



**Professional Publishers Association (PPA) response to Ofcom Consultation: Ofcom's Plan of Work
2022 to 2023**

Written Evidence submitted by the Professional Publishers Association (PPA)

Date: February 4 2022

Sent by email to planofwork@ofcom.org.uk

Full Name: Sebastian Cuttill

Contact Phone Number: [REDACTED]

Representing: Organisation

Organisation Name: Professional Publishers Association

Email Address: [REDACTED]

Confidentiality

There is no part of PPA's response that we wish to be kept confidential and we are happy for it to be published in full.

About Us

The Professional Publishers Association (PPA) is the membership network for UK consumer magazine media and business information publishers, representing around 160 of the UK's most renowned publishing houses. With more than 40 million adults in the UK reading magazine media every month, the sector is worth £3.74 billion to the UK economy, employing more than 55,000 people.

The PPA's membership incorporates the UK's largest publishing houses and titles, including Future, Bauer Media Group, Condé Nast, The Economist, Hearst UK, Immediate Media, The Week, New Scientist, the BMJ, and William Reed Business Media as well as many smaller independent publishers. A full list of members can be found here: <https://www.ppa.co.uk/members>

The PPA is historically synonymous with magazines but today its membership is made up of multi-platform media businesses. The platform on which audiences are engaged may still be a printed magazine – 93% of members still publish a printed magazine - but may just as commonly be virtually via any connected device – 75% operate across five or more platforms, including events, mobile and video.

Across these platforms, each month the sector reaches an estimated 44.3 million consumers in the UK, accounting for 83% of the population aged over 15. For the age group 25-64, covering the core of the working age population of 33.7 million people, penetration is 88%.

Executive Summary

We have recently seen a rapid acceleration of specialist publishers' shift to digital as publishers have innovated rapidly to keep pace with consumer needs. The PPA Sector Report 2021 shows that whilst sector revenue is still predominantly from print-related sources, engagement is now predominantly through digital sources. In fact, 69% of consumers engage is via phone or tablet, against 26% via desktop and 38% via print.

The critical challenge for the sector is monetising these digital engagement channels sustainability in the long term, whilst also ensuring that print titles continue to be profitable in the face of sharp print, paper, and postal costs.

PPA commends the Government for a commitment in its Plan for Digital Regulation to ensuring ‘the UK’s media and press sectors are able to flourish online’. This is a tenet of the key objective of ‘Promoting a flourishing democratic society’. Digital regulation policy must recognise the critical contribution of specialist publications to a diverse and plural media. Ofcom should look to mirror this commitment in its Plan of Work for 2022 to 2023.

Indeed, Ofcom’s priorities for the year ahead include ‘Media we trust and value’ (in the context of the broadcasting sector) and ‘We live a safer life online’, whilst a key theme is to ‘support the UK’s vibrant media sector’. For these objectives to be fulfilled, the immense value of the specialist publishing sector to the UK media must be accounted for.

Through regulation of the BBC, its work on Media Plurality, and its work with the non-statutory Digital Markets Unit to develop a code that would govern the relationships between platforms and content providers, Ofcom is well placed to promote specialist publishing, as well as ensuring that the BBC does not negatively affect competition by replicating the work of commercial publishers.

Further, promoting specialist publishers will ensure that trusted content on a wide range of topics will be readily available online. Relevant to this, Ofcom’s role in establishing the online safety regime gives it a critical role in ensuring that trusted, professionally produced, and independently regulated content is not suppressed by digital platforms. Duties on platforms to protect journalistic content must be clearly defined and robustly enforced.

Online Safety

The PPA is currently engaged in work aimed at amending the Draft Online Safety Bill but will address the Bill as it currently stands. We would welcome the opportunity to engage with Ofcom as the Bill progresses through Parliament, and when the regime is implemented.

