



Response to Ofcom consultation on Modernising the BBC Operating Licence

September 2022

Question 1: What are stakeholder views on how Ofcom should assess and measure BBC performance?

1. In general we believe Ofcom should take a new look at how it assesses and measures some aspects of BBC performance.
2. Ofcom has placed considerable emphasis on moving away from using a quantitative approach to measure how the BBC's content meets its mission and public purposes, both in the current and proposed Operating Licences. This particularly relates to key genres which we would argue indicate distinctiveness. As we demonstrate elsewhere in this response, the relaxation so far of certain programme genres in radio and audio has led in some cases to a highly significant reduction in original hours of those genres, adversely affecting the benefit to the Licence Fee Payer and to the BBC's role in developing new talent.
3. Given these genres include some which are not regularly found on other radio or audio services, this is deeply regrettable. While the BBC does not exist purely to tackle market failure, its third Public Purpose to *"provide high-quality output in many different genres and across a range of services and platforms which sets the standard in the United Kingdom and internationally"* is in danger of being insufficiently met, unless Ofcom tightens up some of its requirements in terms of the hours produced in certain key genres.

Question 2: Do you agree with the proposals for Public Purpose 1? If not, please explain why.

4. All news content for the BBC's Radio and audio services is made in-house, in accordance with the Charter and Agreement. Therefore we do not offer views on these proposals.

Question 3: Do you agree with the proposals for Public Purpose 2? If not, please explain why.

5. We note Ofcom's proposal to move the conditions in respect of arts and music, religion, documentaries, drama, factual content and specific music content from Public Purpose 2 into our proposals for Public Purpose 3. We have no objection to this per se, however as we set out below, the requirements around the BBC's airing of certain genres need to be moved to a more quantitative-based approach, as previously used by the BBC Trust.

Question 4: Do you agree with the proposals for Public Purpose 3? If not, please explain why.

6. We do not agree with Ofcom's approach of removing quantitative measures of the BBC's performance in terms of some key genres in radio and audio. This course of action has already led to a reduction in the distinctiveness of BBC Radio services in terms of providing sufficient programming in the genres discussed above.
7. One of the key tools used by the former BBC Trust to ensure diversity of BBC Services was to require a certain level of output in underserved genres, via separate Operating Licences for each BBC service. The last BBC Trust Service Agreement for Radio 4 in 2016 required that network to broadcast at least 600 hours of original drama and readings each year and at least 180 hours of original comedy each year¹.
8. During the consultation on the original Ofcom-BBC Operating Licence, AudioUK (then Radio Independents Group/RIG) made the case to Ofcom² that it should in the first instance adopt the radio genre quotas instated by the BBC Trust. We warned that failure to do so could well result in a very significant reduction in the BBC's provision of certain types of PSB programmes³.
9. Despite this however, Ofcom's approach was to remove altogether specific quotas for drama and comedy on BBC Radio 4 and drama on BBC Radio 3. During the period prior to Ofcom finalising its first Operating Licence, the BBC wrote to Ofcom⁴ setting out commitments for its first Annual Plan for the year 2018-19:

"For the period of the current Annual Plan, we are happy to commit to 600 hours of original drama and readings and 180 hours of original comedy on Radio 4; 55 hours of comedy and 55 hours of drama per week on Radio 4 Extra; and 25 new drama productions broadcast on Radio 3, i.e. the same level as contained in the previous Trust Service Licence quotas. Longer term, we question whether volumetric input measures are the best approach to maximising the distinctiveness of expensive programme genres such as Drama and Comedy."

10. As per the above commitment, the BBC 2018-19 Annual Plan duly stated:

"We will make over 600 hours of drama and 180 hours of comedy for Radio 4 and iPlayer Radio combined".⁵

¹ [Radio 4 Service Licence. BBC Trust, April 2016, p5](#)

² See our full response to the Ofcom consultation at <https://www.audiouk.org.uk/wp-content/uploads/2021/09/RIG-response-Holding-the-BBC-to-account-for-the-delivery-of-its-mission-and-public-purposes-Final.pdf>

³ see [Farber, F. RIG: BBC must not drop radio quotas. Broadcast, August 2017](#)

⁴ [Letter from BBC to Ofcom. 14 August 2017](#)

