

Ofcom Consultation Response: Modernising the BBC's Operating Licence



1. Introduction and Summary

The Children's Media Foundation (CMF) is a not-for profit organisation supported by public donation, which campaigns for greater range and variety in the content provided for children and young people in the UK, advocates a research-based approach to policy and regulatory decision-making, and supports the production of UK-based programming that offers British children the opportunity to hear their own voices, experience their own stories and explore their own culture and society.

While the Children's Media Foundation understands Ofcom's aspiration to offer the BBC a regulatory regime appropriate to its *Digital First* ambitions and reflective of the need for flexibility in the face of funding constraints, we feel the proposals as currently conceived have the potential to endanger both the breadth and range of the BBC's services for children. We strongly urge Ofcom to reconsider some of its fundamental assumptions about the children's audience and reflect further on how it can best ensure the BBC meets the needs of this extraordinarily diverse and important audience.

Our responses are in the main focused on the delivery of **Public Purpose 3** - specifically this proposal in the consultation document:

- Replace quotas for arts and music, religious programmes, content for children and comedy on network TV with a condition to provide a wide breadth of output supported by transparency requirements. This would include requiring the BBC to set out the number of hours it will provide for each at-risk genre with its Annual Plan, including hours of first-run and acquired programming.

One of our main concerns is that this proposal implies a premiss that, in our view, is fundamentally flawed; children's programmes are not a genre of programming and should not be grouped together with 'at risk' genres. Children's programming is a service provided to a segment of the audience and should be treated as such, with regulatory proposals that will ensure the BBC provides a full range of quality programming across live action drama, factual and entertainment, including animation.

It is important we make this point because Ofcom's proposed changes to the BBC Licence, as they impact on children, are grounded in this misconception. For example, although Ofcom accepts the principle that '*quotas successfully ensure and safeguard a minimum performance by the BBC*' and is proposing that quotas for UK original productions for TV services for the adult and family audiences are retained, because the children's audience is included in the group of 'at risk' genres it will not receive the same protection.

The Foundation has expressed a view on the reduction of the original productions quota for CBBC in a previous Ofcom consultation on changes to CBBC's operating licence¹. We made clear our concern that, historically, children's services have been vulnerable within the BBC when the Corporation is facing financial pressures, which is why the BBC's children's services require clear red lines - quotas - that go some way to protect funding, which ultimately is what underpins the quality and range of programming.

Ofcom is proposing the BBC Licence retains quotas for first-run UK originations, but with additional flexibility for the BBC to determine on which services and when to show such content. Given the vulnerability of the Children's Department within the BBC, it is our belief that giving the BBC flexibility in how it distributes this quota across its services may well remove current protection for first-run UK originations on the BBC's children's services.

We acknowledge Ofcom genuinely believes the new Licence requirement on the BBC to provide much greater transparency regarding its plans will allow for more effective regulation of BBC services. Although we concur with the VLV when they note that this should surely be a basic requirement of a publicly-funded corporation and not a bargaining chip used to negotiate a weakening of the Licence terms. We also accept that Ofcom's proposed changes to its relationship with the BBC are *designed* to allow the regulator to assess the BBC's plans on a regular basis and provide feedback. But *how* will that process work in practice?

We can find no information in these proposals to indicate the precise criteria Ofcom intends to use to assess whether or not the BBC's plans are sufficient to meet the needs of the children's audience. What exactly would constitute a '*a wide breadth of output*'? What would be a sufficient number of hours of programming for children? How many hours of first-run and acquired programming would Ofcom expect the BBC to provide for children to meet the audience's needs? Instead of giving the BBC clear, measurable targets for the children's audience, Ofcom's proposals rely upon: '*expectation of continued investment in a range of first-run UK originations for children currently on CBBC and CBeebies*'.

Once lighter-touch regulation is in place then influence over the funding, public service relevance and distribution practices of children's programmes will be limited. Proposals such as closing the CBBC broadcast channel in favour of online delivery will be subject to less scrutiny. We explore the implications of this for the children's audience in our more detailed series of responses below.

It is hard to avoid the conclusion that if these proposed changes take effect, the breadth and depth of children's programming will be less than is currently provided, which will mean a further weakening of the BBC's service for the children's audience, compounding Ofcom's well-known documentation of significant industry-wide decline over the last ten years..

