

*Championing  
excellence and diversity  
in broadcasting*



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## **VLV RESPONSE TO OFCOM CONSULTATION ON HOW OFCOM REGULATES THE BBC**

**September 2021**

## INFORMATION ABOUT THE VLV

1. The Voice of the Listener & Viewer (VLV) is an independent, not for profit membership-based charity, free from political and sectarian affiliations. VLV supports high quality broadcasting which maintains the democratic and cultural traditions of the UK. We support the independence and integrity of the BBC and encourage work which demonstrates commitment to the principles of Public Service Broadcasting (PSB). VLV is a charitable company limited by guarantee (registered in England and Wales No 4407712 - Charity No 1152136).

## INTRODUCTION

2. VLV welcomes the opportunity to respond to the consultation on how Ofcom regulates the BBC.
3. VLV supports Ofcom in carrying out fair, robust and independent regulation of the BBC.
4. VLV acknowledges that there may be some need to adapt regulation of the BBC as it adapts to changes in audience behaviour, especially with reference to content which is viewed online. However, VLV considers there is a potential conflict between two goals set out in the consultation, namely for Ofcom to hold the BBC to account for delivery of its Mission and Public Purposes while also allowing the BBC more scope to determine how to fulfil its obligations.
5. VLV is concerned that the proposals to change Ofcom's approach to assessing the BBC's performance will lead to less robust regulation of the BBC. While VLV acknowledges that the BBC needs to be allowed flexibility to ensure creative freedom and to innovate to meet audience needs and expectations, VLV does not believe this should be at the expense of robust regulation to ensure it delivers the missions and purposes set out in the Charter for the benefit of licence fee payers.

**Question 1: Do you agree with the proposed scope of the review of BBC regulation as set out in this document? If not, please explain the areas where you think changes should be made.**

6. VLV agrees with the scope of the review of BBC regulation, focusing on performance, content standards and competition.
7. However, VLV would like to recommend that as part of its Periodic Review of the BBC Ofcom considers how public engagement in the BBC regulation process could be improved.
8. Since the abolition of the BBC Trust VLV has been concerned by the reduction in the accountability of the BBC to those who fund it. Under the BBC Trust there was far greater engagement with licence fee payers than there has been under the new regulatory and governance model. Neither the BBC nor Ofcom carry out meaningful outreach activity to find out whether licence fee payers are happy with the BBC's performance; instead audience research is used to assess audience satisfaction. This is not an adequate replacement for meaningful, accountable and transparent engagement with licence fee payers.

**Question 2: Do you agree with the proposed approach to reviewing the BBC Operating Licence? If not, please explain why.**

9. VLV agrees with Ofcom's proposed approach to reviewing the BBC Operating Licence.

**Question 3: Do you have any views on how to measure the BBC's performance?**

10. VLV agrees that the Operating Licence should enable Ofcom to hold the BBC to account for its delivery *across all its services*<sup>1</sup>, allowing the BBC greater freedom to decide where it should broadcast content which is required by quotas. VLV agrees with this proposal on the proviso that the most popular BBC TV and radio channels broadcast an adequate amount of content required by quotas (to be agreed with Ofcom) so that it continues to fulfil its Mission and Purposes as set out in the Charter.

11. VLV agrees that that the BBC should be allowed to determine how best to fulfil its Licence obligations across its platforms and services, provided it sets out publicly in its Annual Plan how it will deliver the Mission and Public Purposes<sup>2</sup>. We have a concern, set out below, about the timescale involved in the regulatory process.

12. VLV disagrees with Ofcom's proposal to *move away from primarily requiring compliance with quantitative conditions and output reporting*<sup>3</sup> for reasons we set out below.

13. VLV agrees that the Licence should enable Ofcom to hold the BBC more effectively to account by requiring greater transparency and more effective reporting, both when the BBC sets out its plans for delivering its Mission and Public Purposes and when it assesses how it has delivered against those plans<sup>4</sup>. VLV considers that currently the BBC Annual Plan does not provide enough clarity and detail on what it is committing to deliver. This especially applies to how the BBC intends to satisfy the needs of different audiences (such as young people, audiences in the nations etc.).

