

# How Ofcom regulates the BBC



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# 1. Overview

## The BBC is central to the success of the UK broadcasting sector

- 1.1 The BBC's Mission is to serve all audiences in the UK by providing duly impartial, high-quality and distinctive output and services which inform, educate and entertain. Ofcom became the first independent regulator of the BBC in 2017. We must hold the BBC to account for fulfilling its Mission and promoting the Public Purposes on behalf of audiences, protect fair and effective competition, and secure content standards in BBC programming.
- 1.2 The BBC's remit puts it at the core of the UK broadcasting sector and its success is important for audiences and the creative economy across the UK. It provides a wide range of high-quality, distinctive and creative content, including a significant volume of trusted news and current affairs and a variety of educational and learning programmes that is valued by audiences across the nations and regions of the UK.
- 1.3 In our recent review of the BBC's performance over this Charter period we found that, overall, the BBC has delivered its remit. More than 80% of adults use the BBC each week – a higher proportion than for any other broadcaster in the UK.<sup>1</sup> Audience satisfaction with the BBC compares well with other content providers and it remains the most used news source for audiences in the UK. The BBC played a critical role in delivering education during the Covid-19 pandemic and brings the country together for highly valued events such as the Women's Football World Cup and *Strictly Come Dancing* as well as other events of national significance like the coverage of the Queen's Platinum Jubilee celebrations.
- 1.4 The BBC invests more in the UK creative economy than any other broadcaster – it spent over £500m supporting independent UK producers in 2020/21<sup>2</sup> and this investment has helped build an internationally renowned production sector. In its [Across the UK](#) strategy the BBC also committed to increase its investment in TV and radio content in the nations and regions.

## The BBC needs to transform and modernise to be relevant for all audiences

- 1.5 The BBC's remit has not changed. However, since the Charter was put in place, audience fragmentation, market changes and budgetary pressures, have made delivering the Mission and Public Purposes more challenging. For example, audiences are increasingly moving away from broadcast TV and radio services to online services and there is significantly more competition for audiences, particularly from well-funded and innovative global players.

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<sup>1</sup> IPA TouchPoints 2021 w2

<sup>2</sup> Pact, 2021, [UK Television Production Survey: Financial Census 2020](#), p.17.

- 1.6 We said in [Small Screen: Big Debate](#) that public service broadcasters (PSBs) need to accelerate their digital plans to maintain a strong link with audiences, especially younger age groups. It is essential that the BBC transforms the way it reaches and remains relevant to viewers and listeners across the UK. As a priority it must continue to develop its online services while maintaining the delivery of distinctive and original UK content.
- 1.7 In May 2022 the BBC set out its strategy for the remainder of the Charter period, focusing on transforming its online delivery to maximise value from the licence fee and deliver more for audiences. This includes putting more money into new programmes for BBC iPlayer, moving local and regional output towards digital, shifting resources from broadcast news to digital and online video news, and investing more in product development for its online services.

## Regulation needs to be fit for purpose

- 1.8 Our regulation must not create a barrier to the BBC transforming and modernising its services to adapt to changing audience behaviour. In [Small Screen: Big Debate](#) we set out that legislation needs to be overhauled for the digital age to ensure that UK audiences continue to benefit from high-quality UK programmes and news. The Government has now published its intention to implement key recommendations in its [White Paper](#).
- 1.9 In this review we have looked at all areas of our regulation and considered whether any changes are required to ensure that regulation is effective in meeting audience needs for the remainder of this Charter period. Our review is based on our extensive programme of research, our experience of regulating the BBC, stakeholder views and our recommendations in [Small Screen: Big Debate](#).
- 1.10 Regulation needs to incentivise the BBC to develop and maintain a trusted relationship with audiences; this is critical for the sustainability of the BBC. The BBC must be responsive to audience concerns and give them confidence that their complaints will be fairly considered. This is vital if the BBC is to continue to enjoy the advantages of its distinctive BBC First complaints framework.
- 1.11 The regulatory framework must also keep pace with the changing environment in which the BBC operates. The BBC's current Operating Licence does not reflect how audiences watch and listen to content or allow the BBC to quickly adapt to changing audience behaviours. In addition, to enable the BBC to make frequent changes to its services so that it continues to meet audience needs in the right way, competition regulation requires reform.
- 1.12 This report sets out a summary of the changes we are proposing to our regulation. It also outlines recommendations to Government on changes that might be made to the Framework Agreement.
- 1.13 Alongside the report we are publishing updated Complaints Handling Determinations that require the BBC to provide significantly more transparency of the BBC First regime. We are also consulting on changes to update the BBC's Operating Licence so that it remains

effective, now and in the future, and ensures that the BBC delivers high quality and distinctive content and services for all audiences across the UK. In the autumn, we will be consulting on changes to our competition regulation to enable the BBC to more effectively adapt its services to better meet audience needs, while protecting fair and effective competition. In addition, we are also publishing the research we have undertaken for this review.

## Greater transparency is critical for updating and modernising BBC regulation

- 1.14 Transparency is important for the BBC to ensure it maintains public trust and support. As a publicly-funded body, the BBC is accountable for how it delivers its services for all audiences. A lack of transparency has been a recurring feature of our assessment of the BBC's performance and concerns have been frequently raised by stakeholders. Additional transparency requirements are critical in updating and modernising our regulation across all our duties.
- 1.15 We will put new requirements in place to ensure that the BBC is open and clear about how it is delivering for audiences and responding to their concerns. Under the BBC First system, audience complaints must normally be addressed by the BBC before they can be escalated to Ofcom, other than in exceptional circumstances. It is therefore vital that the BBC explains to licence fee payers how it handles and makes decisions on their complaints, in order to retain their trust. Greater transparency is also essential where we are proposing to remove some of the service-specific quotas in the Operating Licence, so that we can hold the BBC to account in delivering its remit. We believe that better engagement between the BBC and stakeholders is needed so that the BBC can understand the potential competitive impact of proposed changes to its services.

## Improvements are needed to the BBC First complaints process

- 1.16 [Audience research](#) shows that BBC licence fee payers have a sense of ownership of the BBC. The BBC First complaints system, set out by Parliament in the BBC Charter and Agreement, recognises this direct relationship with audiences and gives the BBC an opportunity to respond to and resolve complaints before they are escalated to Ofcom. For this system to work it is vital that the BBC has an effective and easy to use complaints process and that it is open about how it addresses audience concerns. This requires greater transparency about the BBC's decision-making in responding to editorial complaints, and is critical to maintain the trust of audiences.
- 1.17 We asked audiences about their experiences and perceptions of the BBC's complaints process. In general, they are not opposed to the current system. However, respondents were not clear about the BBC's process and were concerned about the time taken to respond as well as the tone and detail of the responses. Overall, our research indicates that the low number of complaints being escalated to Ofcom may be a result of frustration as opposed to satisfaction with how the BBC has dealt with audience concerns. The BBC must

therefore urgently consider what changes are required to its processes to make them simpler and clearer for audiences to navigate.

- 1.18 Alongside this we are introducing new regulation to ensure that the BBC is more transparent and open. We have updated our Complaints Handling Determinations to require the BBC to publish the reasoning behind its decisions to not uphold complaints about due impartiality and due accuracy, that reach the final stage of its complaints process. Due impartiality remains a key area of concern for audiences and stakeholders: greater clarity about how the BBC assesses concerns in this area will give audiences more confidence in the decisions taken and help demonstrate the BBC's commitment to the principle.
- 1.19 The BBC must also be more transparent with Ofcom. We must have sufficient oversight of the BBC's complaints process to hold the BBC to the highest standards for how it responds to audience concerns, and to be satisfied that we are taking a consistent approach to protecting audiences across the industry. We are therefore impressing upon the BBC the importance of alerting us at an early stage of potential serious editorial breaches. If it is unwilling to provide this information to Ofcom voluntarily, we will recommend that the Government makes a change to the Agreement, so that Ofcom can require the BBC to provide this information. We have also agreed with the BBC that it will provide additional transparency to Ofcom during elections and referendums.
- 1.20 We will be paying close and regular attention to the effectiveness of BBC First. We expect the BBC to carefully consider and take appropriate action in response to the concerns expressed by audiences in our research. We will conduct a further review of the BBC First system before the end of the current Charter to assess the impact of the changes we have made, and any changes made by the BBC in response to this review. We will also update our research on audience perceptions of the BBC's complaints process in the next two to three years.

## **The BBC must address concerns arising from perceptions of its due impartiality**

- 1.21 Preserving due impartiality is central to the BBC delivering its Mission and Public Purposes – to maintain audience trust it is important that the BBC is considered to be duly impartial. The BBC has a good record of complying with broadcasting rules which require that its programmes appropriately reflect alternative viewpoints, taking account of the subject and nature of the programme. However, when we have asked audiences about BBC news, although they rate it highly for trust and accuracy, they consistently rate the BBC less favourably on impartiality.<sup>3</sup>
- 1.22 Audience attitudes on due impartiality continue to be driven by multiple factors, many of which do not directly relate to the BBC's news and current affairs content. These include:

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<sup>3</sup> Source: Ofcom 2021 News Consumption Survey online sample only. The survey asks the BBC's TV, radio and online news audiences about their attitudes towards each platform separately.



the sense of ownership audiences have with the BBC; the overall BBC brand; how it responds to audience concerns; the way people see themselves being reflected on screen; the stories it chooses to cover; and how the BBC's impartiality is challenged in the wider media.