⁵ [BBC Annual Plan, 2018-19. BBC, March 2018, p42](#)

11. Just five years on, the BBC Annual Plan for 2022-23 states that Radio 4 will commit to broadcast just 300 hours of drama and 150 hours of comedy⁶. This means that in only five years there has been a 50% reduction for Radio 4 drama and a 17% reduction in Radio 4 comedy.
73. It is also worth noting that the final BBC Trust Service Licence for Radio 3 required it to broadcast at least 20 new drama productions each year⁷. The BBC's 2017 letter to Ofcom contained the commitment of: *"25 new drama productions broadcast on Radio 3"*, however the first BBC Annual Plan contained no commitment to drama other than the statement that: *"Radio 3 will maintain its role in unique and challenging drama"*. The latest BBC Annual Plan contains no commitment to drama on Radio 3.
74. Whatever the merit of the BBC's rationale in its 2017 letter to Ofcom, it is hard to equate this scale of reduction, especially in radio drama, with the BBC's statement in its 2017 letter to Ofcom that *"The BBC has no plans to reduce its commitment to Drama or Comedy"*⁸.
75. We recognise that the BBC's real-terms funding has fallen somewhat in the intervening years. We also recognise that for some years Radio 4 programme budgets fell behind inflation, something which we raised with the BBC and to which it responded by raising budgets for programmes such as drama, but in return for commissioning fewer hours. Nevertheless even put together these factors do not explain a 50% reduction and therefore this appears to constitute a pro-active decision by the BBC to heavily reduce its BBC's commitment to commissioning original radio and audio drama. In contrast the BBC continues to invest heavily in original TV drama, despite the plethora of other broadcasters and on-demand services also providing it.

Ofcom's Approach to a new Operating Licence

76. In its recent consultation on 'How Ofcom regulates the BBC' Ofcom decided that it should keep in place some quotas for music stations, where they relate to competition and market impact, to ensure BBC music stations are distinctive and are not competing too directly with commercial radio. Overall however it stated that:

*"our regulation should move away from primarily requiring compliance with quantitative conditions and output reporting"*⁹
77. Despite AudioUK's consultation response expressing concerns on, and providing evidence for, the effect of removing genres quotas, this approach has now shaped the new draft Operating Licence, which simply requires BBC Radio 4 to:

⁶ [BBC Annual Plan, 2022-23. BBC, March 2022, p62](#)

⁷ [Radio 3 Service Licence. BBC Trust, April 2016](#)

⁸ [Letter from BBC to Ofcom. 14 August 2017, p3](#)

⁹ [How Ofcom regulates the BBC – a review. Ofcom, July 2021, p8](#)

“provide a wide breadth of output covering a range of genres and content types, including arts, religion, ethics, documentaries, drama and comedy”¹⁰

78. Therefore Ofcom is retaining requirements in areas where it perceives a detrimental effect on existing private sector media providers, but is elsewhere increasingly leaving it to the BBC to determine how it fulfils its core purposes relating to a range and diversity of content for the Licence Fee Payer. This in our view constitutes a significant departure from the approach envisaged by the Clementi Report of ‘a greater focus on measurable quantitative obligations that specify the desired outputs and outcomes’.

79. Ofcom also stated in its consultation on ‘How Ofcom regulates the BBC’ was that public value had changed:

“As the BBC adapts its services to meet the needs of audiences, through online and traditional broadcast services, it will be important for the BBC to adapt its measure of public value”.¹¹

80. We would question whether the ‘needs of audiences’ has been adequately defined. Any definition should mean not just the needs of larger audiences, but also specific audiences with a deep appreciation of certain genres. It should also encompass enabling discovery of these genres to new and diverse audiences, reflecting on life in Britain today. There is also the BBC’s educational role to consider, with drama an important educational tool, as is documentary.

81. We question whether the Licence Fee Paying audience would regard Ofcom’s stated approach as consistent with the BBC being adequately held to account, in terms of the extent to which to provide a suitable range and diversity of content, as opposed to effectively being left to self-regulate.

82. This is of particular concern given the rationale behind the BBC’s move to a digital-first approach, as announced by DG Tim Davie in May this year. Among other developments the announcement referred to:

“Plans to accelerate digital growth in audio and drive listeners to BBC Sounds, simplifying schedules and cancelling shows that do not deliver”¹².