14. VLV agrees that Ofcom should have the power *to step in, in a timely manner, if [it has] any serious concerns about the BBC's planned or actual delivery*.<sup>5</sup>

**Quantitative Conditions**

15. VLV is concerned with the Ofcom proposal *to combine quantitative requirements with requirements which focus on how the BBC delivers for audiences, using measures such as the quality, reach and impact of programming (qualitative requirements)...[making] this approach more central to the Licence*.<sup>6</sup>

16. VLV does not believe that the approach being proposed by Ofcom is robust enough because it proposes replacing some quotas with requirements which *focus on how the BBC delivers for audiences*<sup>7</sup>, ie qualitative requirements. VLV considers that this would constitute a reduction in the accountability of the BBC and undermine Ofcom's ability to hold the BBC to account.

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<sup>1</sup> *How Ofcom regulates the BBC:A review*, Ofcom, 21 July 2021, para 3.17

<sup>2</sup> *How Ofcom regulates the BBC:A review*, Ofcom, 21 July 2021, para 3.18

<sup>3</sup> *How Ofcom regulates the BBC:A review*, Ofcom, 21 July 2021, para 3.19

<sup>4</sup> *How Ofcom regulates the BBC:A review*, Ofcom, 21 July 2021, para 3.21

<sup>5</sup> *How Ofcom regulates the BBC:A review*, Ofcom, 21 July 2021, para 3.25

<sup>6</sup> *How Ofcom regulates the BBC:A review*, Ofcom, 21 July 2021, para 3.19

<sup>7</sup> *How Ofcom regulates the BBC:A review*, Ofcom, 21 July 2021, para 3.19

17. We understand this shift in approach is to allow the BBC greater flexibility to adapt to market conditions when necessary, to allow measurement of delivery on platforms where it has not been measured in the past and to improve assessment of the impact of BBC provision on audiences.

### **Measuring delivery online**

18. VLV acknowledges that a potentially more complex set of metrics is required to assess whether the BBC's Purposes and Mission are being delivered, especially as regulation becomes platform neutral. We note that some existing quotas do not translate well for online platforms; for example the 'peak' time quota, which ensures that publicly valuable content is broadcast at a time in the linear schedule when it will have the most impact, is less relevant for online platforms.

19. We also note that there is currently no standardised approach to measuring delivery on platforms other than TV channels. VLV urges Ofcom, the BBC, platform operators and others in the audio-visual industries to work together to develop an agreed set of metrics to assess the consumption and impact of content so that the public value of BBC and other PSB content can be properly measured.

20. Additionally VLV understands that it is a challenge to obtain access to data from platforms. VLV believes that Ofcom should be mandated to demand such data from platforms so that it is able to fulfil its role as the broadcasting and online regulator. The provision of data to the BBC by platforms should be agreed during carriage negotiations.

### **Quotas**

21. VLV agrees that that audience experience is important and that quantitative measurement of hours alone doesn't tell us about quality or the impact content has had on the audience.

22. While VLV acknowledges that the disadvantage of quotas is that they can incentivise broadcasters to focus more on meeting the actual quotas rather than on how 'services meet the needs of audiences'<sup>8</sup>, if a specific volume of content is not required from broadcasters and measured as part of the process to assess their performance, there is incontrovertible evidence that the availability of such content declines. After quotas were removed for arts, religious and children's programmes the volume of such programmes on the PSBs declined dramatically<sup>9</sup>. Additionally VLV is concerned by the the reduction of non-news international content which has been historically tracked by the International Broadcasting Trust<sup>10</sup>. These declines in valuable PSB content are detrimental for audiences.

23. As the BBC competes in an increasingly competitive market with 30% less public funding in real terms than it received a decade ago<sup>11</sup>, it is under significant pressure to increase commercial income from international sales. In this context VLV is concerned that the BBC will be forced to increasingly focus on content which will appeal to global audiences, such as drama, rather than the PSB genres which are less popular and are in market failure. VLV notes Mediatique research which predicts that investment in these genres is only likely to decline further in coming years<sup>12</sup>. Without quotas, VLV does not believe that there will be adequate commitment to these genres at a regulatory, commissioning or editorial level.

