

## **Consultation on How Ofcom Regulates the BBC**

### **Submission from Ofcom Advisory Committee for Northern Ireland**

Ofcom's Advisory Committee for Northern Ireland (ACNI) advises Ofcom on the interests and views of citizens and consumers in Northern Ireland (NI) in respect of communications matters. The Committee receives briefings from Ofcom and provides advice on a wide range of broadcasting matters, including the performance of the BBC and the wider debate on the future of Public Service Media. In May 2021 a subgroup of the committee engaged with the Ofcom team looking at the developing regulation of the BBC and provided some early insights, drawing on its understanding of the interests of consumers and citizens in Northern Ireland.

This is the Committee's formal advice into the consultation. It should be read alongside [our submission to the Small Screen: Big Debate consultation](#) which discusses how regulation might evolve for PSM more broadly.

Overall, the Committee recognises the importance of updating the regulation of the BBC, with more service neutral and outcomes focused measures, where these support universality and the wider public service remit. It is vital that the needs and interests of diverse audiences are protected, including less well served groups and those who are not consuming online. We also believe that there remains a number of areas where the public policy aims can only be met through broadcast quotas including, for example, regional production at local and network level. We agree that any changes in the regulatory system must be underpinned by the highest standards of transparency and openness and we would like to see more engagement and accountability to stakeholders and audiences in NI.

The Committee has responded to the 6 consultation questions below:

#### **Q1: Do you agree with the proposed scope of the review of BBC regulation as set out in this document?**

ACNI believes that the review of BBC regulation is necessary and timely and agrees with the scope of this consultation. It is especially important to understand how the BBC's performance can be assessed across different platforms, including online.

#### **Q2: Do you agree with the proposed approach to reviewing the BBC Operating Licence?**

ACNI believes that this is a useful and thorough approach to reviewing the BBC's Operating Licence. It welcomes the opportunity to provide further comment on more detailed proposals before a new framework is agreed. It will also be important to keep the framework under review, given the pace of change.

#### **Q3: Do you have any views on how to measure the BBC's performance?**

In its response to the Small Screen: Big Debate consultation ACNI agreed in principle that the regulatory framework for all of the PSMs should become increasingly service neutral and outcomes focused, *where this supports universality and the wider public service remit*. The Committee noted that this would allow the PSMs more flexibility to choose the provision and delivery best suited to the agreed aims, and to be more responsive to ever evolving needs and opportunities. Such agility is essential when PSMs are having to meet the needs of both

broadcast and online audiences, and the complex intersection of these. The Committee therefore welcomes Ofcom's work to update the regulatory framework for the BBC to reflect new, and evolving, realities.

However, the Committee wishes to make the following further points about measuring the BBC's performance:

**Universality:** In our response to the Small Screen: Big Debate consultation ACNI said that more needed to be done to strengthen the universal offer provided by PSM, and the BBC as the largest PSM will be very much to the fore. It is therefore absolutely essential that any new regulatory regime for the BBC protects and actively promotes the universality of the BBC's offer so that value is delivered for *all* of its audiences. Performance must be assessed across the different parts of the UK and for different demographic groups, with particular focus on diverse, vulnerable sections of the audience and those who we know to be less well served. We would ask Ofcom to test a draft framework against the needs of different audiences and to ensure that there is sufficient incentive on the BBC to provide timely and effective remedies if sections of the audience are found to be missing out.

The BBC must also continue to serve sections of the audience who, for various reasons, do not access online services. The Committee notes that the transition from broadcast to online delivery is not necessarily a straight road or indeed a given over time for everyone. More widely, as the BBC Three experience has shown, consumption patterns have proven to be as complex as they are evolving, with enduring broadcast needs sitting alongside the take up of online services, even for younger audiences. This has significant implications for the consideration of 'service neutral' or 'online first' approaches. The Committee considers that service specific and output focused measures should be included where these are necessary to ensure audiences who are not consuming content online continue to be well served.

**Quotas:** The Committee believes that, whilst there is a need to proceed with some more qualitative outcome measures, there remains a number of areas where public policy aims can still only be met through output measures, such as quotas. This includes, for instance, regional production at local and network level and the production of genres where there would otherwise be market failure, such as nations and regions current affairs. Spend and hours targets for network supply from outside London are one example where output measures have proven to be a very successful means of driving the desired public service aims, from improved portrayal to growth of the creative industries and nurturing of talent, wherever it may be found. Conversely, ACNI notes examples where a relaxation of quotas has led to poorer outcomes for audiences and wider society in important areas of the public service mission.

The Committee therefore believes that it is vital that Ofcom identifies these areas and ensures that any further qualitative and service neutral measures are *additional* to the quota system until such a time as they are proven to be unnecessary.

