and online. Our members publish over 900 news media titles - from The Times, The Guardian, the Daily Mail and the Daily Mirror to the Yorkshire Post, Kent Messenger, and the Monmouthshire Beacon. Our membership spans the industry - from the largest groups to small, independent, family-owned companies publishing one or two local titles. Collectively these publishers are by far the biggest investors in news, accounting for 58 per cent of the total spend on news provision in the UK.
- 1.2. The NMA welcomes Ofcom’s consultation into “*How Ofcom Regulates the BBC*” (the “**Consultation**”). The BBC has an important role as a public service provider. Therefore, scrutiny and accountability are fundamental to ensure it is fulfilling its function, which the commercial press is increasingly concerned that it is not. The BBC uses public money to extend far beyond its remit and does not consult with the market players on its impact. This conduct represents a significant challenge to commercial media and threatens the welfare of a plural press in the UK.
- 1.3. The NMA’s response outlines below the concerns of the commercial news industry. We welcome further discussion with Ofcom regarding the Consultation and the BBC’s broader impact on the commercial press.

2. Response

- 2.1. **Question 1:** *Do you agree with the proposed scope of the review of BBC regulation as set out in this document? If not, please explain the areas where you think changes should be made.*
 - 2.1.1. Ofcom plans to review regulation across all areas of Ofcom’s duties – performance, content standards and competition, with which we agree. In addition, we equally welcome Ofcom’s proposed expansion to this review, which now seeks to regulate the BBC against additional themes set out in the Consultation.
 - 2.1.2. We are pleased that “*transparency and engagement*” will be included and believe this theme should be considered especially in relation to the news media industry. Transparency and engagement are areas that the BBC has persistently been poor. For example, in relation to transparency, the BBC refuses to release data that could demonstrate how the BBC is harming national and local titles (see [2.3.2](#) of this response for an example). In equal measure, the BBC has shown its disregard towards its industry peers through its poor engagement. One recent example (see [here](#) and [here](#)) includes a local reporter asking the BBC to respond to a story in the Brighton Argus about Martin Bashir. The BBC accidentally copied the reporter on its reply to colleagues, suggesting that the Brighton Argus’ request should be ignored.
 - 2.1.3. The NMA equally welcomes “*public value*” as a theme of review. This should, however, encompass how the BBC promotes a plural press, for example through its services and

content, and contributes to wider society and the UK news industry. It is difficult to see the rationale for, or benefit to the British society of, the large volume of written news and feature material produced by the BBC's online operation, which falls outside the remit of hard news (see [Annex](#) for a non-exhaustive list of examples of BBC stories believed to be outside or on the fringes of the BBC's public interest remit). 'Soft news' is an area well-served by commercial members. There is, therefore, no public value in the BBC's additional coverage of such content, including long reads and feature material, highly shareable videos of animals, online games, food recipes and entertainment reviews, celebrity news, as well as comment articles *inter alia*. Such an expansion is a needless use of taxpayers' money, and unduly poses a direct challenge to commercial news media providers that rely on soft news as a sustainable revenue stream.

2.1.4. Specifically, the NMA believes that there are three issues which should be addressed when reviewing the BBC's performance and regulation, namely: (i) despite not being part of its public service remit, the BBC is increasingly pursuing a strategy of publishing soft content, such as celebrity news and gossip, which drives audiences and advertising revenues away from commercial providers; (ii) the BBC is not sufficiently transparent about its designation of public service content which is misused to secure preferential status; and (iii) the BBC poses a direct threat to local journalism both through its ambitions to launch local news services in direct competition with commercial providers, and its use of their content without proper attribution.

2.2. **Question 2:** *Do you agree with the proposed approach to reviewing the BBC Operating Licence? If not, please explain why.*

2.2.1. The NMA is concerned about the proposals to update the Operating Licence (the "**Licence**") set out in the Consultation. Ofcom is correct to identify that there is limited recognition and regulation of the BBC's online services in the Licence. Expanding the Licence to comprehensively cover all the BBC's services, as proposed, has the potential to achieve greater transparency and accountability. However, as Ofcom has admitted in the Consultation, the Licence in its current form primarily regulates through quantitative conditions. This is problematic, as it incentivises the BBC not to create quality content but rather meet a quantitative quota. For example, the commercial sector would be at risk if the Licence expanded to ensure that the BBC met large quotas concerning how many news stories should be published on the BBC's online news website, as it does with BBC radio and television channels. Such quotas would further encourage the BBC to copy stories from commercial local news titles and publish soft content outside its public service remit, an already rife and damaging practice.

