

“Ofcom’s blind eye to racism must end”.
**A Campaign for Broadcasting Equality CIO response to Ofcom’s
proposed plan of work 2021/22**

Despite its statutory responsibilities, Ofcom has chosen to turn a blind eye to racism in broadcasting.

Now, Ofcom CEO, Dame Melanie Dawes, has said that to rebuild trust, the broadcasters should bring back into the industry the minority ethnic people who had left it.

This cannot be achieved until the issue of racism in broadcasting is addressed.

As a first step Ofcom should establish the new independent reporting body to tackle racism in broadcasting, proposed in the BECTU/Ryder report and include this in the Ofcom Annual Plan for 2021/22.

Ofcom also needs to get its own house in order.

Statutory Responsibilities

Ofcom launched on 29 December 2003. Section 27 of the Communications Act 2003 gave Ofcom the duty to take appropriate steps to promote equal opportunities in broadcasting. Under section 337 of the Act, broadcasters who employ more than 20 people and broadcast for more than 31 days a year are required to comply with licence conditions to make arrangements for promoting equal opportunities in employment, in terms of gender, race and disability.

The Communications Act 2003 sets out four purposes and objectives of public service broadcasting. These include:

Purpose 3: Reflecting UK cultural identity - To reflect and strengthen our cultural identity through original programming at UK, national and regional level; on occasion, bringing audiences together for shared experiences

Purpose 4: Representing diversity and alternative viewpoints - To make us aware of different cultures and alternative viewpoints, through programmes that reflect the lives of other people and other communities, both within the UK and elsewhere.

These purposes cannot be achieved if Ofcom is unaware of, or turning a blind eye to, racism in the broadcasting industry.

Furthermore:

Ofcom’s avoidance of such issues was reflected in Ofcom excluding BBC Charter Article 14 on Diversity from its Consultation on the Draft BBC Operating Framework, apart from a reference in footnote 66 to paragraph 4.123.

The Campaign for Broadcasting Equality CIO received advice from Stephen Hornsby, Partner, Goodman Derrick, an expert on regulatory matters, who said, inter alia:

“Article 45 of the Charter provides that in carrying out its functions under the Framework Agreement, Ofcom must have regard to the BBC’s duties under Article 14. Section 5.4 of the Agreement with the BBC goes further and requires the Operating Framework to set out how compliance with General Duties (such as Article 14) can be enforced.

Schedule 3 paragraph 12 of the Agreement with the BBC gives effect to Article 14 and makes employment diversity a “specific requirement” that Ofcom has the power and duty to enforce. “

“The phrase “have regard to” in the context of Article 14 imposes a strong obligation on Ofcom under Article 45 of the Charter and thence the Framework Agreement to oversee and if necessary enforce the duties on the BBC set out in Article 14. The London Oratory High Court case of 2015 on the meaning “have regard to” confirms that Ofcom could only ignore Article 14 if there were clear reasons that are proper and legitimate. In practice, in the light of this case law, it is difficult to conceive of any reasons that might justify Ofcom in not following through on the BBC’s Article 14 diversity obligations with vigour.”

Enforcement of Schedule 3 paragraph 12 of the Agreement with the BBC must require Ofcom to address the issue of racism in the BBC.

Racism in broadcasting

Over the recent years, there has been abundant evidence of racism in broadcasting.

“Black and Asian executives quit ‘snowy white peak’ BBC” by Nicholas Hellen, Social Affairs Editor, The Sunday Times November 27 2016

<https://www.thetimes.co.uk/article/black-and-asian-executives-quit-snowy-white-peak-bbc-xqzlvp85j>

Racial Discrimination – BBC Public Purposes didn’t stop “witless” ethnic cleansing” by Simon Albury

<https://cbesite.wordpress.com/2019/04/28/racial-discrimination-bbc-public-purposes-didnt-stop-witless-ethnic-cleansing-by-simon-albury/>

Sir Lenny Henry’s and Simon Albury’s evidence to the Lords Communication Committee in July 2019.