- 1.23 Much of the debate around the BBC's impartiality goes wider than Ofcom's responsibility for enforcing content standards; it touches on broad social concerns such as diversity and on-screen talent. However, if the BBC is to retain the trust of audiences, it is important that it addresses the apparent disparity between audience attitudes to its impartiality and its good record of compliance with the due impartiality broadcasting rules. The BBC will need to find creative ways of demonstrating its approach and commitment to due impartiality. We welcome, and will monitor, the measures the BBC has taken to improve audience attitudes and perceptions of its due impartiality, particularly in response to the [Serota Review](#), such as the [Impartiality and Editorial Standards Action Plan](#). The BBC must rigorously assess and transparently report on these actions if it is to retain audience trust.
- 1.24 Our decision to require the BBC to publish its not-upheld decisions on due impartiality complaints will give audiences and stakeholders more clarity about how the BBC approaches this issue, help demonstrate the BBC's commitment to due impartiality and allow more effective oversight by Ofcom as the independent regulator.
- 1.25 Given the importance of the BBC's delivery of due impartiality to the BBC First complaints system, we will carry out further research on audience perceptions of the BBC's due impartiality in the next two to three years, alongside our further research into the BBC First system.

## **We propose modernising the Operating Licence to fully incorporate the BBC's online services**

- 1.26 We need to ensure that audiences across the UK are well-served by the BBC, and that it fulfils the Mission and promotes the Public Purposes and provides distinctive output and services. The current Licence was put in place in 2017 and largely consists of quotas which are specific to individual BBC television and radio services, with limited recognition of the BBC's online services and wider technological developments.
- 1.27 It is important that the Licence allows the BBC to innovate and respond to changing audience needs while ensuring that it delivers its remit. In our separate consultation we are proposing to put in place a multi-platform digital Licence that will give the BBC more scope to determine how to meet its obligations across its TV, radio and online services but retains quotas where we consider these are important to secure the Mission and Public Purposes (for example to safeguard news and current affairs, or to ensure distinctiveness). Our Licence will also require the BBC to be more transparent in its Annual Plan and Annual Report about how it delivers for audiences.
- 1.28 Increased transparency, together with our independent assessment of performance, which draws on extensive audience research, industry data and stakeholder engagement, will enable us to hold the BBC to account and take swift action where necessary. If we have

serious concerns about the BBC's plans or performance, we will not hesitate to impose new Licence conditions.

## Competition regulation should be changed to give Ofcom more flexibility in its regulatory processes

- 1.29 We have considered whether the competition rules strike the right balance between allowing the BBC to make the necessary changes to its services and protecting fair and effective competition. Over time the risk of the BBC crowding out its rivals is likely to diminish in some areas, particularly given the increase in global competition. But in other areas the BBC is likely to continue to have a significant impact on competition. In addition, some changes to BBC services are likely to result in substantial increases in public value. Where the risk of the BBC impacting competition is low and/or where the changes are likely to have significant public value, we consider the BBC should be able to implement these changes quickly, subject to appropriate regulatory oversight.
- 1.30 We are therefore recommending that the Government make some changes to the Agreement to give us more flexibility on our regulatory processes. For example, if we agree with the BBC's competition and public value assessments of proposed changes to services, and it has effectively consulted with stakeholders and taken account of their concerns, it may not be necessary for Ofcom to undertake a formal competition assessment. We are also considering what changes are needed to our competition assessment processes so they are as efficient as possible.
- 1.31 In our autumn consultation we will set out our views on competition in the main sectors in which the BBC operates, and the types of impact that changes to BBC services can deliver to generate significant public value. This will give the BBC and other stakeholders more clarity about how we are likely to approach future assessments. Stakeholders will have an opportunity to comment and help shape our [guidance](#) on how we will undertake future competition and public value assessments.
- 1.32 Effective engagement between the BBC and its competitors is an important enabler to Ofcom stepping back from formally assessing the BBC's changes or undertaking a short process. We will work with the BBC and other stakeholders to develop a practical process that incentivises the BBC and its competitors to engage effectively in the BBC's competition assessment. This will allow the BBC to make changes quickly if they are unlikely to significantly impact competition, and give stakeholders and Ofcom confidence that their concerns are being taken into account.



### **What we are proposing – in brief**

**To ensure that the BBC First complaints process works well for audiences, is easy to navigate and more transparent, we will:**

- (1) require the BBC to publish its reasoning for all due impartiality and due accuracy complaints that reach the final stage of its complaint process;
- (2) request that Ofcom is alerted by the BBC at an early stage about potential serious editorial breaches across its content. This will allow us to better scrutinise how the BBC's complaints process is working in practice and, if necessary, intervene early to protect audiences;
- (3) continue to press the BBC to improve public confidence in its approach to due impartiality, monitor implementation of the Serota Review findings and the Impartiality and Editorial Standards Action Plan, and develop closer links with the Editorial Standards and Guidelines Committee; and
- (4) update our research on audience perceptions of BBC First and impartiality in the next few years and conduct a further review of the BBC First system before the end of the current Charter.

**We propose to update the Operating Licence so that:**

- (1) it sets new requirements on the BBC's online services;
- (2) it gives the BBC more flexibility where this can enable it to better serve audiences, but retains quotas where specific safeguards are necessary, including in relation to delivery of news and current affairs and to secure distinctiveness; and
- (3) it requires the BBC to publish more and better information with its Annual Plan and Annual Report.

**We are recommending that the Government makes changes to the Agreement to give more flexibility to Ofcom about when and how to undertake a competition assessment.**

In addition, we intend in our autumn consultation to propose a more targeted, flexible competition framework that can adapt as competitive conditions in the market change. This includes:

- (1) providing greater clarity about our view of competition in the main sectors in which the BBC operates, and how we are likely to approach future assessments of competition and public value; and
- (2) working with stakeholders to develop a practical approach to engagement to ensure that the BBC can appropriately take account of the potential competition impacts of its planned changes.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on, and the reasoning behind them, are set out in the full document and related consultations.

## 2. Context of our review

### Ofcom must undertake a review of how the BBC is meeting its remit

- 2.1 Ofcom became the first independent external regulator of the BBC under the current BBC Charter and Agreement, which began on 1 January 2017 and ends on 31 December 2027. The Charter and Agreement set out the different roles and duties of the BBC and Ofcom, including the principal functions of the BBC Board. The BBC Board is responsible for ensuring that the BBC delivers its remit and for setting the strategic and creative direction of the organisation, while Ofcom holds it to account for delivering for all audiences.
- 2.2 In particular, the BBC Board must ensure that the BBC fulfils its remit by:
- **Delivering the Mission and Public Purposes** – this includes the Board setting strategy in relation to programme commissioning and scheduling, budgets and editorial decisions. The BBC sets out how it plans to deliver the Mission and Public Purposes in its Annual Plan, and reports on how it has achieved that in the Annual Report.
  - **Complying with the Broadcasting Code** in its editorial decision-making and assessing and responding to complaints under the BBC First system.
  - **Considering its impact on competition** – this includes the Board considering whether the public value of any proposed material change justifies any adverse impact on fair and effective competition.
- 2.3 Ofcom is required to:
- **Ensure that the BBC is delivering for audiences and hold the BBC to account for fulfilling the Mission and promoting the Public Purposes;** this includes setting an Operating Licence to secure the provision of distinctive output and services. We also publish an Annual Report on the BBC which assesses its performance in delivering the Mission and Public Purposes.
  - **Regulate the BBC’s editorial standards and complaints** – we ensure that the BBC (and other broadcasters) comply with the Broadcasting Code and monitor how the BBC is responding to audience concerns through the BBC First system. This includes reviewing complaints that have been escalated to Ofcom and being able to step in at an earlier stage if we have serious concerns.
  - **Protect fair and effective competition** – we review material changes to the BBC’s services and, following a Public Interest Test from the BBC, undertake a detailed analysis to consider whether the public value of the proposed change justifies any adverse impact on fair and effective competition. We can also undertake a competition review if we consider one of the BBC’s public services is having a significant adverse impact on competition.
- 2.4 Under the Charter and Agreement, Ofcom is required to *“carry out and publish two or more detailed periodic reviews on the extent to which the BBC is fulfilling its Mission and promoting each of the Public Purposes, and addressing any specific issues of concern*

*identified by Ofcom*".<sup>4</sup> Our first review must be published in sufficient time to inform the Government's Mid-Term Review of the BBC Charter.<sup>5</sup>

- 2.5 We set out our proposed approach to this review in our July 2021 consultation: [How Ofcom regulates the BBC](#). We said that our review would consider whether, given the changes in the market, regulation will continue to hold the BBC to account for viewers and listeners. Respondents largely agreed with the scope of our review, and that it should cover the key areas of Ofcom's duties in relation to performance, competition and editorial standards. We discuss specific stakeholder comments in the relevant sections of this report and the related consultations.
- 2.6 Our review takes account of the relevant findings from our [Small Screen: Big Debate](#) review, which sets out our recommendations to Government on the future of public service media. These included the need for change in both PSBs and regulation to ensure that online and broadcast TV audiences benefit from public service media, that services adapt to meet changing audience needs and that PSBs are transparent about how they plan to deliver their objectives and report annually on their performance. We have also drawn on our experience of regulating the BBC, the responses to our July 2021 consultation, and subsequent conversations with stakeholders.
- 2.7 Our review is informed by the extensive programme of research and analysis that we undertake to monitor the media sector and to evaluate how well the BBC is meeting its Mission and Public Purposes. We use a [performance measurement framework](#) which considers:
- availability: what content the BBC provides, including how much it spends;
  - consumption: the extent to which audiences use the BBC;
  - impact: audience perceptions of the output; and
  - contextual factors: other factors important to note in our evaluation.
- 2.8 The evidence we use for this is drawn from a range of sources including industry audience metrics such as BARB, RAJAR and other third-party data,<sup>6</sup> and our own independent research programme which tracks audience behaviours and attitudes to the BBC and other media providers, including specific research in the context of news. In addition, we collect information from the BBC and other UK broadcasters on a range of different metrics (such as their revenue, spend and output across the UK).
- 2.9 We also commission bespoke audience research, as appropriate. To inform this review we have commissioned research into:

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<sup>4</sup> Article 51(1) of the Charter.