83. The BBC needs to be clear on how it defines ‘shows that do not deliver’. Given the reference to ‘digital growth’ this would seem to imply a focus on BBC content ‘delivering’ in terms of sheer audience numbers. If so, we would argue this lies contrary to the BBC’s renewed commitment to serving minority audiences, both in terms of their lived experience but also in terms of minority programme tastes, not just those audiences which ‘deliver’ the largest figures.

Allowing a gradual downward trend

84. Ofcom states in its consultation on the new Operating Licence that:

¹⁰ [Operating Licence for the BBC’s Public Services: Draft for consultation. Ofcom, June 2022, p13, para 3.8.3](#)

¹¹ [How Ofcom regulates the BBC – a review. Ofcom, July 2021, p8](#)

¹² <https://www.bbc.co.uk/mediacentre/2022/plan-to-deliver-a-digital-first-bbc/>

"We do not expect the BBC to report on minor 'business as usual' changes, rather that it is open and upfront with changes that meaningfully alter how it delivers for audiences. A key example of such a change would be significantly reducing output in a certain area, either due to shifting content online or discontinuing it for cost-saving purposes."

85. The difficulty with this approach is that it allows the BBC over time to facilitate a steadily downward trend in the amount of genres hours it commits to, while not ever reducing them sufficiently in any given year to cause it to be seen by Ofcom as 'significant'.
86. In its original Operating Licence, Ofcom simultaneously dropped the drama and comedy quotas without requiring the BBC to state how many hours it would commission in any given financial year, beyond its first Annual Plan. As a result while 2019/20's subsequent BBC Annual plan did feature commitments for 530 hours of drama, the following two years' reports did not feature any quantifiable commitments, just aspirational text on the types of content the BBC would commission. It is only the most recent Annual Plan that reintroduced the specified commitment of a certain number of hours, although as stated above this was drastically reduced from the figure of 2018/19 and even of 2019/20.
87. While we understand Ofcom's argument that the BBC needs to expand its content strategy across all platforms, what is not present is any strategy to compensate for removing the genre quotas for radio. If Ofcom were to reinstate the genre quotas but run them across all services (i.e. including BBC Sounds) this would to some extent be more understandable.
88. We have noted to Ofcom previously our concern that the BBC's 'Fewer, Bigger Better' strategy will cause those programmes which are important but not attracting large audiences to suffer. The BBC Director General has already spoken of wanting to make fewer documentaries¹³, at which point again there is concern that this will cause reduction of programmes in genres that are an important part of PSB. We have already seen documentaries moved from peak time on Radio 2 to non-peak, which although the BBC is moving towards a 'Digital-First' strategy can still appear to downplay such genres, especially as RAJAR figures show that 89% of the British population still listen to live radio each week¹⁴.

The importance of key radio/audio genres

89. Genres such as drama and comedy are places where new writers, performers and directors can explore and develop their craft. This is therefore relevant both to the BBC's responsibilities to the creative industries but also in ensuring that there will be a pipeline of creatives, drawn from a wide range of backgrounds and lived experiences, making such PSB content in years to come for BBC audiences.

¹³ See <https://www.documentarytelevision.com/uk/bbc-director-general-floats-deep-cuts-to-documentaries-in-smarter-bigger-better-strategy/>

¹⁴ [RAJAR Data Release: Quarter 1, 2022. RAJAR, 19 May 2022](#)

90. The BBC is rightly making moves to ensure that those companies making this content are increasingly diverse. It introduced a £12m scheme to encourage the commissioning of content featuring a combination of more diverse subject matter and from companies that are diverse in their makeup. Documentary, comedy and drama are key genres in which to hear from a more diverse range of perspectives, particularly as they are genres in which the wider market does not significantly provide content. If the opportunity to produce for these genres continues to diminish, then the risk is that the range of content becomes more and more narrow.
91. To inform this response with some on-the-ground perspectives, AudioUK took soundings from some of our drama producer members, who told us:

“Audio drama is a platform for new diverse talent - mainly in terms of casting. There are very few opportunities to welcome new directors in because they don’t offer a budget uplift. And it has definitely been possible to encourage more writers from diverse backgrounds to have a go at writing audio drama ... it’s a great try out for new talent. Theatre is high-risk in terms of investing in new writing, TV want series (which means writers need a track record) but most radio dramas are single plays of 30 or 45 minutes. That’s manageable and a great opportunity for writers new to radio.”