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/communications-and-digital-committee/public-service-broadcasting-in-the-age-of-video-on-demand/oral/103093.html>

Campaign for Broadcasting Equality evidence to Commons DCMS Committee

<https://committees.parliament.uk/writtenevidence/6703/html/>

“BBC Racism – Why external investigation is needed”

<https://cbsite.wordpress.com/2020/08/12/bbc-racism-why-external-investigation-is-needed-by-simon-albury/>

David Olusoga: racism in British TV has led to 'lost generation' of black talent

<https://www.theguardian.com/media/2020/aug/24/david-olusoga-racism-in-tv-has-led-to-lost-generation-of-black-talent>

EXCLUSIVE: BBC head ‘must answer toxic racism claims’

<https://www.easterneye.biz/bbc-head-must-answer-toxic-racism-claims/>

Exclusive Investigation: We lay bare the toxic life for Asians working in a culture of fear in a “racist” BBC

<https://www.easterneye.biz/exclusive-investigation-we-lay-bare-the-toxic-life-for-asians-working-in-a-culture-of-fear-in-a-racist-bbc/>

Exclusive: BBC Staff Accuse Corporation Of Being 'Institutionally Racist'

https://www.huffingtonpost.co.uk/entry/bbc-institutionally-racist_uk_5f3f9c78c5b697824f977779

Exclusive: Black BBC Staff Morale At 'All Time Low' After N-Word Scandal

https://www.huffingtonpost.co.uk/entry/bbc-n-word-staff-morale-low_uk_5f43f0a8c5b66a80ee1621f6

EXCLUSIVE: BBC boss ‘in denial’ over racism claims

Exclusive: “Investigate BBC bullies”

EXCLUSIVE: BBC employee driven by “workplace bullying” to attempt suicide After Eastern Eye revealed the ‘toxicity of racism’ in the BBC, an MP demands LEADERSHIP FROM THE TOP

Many of these articles show persistent investigation by Nadine White, Huffington Post (Black heritage) and Barnie Choudhury, Eastern Eye (Asian heritage) who are trusted by minority ethnic people. They don't turn a blind eye to racism.

When BBC Director General, Tim Davie, appeared before the Commons DCMS Committee on 29 September 2020, Davie told John Nicolson (SNP) that he didn't think the BBC was institutionally racist and Davie assured Steve Brine (Con) that he was aware of Barnie Choudhury's article ““Culture of fear at racist BBC” and would look into it.

Ofcom's reports suggest Ofcom is either unaware or, or turning a blind eye to, the evidence of racism in broadcasting. Ofcom doesn't employ anyone like Nadine White or Barnie

Choudhury – or like Marcus Ryder or Sir Lenny Henry. The Henry/Ryder book “Access All Areas” shows why Ofcom should.

Ofcom CEO Imperative

On 15 December 2020, the new Ofcom CEO, Dame Melanie Dawes, gave oral evidence to the Commons DCMS Committee. Ten months into the role, Dawes showed a clear grasp of media issues. On diversity, she signalled a very positive new focussed approach and an end to faffing around.

Ofcom is now charged with “getting much better at understanding what is making a difference, which are the interventions that move the dial and change the numbers.” Ofcom would “accelerate and back the things that work and maybe pull away from some of the things that are not working.”

Dawes’ most radical instruction was that the broadcasters should bring back into the industry the minority ethnic people who had left it.

“Reaching out into the communities that used to work for the BBC but left, because they knew they would not progress, is a big part of what it has to do as well as ensuring that its own existing staff come up through the ranks at the same rate as others.”

It is clear from reactions to Dame Melanie’s comments on bringing people back, that many people who left the BBC feel too bruised to consider returning. Many bruised people still remain within the BBC. One current employee wrote:

“Too many black people have left because of the N word defence. It will take a lot to bring black people into that corporation! I am so over their bullshit high level meetings. They don’t get why they have to make change. They don’t believe they’ve really insulted and disrespected the black community. Until that whole club of management goes there will be no tangible change.”

Minority ethnic people will not return to broadcasting unless Ofcom addresses the issue of racism.

In her evidence to the Commons DCMS Committee, Dame Melanie showed a more profound understanding of broadcasting diversity issues. She said:

“I think any organisation in the modern world, if it is worth its salt, does need to understand who it employs and the overall diversity of its employees. For me, it is a basic requirement regardless of whether your regulator is asking you for the data or not.”

Ofcom now needs to put its own house in order. In December 2018, Ofcom’s diversity chief told a conference, “I have empathy with the broadcasters”. Empathy with the regulated may be a useful quality in a regulator but only if it is balanced with an empathy with the Black, Asian and minority citizens and consumers whose statutory interests it has a duty to represent. Taken together, the CBE responses to this consultation, to date, demonstrate that such empathy has been lacking. It is confirmed by CBE experience since 2014. It continues

Ofcom's history of failure to take its equality duty seriously, evidenced in the CIO response to Ofcom's third review of public service broadcasting in 2015 (see Appendix).