The Draft Online Safety Bill requires Ofcom to prepare one or more codes of practice in relation to the relevant safety duties beyond those set out in subsections 1 and 2, including the duties to protect journalistic content. How these codes should be structured and organised will be a matter for Ofcom to decide as appropriate. Ofcom is therefore given considerable agency in deciding how these duties are crystallised into practical requirements. PPA argues that the duties to protect journalistic content should be addressed with a specific code of practice and ensuring that content published by professional journalistic organisations is readily available will support the media literacy objectives in the Bill. We would urge Ofcom to start working on the codes of practice immediately, so they are ready for enforcement as soon as the Bill becomes law.

As currently stands, the definition of ‘news publisher content’, particularly the substantive conditions of a ‘recognised news publisher’ having the principal purpose of producing ‘news-related material’, is open to interpretation. There is a distinct possibility that, as part of its code of practice concerning journalistic content, Ofcom may be required to create a list of ‘recognised news publishers’. If this were to occur, PPA believes that Ofcom should consider all IPSO regulated publications as ‘recognised news publishers’, ensuring consistency with the current system of independent press regulation.

Before preparing a code of practice or amendments to it, Ofcom must consult (amongst others) persons who appear to Ofcom to represent the interests of United Kingdom users of regulated services. PPA would welcome the opportunity to contribute to this work, ensuring that the unique values and characteristics of specialist journalism are accounted for in the codes of practice concerning journalistic content.

Media Plurality

Following its November 2021 Report on The Future of Media Plurality in the UK, Ofcom will produce another Report in Q3 2022/23. Ofcom has identified three features of the modern UK media

landscape that may present a risk to media plurality but are not captured under the existing regulatory framework. PPA would welcome the opportunity to engage with Ofcom to discuss preferential options for addressing these concerns before Ofcom provides its views on these points in summer 2022.

A key attribute of specialist publications is that their concentrated focus allows editorial teams to become experts, with many consumer and business publisher staff having worked in the area or industry on which they report. This allows specialist publishers to provide deeper insights on key areas that larger, yet broader news organisations, will likely not analyse.

As a result, these publications give a voice to communities that would not otherwise receive media attention, much like local newspapers. Specialist publications are also highly trusted sources of information. Ofcom's *News Consumption in the UK 2020* Report shows the public consider magazine media to be more trustworthy and accurate than TV, print newspapers, radio, and social media, and are the most highly rated news medium for having 'a range of opinions,' 'helping me make up my mind,' and being 'impartial.'

Given the above, changes in regulation to bolster UK media plurality that do not specifically encompass specialist publishers will have a severely limited impact and may serve to re-establish the dominance of incumbent national 'core news' organisations. Indeed, the future resilience of media lies in focusing on niche audiences and verticals, and its success lies in publishers that speak to very specific interests and consumer demand for trusted content. Regulation must recognise these developments, and support specialist publications rather than entrenching legacy organisations' position.

One of the three key issues identified by the Report is that the basis on which online intermediaries serve news via their algorithms is not sufficiently transparent. These issues could be addressed through an Australian-style Mandatory Bargaining Code, which encompasses specialist publishers. We discuss this in greater detail in the section discussing Ofcom's work with the CMA/DMU on how a Code could rebalance commercial relationships between platforms and publishers.

In addition to a code governing commercial relationships between platforms and publishers, regulation is necessary to remedy another key issue identified by the Report: that online intermediaries and their algorithms control the prominence they give to different news sources and stories.

There should be a requirement to rank content from trusted news and specialist publishers' content favourably against less trusted content. This should specifically include the promotion of original source content. As well as helping media literacy, this would help ensure that specialist media publishers (as well as local news outlets) would receive a level of traffic sufficient to facilitate sufficient investment in high-quality original content, and fund innovative new projects. This solution may also help partially remedy the third key issue identified: that consumers do not always critically engage with the accuracy and partiality of online news sources. Having trusted content prominently displayed is key in helping consumers to engage with reliable sources.

BBC Regulation

Ofcom's regulation of the BBC also has a significant impact on media plurality. Both BBC News Online and BBC Sounds have expanded through incremental changes which individually may have had a limited impact on competitors, but which taken together constitute a significant change which has expanded the scope of the services. The creeping expansion in scope of the BBC's Online services go unscrutinised due to shortcomings in the present process for assessing the competitive impact of changes to the UK's Public Services.

