



Consultation: Ofcom Diversity and Inclusion Programme 2018-2022

Closing date: 23rd February 2018

INTRODUCTION

We welcome the opportunity to comment on the Ofcom Diversity and Inclusion Programme 2018-22. This response is being submitted on behalf of Directors UK.

Directors UK is the professional association for UK screen directors, representing the creative, economic and contractual interests of 6,500 members – the overwhelming majority of working film and television directors across the UK. Directors UK collects and distributes royalty payments and is a membership organisation providing a range of services including campaigning, commercial negotiations, legal advice and support, events, training and career development. Directors UK works closely with fellow organisations around the world to represent directors' rights and concerns, promotes excellence in the craft of directing and champions change to the current landscape to create an equal opportunity industry for all.

CONSULTATION RESPONSE – AREAS OF FOCUS

For the purposes of this consultation we have focused our responses on the issues relating specifically to diversity in broadcasting and on Ofcom as a regulator, as these are the issues that most directly affect our membership. In particular our responses refer to the following sections in the consultation document:

- Section 2.9 – Diversity in Broadcasting
- Section 3.16 – Strengthening diversity and inclusion in broadcasting
- Action Plan – 'Ofcom As Regulator' Action points 9, 12 & 13.

QUESTIONS

QUESTION 1: What are your views on Ofcom's Diversity and Inclusion Programme?

Whilst the proposed Ofcom Diversity and Inclusion Programme 2018-22 sets out activities within the spirit of Ofcom's duty, as specified in the Communications Act (2003):

*"(2) It shall be the duty of OFCOM to take all such steps as they consider appropriate for promoting equality of opportunity in relation to both—
(a) employment by those providing television and radio services; and
(b) the training and retraining of persons for such employment"¹*

Directors UK is concerned that this intended programme of activity does not go far enough to promote diversity within content making teams, to ensure the authorial voices of programme makers are representative of the audiences that they serve. In particular we are concerned that:

¹ Paragraph 27, point 2 of the Communications Act (2003), p44;

- i) the data on which the current action plan is based is not representative of the true levels of diversity and inclusion off-screen due to the absence of freelancer data;
- ii) while there is a specified responsibility for Ofcom to regulate the BBC and review Channel 4, the lack of specified regulatory powers over other broadcasters may allow them to deliver diversity to a lesser standard.

i) The data on which the current action plan is based is not representative of the true levels of diversity and inclusion off-screen due to the absence of freelancer data.

According to the Ofcom report '[Diversity and Equal Opportunities in Television](#)'² the top 78 broadcasters reported that there are 28,442 freelancers working in the sector (p25) alongside 37,433 employees working in the UK-based industry (p4).

That data indicates that freelancers make up 43% of the total workforce in broadcasting - nearly half. Yet the data being gathered and monitored about freelancers by the employing broadcasters and production companies is, as described by Ofcom, at best 'patchy', at worst non-existent. Only 16 of the 78 broadcasters required to supply data were able to provide information about the gender, racial group or disability breakdown of their freelancers. This data only covered 16,402 freelancers, leaving more than 40% of the data about the make-up of the freelance workforce unknown.

Ofcom's report showed the percentage of female and BAME employees in television comparative to their representation in the general population to be:

General Population	Television Employees
49% Male	52%
51% Female	47%
14% BAME	11%

We are concerned that the actual disparity of representation is likely to be bigger than these 'employment' figures indicate, because of this significant section of freelancer data that is missing.

Therefore, whilst we commend Ofcom for holding broadcasters to account through their 'Diversity in Broadcasting' programme and for publishing their first annual report on 'Diversity and Equal Opportunities in Television' in 2017, Ofcom must apply the same scrutiny and regulation to the diversity of the freelance workforce as it does for permanent staff employees of broadcasters and the wider production industry.

We acknowledge that the data of the Project Diamond system may eventually provide better visibility of the freelance workforce, but in the meantime we believe Ofcom has a role to play in catalysing the collection of this data from broadcasters to ensure the real level of representation is understood and that their proposed action plan addresses the actuality of the situation.

If Ofcom does not feel it has the mandate or remit to require the reporting of this data from the broadcasters and production companies then we believe it should seek this mandate from the government. In section 2.9.e of the action plan it makes reference to:

"seeking additional powers to require broadcasters to promote equal opportunities for a broader range of characteristics than currently listed in the Communications Act 2003."

We strongly believe that the monitoring of freelancer data should be included within this request for additional powers.

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Ofcom report '[Diversity and Equal Opportunities in Television](#)' (page 25), September 2017

Ensuring a diverse freelance workforce of programme makers means that the programming itself is more likely to reflect audience diversity, perspectives and views.

ii) There is a specified responsibility for Ofcom to regulate the BBC and review Channel 4, the lack of specified regulatory powers over other broadcasters may allow them to deliver diversity to a lesser standard.