Dawes also told the Commons DCMS Committee that Ofcom has "done a review of our overall, top-level structure. We will be going out to recruit some more people." For Diversity, Ofcom needs some fresh, new, highly-motivated people with fresh ideas.

Independent Racism Reporting

If Dame Melanie Dawes' intention that the broadcasters should bring back into the industry the minority ethnic people who had left it is to be realised, one essential first step would be for Ofcom to establish and take responsibility for the new independent reporting body to tackle racism in broadcasting proposed in

'Race to be Heard: Racism Reporting Body for UK Broadcasting sector'

This report commissioned by the broadcasting union, BECTU, was written and researched by Marcus Ryder MBE, Visiting Professor at The Sir Lenny Centre for Media Diversity and co-author with Sir Lenny of "Access All Areas: The Diversity Manifesto for TV and Beyond".

The report makes four key recommendations:

1. Establish an industry wide body which can both gather reports of racism from all the major industry bodies as well as be a body that people in the industry can go to, to report incidents of racism including anonymous reporting.
2. The body should be able to initiate investigations into issues of systemic racism that would be unlikely to be raised by individual complainants.
3. The body should be able to offer advice and assistance to people who believe they are the victims of racism, and/or feel they have experienced unequal treatment due to their race, on how to process a complaint and the resources available to them to pursue a complaint.
4. The body should publish an annual report on the state of racism in the industry to measure progress, build on best practice and learn from mistakes. The annual report should be complete with policy suggestions for industry stakeholders on how to tackle racism.

The Ofcom CEO's words now need to be followed by bold, positive action.

Appointing new appropriate diversity officials and establishing the Independent Racism Reporting Body would significantly improve Ofcom's shabby reputation, particularly among minority ethnic groups, and provide a necessary, practical first step towards realising Dame Melanie's ambitions.

Who will guard the guards?

This submission is an unambiguous attack on the status quo. Those who have internalised and become committed to the status quo are likely to be defensive. They are also likely to be

the very people who will be evaluating the responses. Among Ofcom's officials, the submission is unlikely to be welcomed.

Will it be welcomed by the board? Tim Suter is on the board. In his earlier life, as an Ofcom official, it was Suter who led Ofcom's resistance to publishing diversity data from licensees. Even though it was the duty of Ofcom to take all such steps as they consider appropriate for promoting equality of opportunity, Suter, then Ofcom Standards and Content partner, told an Information Tribunal that while Ofcom could publish diversity data from licensees, it just didn't think it was appropriate.¹ Suter successfully sustained Ofcom's position.

Since 2017, Suter has been a member of the Ofcom board. There is no evidence that he has changed his position opposing the publication of licensee diversity data, although Ofcom has. The attacks on the status quo may be unlikely to find sympathy from Suter. Suter's will be an influential voice.

When it comes to this submission to the consultation on Ofcom's proposed plan of work, it seems unlikely that it will find sympathy from Ofcom's officials or Ofcom's board.

Actions

As part of Ofcom's proposed plan of work 2021/22, Ofcom should:

- **Appoint a Director of Diversity Research, who is trusted by Black, Asian and minority communities to ensure Ofcom approaches issues of diversity and racism with sufficient knowledge, empathy and understanding of minority ethnic and other under-represented groups, to frame the appropriate questions that need to be asked and to establish appropriate methodologies for answering them.**
- **Require the BBC and the broadcasters to report By 1 July 2020¹ on what they are doing to bring back the minority ethnic people who left.**
- **Commission research to understand the scale of the problem of racism in broadcasting.**
- **Commission research on reconciliation processes that work in comparable circumstances to better understand what is required for broadcasters to position themselves to bring back into the industry the minority ethnic people who have left it.**
- **Establish the Independent Racism Reporting body in accordance with the "Race to be Heard" recommendations as part of the Ofcom plan of work 2021/22.**
- **Seek additional powers if Ofcom takes the view that it lacks sufficient power to do what is proposed.**

¹ Information Tribunal Appeal Number: EA/2009/0067 Information Commissioner's Ref: FS50184499 Heard at Central London County Court, On 9th December 2009, Decision Promulgated 11 January 2010

APPENDIX

Campaign for Broadcasting Equality CIO response to Ofcom's third review of public service broadcasting

Ofcom launched on 29 December 2003. Section 27 of the Communications Act 2003 gave Ofcom the duty to take appropriate steps to promote equal opportunities in broadcasting. Under section 337 of the Act, broadcasters who employ more than 20 people and broadcast for more than 31 days a year are required to comply with licence conditions to make arrangements for promoting equal opportunities in employment, in terms of gender, race and disability.