The BBC Charter states that the BBC must “avoid adverse impacts on competition which are not necessary for the effective fulfilment of the Mission and the promotion of the Public Purposes.” However, in its drive for growth, the BBC is already showing an instinct to explore more ‘magazine’-style content, in the process encroaching on - and arguably duplicating and even displacing, given its strength in search and on social platforms - the efforts of independent UK media enterprises that have spent years and invested millions in growing loyal audiences. The BBC has a ‘Stories’ (formerly ‘Magazine’) section, Recopies, Long Reads, Games, ‘Viral’ Videos. Celebrity/Reality TV Gossip, Comment Pieces, Features and Analysis of Entertainment, amongst others.

These stories are at best of the fringes, and at worst firmly outside, of the BBC’s public interest remit. Commercial publishers are reliant upon advertising and subscriptions to fund public interest content: this task is made extremely difficult as the BBC duplicates this content for no charge.

The key problem with the current Materiality / Public Interest Test / Ofcom BCA process is that it allows the BBC to design incremental changes to its services which do not meet the materiality thresholds and are thus not scrutinised. In its response to Ofcom’s 2021 consultation on Regulation of the BBC, PAA recommended that Ofcom:

- (a) Consider limiting the frequency with which the BBC can propose changes, preventing the BBC making such frequent incremental changes which constitute a substantial shift in scope over time.
- (b) Consider implementing a formal consultation process for all changes that the BBC proposes that warrant a materiality assessment, providing stakeholders with the opportunity to fully engage with the process. (This would provide the initial clarity on the initial materiality process that Ofcom believes could be beneficial).

Postal Regulation

Ofcom is proposing that Royal Mail be required to set and report against its five-year expectations for efficiency targets.

Ofcom’s Annual Monitoring Review 2019-20 was clear that efficiency did not improve in 2019-20 and worsened in 2018-19. In 2019-20 Royal Mail did not achieve its productivity target of 2%, achieving instead only 1%. Real costs rose 1.4%, with no underlying efficiency improvements, excluding transformation costs. It is particularly concerning that poor performance in 2019-20 followed the acknowledgment from Royal Mail in its Full Year Financial Report 2018-19 that ‘a new transformation plan is now required, with a renewed focus on improved service, efficiency and productivity supported by a focus on productivity initiatives, a range of new, digitally enabled work tools and targeted investments.’

Given that Royal Mail already acknowledged the need for efficiency as central to its strategy, yet continues to fail to meet its targets, it is unclear how greater transparency alone will result in the necessary improvements.

Ofcom has decided against efficiency targets and price controls, in part because it asserts that ‘shareholder pressure and market forces already create significant incentives for Royal Mail to become more efficient in the provision of the universal service’. In fact, Royal Mail may be compensating for its inefficiency by implementing above inflation price increases, with the revenues used to pay substantial shareholder dividends.

Therefore, what shareholder pressure there is may be on the CEO and board of Royal Mail to achieve quick results in the short term, which in fact conflicts with long term sustainability plans. Further, in a competitive market, there is a relationship between the pressure to improve efficiency and the

pressure to limit prices. However, it may be that Royal Mail's market power insulates the company from market pressures in this regard.

Ofcom states that efficiency targets could be 'difficult to establish, implement, monitor, and enforce'. However, the difficulties faced by the regulators in setting targets will remain in the future, and intervention may become even more 'difficult' to establish, implement, monitor, and enforce if the situation deteriorates further.

Ofcom also states that efficiency targets 'may have little additional effect for an organisation that is already under pressure to cut costs'. As already stated, Royal Mail is allowed to compensate for failing to meet efficiency targets by implementing above inflation price increases, and can pay substantial dividends, reducing market pressure for greater efficiency.

Given the above, Ofcom should seriously consider the need for efficiency targets and price controls, and the design of such measures; at the very least, conducting the work to explore the design such a framework would provide Ofcom with valuable information regarding the feasibility of, and likely impact of such measures.