<sup>5</sup> Article 51(2) and Article 57 of the Charter.

<sup>6</sup> BARB is the joint industry body responsible for measuring TV audiences in the UK; RAJAR is the joint industry body responsible for measuring radio audiences in the UK. We also use other industry sources such as IPA TouchPoints to provide an understanding of cross-media measurement.

- a) **Audience expectations of the BBC in the current media environment**: this was a three-stage research project involving qualitative and quantitative approaches to understand what audiences want and expect from the BBC. It included how audiences choose content and the extent to which the BBC's content delivers against its mission to inform, educate and entertain.
- b) **Drivers of perceptions of due impartiality**: building on the research conducted as part of the **2019 Review of BBC news and current affairs**, we commissioned new qualitative research to understand how effectively the BBC is serving all audiences in its news and current affairs provision, across all platforms. This includes an exploration of what factors drive audience perceptions of impartiality.
- c) **Audience perceptions of the BBC First complaints system**: quantitative, qualitative and mystery shopping research to understand audience experiences and views of BBC First. The mystery shopping exercise was to understand the various stages of the process and check how well the BBC was meeting its target response times at the different stages.

2.10 There are a number of different stages and outputs within our review:

- In our **2020/21 Annual Report on the BBC** we published an assessment of the BBC's performance across the Charter period so far, and the key themes we have identified since we took on regulation of the BBC.
- This report, which sets out the findings of our **review of the future regulation of the BBC**, focuses on the changes that might need to be made to ensure that our regulation remains effective for the remainder of the Charter period. These include recommendations to Government for changes to the Agreement and a summary of the changes we are proposing to make to regulation across all of our duties.
- **Updated Complaints Handling Determinations** (published alongside this document) which come into effect immediately.<sup>7</sup>
- A **consultation on proposed changes to the BBC's Operating Licence** (published alongside this document). We expect to publish a statement and a new Operating Licence in early 2023, coming into effect in April 2023.
- We will publish a **consultation on changes to the competition framework** in autumn 2022, with a statement in 2023.

## **We are assessing whether our regulation is fit for purpose**

### **The BBC's remit has not changed, but it has become increasingly challenging to deliver**

2.11 Since the current Charter and Agreement were put in place, there have been significant changes in how audiences watch and listen to content. There has been an increase in the

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<sup>7</sup> Our Complaints Handling Determinations set out the information we require the BBC to publish, and to provide to us about the functioning of the BBC First system. The first time period for which the BBC will need to report against the new requirements for the publication of Stage 2 Executive Complaints Unit Findings is 4 to 17 July 2022.

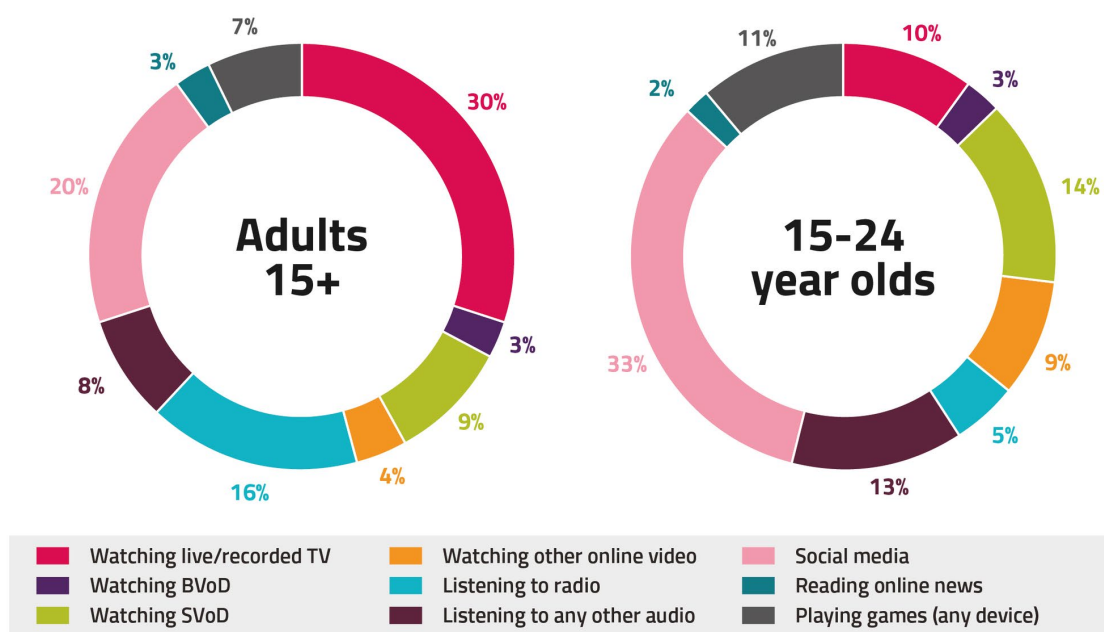
number and take-up of global video and audio streaming services that compete with the BBC (and other UK broadcasters) for audiences’ viewing and listening time.

**Audiences increasingly watch and listen to content when they want, on the device of their choice**

2.12 Improvements in broadband speeds and the choice and availability of content online have driven seismic changes in audience viewing behaviour. This trend has accelerated since the start of the Charter period – 29% of adults watched subscription video on-demand (SVoD) services each week in 2017 but by mid-2021 this had increased to 57%. The number of adults using streamed music services each week doubled from 23% to 48% across the same period.<sup>8</sup> In addition to traditional media sources, a wide range of other services, from social media to online gaming platforms, are increasingly competing for audience attention.

2.13 The challenge facing all UK broadcasters, including the BBC, can best be seen through young people’s viewing and listening habits. Watching live or recorded TV or listening to broadcast radio now represents less than a quarter of media time for 15-24 year olds, who spend more time on social media, watching on-demand and online video and listening to other audio services.<sup>9</sup> In developing their online services, UK broadcasters must also compete with the popularity of video-sharing platforms and online gaming. Ofcom’s media literacy research found that 95% of children aged 3-17 used video-sharing platforms (VSPs) such as YouTube or TikTok, while 58% played games online. This compared to 48% who watched content via broadcast on-demand services like BBC iPlayer, ITV Hub or All4.<sup>10</sup>

**Figure 1: Proportion of time spent each week on media activity: adults 15+ vs. 15-24 year olds**



Source: IPA TouchPoints 2021 w2

<sup>8</sup> Source: IPA TouchPoints, 2021 w2.

<sup>9</sup> Source: IPA TouchPoints, 2021 w2.

<sup>10</sup> Ofcom’s Children’s Media Literacy 2021 Trackers: Online Behaviours and Attitudes survey, and Parents Only survey.

- 2.14 Audiences consider that there are now many content providers which satisfy a broad range of preferences across live, catch-up, and on-demand content. On-demand services are increasingly important to audiences, in large part due to convenience, flexibility and scale of their content libraries. SVoD services are also generally considered to have superior functionality, including search and recommendations. Audiences we spoke to considered that the BBC struggles to compete with the number of titles and wide range and variety of content on SVoD services.<sup>11</sup> Two-fifths of those using SVoD services said they can envisage ‘not watching broadcast TV at all’ five years from now.<sup>12</sup>
- 2.15 However, respondents felt that there was still a role for UK broadcasters and the BBC – as a ‘habitual’ access point for daily information such as news, or for sports and national events such as the coverage of the Queen’s Jubilee celebrations and ‘shared’ peak-time entertainment shows (like *Strictly Come Dancing*). Audiences value the quality and wide range of programmes on the BBC but wanted the programmes to better reflect the diverse backgrounds of audience members and the different regions of the UK.<sup>13</sup>

### **There has been an increase in competition from well-funded global technology and media companies**

- 2.16 The growth in competition has mainly come from well-resourced global companies such as YouTube, Netflix, and Amazon. As seen in Figure 2 below, market entry and reach of these services in the UK has increased significantly in recent years, although we have seen recent evidence that the rate of uptake for some of the services may be slowing, potentially because the number of subscription services households are willing to purchase may have hit saturation.<sup>14</sup>
- 2.17 These global services are well-funded (often mixing subscription, pay-per-use and advertising revenues) and have high original content budgets, and/or large libraries of existing content. UK BVoD services do not have the same global budgets as these players, and they do not match the largest SVoD providers in terms of overall catalogue size.<sup>15</sup>
- 2.18 The UK creative economy is thriving partly as a result of the investment received from global players: international revenues reached £1.2bn in 2019, up by 30% over five years.<sup>16</sup> However, UK broadcasters have raised concerns about significant inflation in UK production costs due to increased competition for skilled workers and studio space.<sup>17</sup>

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<sup>11</sup> [Ofcom research: Exploration into audience expectations of the BBC in the current media environment](#), 2021.