2.2.2. To counter the BBC's focus on quantitative quotas, Ofcom also proposes to include qualitative conditions in the Licence, measuring how the BBC delivers for audiences in areas such as quality, reach and impact. Including qualitative requirements *alone* in the Licence to regulate the online news website offering, for example, could be welcome subject to how it is applied. Indeed, the BBC merely duplicating the content of the commercial offering in the local news sector (as it currently does) is below the quality level that the taxpayer should expect, and Ofcom should seek to regulate this better. Nevertheless, Ofcom cannot guarantee that implementing qualitative conditions will counterbalance the harm of any quantitative quotas; the Consultation provides no empirical evidence which demonstrates as such. By nature, qualitative data is easily refutable and difficult to track and regulate - if these measures are brought in, the BBC should be robustly monitored to ensure that it does not scrape commercial news content or duplicate the commercial online news content to meet quotas. Otherwise,

this will simply encourage the BBC to continue current damaging practices which are significantly harming commercial titles.

2.2.3. A reason for introducing qualitative requirements is because Ofcom proposes that the BBC should have scope to determine how best to fulfil its Licence obligations across its platforms and services, provided it sets out publicly how its plans deliver the Mission and Public Purposes. In practice, Licence conditions could allow the BBC to decide which online or broadcast services to make its content available on; it would be up to the BBC to decide where best to reach audiences. However, this should not enable the BBC to funnel more content through its online news website to meet Licence criteria.

2.2.4. Giving the BBC more room to increase the volume of their online news stories cannot be permitted. The overwhelming volume of free content offered by the BBC in areas traditionally occupied by the commercial press, such as soft content, undermines the digital strategies of commercial publishers. The BBC's uniquely free-to-use service fundamentally affects the ability of commercial titles to build a sustainable business model; it is difficult for publishers' titles to gate their content behind a paywall in order to build a digital subscriptions model to support journalism when the taxpayer-funded BBC is running the same content on its website for free. Given this structural imbalance between the commercial press and the BBC, the BBC should not be allowed to take advantage of its position. An area where the BBC is particularly taking advantage of its position is in the local sphere. However, the expansion of the BBC's online local offering does not add to coverage regionally or locally; instead, it seeks to replicate the output of commercial newspapers. Rather than plugging any alleged democracy gap, it targets an audience already well-served and unfairly competes with local titles by providing the same service ad-free. Therefore, the NMA ultimately rejects any change to the Licence obligating the BBC to increase its already overwhelming online news output.

2.3. **Question 3: Do you have any views on how to measure the BBC's performance?**

2.3.1. An essential component of measuring the BBC's performance is considering how the BBC impacts competition. The Royal Charter views competition as a vital element of the BBC's performance, stating that the BBC should "*avoid adverse impacts on competition which are not necessary for the effective fulfilment of the Mission and the promotion of the Public Purposes*".¹ Indeed, it is not in the public's interest, or the interest of any well-meaning democracy, for a state-funded media organisation to take advantage of its position to stifle commercial titles. However, as noted by the Press Gazette, the BBC is the outright leading news source in the UK, receiving five times more visits in June 2021 than the UK's second-largest title, for example.²

2.3.2. Despite this unbalance, Ofcom's latest Annual Report 2020,³ which outlines the BBC's performance, gives inadequate focus to the BBC's impact on the broader news industry. This may be due to the lack of transparency of the BBC's investment, strategy and performance both nationally and regionally; this view is corroborated by the BBC's stakeholders, who considered that there was insufficient information on these matters, even in the Annual Report and Accounts.⁴ Refusing to foster transparency is detrimental to the news media industry. For example, BBC Scotland does not publish audience figures for its online content.

¹ See cl. 11(2)(a) of the [Royal Charter](#) for the Continuance of the British Broadcasting Corporation

² See the Press Gazette's [article](#) "*Top 50 UK news sites in July 2021: The i and local news sites see fastest growth*".

³ Ofcom's Annual [report](#) on the BBC 2019/2020.

⁴ See pg. 4 Ofcom's Annual [report](#) on the BBC 2019/2020.

Without this data, it is impossible to quantify the service's impact or form meaningful strategies to compete. NMA members have repeatedly asked the BBC to release such information without success so far. Local publishers have equally tried to request a meeting with the new BBC Scotland director, who has not responded to date. This behaviour is emblematic of the BBC not taking the matter of competition seriously.

2.3.3. In its last Annual Report, Ofcom asked the BBC to be more expansive and transparent in its reporting. Therefore, the UK news media industry expect improvements to this area in the Annual Report 2021, with greater consideration given to competition.

2.4. **Question 4:** *Do you agree with our proposed scope of the review in relation to content standards? If not, please explain why.*

2.4.1. The current system for holding the BBC to account is increasingly ineffectual. The "BBC First" complaint process is too close to management, and NMA members routinely find that: (i) complaints get brushed aside and go nowhere; and (ii) it is a lengthy process before you can even get a complaint near to Ofcom, which has a chilling effect on raising complaints. The acute financial pressures that many publishers are under further limit the resources of commercial publishers to hold the BBC to account via the current time-consuming channels. Consequently, we welcome Ofcom's proposals to examine the BBC's complaints process and to scrutinise the BBC's system of handling and expediting serious complaints and to create a separate complaints track for commercial news publishers.