2. Response in Detail

CMF has considered whether the proposals in the Ofcom consultation document enhance public service media provision for the audience of UK children and younger teens. Overall, we do not believe the proposed changes will benefit the children's audience for the following reasons:

¹ <https://www.thechildrensmediafoundation.org/wp-content/uploads/2022/04/CMF-Response-to-Ofcom-CBBC-consultation.pdf>

Suppositions we refute

- Children's content should not be classified as an 'at risk' genre and equated with arts or religious programming. It is a full service, providing multi-genre content to a sub-sector of the general audience. It deserves the same regulatory regime as mainstream adult programming.
- The proposal equates the BBC's need to deliver more content digitally with relaxing regulatory control. This is a spurious connection. It is perfectly possible to maintain quotas, while also broadening the methods of delivery. Quotas can apply to online delivery as much as they might apply to broadcast.
- The proposal asserts that the new relaxed Licence will better allow the BBC to react to changes in audience taste: "*Quotas ensure the BBC delivers a minimum volume of content on specific services but they do not capture aspects such as quality and innovation and they can limit the BBC's ability to respond quickly to changing audience preferences.*" This assertion is not explained or supported by evidence. And in the case of children's services, quotas serve to guarantee a minimum spend on content for the young which can frequently be under-supported within the organisation despite its public service value.

Regulation and quotas

- If children's remains in the Public Purpose 3 'at risk' category, we are concerned that the proposals will lead to less rigorous scrutiny of Children's services because Ofcom is proposing it 'steps back' from detailed regulation in return for transparency.
- Greater transparency at the BBC would be an advantage in terms of continual scrutiny. However, as our colleagues at the VLV have pointed out, a publicly funded corporation like the BBC should be fully transparent by default.
- Transparency is no substitute for clear regulatory controls set in advance by a fully independent body which maintains integrity and public trust in the process. A system of checks and balances with agreed parameters makes more sense than constantly negotiated and shifting standards as the BBC "sets its own homework" (to quote our colleagues at the VLV).
- Consequently, CMF supports the VLV recommendation that if the proposals are adopted Ofcom should not allow significant variance between the new BBC-set targets and existing quotas.
- Alongside the new BBC-set targets, Ofcom should set a minimum content volume level for the 'at risk' genres - including children's.
- Ofcom should also ensure content is broadcast on BBC television channels to safeguard delivery on free to air platforms which do not require internet access. This should include CBeebies and CBBC content. (See Access section below)
- CMF has already opposed the reduction in quota hours applied to the CBBC Channel². Now we face the complete removal of quotas. Ofcom's own research shows the huge decrease in original production of children's content over the past decade which will continue to decline.
- The proposals retain quotas for news, original UK content on all television channels, music for certain radio channels, regional production etc. So clearly regulation and transparency can and should go hand-in-hand.

Funding and public service

- The proposals come at a time when the BBC is under considerable financial strain, which is forcing it to prioritise commercial solutions. This is particularly acute in the Children's Directorate which has recently transferred its production staff to BBC Studios where there is

² <https://www.thechildrensmediafoundation.org/wp-content/uploads/2022/04/CMF-Response-to-Ofcom-CBBC-consultation.pdf>

already pressure to pursue a commercial agenda - i.e. content which can sell to overseas markets.

- The recent change in quota levels for the CBBC Channel reflects prioritisation of animation at BBC Children's commissioning. Animation, due to its high cost, is inevitably a co-production, almost always co-financed internationally, with accompanying implications for inclusion of uniquely British references and sensibility.
- These are clear indications that without quotas there will be a decrease in the production and commissioning of content which is culturally specific to the UK and relevant to British children.
- There must be a mechanism to hold the BBC to account to deliver the public purposes set out in the Charter, as these are in significant danger of erosion in this overtly commercial climate.

Access

- The BBC's Digital First strategy will favour those who consume content online and discriminate against those who do not have access to the internet (6% of UK households, 14% of disadvantaged households). In this context it is crucial that Ofcom retains the power to ensure children's content is still available on a linear broadcast platform for the foreseeable future.
- While we understand the BBC desire to reach children on new platforms, this cannot be at the cost of any child left behind.
- The BBC should publish an annual report on audience satisfaction in the same way as it does for delivery of Purpose 4.
- In particular Ofcom should put in place a programme of work to assess whether children are aware of and using the BBC iPlayer which, as we stated in our previous response to the CBBC Licence consultation³, is not set up to be attractive to young people or child-friendly.

3. Conclusion

The BBC's Children's services - a microcosm of its adult services - are probably the most comprehensive in the world.

Maintaining the range quality and appeal of these services has always been challenging. We are concerned that Ofcom's new proposals are likely to make this increasingly difficult in the future.

³ <https://www.thechildrensmediafoundation.org/wp-content/uploads/2022/04/CMF-Response-to-Ofcom-CBBC-consultation.pdf>