<sup>12</sup> Ampere Analysis Consumer, age: online 18-64, Q1 2021, UK. Base: 1,633, those who use SVoD.

<sup>13</sup> [Ofcom research: Exploration into audience expectations of the BBC in the current media environment](#), 2021.

<sup>14</sup> BARB Establishment Survey.

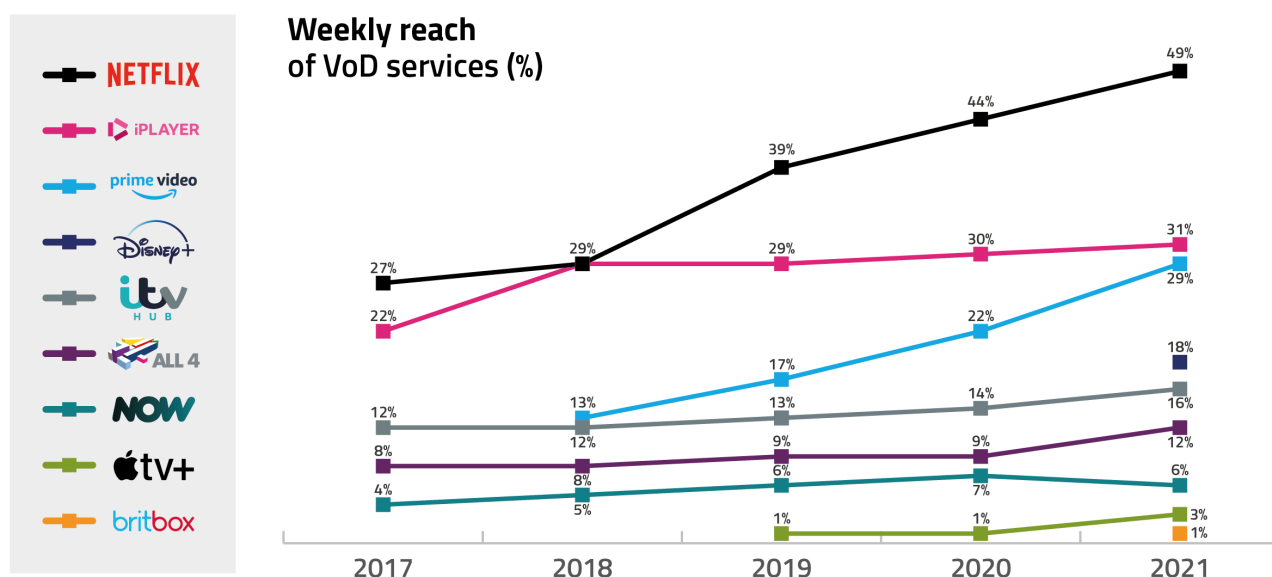
<sup>15</sup> According to Ampere Analysis data as at April 2022, the largest BVoD services were BBC iPlayer and All4, which both offered over 14,000 hours’ worth of content. While these are larger than some international players’ catalogues, they fall short of Netflix and Amazon Prime Video, on which around 39,000 and 27,000 hours are available respectively.

<sup>16</sup> Pact, 2021, [UK Television Production Survey: Financial Census 2020](#), p.23. Overall revenues dropped in 2020 due to the impact of the pandemic – international revenues were £1.1 billion.

<sup>17</sup> See evidence submissions set out in [House of Lords Select Committee: Public Service Broadcasting: as vital as ever](#) 2019, paragraphs 110-158; BBC Annual Plan 2022/23 p.40.



Figure 2: Weekly reach of Video on-demand services: 2017-2021



Source: IPA TouchPoints

## The BBC needs to modernise to continue to deliver for audiences

- 2.19 All UK PSBs, including the BBC, must adapt their business models and services to ensure they are meeting audience needs. The BBC needs to focus on transforming its online services to reach, and remain relevant to, all audiences, and to continue to provide a range of distinctive and original content and services for UK audiences. It also needs to continue its important role in supporting the creative economy across the nations and regions of the UK.
- 2.20 In our review of the BBC’s performance over the Charter period to date we found that overall, the BBC had delivered its remit and purposes. It remains popular, with relatively high reach and audience satisfaction. It provides a significant volume of original programming, including news and a range of education and learning content. The BBC adapted quickly to deliver more educational content during the pandemic, and brings the country together for key sporting and cultural events such as Radio 1’s Big Weekend, the Women’s Football World Cup and the coverage of the Queen’s Platinum Jubilee celebrations. However, we identified several challenges for the BBC:
- it must keep evolving to be relevant to all audiences – particularly less satisfied audiences, and to build stronger links with younger people;
  - achieving due impartiality continues to be a complex challenge for the BBC;
  - distinctive and original UK content, reflecting and representing the nations and regions of the UK, must continue to be a priority for the BBC; and
  - it should further embed transparency into its ways of working.

- 2.21 The BBC faces financial constraints. Under its recent settlement with the Government, the licence fee will be held at its current level until 2024 and then rise with inflation (CPI) until the end of the Charter period. The BBC has said this creates a £285m annual funding gap as of 2027. In addition, there is uncertainty over the future funding model for the BBC. The Government has announced a Funding Model Review ahead of the next Charter review.
- 2.22 In May the BBC set out its strategy to create a “*modern, digital-led and streamlined organisation*” that maximises value from the licence fee and delivers more for audiences. This includes:
- shifting significant amounts of money into new programmes for BBC iPlayer which the BBC expects will also attract additional third-party investment on-screen;
  - shifting local resources towards digital, while keeping spend flat (including enhancing investigative journalism in local current affairs);
  - making savings in broadcast news (notably through the creation of a single, 24-hour TV news channel serving UK and international audiences, with greater shared content) and reinvesting the savings into video and digital news; and
  - investing up to £50m a year in product development for its online services.
- 2.23 The BBC’s longer-term strategy will also include some efficiency savings to address the shortfall in funding that it has identified from the licence fee settlement (it expects to lose c.1,000 staff over the next few years) and a drive to seek new commercial investment. The BBC also signalled that it was going to stop broadcasting some smaller linear TV and radio channels (including BBC Four, CBBC and BBC Radio 4 Extra) after the next few years with detailed plans and budgets to be set out in its future Annual Plans and Annual Reports.
- 2.24 The BBC also committed to greater investment in programming from the nations and regions of the UK through the implementation of its *Across the UK* plan. It also set out its plans to expand boxsets and archive content on BBC iPlayer, and to invest in real-time data that supports the growth of digital products and services.
- 2.25 In the BBC’s 2022/23 Annual Plan the BBC said that it plans to focus on:
- extracting more from its online services (BBC iPlayer, BBC Sounds and website/apps);
  - providing distinctive high-impact content;
  - strengthening impartiality;
  - engaging more directly with audiences; and
  - building commercial income.<sup>18</sup>

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<sup>18</sup> [BBC Annual Plan 2022/23](#), 2022, p.18.

## Regulation must enable the BBC to transform its services, while ensuring that it delivers for audiences

- 2.26 The Government recently set out its vision for the UK broadcasting sector in a White Paper ahead of the forthcoming Media Bill. Among other things, this explains the Government's intention to implement some of the key recommendations of our *Small Screen: Big Debate* review. This includes a new prominence regime for PSB services on the major connected TV platforms, a simplified remit, and greater flexibility for PSBs in how they deliver their obligations, including through their online services.
- 2.27 The objectives of our Review are to ensure that the BBC **delivers for all audiences** and supports the creative economy. To do this the BBC must transform into a modern digital organisation and develop its online services so that it can reach all audiences wherever they are and deliver the Mission and Public Purposes. The regulatory framework will need to be flexible enough to support this transformation and hold the BBC to account for delivery across all its services.
- 2.28 The BBC must ensure that it is **open and transparent** in explaining to audiences and stakeholders the changes it is planning to make and how these help it meet the Mission and Public Purposes. This includes explaining the decisions it reaches on complaints so that audiences and stakeholders can easily raise concerns with the BBC and have confidence that their complaints are being considered fairly.
- 2.29 We have looked at all areas of our regulation and considered whether changes are needed to the regulatory framework to ensure it is effective for the rest of this Charter period. The key issues we have identified with the current regulatory framework are:
- the BBC needs to make changes to its complaints process to ensure that it is working for all audiences, and it must be more transparent about how it considers and takes account of audiences' concerns. This will also enable Ofcom to fully hold the BBC to account against its editorial standards;
  - the lack of flexibility in the current Operating Licence constrains the BBC's ability to meet audience needs across its linear broadcast and online services; and
  - while the competition processes have adapted to be more effective and efficient over the Charter Period, there is more to be done so that the BBC can make the necessary changes to its services quickly, while ensuring that fair and effective competition is protected.