The Committee further notes that broadcast quotas are a particularly good way of ensuring that public benefits are spread across the UK. ACNI has observed that, when quotas are not set, or are not applied at Nations specific level, NI tends to lose out disproportionately. NI's relative size, its geographic remoteness from the centre and its many points of social, cultural and political distinction are all factors. Over the course of time there is a cumulative impact for audiences and societal interests across different areas of the PSM framework. And, now that more PSM production is moved out of London to hubs in GB, but not NI,

there is a further danger that NI audiences and creative industries will be significantly disadvantaged unless the regulatory system ensures otherwise.

**Means of measurement:** The Committee agrees that a new framework is required which takes account of different measures of public value, including more qualitative, outcome based measures. The principle of universality implies considerable complexity because of the range of different audience needs that must be met. Thought should be given to the various measures of success, and should go beyond audience reach to include quality and distinctiveness, value and impact, delivery against public service aims and value for money. The consultation paper observes that one of the downsides of quantitative quotas is that there can be little incentive to deliver once the targets are achieved. ACNI observes that qualitative targets may have the potential to further drive performance where it matters most, but only if this is effectively built in to the regime.

It will be important to define outcomes in a way that is clear, measurable and will fully leverage *all* of the intended public service benefits, whilst also retaining appropriate flexibility with regard to how this is achieved. On a practical level, we are mindful that measuring outcomes can be more difficult and open to interpretation than measuring outputs, and any room for debate is unlikely to serve the policy aims well. We note, by way of example, past concerns about blurring of programme genres to achieve quotas as well as industry concerns about 'brass plating' to meet regional production quotas. This places a very significant onus on Ofcom to provide clarity round its measures as well as a means to verify that they are applied appropriately and consistently. The regulator needs to be able to see clearly when the BBC is not on course to achieve the required outcomes and intervene in a timely and proportionate manner.

**Transparency and accountability:** The Committee strongly agrees with Ofcom's view that the BBC needs to demonstrate significantly more transparency to enable this new approach to regulation to work. Without this public confidence in the BBC, in public service media and in its regulation will be significantly undermined – all at a time when PSM as a whole, and the BBC in particular, is under considerable pressure and scrutiny.

ACNI will want to see how well the interests of NI audiences, in all their diversity, are served in clear and measurable terms, and this needs to be built into the framework of regulatory requirements as per Q2 above.

The Committee believes that it is vital that a new PSM framework provides for accountability beyond Ofcom to Westminster and the devolved Parliaments/Assembly. We consider that the long term lack of representation for NI on both the Ofcom and BBC Boards has been a weakness of the current structure, as has the absence of a mechanism to allow for scrutiny by the NI Assembly. This experience has shown how important it is that the arrangements which underpin any framework are fully in place from the outset if it is to fully deliver its purposes across the UK.

We also strongly believe that PSM will be better served if there is more direct engagement between providers and audiences, particularly by the publicly funded BBC. This contributes another important layer to accountability and to continuously shaping an offer that is responsive to the diverse and evolving needs of audiences. This would also serve important media literacy objectives in engaging audiences with the values and benefits of PSM so that they derive maximum benefit and can play a fuller, informed role in directing how PSM develops and is paid for. In the past the NI Annual Review was one way to engage

stakeholders and audiences with the BBC's performance and direction in this part of the UK. We would welcome further consideration as to ways to stimulate and strengthen these conversations in NI.

**Q4: Do you agree with our proposed scope of the review in relation to content standards?**

The Committee agrees that it is appropriate to take time to consider how well the editorial complaints framework for the BBC delivers for audiences. We believe that, in principle, it is important for the BBC to handle complaints in the first instance, to ensure that it is directly exposed and accountable to audience complaints and has the opportunity to resolve issues at a preliminary stage. However, we are aware of audience concerns about transparency in complaint handling and decision making and some confusion and frustration around the process. We therefore fully support a review to understand where improvements can be made and will be interested in contributing advice on behalf of audiences in NI. We also agree that it is important to have a particular focus on the handling of serious editorial complaints which have a significant bearing on public confidence in the BBC.

We agree with Ofcom's proposal not to focus on impartiality at this stage, so that there can be due focus on the wider issues as noted above. This is very much on the basis of the assurance that Ofcom will bring this work forward if there is further need.

**Q5: Do you agree with the issues we have identified with the processes for assessing the competitive impact for changes to the BBC's UK services?**

**Q6: Do you have any concerns about the regulatory framework for the BBC's commercial activities that are not being considered in the review of BBC Studios?**

ACNI's main focus is on the interests of consumers in NI, and we therefore have less to contribute in this area. However, we will remain interested in Ofcom's findings, particularly as they relate to the creative industries and audiences in NI.

*Advisory Committee for NI*

*September 2021*