The proposed action plan specifies the responsibility of Ofcom to regulate the BBC (Action plan point 12) and to review Channel 4 (Action Plan point 14). We are concerned that by Ofcom not being in a position to apply the same scrutiny to the other principal broadcasters that this may result in them delivering diversity obligations to a lesser standard. This immediately limits the overall effectiveness of Ofcom's Diversity & Inclusion approach because it does not specifically include the other principal television broadcasters such as Channel 5, ITV or Sky.

If a significant proportion of the television content broadcast to UK consumers is not included in this action plan, we are concerned as to how effectively Ofcom can ensure that they are meeting their remit to promote "equality of opportunity" as set out in the Communications Act (2003).

We believe that to truly deliver its obligation with regards diversity and equality that Ofcom should seek the power from the government to expand its remit (as outlined in 2.9.e above) to include reporting obligations from all major broadcasters.

We believe this provision should be the minimum requirement for all broadcasters as a clause of their licencing agreement.

QUESTION 2: To what extent do you believe that our approach will promote diversity and inclusion within Ofcom and in the sectors we regulate?

Ofcom's plans are significant and are intended to encourage diversity and inclusion amongst broadcaster employees and in on screen/ on air representations of diversity, but as stated above we do not feel the plans sufficiently promote diversity within the freelance creative and technical communities working behind the camera to create the content.

Our own experience of researching the data for the employment of directors by gender (*Who's Calling the Shots? Women Directors in British Television Production, 2014*)³ and diversity (*UK Television: Adjusting the Colour Balance, BAME directors in UK Television, 2015*)⁴ found that freelance employment is largely unmonitored and as a result unprotected by normal HR management, which is why problems with ensuring diversity and equality occur. Directors UK strongly believes that the industry is not able to rectify this itself and that the intervention of a regulator is required to enforce a change of practice.

Our own evidence has shown that there has been slow, almost negligible progress since we first began examining the issue. We are currently reviewing the data since our first two reports on gender and diversity were published and will be able to provide Ofcom further evidence on this later this year. We believe that a regulatory obligation would provide the required trigger and leverage to effect change.

By not making it a regulatory requirement for broadcasters and production companies to monitor and report on the freelance workforce there is a great risk of regulatory imbalance, with one group of employees regulated and one group not. This then carries the risk of an abuse of employment practice among freelancers.

³ <https://www.directors.uk.com/campaigns/women-directors-campaign>

⁴ <https://www.directors.uk.com/campaigns/bame-directors>

As Sharon White, Ofcom's Chief Executive highlighted in her speech to the Westminster Media Forum in November 2017:

"Diversity is about people, not percentages... Progress will not be made on paper. It will be made on the screen, behind the camera, inside the editing suite, around the commissioning table, out on location and across the newsroom floor. These are the places where passionate, talented women and men – of all ages and backgrounds, from every section of society – deserve the opportunity to contribute. Take the example of drama – perhaps the most powerful genre of all. Great dramas tell stories that really connect with audiences. They stimulate conversation and debate. Flagship productions like Gunpowder, Broadchurch, Fortitude or The Crown can symbolise a broadcaster's identity and ambitions. The UK has an unrivalled tradition of producing brilliant drama. But how wide is the circle of commissioning editors who determine what gets made? How deep is the pool of senior writers and directors who develop those stories? Commissioners may be turning repeatedly to tried and trusted writers and editors. That's an understandable instinct, but it risks forming a closed circle of talent. Emerging voices are excluded, and safe formats triumph over risk and innovation."

We agree with these sentiments and would like to see this fundamental issue addressed through direct intervention by Ofcom to address diversity at all levels, and that includes freelancers.

By properly understanding the entire eco system of production (through more detailed reporting from all of the principal broadcasters), Ofcom can help ensure that broadcasters don't keep turning to "tried and trusted writers and editors." They will be able to suggest practical measures to deepen the 'pool' of talent making shows that express our creative excellence and national diversity. These measures could include:

- Reporting obligations for all broadcasters and production companies to include freelancers as well as employees.
- Setting production off-screen diversity targets in genres such as children's programming and high end drama.
- Requiring broadcasters and production companies to use fair and open hiring practices, where roles are truly open to a wide selection of candidates, rather than only those on preferred lists.
- Monitoring by Ofcom of the training opportunities available to creatives to encourage diversity in the hiring pool.

We have found that diversity does improve when there is a targeted intervention. Our training initiatives, which have been designed to widen the pool of known directing talent at various levels, have resulted in creating employment opportunities for a more diverse group of directors e.g. the High End TV Drama Directors Career Development Programme and the Continuing Drama Directors Training Scheme.

Question 3: Are there any additional objectives that you feel Ofcom should include in its Diversity and Inclusion Programme?

We have highlighted a number of suggestions in the answers above. We believe a critical objective should be an obligation for all broadcasters and production companies to report on diversity and inclusivity data for freelance employees over the next 4 years.

Directors UK
www.directors.uk.com

22nd February 2018