## Our Review will inform the Government's Mid-Term Review of the BBC Charter

- 2.30 The Government published the Terms of Reference for its [BBC Mid-Term Review](#) in May 2022. This is examining whether the governance and regulatory arrangements set out in the current Charter and Framework Agreement are effective in enabling the BBC to deliver on its Mission and Public Purposes. It will also look at the evidence as to how Ofcom can effectively hold the BBC to account.

2.31 The Government is expected to complete its Review within 12 months, ahead of the Charter Review process due to start in 2025. In particular it will focus on:

- editorial standards and impartiality;
- complaints – the way the BBC assesses complaints through the BBC First system;
- commercial governance and regulation of the BBC’s commercial subsidiaries;
- competition and market impact;
- diversity; and
- transparency.

## **We are recommending that the Government makes some changes to the Agreement**

2.32 In this report we are recommending that the Government should consider some changes to the Agreement as part of its Mid-Term Review, including:

- Requiring the BBC to provide Ofcom with information about potential serious editorial breaches at an early stage, if the BBC does not agree to provide this information to Ofcom voluntarily.
- Requiring the BBC to comply with Ofcom’s rules on constituency and electoral reporting.
- Allowing Ofcom to set the quotas for programmes made outside the M25 that apply to programmes produced both for the network and BBC iPlayer.
- Removing the requirement for Ofcom to set regulatory conditions for non-news and current affairs programming in the nations and regions.
- Modifying the requirement for Ofcom to set original production quotas on each TV service, so that we are able to set a service-neutral quota for original productions.
- Removing the link between the BBC undertaking a public interest test and Ofcom doing a BBC competition assessment, so that we are able to approve the change without conducting a competition assessment, if we agree with the BBC’s analysis and it has effectively engaged with stakeholders.
- Enabling Ofcom to approve a change to BBC services with conditions using a shorter assessment.
- Changing the definition of a ‘material’ change so that new public services are not automatically considered to be material (they would still be subject to the test of whether the change/new service may have a significant adverse impact on fair and effective competition).

2.33 We are consulting on changes to the Operating Licence and intend to consult on changes to our competition regulation in the autumn. These processes will need to be considered alongside the development of changes to the Agreement.

## **Considerations for the next Charter period**

2.34 In undertaking this review, we have identified some areas that would be better considered as part of the preparation for the next BBC Charter, along with the funding review already

announced by the Government. This includes whether the BBC should have strengthened requirements in relation to entering into partnerships to help secure the long term sustainability of the UK broadcasting sector and whether the current level of separation between the public service and the commercial activities remains appropriate.

- 2.35 In our *Small Screen: Big Debate* review, we said that strategic partnerships can help broadcasters reach a wider audience and engage with harder-to-reach groups, increase efficiency and reduce costs. We noted that stakeholders supported greater sharing of data (including audience data) which could provide additional insight for commissioning and editorial decisions, and commercial decision-making. We suggested that joint approaches to distribution, such as an on-demand player combining content from UK broadcasters, could benefit audiences.<sup>19</sup>
- 2.36 Under its General Duties in the Charter, the BBC has obligations about entering into partnerships. These include, where it is in the public interest, working collaboratively and seeking partnerships with respect to the creative economy and regional and minority languages of the UK, and in promoting technological innovation and research and development.<sup>20</sup> The Agreement also requires the BBC to use partnerships for industry training, and under Public Purpose 2, the BBC should encourage people to explore new subjects and participate in new activities through partnerships with educational, sporting and cultural institutions.<sup>21</sup>
- 2.37 The BBC does enter into partnerships with other UK organisations. For example the BBC has a long-term strategic partnership with Sky to give greater prominence to the BBC's brands and content on Sky's TV products.<sup>22</sup> It also shares sports rights for significant sporting events such as the Football World Cup<sup>23</sup> and collaborates with cultural organisations such as Screen Scotland, Northern Ireland Screen and Creative Wales, supporting the wider creative economy.<sup>24</sup> In addition the BBC partners with a number of organisations to deliver important content, such as the Royal Shakespeare Company, the Science Museum and Puffin Books.<sup>25</sup>
- 2.38 As part of the next Charter renewal, we think the Government may wish to consider whether strategic partnerships between the BBC and other UK organisations could benefit the future sustainability of UK broadcasting sector. Stakeholders have also told us that the BBC lacks transparency in how it engages in partnerships<sup>26</sup> and Wireless recommended that the BBC should have a new requirement to incorporate industry partnerships.<sup>27</sup> We have also said the BBC should consider a more ambitious and open approach to genuine,

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<sup>19</sup> Ofcom, [Small Screen, Big Debate](#), 2021, pp.57-59.

<sup>20</sup> Articles 13, 14 and 15 of the BBC Charter.

<sup>21</sup> Schedule 3 (13) (3) of the Agreement and Section 1 of the Operating Licence.

<sup>22</sup> Sky, 14 September 2021, [BBC and Sky extend long-term strategic partnership](#) [accessed 14/06/2022].

<sup>23</sup> BBC, 6 April 2022, [BBC and ITV announce World Cup 2022 coverage schedule](#) [accessed 14/06/2022].

<sup>24</sup> BBC Annual Report and Accounts 2020/21, p.64

<sup>25</sup> BBC Annual Report and Accounts 2020/21, p.22

<sup>26</sup> [MG Alba response to consultation](#) p.1; [Pact response to consultation](#) p.3.

<sup>27</sup> [Wireless response to consultation](#) p.15.

strategic partnerships.<sup>28</sup> For example, one way of the BBC reaching wider audiences may be to form strategic partnerships with news outlets across the UK.

- 2.39 We also believe the Government should consider whether the current level of separation between the public service and the commercial activities remains appropriate. Under this review we asked what role the public service should have in the operation of the commercial activities. This might become more important given the BBC's focus on building its commercial income. Most stakeholders did not respond to this question, instead preferring to wait until our review of BBC Studios had concluded.
- 2.40 The Charter and Agreement set out the circumstances under which the BBC can undertake commercial activities and the degree of separation with the licence-fee funded public service. We think that the best time to consider whether this approach remains appropriate is ahead of the next Charter period, alongside questions such as how the public service will be funded.

## Structure of our report

- 2.41 In the following sections of this report we set out the key findings of our review and our recommendations to the Government for changes to the Framework Agreement.
- Section 3 discusses the important cross-cutting themes of our review – transparency, diversity and partnerships.
  - Section 4 sets out the steps we have taken to improve the effectiveness and oversight of the BBC First complaints system.
  - Section 5 summarises our proposals for a new BBC Operating Licence and recommends some changes to the Agreement.
  - Section 6 summarises the changes we are planning to make to the competition regulation and recommendations for changes to the Agreement.
- 2.42 In addition, we have published the research we have commissioned for this Review:
- audience expectations of the BBC in the current media environment;
  - audience experience of the BBC First complaints process; and
  - audience attitudes towards the due impartiality of BBC services.
- 2.43 Alongside this report we have also published a consultation on changes to the Operating Licence, and updated Complaints Determinations. We have also published today the findings of our review of the interaction between BBC Studios and the BBC public services (BBC Studios Review). We will publish a consultation on our proposed changes to the competition framework in the autumn.<sup>29</sup>

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<sup>28</sup> [Ofcom Annual Report on the BBC 2020-21](#) p.41.

<sup>29</sup> Where relevant we have considered the equality implications of our proposals in line with our duties under the Equality Act 2010 and the Northern Ireland Act 1998. Our assessments are set out separately alongside our specific proposals on changes to the Operating Licence and our findings on BBC Studios.



## 3. Transparency

### Our proposals for regulatory changes are dependent on the BBC being more transparent

#### We have consistently highlighted the need for the BBC to be more open and transparent

- 3.1 The Charter requires the BBC to observe high standards of openness and seek to maximise transparency and accountability. As a publicly funded body, it is critical that the BBC is open about how it is delivering for audiences, and acts in a way that is beneficial to the sector as a whole. For the BBC to maintain public trust and support it needs to set out how it is meeting audience needs and responding to their concerns.
- 3.2 We have consistently raised issues about the BBC's transparency, including about how it articulates its plans for changes to its services, how it reports on performance and how it makes decisions on content standards and complaints handling (particularly with respect to due impartiality). In addition, the Serota Review, commissioned by the BBC, explicitly noted the importance of improving transparency of the BBC's operations overall, stating that as a *"publicly funded organisation in a society that is increasingly open, the BBC must continue to seek opportunities to enhance transparency still further."*
- 3.3 We have seen some improvements in the BBC's transparency over the Charter period. For example, the BBC linked performance in its 2021 Annual Report back to the Director General's strategic priorities. We have also seen better reporting on iPlayer and Sounds, although more effective measurement of online services is still needed. The BBC has also made some incremental improvements in publicly explaining how it handles complaints, but there is more for it to do to retain the trust of audiences.
- 3.4 The BBC recently announced its long-term strategy that helpfully set out its overarching plans and detailed proposals for its digital transformation.<sup>30</sup> It included information on what services are likely to be affected in the near future – for example BBC Four, CBBC and BBC Radio 4 Extra are likely to stop being broadcast after the next few years. The BBC has also committed to providing more detailed plans.
- 3.5 In our consultation we set out the importance of the BBC having high standards of openness given its unique funding model, and said that we would use this review to work with the BBC and stakeholders to improve transparency across all the BBC's activities. This section draws together the responses to our consultation and information from our existing body of evidence relating to the transparency of the BBC across all areas of our regulation. We set out how our proposals to improve transparency in content standards,

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<sup>30</sup> BBC, 26 May 2022, [BBC's Plan to deliver a digital-first BBC](#), [accessed 14/06/2022].

performance and competition fit together to ensure the BBC will be more open and transparent in the future. The details of our proposals are set out in Sections 4 to 6.