Ofcom fails to fulfil the equality duty

Ofcom did not take its equality duty seriously. Had it done so we might have expected to see an increase in BAME employment. Ofcom failed to take appropriate steps to promote equal opportunities. Skillset data shows that between 2006 and 2012 the reported BAME numbers working in the UK television industry declined by 30.9%.

When it comes to promoting equal opportunities, there is little evidence that Ofcom can adduce to demonstrate serious intent to fulfil its duty.

Broadcast Equality and Training Regulator

In 2005 Ofcom established the Broadcasting Training and Skills Regulator (BTSR) to carry out Ofcom's duty to provide training and development. In January 2009, it extended BTSR's remit to cover equality of opportunity and BTSR was renamed the Broadcast Equality and Training Regulator (BETR). In anticipation of possible changes to Ofcom's statutory duties, which never came to pass, Ofcom closed down BETR with indecent haste in June 2011.

In the forward to the BETR valedictory report (June 2011), its Chair, Stephen Whittle wrote: "Regrettably, what we have also seen is no discernible movement on diversity." Whittle said "Our view remains that many organisations still have a challenge to ensure that managers and staff at all levels understand why a highly skilled and diverse workforce is important to their business." He asked, "Why is it that this creative industry feels able to miss out on recruiting and developing from the widest possible talent pool that could help shape its future? And how can it feel comfortable in ignoring large segments of their potential audience while hoping to remain valued as a provider of compelling content? We had wanted to go on engaging with the industry in seeking answers. Now we can only hope that you who are reading this report will continue to ask the question why."

Ofcom failed to address any of the questions Stephen Whittle posed. Why?

UK cultural identity and representing diversity

As the Ofcom review says, The Communications Act 2003 sets out four purposes and objectives of public service broadcasting. These include:

Purpose 3: Reflecting UK cultural identity - To reflect and strengthen our cultural

identity through original programming at UK, national and regional level; on occasion, bringing audiences together for shared experiences

Purpose 4: Representing diversity and alternative viewpoints - To make us aware of different cultures and alternative viewpoints, through programmes that reflect the lives of other people and other communities, both within the UK and elsewhere

These purposes cannot be achieved if employment in the public service broadcasters, at all levels, on-screen and off fails to reflect the diversity of the population.

BBC and Diversity

If the BBC is to be seen as the cornerstone of public service broadcasting it must also be the cornerstone of diversity. This evidence is focussed on the BBC because licence fee funding places a greater obligation on the BBC to deliver public good than on other public service broadcasters which are commercially funded.

The BBC should learn from the “360° Diversity Charter” developed by Channel 4. The “360° Diversity Charter” demonstrates an understanding of the complexities of addressing diversity issues which has been lacking in anything the BBC has produced to date. (It is important to note the BBC “Action Plan to Tackle On and Off Air BAME Representation” was announced in June 2014 while the Channel 4 Charter was not presented until January 2015, six months later.)

Ofcom should take account of the written evidence submitted by Lenny Henry, Marcus Ryder and Patrick Younge to the House of Commons Culture Media and Sport Committee Enquiry on the Future of the BBC in June 2014. Inter alia, it said:

“The BBC Charter promises to “represent the UK, its nations, regions and communities.”

Back in 2003, the BBC realised it had a representational problem in the nations and regions outside London. At the time 91% of network programmes were being made in and around London, and according to the BBC Annual Report only 3.7% of core programming budget was being spent in Scotland, despite Scotland having around 9% of the UK population. The BBC adopted a significant structural response.

First they committed to spend 50% of their money outside of the M25; and for Scotland, Wales and Northern Ireland the BBC promised that by 2017 the proportion of programme spend in each nation would at least match that nation’s percentage of the UK population. They set firm targets and quotas of a minimum amount of programmes to be commissioned from each nation and region.