For clarity, PPA supports the requirement for Royal Mail to set and report against five-year expectations as an absolute minimum requirement. However, Ofcom should review progress made against targets year by year with Royal Mail, and benchmark the progress against international comparisons. In addition, although we appreciate that Ofcom cannot give a firm commitment of what further action it will take if efficiency expectations are not met, it should at least give an indication of what action it would consider. Otherwise, there is little prospect of the new requirement spurring meaningful change.

Ofcom/DMU work on a Code to govern commercial relationships between platforms and publishers

In 2021, the Digital Secretary asked the Digital Markets Unit to work with Ofcom to look specifically at how a code would govern the relationships between platforms and content providers such as news publishers, including to ensure they are as fair and reasonable as possible.

When designing such a Code, drawing the scope of news content broadly reflects the reality of news media businesses in the UK. Such businesses cover a broad range of content, in an intermingled fashion, ranging from 'serious' journalism to 'softer' reporting of lifestyle, celebrity and human interest stories. That is, all UK news media organisations exist at the intersection of traditional journalism and entertainment.

Indeed, the digital platforms themselves take a very broad view of what constitutes 'news'. This is perhaps most obviously illustrated in the Facebook news feed, which incorporates an almost limitless array of content. This approach is also well illustrated in the Google News platform. That platform advertises itself to users as a 'news' platform. It is, however, open to all publishers if they meet the Google News Content Policies. On Google News, verticals include sports, entertainment, technology, and science. Indeed, the presence of specialist publishers is of immense value to digital platforms, as it allows them to serve expert content based on readers' specific interests. Importantly, the 'soft' news content often funds the production of the more 'serious' news content. If the Code fails to adequately protect the commercial value of that 'softer' news content, the business models that support more serious journalism will continue to fail.

An Australian-style UK Mandatory Bargaining Code should account for the importance of the Copyright, Design and Patents Act clearly covering and accommodating the rights under the Press Publishers' Right now being distinctly defined and applied under national laws within the EU. The Australian Code has a narrow focus on core news content, which is a major block on the Code's impact on media sustainability and plurality. If a Code only benefits larger 'legacy' core news

organisations, it could have a negative impact on media plurality. PPA views the definition of 'Press Publisher' used in the EU Copyright Directive as an appropriate model definition for those news and specialist publishers that should benefit from such a code:

(4) 'press publication' means a collection composed mainly of literary works of a journalistic nature, but which can also include other works or other subject matter, and which:

- (a) constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper or a general or special interest magazine;*
- (b) has the purpose of providing the general public with information related to news or other topics; and*
- (c) is published in any media under the initiative, editorial responsibility and control of a service provider.*

Further, significant consideration should be given to DMU support and allocating funding for smaller media businesses, who qualify under a code, so they have the resources to develop the skills and/or procure the expertise needed to initiate and sustain negotiations (either individually or collectively) with the digital platforms. It will also likely be necessary to develop additional measures that support smaller, but eligible, media businesses in parallel with a Code in the event they are forced to bargain in its shadow. PPA would welcome the opportunity to engage with Ofcom on the form these additional measures may take.

Conclusion

Clearly, the establishment, implementation, monitoring and enforcement of a range of Ofcom's regulatory functions are critical to the future sustainability of the specialist media sector. We would urge Ofcom mirror the Government's commitment in its Plan for Digital Regulation to ensure 'the UK's media and press sectors are able to flourish online'. Ofcom's regulation must recognise critical contribution of specialist publications to a diverse and plural media.

The Government's Plan for Digital regulation also states a key principle for fulfilling its objectives as 'Achieve[ing] forward-looking and coherent outcomes', including the need for policymakers to 'make sure that new regulation minimises contradictions'. We would urge Ofcom to ensure that work supporting the specialist media sector in one area is not diminished or counteracted by a lack of attention in other areas. Only a joined-up approach to supporting specialist publishers and the wider media will ensure that the UK's media and press sectors are able to flourish online. The sustainability of print titles must also be supported, with print revenues being used to fund the digital innovations that will support long term growth.