## The BBC needs to be more open and transparent about how it considers audience concerns

- 3.6 It is vital that the BBC is clear in explaining to audiences how it handles and makes decisions about their complaints so that it can retain their trust. Under the BBC First system, audience complaints must normally be addressed by the BBC before they can be escalated to Ofcom, other than in exceptional circumstances. This gives the BBC a unique advantage. While complainants might not be happy about the outcome of the BBC's decisions, greater transparency about its reasoning will give audiences confidence that their complaints are being fairly and consistently handled. In addition, publication of more of its decisions will reassure audiences and industry stakeholders that the BBC is acting appropriately under the BBC First system.
- 3.7 Over the Charter period we have made several changes to the BBC's Complaints Handling Determinations to improve how the system is working and to require the BBC to publish more information about its editorial decision making and assessment of complaints. This includes changes made in July 2020, to require the BBC to publish more information about its decisions on complaints that are not upheld.<sup>31</sup>
- 3.8 The BBC has acknowledged that it must do more to maintain audience trust in its editorial decision-making and complaints processes, including in its responses to our July 2021 consultation, to the Serota Review and in its resulting Impartiality and Editorial Standards Action Plan. The Serota Review called for "*less defensiveness and more transparency in how the BBC reacts to the outside world*", and made specific recommendations on complaints-handling – including that the BBC should publish, with adequate reasoning, findings of any investigations into serious breaches of the BBC's Editorial Guidelines.<sup>32</sup> As a result of the Serota Review, the BBC is updating its Complaints Framework to provide greater transparency about the Director-General's overall role in editorial standards investigations.
- 3.9 As set out in Section 4, we have revised our Complaints Handling Determinations to require the BBC to publish its reasoning behind all complaints that it decides not to uphold, those that reach Stage 2 of its complaints process relating to due impartiality and due accuracy (including election and referendum issues), and where there are more than 100 complaints on an issue at Stage 1a. We consider that this will give audiences, stakeholders and Ofcom a better understanding of the BBC's complaints handling and decision-making process and additional reassurance that it is reaching appropriate decisions.
- 3.10 It is also important there is greater transparency of any potential serious editorial breaches across the BBC content at an early stage. This will allow us to better scrutinise how the

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<sup>31</sup> Further detail on the information that we require from the BBC can be found at Annex 2 of the [Complaints Determinations \(2020\)](#)

<sup>32</sup> BBC, 2021, [The Serota Review](#), pp.2, 26.

BBC's complaints process is working in practice and, if necessary, intervene early to protect audiences. It is also consistent with the early notice of issues during election and referendum periods that the BBC has already agreed to provide Ofcom. If the BBC does not agree to our request voluntarily, we will recommend that the Government makes a change to the Agreement so that Ofcom can require the BBC to provide this information.

## **Additional transparency is a vital component of our proposed changes to the Operating Licence and regulation of competition**

3.11 In our July 2021 consultation, we emphasised the importance of the BBC being open and clear about its planned changes to services and how these meet audience needs and help to deliver its remit. In response to our consultation, stakeholders agreed there was a need for increased transparency and engagement with the BBC.<sup>33</sup>

### **The BBC needs to set out with its Annual Plan how it plans to deliver the Mission and Public Purposes, and report against how it has met these commitments in its Annual Report**

3.12 Respondents were concerned that the BBC's Annual Plan lacked clarity about planned changes to its services, and that the detail provided was not sufficient for them to understand how the changes were likely to impact their business.<sup>34</sup> For example, ITV stated that the BBC's Annual Plan focuses on "*headline initiatives rather than its more detailed plans for delivery, where much of the market impact can be hidden*". Some stakeholders also thought that the BBC's Annual Report should be more detailed in certain areas.<sup>35</sup>

3.13 Our proposals for a new Operating Licence require greater transparency from the BBC about how it is delivering for audiences. As set out in Section 5, where we are proposing to remove quotas, the Licence will require the BBC to set out specific information with its Annual Plan and Annual Report, including its plans to deliver a certain level of output. The Licence will also require the BBC to set out and give reasons for any changes it plans to make which may impact the delivery of its Licence conditions, and report on any differences to its previously published plans. If we have concerns that its plans or any changes could adversely impact the BBC's delivery of its Licence conditions or the Mission and Public Purposes, we will step in to ensure that audiences do not lose out.

3.14 As emphasised by stakeholders, greater detail in the BBC's proposals would also allow the BBC's competitors to consider the impact that any planned changes to the BBC's services would have on their businesses. We expect that greater transparency will allow the BBC and stakeholders to have a genuine dialogue about the competitive impact, which the BBC can then take into account as it finalises its plans. This will help inform the BBC's

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<sup>33</sup> [Pact response to consultation](#) p.3; [News Media Association response to consultation](#) p.1; [Radiocentre response to consultation](#) pp.10, 43-46.

<sup>34</sup> [ITV response to consultation](#) p.6; [Pact response to consultation](#) p.5; [Professional Publishers Association response to consultation](#) p.3.

<sup>35</sup> [Writers' Guild of Great Britain response to consultation](#) p.3; [Campaign for Regional Broadcasting Midlands response to consultation](#) p.6; [News Media Association response to consultation](#) p.3.

assessment of whether its planned changes might have a significant adverse impact on competition.

- 3.15 The BBC will also be required to report against how it has met these commitments in its Annual Report. This will ensure that audiences and stakeholders better understand how the BBC has delivered the Mission and Public Purposes and we can effectively hold it to account.

### **The BBC must also have a clear and consistent process for announcing changes outside the Annual Plan process**

- 3.16 The BBC will need to make frequent changes to its services so that it can continue to meet changing audience needs. It is likely that some of these changes will need to be implemented outside the Annual Plan process. It is therefore important that these changes are announced before their implementation, so that audiences, competitors and Ofcom can raise any concerns. These changes should be announced in a way that gives sufficient prominence to the change; for example, they could be published on a dedicated part of the BBC's website so that stakeholders have sufficient opportunity to raise any issues. The BBC already has a clear and efficient process for notifying Ofcom of planned changes to its services.

### **There needs to be effective engagement between the BBC and its competitors**

- 3.17 Effective engagement between the BBC and stakeholders is important so that the BBC can understand the potential impact its activities may have on competition, and if necessary, to mitigate any harmful impacts by amending plans for changes to its services.
- 3.18 Several stakeholders raised concerns about the way in which the BBC currently engages with stakeholders when assessing how changes to its services may impact competition. For example, in its response to our consultation Directors UK noted that "*the BBC isn't always transparent at the outset of the BBC PIT in terms of sharing more details about the changes or providing impact data for assessment, so that stakeholders can make informed views on the impacts*".<sup>36</sup> Pact described engagement in recent years with the BBC as "*less than transparent*" and the NMA said that transparency and engagement are areas where the BBC has "*persistently been poor*".<sup>37</sup> Stakeholders were also concerned that there is no transparency for the market about changes which the BBC determines are not material.<sup>38</sup>
- 3.19 As set out in Section 6, improving engagement with stakeholders is an important component of our proposed changes to competition regulation. If the BBC is transparent and engages with stakeholders effectively, it will help us to take a more flexible approach

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<sup>36</sup> [Directors UK response to consultation](#) pp.2-3, see also [News Media Association response to consultation](#) pp.1-4; [Professional Publishers Association response to consultation](#) p.3.

<sup>37</sup> [Pact response to consultation](#) p.3; [News Media Association response to consultation](#) p.1.

<sup>38</sup> For example, [Radiocentre](#) suggested that the BBC should disclose all materiality assessments, have clear 'meaningful consultation' obligations that include the information it must provide to stakeholders, and that Public Interest Tests for certain changes be made mandatory (such as the launch of new radio services). See also [Teledwyr Annibynol Cymru response to consultation](#) p.2; [News Media Association response to consultation](#) p.4; [Professional Publishers Association response to consultation](#) p.4.

to our own role in assessing the BBC's impact. At the same time, it is important that stakeholders engage in an open and productive dialogue with the BBC, providing sufficient reasoning and evidence to justify any concerns.

- 3.20 We will work with the BBC and other stakeholders over the coming months to understand how engagement between the BBC and its competitors might work better in practice, so that we can set out in our guidance clear expectations on engagement as part of the BBC's consideration of materiality.<sup>39</sup>

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<sup>39</sup> Ofcom, 2017. [Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance.](#)

## 4. Standards and audience protection – serving and protecting BBC audiences

**To ensure that the BBC First complaints process works well for audiences, and that it is easy to navigate and more transparent, we will:**

- (1) require the BBC to publish its reasoning for all due impartiality and due accuracy complaints that reach the final stage of its complaint process;
- (2) request that Ofcom is alerted by the BBC at an early stage about potential serious editorial breaches across its content. This will allow us to better scrutinise how the BBC's complaints process is working in practice and, if necessary, intervene early to protect audiences;
- (3) continue to press the BBC to improve public confidence in its approach to due impartiality, monitor implementation of the Serota Review findings and the Impartiality and Editorial Standards Action Plan, and develop closer links with the Editorial Standards and Guidelines Committee;
- (4) update our research on audience perceptions of BBC First and impartiality in the next few years and conduct a further review of the BBC First system before the end of the current Charter.