Since 2003 there has been a 400% increase in the number of network programmes produced in the English regions, and by 2016 over half of network spend will be outside of London. Spend in Wales and Scotland already matches or exceeds the size of the local population, two years ahead of target.

The BBC has kept its promise for the nations and regions but failed the BAME communities. It may be not for a lack of effort, as the BBC has run some 29 initiatives aimed at BAME's in the past 15 years. But the situation is not improving.

The Broadcasting industry should take exactly the same approach the BBC took to tackling their nations and regions, introducing the same structural solution by ring-fencing money specifically for BAME productions."

This written evidence proposed that the Ofcom criteria for deciding if a production qualifies as coming from the nations or the regions should provide a model for developing criteria for BAME productions to be linked to the ring-fenced fund.

In his BAFTA lecture (March 2014) Lenny Henry said, "In the last three years the total number of BAME people in the industry has fallen by 2,000 while the industry as a whole has grown by over 4,000. Or to put it another way – for every black and Asian person who lost their job, more than two white people were employed." It should be noted that in 2014, resignations from the BBC by BAME staff reached a five year high (Broadcast February 2015).

The general population is more than 12% BAME and set to double by 2045. If the BBC ring fenced 12% of production budgets across all genres for productions that matched the Henry Plan, it would create a clear demand. By the Henry criteria of 50% maximum, it would only lead to a modest 6% BAME employment in production.

There is evidence that BAME people are routinely employed at a discount. In Broadcast (January 2014), Jane Mote wrote "I was shocked when recruiting for our new television station London Live that the BAME applicants consistently appeared to be on worse contracts and had lower wages than their white counterparts, even though they often had better skills."

There are conflicting views on the proportion of BAME people with broadcasting skills who are not being employed. There may already be a sufficient population to satisfy the demands of the Lenny Henry proposal for a significant ring fenced fund for BAME production. If not, BAME employees would be employed at a premium rather than at a discount. If there were to be an insufficient supply of appropriately skilled people to match the Henry proposal, the ring-fenced budget would not be spent in its entirety. If the ring-fenced fund were rolled over annually like a lottery jackpot, the demand for BAME production staff would increase. In the longer term the market would drive recruitment, training and development of new and existing BAME talent.

To date, the BBC has not adopted the Lenny Henry proposal and has demonstrated few mechanisms for driving BAME employment.

BBC Ring-Fenced Fund

In June 2014, the BBC announced a range of new initiatives to promote BAME employment. Among them was a ring-fenced fund, the Diversity Creative Talent Fund. This fund has a budget of just £2.1m which amounts to no more than 0.12% of the 2013 BBC content budget of £1,789.1m. It is equivalent to the cost of just two episodes of Downton Abbey. This is derisory. Furthermore by contrast with the ten year spending

plans for increasing regional production, which enable appropriate business models and structural adjustments to be developed, the Diversity Creative Talent Fund has not been committed for an extended period.

It is important to note that the Diversity Creative Talent Fund is exclusively dedicated for projects which can demonstrate improved on-air representation. Improvement in on-screen BAME portrayal is important – but on screen representation which is not matched by off-screen employment is a hollow, deceptive and superficial gesture. Editorial power and influence lie behind the screen not on it.

Diversity and Contestable Funding

Ofcom has suggested Parliament could introduce contestable funding to address under-provision of certain types of programming.

Contestable funding could also be applied to address the under representation of BAME in public service broadcasting employment, particularly at the BBC.

The Campaign for Broadcasting Equality believes that the measures that the BBC has instituted to promote diversity are inadequate. We may stand to be proved wrong in the period of the run up to Charter renewal. Absent significant progress on BAME employment in this period, contestable funding should be used to provide a ring-fenced fund to drive diversity in line with the Lenny Henry proposal.

In a speech to the Oxford Media Convention on 26 February 2014, Lord Hall, the BBC Director General dismissed the idea of contestable funding, saying

“Contestable funding feels like a solution in search of a problem.” Under representation of BAME people in public service broadcasters is a problem to which contestable funding could be the solution.

Ofcom and the Equality Duty

Ofcom’s response to its duty to take appropriate steps to promote equal opportunities in broadcasting has been shabby. It must be hoped that Ofcom’s past performance is not a guide to Ofcom’s future performance. Ofcom should review its past performance and advance proposals for doing better from now on.

Campaign for Broadcasting Equality CIO

26 February 2015