“I always hoped the BBC would encourage indies to bring more diverse production, directing, writing and acting talent to Radio 4. In-house BBC producers can’t help seeing outsiders using up their slots as a threat. As indies we’re so much closer to the ground, to our producing theatres, our local publishing presses, our fringe theatre venues and activity. We’re better networked, we’re more open and many of us love creating new opportunities for the talent on our doorstep.”

“[it was disappointing to see] the significant drop in single 45-minute Afternoon Dramas. This was the traditional space for new and hopefully diverse voices to be heard.”

92. The Government has acknowledged that radio programming in genres such as drama and comedy are hard to sustain on a commercial basis – hence its creation of the Audio Content Fund¹⁵, which has enabled such genres to appear on some commercial radio and community networks for the very first time, although still in a limited capacity. The DCMS policy paper published at the time of the ACF’s creation stated:

“...examples of public service content outside national and local news on commercial radio are rare, as the vast majority of public service programming is provided by the BBC. While commercial radio stations broadcast an average of 13 hours of public service content each week, delivering significant public value, most of this consists of news and sport, travel, weather, charity appeals and local events. Long-form genres such as documentary, comedy, and drama are almost entirely broadcast by the BBC.”¹⁶

93. The BBC Charter White Paper stated that one of the purposes of the contestable fund would be to improve diversity:

¹⁵ www.audiocontentfund.org

¹⁶ [Contestable Fund Pilot: Supporting Young Audiences and Audio Content. DCMS, October 2018, p8](#)

“...the government will also introduce a pilot for contestable funding (as set out in Chapter 6). This will mean that funds will be available for making shows about and for diverse audiences, helping aspiring talent from minority communities to get commissioned, and onto the schedules.”¹⁷

94. While the Audio Content Fund has provided an additional source of some drama commissions and also new digital platforms allow for the creation and distribution of drama, the BBC still remains a vitally important commissioner and broadcaster of drama content for UK audiences. This is currently particularly the case as there is currently no further funding being made available for the Audio Content Fund, therefore production in these genres will decrease in commercial and community radio until such time as the funding is reinstated.
95. Such genres are, we would argue, absolutely essential to the BBC's remaining distinctive as required under Public Purpose 3. The BBC therefore has a duty to ensure it is helping to maintain radio and audio drama which captures the imaginations of audiences through storytelling. Thanks in main to BBC commissioning the UK has been a world-leader in drama and comedy production, for example recognised by global radio awards such as the New York Festival International Radio Awards.

Recommendations on preserving key genres

96. Ofcom's role is not purely to ensure the BBC is not affecting competition and markets - it is also to ensure the BBC is delivering to audiences by ensuring there is the proper amount of creative competition for making a diverse and distinctive range of content. This lies behind the requirements in the Charter and Agreement for BBC TV, radio/audio and online to have greater commissioning opportunities for external producers.
97. It appears to some extent that Ofcom and the Government are working at cross purposes, with the Government introducing more requirements in areas like diversity, which includes some stronger out-of-London requirements in areas like radio (see below), while Ofcom is simultaneously relaxing similar rules.
98. Ofcom appears to have chosen to prioritise some areas of regulation above others in terms of how strongly it seeks the BBC's fulfillment of its Mission and Public Purposes. We cannot be certain whether this is because of Ofcom's own interpretation of its role, or the interpretation it may have been given from DCMS. It may therefore be beneficial for Ofcom to discuss with DCMS how it issues guidance to and liaises with Ofcom regarding how the latter ensures the fulfilment of every aspect of the Charter and Agreement.
99. In order to prevent further significant deterioration in the BBC's supply of content in key genres such as drama and comedy to audiences, Ofcom should reinstate quantitative quotas for such genres on radio networks and BBC Sounds and to start from a level at or near to the previous BBC Trust quotas.

¹⁷ [A BBC for the future: a broadcaster of distinction. DCMS, 2016, p13 DCMS, 2016, p42](#)

100. Ofcom should review its approach in terms of how and to what extent it fulfils its remit on ensuring the BBC meets its public purposes across the piece but in particular regarding the diverse nature of content provided to the Licence Fee payer.