### Ofcom has a duty to protect audiences and maintain content standards

- 4.1 Ofcom has an important role in ensuring that viewers and listeners are protected from harmful or offensive material on TV, radio and on-demand services. We do this through requiring that all the broadcasters we regulate, including the BBC, comply with our Broadcasting Code (the Code).<sup>40</sup>
- 4.2 We have responsibility for regulating all areas of the BBC's content standards,<sup>41</sup> including the due accuracy of news and the due impartiality of news and current affairs. Under the Agreement we also set procedures to handle and resolve complaints referred to us about the BBC's TV, radio and on-demand programmes.
- 4.3 The BBC also publishes its own [Editorial Guidelines](#). These reflect the Code, but differ in some areas, including being more widespread in relation to preserving due impartiality.<sup>42</sup> The BBC requires all its content to comply with the Editorial Guidelines.

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<sup>40</sup> The BBC Charter and Agreement also require us to hold the BBC to account against the Broadcasting Code.

<sup>41</sup> In May 2017 Ofcom and the BBC entered into an [arrangement](#) under which Ofcom can consider and give an independent 'Opinion' on whether the BBC has observed the relevant BBC Editorial Guidelines in its online material. Online material includes text, images, video and audio content on the BBC's website and apps. It does not extend to the BBC's social media content.

<sup>42</sup> The BBC's Editorial Guidelines require due impartiality across all its output, whereas Ofcom's rules on due impartiality apply primarily to news and current affairs content.



- 4.4 This review is our first opportunity, since taking over regulation of the BBC, to consider the way in which the BBC handles complaints from audiences and complies with the Code. This is timely given the increased public scrutiny of the BBC's editorial decisions as a result of the publication of the [Dyson](#) and [Serota](#) Reviews<sup>43</sup> and the BBC's own subsequent [Impartiality and Editorial Standards Action Plan](#).
- 4.5 To deliver for audiences, it is important that the BBC's complaints system:
- is clear and simple, so that licence fee payers can easily complain about something they have seen, heard or read;
  - is transparent, so that audiences and other stakeholders have confidence in the BBC's complaints system and have reassurance that complaints will be fairly considered and that the BBC is acting appropriately; and
  - provides Ofcom with the appropriate information so that we can have sufficient oversight to hold the BBC to high standards, consistent with other broadcasters.

## **BBC First recognises the direct relationship the BBC has with licence-fee payers**

- 4.6 Complaints about the BBC's content and programming must normally be made to the BBC first.<sup>44</sup> This 'BBC First' complaints system, set out by Parliament in the BBC Charter and Agreement, was put in place to allow the BBC to stay close to its audiences and their concerns. Audience research shows that licence fee payers continue to have a strong sense of ownership of the BBC; the complaints system gives it an opportunity to maintain this direct relationship with its audiences.<sup>45</sup> It is an important tool for the BBC to build and maintain trust with licence-fee payers.
- 4.7 Figure 3 below shows how BBC First works in practice. There are three stages:
- Stage 1a – complainants receive an initial response from Audience Services.
  - Stage 1b – if the complainant is unhappy with the response, they can escalate their concerns and receive a response from a BBC manager or member of the editorial team.
  - Stage 2 – if they remain unhappy with the response, they can escalate the complaint again to be considered by the BBC's Executive Complaints Unit (ECU).<sup>46</sup>
- 4.8 If complainants remain dissatisfied with the BBC's final decision, they can refer the matter to Ofcom.<sup>47</sup> We monitor all published BBC ECU upheld decisions to decide whether any further regulatory action is necessary (regardless of whether we receive an actual complaint on that case). We also have the power to step in and intervene at an earlier

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<sup>43</sup> Following investigations into the 1995 *Panorama* interview conducted by Martin Bashir with Diana, Princess of Wales.

<sup>44</sup> This does not apply for Fairness and Privacy complaints, which can be made directly to Ofcom.

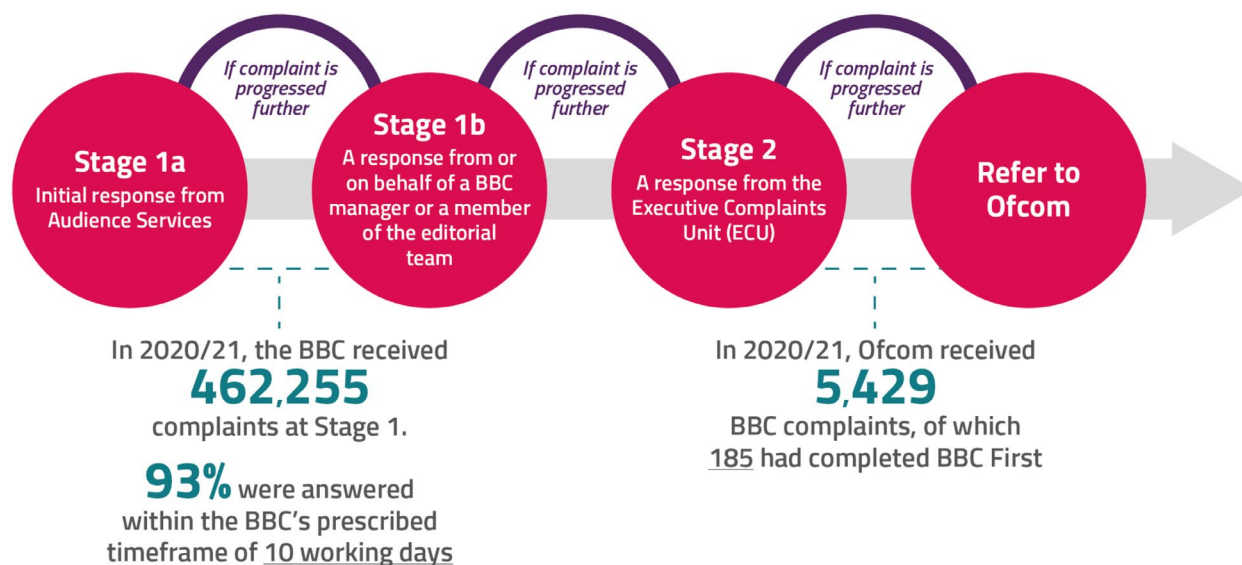
<sup>45</sup> For example, at each stage of the BBC First process, the BBC provides appropriately tailored responses to complainants.

<sup>46</sup> The ECU is tasked with considering complaints impartially and independently of the interests of the programme makers/content providers.

<sup>47</sup> Complainants can also come to Ofcom if they consider, following the resolution of a complaint by the BBC that the imposition of a sanction may be appropriate, or if the BBC has failed to resolve a complaint within the time period set out in its procedures.

stage, in exceptional circumstances, or to launch an investigation in the absence of a complaint if we think it is appropriate to do so.<sup>48</sup>

Figure 3: BBC First is a multi-stage and complainant-led process:



## It is important that BBC First meets audience needs

4.9 As outlined above, under the BBC First system, audience complaints must normally be addressed by the BBC before they can be escalated to Ofcom, other than in exceptional circumstances. This gives the BBC a unique and material advantage over other broadcasters. As the BBC's independent regulator, Ofcom needs to be confident that: this system is working well for audiences and easy to use, and that the BBC is reaching appropriate decisions in a transparent way. We have therefore undertaken [research](#) to understand the experiences of those complaining to the BBC and how these compare to their experiences of complaining to organisations in other industries.

4.10 The research used a mix of quantitative and qualitative research:

- The quantitative phase of the research comprised a survey of over 2,000 respondents including those who had complained directly to the BBC in the past year.
- This was supplemented by 16 in-depth interviews with participants identified and recruited from the quantitative survey, 11 of which were with people who said they had previously complained to the BBC. This phase was used to understand, in more detail, the particular experience of a small number of complainants with the complaints process and their satisfaction with the process and outcome.
- We also conducted a mystery shopping exercise, in which 50 'mystery shoppers' submitted a complaint scenario (developed by Ofcom) through the BBC's complaints

<sup>48</sup> BBC First also applies to BBC online material (see footnote 2). However, unlike our role regulating the standards of BBC broadcasting and on-demand programme services, Ofcom has no enforcement powers for BBC online material.

system. This phase tracked and surveyed the mystery shoppers' experiences at each stage of the BBC process.