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<sup>8</sup> *How Ofcom regulates the BBC: A review*, Ofcom, 21 July 2021, para 3.15

<sup>9</sup> *Small Screen: Big Debate – a five-year review of Public Service Broadcasting (2014-18)*, Ofcom, 27 February 2020, page 21

<sup>10</sup> <https://www.ibt.org.uk/reports/>

<sup>11</sup> <https://www.vlv.org.uk/news/vlv-research-shows-a-30-decline-in-bbc-public-funding-since-2010/>

<sup>12</sup> *Future models for the delivery of public service broadcasting*, Mediatique, December 2020, paragraph 4.22

24. VLV believes that existing total quotas should not be reduced so that a back-stop is maintained. However, the BBC should be allowed to decide on an annual basis which platforms to use to deliver content required by quotas. Ofcom should have the power to review the BBC's plans before they are instituted and require changes to be made if it has concerns. A primary concern of Ofcom when reviewing the BBC's plans should be to ensure that the BBC's strategy promotes key PSB genres and does not allow content which might be considered less popular to be moved off mainstream channels or onto the iPlayer where it will be less prominent and have less impact.

### **Qualitative Research**

25. As long as quantitative measurement of the BBC's performance is maintained, VLV would welcome the BBC conducting more qualitative research to evidence delivery of its Mission and Public Purposes, but this research must be *additional* to quotas.

26. Qualitative research is valuable because it can provide greater nuance and understanding of impact through analysis of audience reaction and appreciation.

27. VLV opposes the approach set out by Ofcom in the consultation document whereby some quotas will be replaced by qualitative requirements because qualitative research is less robust than quantitative research.

28. Answers to qualitative research can be easily influenced by the wording of the questions asked during the research process and audience perceptions can be influenced more by the successful branding of a broadcaster than by the actual output of the year being investigated. This can be seen by the consistency of the qualitative responses to Channel 4's output in its Annual Report despite changes in the survey panel and actual output from Channel 4.

29. Additionally, VLV opposes the approach whereby broadcasters are allowed to 'mark their own homework', conducting their own qualitative research to evidence their performance. If this is permitted they are able to set the questions asked during the research and to interpret the results themselves, reporting on their own performance in a less transparent way than is afforded by quotas.

### **Time Delay**

30. VLV envisages a potential problem if Ofcom adopts its proposal as set out in the consultation to assess BBC performance.

31. This process will take at least 18 months from the moment the BBC publishes its annual targets in its Annual Plan until Ofcom publishes its BBC Annual Report. During this time it could be possible for the BBC to reduce delivery of a certain genre, for example comedy output, without Ofcom being aware of the problem until much too late to rectify the decline. If this were to happen some genres could become under-delivered which would be detrimental to audiences.

32. In addition, if there is a decline in the commissioning of content in a certain genre for 18 months, this could have an impact on the availability of such content in future as producers go out of business or expertise is lost within the BBC.

33. The only way to mitigate this risk is for Ofcom to continuously track BBC output. Such tracking would be necessary if audience's interests were to be safeguarded.

**Question 4: Do you agree with our proposed scope of the review in relation to content standards? If not, please explain why.**

34. VLV agrees with the proposed scope of the review in relation to content standards.

35. VLV agrees with Ofcom that there is scope for further improvements in the BBC complaints processes, especially regarding the ease and clarity of the process for audiences.

**Question 5: Do you agree with the issues we have identified with the processes for assessing the competitive impact of changes to the BBC's UK Public Services? If you consider there should be changes to these processes, please set out what these are and, if possible, provide any relevant evidence.**

36. VLV agrees with the issues Ofcom has identified with the processes for assessing the competitive impact of changes to the BBC's UK Public Services.

**Question 6: 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?**

37. VLV does not have any concerns about the regulatory framework for the BBC's commercial activities that are not being considered in the review of BBC Studios. We note that there will be an opportunity to comment on the framework during the Periodic Review. VLV's primary concern is that the BBC's commercial activities should accord with and support delivery of the Mission and Public Purposes of the BBC.