Question 5: Do you agree with our preliminary view on the BBC's request to change Operating Licence conditions 2.21 and 2.32 for BBC Four, including our proposal to remove BBC Four's peak original productions quota and set the 'all hours' quota at 65% instead of 60% as requested by the BBC? If not, please explain why.

101. Given that it relates to television services, we do not have a view on this matter.

Question 6: Do you agree with the proposals for Public Purpose 4? If not, please explain why.

102. We have significant concerns regarding the proposals, again in terms of their continuation of Ofcom's policy of relaxing quantitative measures for the BBC's performance against its mission and public purposes. Diversity of supply is a key factor in the BBC achieving its third and fourth Public Purposes. One of the core reasons the Government - and indeed the BBC itself in recent years - has moved towards greater competition in programme-making is that it ensures that the BBC's content – and therefore its audiences – benefit from a wider range of stories, ideas, talent and perspectives.
103. Around half of AudioUK's members are based outside of London, however figures compiled by AudioUK indicate the majority of BBC commissioning of independent audio production companies still happens within London. There needs to be a greater push by the BBC to establish a truly level playing field for independent audio production companies across the UK and arguably a greater responsibility to be placed on it to do so.
104. Following conversations had with AudioUK Out-of-London member companies, the BBC last year launched the Radio Indie Development Fund¹⁸ which will invest £250k annually in a number of companies around the UK to help them grow and be able to establish working relationships with the BBC and pave the way to take on larger commissions.
105. We do of course welcome such initiatives from the BBC. However there remains the need to ensure that in general commissioning by the BBC from out-of-London companies is on a level playing field with in-house commissioning teams and production companies based in London. Currently there is no data required by Ofcom, or provided voluntarily by the BBC, to measure how much is spent on commissioning productions from external producers outside the M25.

Reduction of quotas for Out-of-London radio commissioning spend

106. Following revisions in May 2022, the BBC Agreement now requires that:

¹⁸ <https://www.bbc.com/mediacentre/2021/bbc-radio-indie-development-fund>

“The BBC must deliver plans to ensure that, by 31 December 2027, 50% of its relevant expenditure on network radio programmes and music (taken together) is referable to different centres outside the M25 area”¹⁹

107. The first Ofcom BBC Operating Licence required each of the BBC’s individual UK Radio networks (Radio 1, Radio 2, Radio 4, Radio 5 live) to allocate a third of their relevant expenditure outside London (with the exception of Radio 3 which has a requirement of 40%)²⁰.
108. The BBC wrote to Ofcom in September 2020²¹ requesting that these quota requirements for its out-of-London radio spend were reduced. We are not in possession of the correspondence preceding this letter but Ofcom have told us that the request from the BBC was related to BBC Radio 3 and a central orchestras subsidy.
109. Ofcom has agreed to the BBC’s request and the new draft Operating Licence contains the following:

“In respect of the UK Public Radio Services which are designed for audiences across the UK and BBC Sounds taken together, the BBC must ensure that in each Financial Year at least 30% of relevant expenditure is incurred outside the M25 Area ...”

*... “the BBC must ensure that **some** [our emphasis in bold] of the relevant expenditure is incurred in respect of each of the following radio services [Radio 1, Radio 2, Radio 3, Radio 4, BBC Radio 5 live]”*

In respect of Radio 3, the BBC must ensure that in each Financial Year at least 28% of relevant expenditure is incurred outside the M25 Area²².

110. We have two concerns relating to this. Firstly we are not convinced of the BBC’s case that such a reduction is necessary. Secondly, this change to the Out-of-London radio spend already appears to have been implemented, ahead of any consultation and contrary to the current Operating Licence as featured on Ofcom’s website.