2.4.2. However, the NMA is extremely concerned that 12 out of the 16 members of [Ofcom's Content Board](#) have strong links to the BBC. More needs to be done to ensure a diverse range of participants, and to instil public confidence that BBC content will be regulated in a manner that promotes a fair and competitive news media market.

2.5. **Question 5:** *Do you agree with the issues we have identified with the processes for assessing the competitive impact of changes to the BBC's UK Public Services? If you consider there should be changes to these processes, please set out what these are and, if possible, provide any relevant evidence.*

2.5.1. It is frustrating for the commercial sector that, as Ofcom and stakeholders have found,⁵ the BBC lacks engagement with stakeholders during the initial materiality test and does not provide sufficient detail about the changes it plans to make. As stakeholders corroborate, there is equally a lack of detail in the Public Interest Test ("PIT") consultations and that the BBC does not take their views into account. The BBC's behaviour is indicative of not having any due regard to competition, seeing the whole materiality process (if it is conducted at all) as a checkbox to pay lip-service to but not act on. This is most obvious in the BBC's most recent Across the UK Plan which will have material impact, particularly on the local press, but for which no members of the commercial press were consulted. The UK press cannot at this stage hold the BBC accountable for this lapse in publishing its Across the UK Plan, though it has been used as the basis for agreeing its License fee for the next five years. This is a fundamental procedural irregularity which must be addressed.

2.5.2. The BBC is explicit in its Across the UK Plan that it intends to expand its reach further to audiences across the whole UK by "*making a decisive shift in its footprint*". This has raised significant competition and regulatory concerns amongst NMA membership. The BBC brazen intention to compete aggressively against local commercial publishers of every description,

⁵ See paragraphs 3.50-3.52 of the [Consultation](#).

with no prior consultation or investigation into the impact on local press, especially with the introduction of a news app and concentration on mobile is unacceptable. The BBC has taxpayer funded resources that no local operator could hope to match and it already has overwhelming brand dominance in news supply. The conclusion must be that the BBC's renewed and expanded efforts will have the inevitable result of further reducing competition, extinguishing local independent journalism of any significance.

- 2.5.3. The Across the UK Plan, therefore, is a perfect case study of the shortfalls of the current regulatory system. The BBC, by its own admission, in its Across the UK plan proposes to introduce a "*new model*" for regional and local news and digital community reporting, changes which appear likely to be "*material*". As the starting point, therefore, the BBC should have considered whether the changes "*may have a significant adverse impact on fair and effective competition,*" including how the changes will affect NMA members. The BBC must be required, at this stage, to demonstrate that it has considered the "*materiality*" of its proposed actions and must be compelled to show its reasoning in deciding: (i) that the Across the UK plan was not material; or (ii) why it did not undertake this required assessment.
- 2.5.4. The BBC clearly did not get onto the second part of its obligation to carry out a PIT on the proposed change to the Plan because it failed to consult either wider industry or the [Local News Partnership](#), deemed by the BBC and stakeholder publishers to be a success, emulated around the world and one which should be built on and expanded. It is, therefore, strange that the BBC would embark on a new model for local news and community reporting, which they acknowledge could have a material impact on existing local news providers without even considering this established '[trailblazing partnership](#)'. This is of particular concern given the BBC claims in its Plan that its proposals for online services "*will help support the local news industry and a plurality of local provision*". The BBC proposals regarding 'BBC News across the UK' and 'Supporting local communities' will likely undermine local news and stifle press plurality by exacerbating current problems in BBC conduct in these areas. The BBC must be required to carry out a PIT to support this claim. It cannot be right that the BBC cannot be held accountable until after it has spent public money on a course of conduct damaging to the local press.
- 2.5.5. The NMA has learnt this week that the BBC is due to launch a BBC news app in the new year. This was not proposed in its Across the UK Plan. Again, this is a material change which we expect will have a significant adverse impact on fair and effective competition. The prospective BBC app will be a real threat to local journalism. The launch of this app, therefore, also exposes the need for the materiality assessment and the PIT to be enforced proactively by Ofcom.
- 2.5.6. The NMA, therefore, believes that Ofcom must go further than simply requiring greater clarity on the initial materiality process. Changes are needed to the BBC PIT and Ofcom's BBC Competition Assessments. In particular: (i) they need to be given more teeth; (ii) Ofcom must proactively intervene and prevent BBC plans likely to be detrimental to competition and with the potential to stifle press plurality. Ofcom must be more closely involved with the materiality processes, which at present it does not initially participate in. It is evident that this period is where the BBC is notably falling short of adequacy, likely taking advantage of the fact that the BBC has no external oversight.
- 2.5.7. For context, the local news media sector is made up of around 900 titles reaching 40.6 million people a month via print and digital channels. Absent these changes the BBC will continue to improperly expand its remit, which will pose an existential threat to local news publishers and the plurality of local journalism they support.

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Annex

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