Concerns regarding the rationale for reducing the quotas

111. The BBC’s rationale for reducing the Out-of-London radio spend quotas across the piece was that:

“we do have concerns about the level at which Ofcom would set any revised

¹⁹ [Broadcasting: An Agreement Between Her Majesty’s Secretary of State for Digital, Culture, Media and Sport and the British Broadcasting Corporation. DCMS, May 2022, 5C\(1\)](#)

²⁰ [See Operating Licence for the BBC’s UK Public Services. Ofcom, October 2017, p27, para 2.64](#)

²¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0020/216236/BBC-letter-to-Ofcom-dated-29-September-2020.pdf

²² [Operating Licence for the BBC’s Public Services: Draft for consultation. Ofcom, June 2022, p13, para 4.28 – 4.30](#)

quotas for both Radio 3 (Condition 2.66) and UK Public Services Radio (Condition 2.64) spend outside of London. As a technical change to the BBC's operating licence, any new quotas must be consistent with the BBC's recent performance and existing operational headroom. We therefore consider that – based on our performance over the past five years and the level of the existing quota – it would only be appropriate to set the revised requirement in Condition 2.66 at 28% (not 30% as proposed) and to revise the requirement in 2.64 to 30% (not 33.3%) to account for the impact of removing the central orchestras' subsidy from both these calculations."

112. We are not familiar with the detail of the BBC's orchestra subsidy, nevertheless even if this does affect Radio 3, this does not account for the BBC's request to drop the rest of the UK stations' quotas below the 'one-third' requirement or to wrap them up into one overall quota.
113. Specifically, we are not clear on why '*the BBC's recent performance and existing operational headroom*' is a barrier to observing the current Out-of-London spend requirements, given that it has to date been able to meet them. The BBC's latest 2021-22 Annual Report lists its out-of-London radio expenditure, across all of its networks outside of Radio3, to be 39%. Demonstrably there is not a problem for the BBC in achieving such levels and we are therefore not clear as to why it has requested to lower them and why Ofcom has agreed to do so.
114. Furthermore, it is not clear how Ofcom's agreement to this reduction in the BBC's Out-of-London spend fits with the new requirement in the BBC Agreement of 50% spend by 2027. Given the BBC letter quoted above was dated September 2020, 18 months prior to the 50% figure being inserted into the Agreement, we question whether the BBC's request remains current.
115. We note that an annex to the BBC letter shows that it put the case to Ofcom that for Radio 3 in particular, the quota was a challenge because:
- "...it may also be harder for the BBC to ensure we can commission relevant radio programmes across the UK when compared to in-house production over which we have more control."*
116. This could be interpreted as implying that the production sector outside London would not be able to meet the requirements for making Radio 3 programmes, something which we would dispute. Over half of AudioUK's membership (currently around 140 companies) is based outside the M25 in areas across the UK and operate across all genres. The Audio Content Fund's latest Annual Report shows that 70% of the projects commissioned in 2021-22 were produced outside London²³.
117. Therefore, in respect of the Out-of-London spend requirements for BBC UK Radio networks, we believe the current requirements should be kept in place.

Reporting the overall Out-of-London annual spend on external commissions

²³ <https://www.audiocontentfund.org.uk/2022/07/26/acf-pilot-distributed-3-35m-and-created-more-than-6000-freelancer-days/>

118. As an extra measure, the BBC should be required to show more clearly the extent to which it is investing in a range of companies in the creative industries around the UK. It should be required to provide an overall figure for how much it spends on the radio and audio indie sector overall, as well as how much of that spend goes into the sector outside the M25. It should also be required to supply details of how many companies are commissioned in each separate region and nation. This would greatly increase transparency.

Lack of consultation on a substantial change to the Operating Licence

119. We note that the BBC's 2021-22 Annual Report already sets out its out-of-London radio spend quota as a requirement to spend 30% across all of its networks²⁴. We also note that Ofcom's consultation on the new Operating Licence refers to 'current' Licence condition 2.64 as being 30%²⁵.
120. This is despite the fact that the current Operating Licence, present on Ofcom's website, still lists the requirement as one third of expenditure for each UK-wide network and 40% for Radio 3²⁶.
121. It is unclear as to how this discrepancy has occurred, nevertheless the result is that Ofcom appears to have agreed to a change to the BBC's Operating Licence conditions, ahead of its consulting on its proposed new BBC Operating Licence.
122. We recently raised with Ofcom the issue of the fall in the out-of-London radio spend quota contained in the new draft Operating Licence. Ofcom pointed us to the BBC's September 2020 letter on its website. However outside of the publication of this letter, which as far as we are aware was not publicised at the time, we are not aware of any consultation being carried out or specific notice being given of this change being implemented ahead of the formal review of the BBC Operating Licence, nor did Ofcom make us aware of any.
123. This gives rise to questions on the level of transparency involved in the BBC requesting a change to its Operating Licence and that change being implemented ahead of Ofcom's formal consultation on its draft Operating Licence. In our opinion a change such as this ought to be brought to the attention of stakeholders and views sought as to whether it could have any detrimental impacts, in this case to the creative industries in the context of providing greater diversity to the BBC's programme making.
124. For Ofcom to make changes in this manner has implications for its regulation across all of the BBC's public purposes, including in this case provisions relating to diversity. It is also an example of a decision being made outside the context of the full Operating Licence, which has only now been published in draft form.

²⁴ [BBC Group Annual Report and Accounts 2020/21. BBC, 2021, p142](#)

²⁵ [Modernising the BBC's Operating Licence. Ofcom, June 2022, p67, footnote 209](#)

²⁶ [Operating Licence for the BBC's UK Public Services. Ofcom, October 2017, p27-28, 2.64 – 2.66](#)

125. We therefore recommend that Ofcom reviews the procedures under which it makes significant changes to the Operating Licence without consultation and ahead of the formal consultation on the full draft Operating Licence.

Question 7: Taken together, do you agree with the proposals for a new Operating Licence? If not, please explain why.

126. As per the above, in our opinion Ofcom is moving too far in some areas in allowing the BBC the freedom to interpret in any way it wishes how it should be achieving elements of its mission and public purposes. We do not believe this was the intention behind the recommendation of Ofcom to regulate the BBC, contained in the independent review of BBC governance and regulation conducted by Sir David Clementi. Nor do we believe it is what the Government had in mind when it consequently decided to make Ofcom the regulator for the BBC.
127. If we revisit the origins of the current regulatory regime and the rationale for appointing Ofcom as the regulator of the BBC, it is clear that the expectation was that Ofcom would be a stronger, more effective regulator than its predecessor, the BBC Trust. The Clementi Review concluded in 2016 that the BBC Trust model was “flawed” as it:

“...conflates governance and regulatory functions within the Trust”.

Sir David recommended that Ofcom should instead regulate the BBC, because:

“Ofcom has scale and credibility. It would be a strong regulator to match a strong BBC.”²⁷

128. The subsequent BBC Charter White Paper confirmed that, on the back of Sir David’s recommendations, the new Charter would:

“introduce external independent regulation of the BBC by Ofcom, as recommended by the Clementi Review. This will ensure a strong regulator sits alongside a strong BBC”²⁸.

129. AudioUK (then ‘Radio Independents Group’) agreed with this conclusion, in the belief that Ofcom would take a strong line in ensuring the BBC was working closely to its Mission and Public Purposes in all respects.

130. Sir David envisaged that there would be an overall Operating Framework, accompanied by a series of Operating Licences, to ensure the BBC met its core objectives:

*“... the Operating Licences would be different from the [BBC Trust] Service Licences [by] moving towards a more clearly regulatory document. This means that **they should have a greater focus on measurable quantitative obligations** that specify the desired outputs and outcomes, rather than the more qualitative approach of the existing Service Licences. The Operating Licences would need to*

²⁷ [Clementi, Sir David. A Review of the Governance and Regulation of the BBC. March 2016, para 6, p8](#)

²⁸ [A BBC for the future: a broadcaster of distinction. DCMS, 2016, p13](#)

*include the statutory quotas the BBC must meet, and **would be expected to include other metrics about the BBC's output that are based around the key objectives set in the Charter and Agreement.***" [our emphasis in bold]²⁹

131. The BBC ultimately should be clearly distinguishable from others providing TV and radio services, otherwise its status as a PSB surely comes into question. This is not something which AudioUK member would want to see and is clearly not the intention of Ofcom regulating the BBC.
132. We have submitted similar views to the DCMS as part of its stakeholder consultation on the Mid-Term Charter Review. We believe it would be beneficial, prior to Ofcom finalising its new Operating Licence, for it to review with DCMS its intended purpose in regulating the BBC and whether it is carrying this out in a way that truly ensures the BBC is acting in the best way to achieve its mission and public purposes in some key areas relating to content.

www.audiouk.org.uk

²⁹ [Clementi, Sir David. A Review of the Governance and Regulation of the BBC. March 2016, para 44, p53](#)