- 4.11 We have considered the findings of the research as a whole. The qualitative and mystery shopping findings provided rich contextual information and case studies that helped to illustrate themes that emerged from the quantitative survey.
- 4.12 We focused on the experience of complainants navigating BBC First, given the importance of audiences being able to easily complain to the BBC. We did not look at audience satisfaction with the outcome of a complaint, as we are mindful that the majority of those who complain to the BBC will not have their complaints upheld. It is vital that the BBC has the editorial freedom to make programmes that some people may find offensive or strongly disagree with, as long as it complies with the Code.
- 4.13 We found that audience experiences of complaining to the BBC did not compare well with complaining to other organisations. Less than one in five (18%) reported having had a satisfactory experience with the BBC.<sup>49</sup> This was significantly worse than satisfaction with complaining to Ofcom (56%) or other media companies (44%).<sup>50</sup> At the same time, some participants in our qualitative research said they held the BBC to a higher standard because of its unique position and expected more of it, compared to other broadcasters.
- 4.14 The quantitative research, qualitative case studies and mystery shopping research highlighted a variety of issues:
- A **lack of awareness** of the complaints process – only 21% of participants were aware of the BBC First process and only 7% said they were aware of the full three-stage process.
  - A **lack of clarity** about the process – the majority of mystery shoppers (41 of 49) felt they did not receive appropriate information at Stage 1a on how to escalate their complaint. There was also confusion about whether complainants had submitted an official complaint or had contacted the BBC in a way which the BBC considered to be a 'comment' or 'feedback'. In some cases this led to dissatisfaction about the lack of a substantive response.
  - Concern about the **tone and detail of response received** – almost seven in ten (69%) participants were dissatisfied with the effort the BBC had made to address the complaint. 54% of participants in the quantitative survey, who had made a complaint to the BBC, said that they had a 'bad' experience, with 22% classing it as 'very bad'.
  - Concern about the **length of time the process took** – less than half of complainants said they received an initial substantive response within two weeks, the BBC's target response time.<sup>51</sup> Of those who received a response, a third were satisfied with the

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<sup>49</sup> Over half (54%) in the quantitative survey reported the experience as being bad (22% said very bad). 20% and 55% said their experience complaining to Sky and Virgin Media TV respectively was bad/very bad. Ofcom, 2022. [Audience perceptions of the BBC First complaints system](#), p.18; p.34.

<sup>50</sup> 11% said their experience complaining to Ofcom was bad (5% said very bad).

<sup>51</sup> The BBC says that it "*aims to reply within 10 working days of receipt of your complaint though some complaints may take longer than others to investigate*".

speed of reply. Overall, participants thought that three BBC stages before escalation to Ofcom was too many.<sup>52</sup>

## The BBC must do more to improve confidence in its editorial decision-making and complaints handling

- 4.15 The BBC has acknowledged the need to maintain audience trust in its editorial decision-making and complaints processes, noting that their Impartiality and Editorial Standards Action Plan is “setting out detailed actions to ensure the highest editorial standards, including impartiality, across all BBC output”.<sup>53</sup> The Serota Review made specific recommendations about complaints-handling, including that the BBC should publish, with adequate reasoning, findings of any investigations into serious breaches of the BBC Editorial Guidelines.<sup>54</sup> The BBC is updating its Complaints Framework as a result, to provide transparency about the Director-General’s overall role in editorial standards investigations. We welcome these changes and the commitments in the Impartiality and Editorial Standards Action Plan.
- 4.16 However, we think more substantive changes to BBC First are needed to ensure that it meets audience needs.

## The BBC must urgently improve BBC First to make it clearer and simpler for audiences to make and escalate complaints

- 4.17 Only a small number of complainants decide to take their complaint further (escalate it either within the BBC’s system and to Ofcom).<sup>55</sup> In some cases this may be because complainants were satisfied with the BBC’s response and chose not to progress further. However, our research suggests that the small escalation rate may be due to other issues such as frustration with the process, a lack of clarity in how to progress a complaint or a lack of faith that a complaint will be dealt with appropriately by the BBC. Concerns about complaints not making a difference or not being taken seriously were much higher for the BBC than for other broadcasters. Four in ten (42%) said that complaining to the BBC would not make a difference and 29% felt that their complaint would not be taken seriously. This compared with 22% and 17% respectively for other broadcasters (ITV/Channel 4/Channel 5).
- 4.18 The BBC must urgently consider improvements to BBC First to ensure it is **simple** and **clear** and that **transparency** is improved. In particular, the BBC should ensure that:

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<sup>52</sup> Ofcom, 2022. [Audience perceptions of the BBC First complaints system](#), p.35.

<sup>53</sup> BBC, 2021. [Impartiality and Editorial Standards Action Plan, p.1.](#)

<sup>54</sup> BBC, 2021. [The Serota Review](#), p. 2; p.26.

<sup>55</sup> The BBC did not publish its editorial complaints figures for 2020/21, but its Annual Report for 2019/20 showed that of the 368,377 editorial and general complaints it received at stage 1 in that financial year, only 759 were escalated to stage 2 and only 212 of those were escalated to Ofcom. As stated above, for financial year 2020/21 Ofcom only received 185 complaints which had completed the BBC First process.

- a) Audiences understand how to complain to the BBC and that the process is easy. There should be a clear distinction between formal complaints and feedback.
  - b) Complainants receive an acknowledgement and are appropriately informed about escalation procedures at each stage of the process.
  - c) It is doing all it can to meet its response targets and consider the reasons for audience dissatisfaction with the length of time it takes to handle complaints.
  - d) Complainants are clear about the likely level of detail in the BBC's responses at the outset.
- 4.19 We will be paying close and regular attention to the effectiveness of BBC First. We expect the BBC to carefully consider and take appropriate action in response to the concerns expressed by audiences in our research and will discuss with the BBC the changes it intends to make. We will conduct a further review of the BBC First system before the end of the current Charter to assess the impact of the changes we have made and any changes made by the BBC in response to this review. We will also update our research on audience perceptions of BBC First in the next two to three years.

### **The BBC must be more transparent and open about its decision-making**

- 4.20 The BBC First system can only work if we have confidence that the most serious complaints will be escalated to Ofcom if complainants are unhappy with the BBC's response. This requires transparency about how the BBC is handling its complaints.
- 4.21 When we took over regulation of the BBC, we put in place requirements for the BBC to publish complaints data so that its rationale for its decisions would be clear to audiences and Ofcom. We have since introduced further requirements to improve transparency. The BBC now publishes fortnightly information on the number of editorial complaints and all upheld, part upheld and resolved complaints at Stage 2.<sup>56</sup> We also revised our Complaints Determinations in June 2020 to require the BBC to publish its reasoning for decisions it has not upheld and which meet certain criteria.<sup>57</sup> However, the BBC has not published any 'not upheld' decisions since this requirement was put in place. The BBC has told us that this is because it considered that none of its 'not upheld' decisions met the criteria.
- 4.22 Without additional transparency about the BBC's handling of complaints that were not upheld at Stage 2, we cannot be confident about the robustness of the BBC's decision-making. This lack of transparency risks undermining the legitimacy of the BBC First system for audiences and other stakeholders who have limited understanding of how important

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<sup>56</sup> Following changes the BBC made to its Complaints Framework as a result of the BBC Breakfast case.

<sup>57</sup> The BBC agreed to the following non-exhaustive list of considerations which would be likely to guide its judgement in publishing the reasoning relating to stage 2 not upheld decisions: the level of public interest attaching to the issue(s) of complaint; the number of complaints escalated to the ECU; the profile of the programme (or other item of output) complained of; the nature of the complainant (e.g. first or third party, corporate body, person in public life); the significance of the potential breach of standards identified; potential reputation damage; and where complaints about the same item have been upheld, and the reasons for not upholding others are important for an understanding of the ECU's reasoning.

themes like due impartiality are handled by the BBC. This is especially important given that 'not upheld' decisions account for around 90% of all Stage 2 complaints.

- 4.23 The BBC has said that publishing the reasoning behind all its 'not upheld' ECU decisions stage would require significant additional resource. We disagree with the BBC. Since all complainants already receive an individual response from the ECU setting out the basis for the outcome of their complaint, we consider that publication of the reasoning would not be disproportionate.
- 4.24 We have therefore revised our [Complaints Determinations](#), to require the BBC to publish 'not upheld' Stage 2 decisions that meet the following criteria:
- all decisions related to a complaint about due accuracy or due impartiality (including during election periods and referendum periods); and
  - all decisions related to a case where the BBC has received more than 100 complaints about the item at Stage 1a.
- 4.25 Due impartiality remains a key area of concern for audiences and stakeholders. Greater clarity about how the BBC assesses concerns in this area will give audiences and stakeholders more confidence in the decisions taken and help demonstrate the BBC's commitment to due impartiality.

## **The BBC should provide early information to Ofcom about potentially serious editorial issues**

- 4.26 Ofcom can step in and intervene at an early stage in exceptional circumstances. We can also launch an investigation into editorial standards in the absence of a complaint, if we think it is appropriate to do so. To have confidence in the BBC's process we need a good understanding of how the BBC is handling the most serious editorial complaints and be satisfied that it is doing all it can to ensure that BBC First is effective.
- 4.27 This requires regular engagement between Ofcom and the BBC. The BBC has suggested holding regular meetings every two months with Ofcom to update us on all relevant developments in this area, including implementation of the Serota Review and Action Plan. We will also meet the BBC Board's Editorial Standards and Guidelines Committee on a regular basis.
- 4.28 However, there remains a significant gap in Ofcom's ability to hold the BBC to account. It does not currently notify potentially serious editorial breaches (whether or not these have been raised with the BBC as complaints) to us at an early stage of its process. We have therefore asked the BBC to provide us with details of these potential breaches as soon as it identifies them. This is what it did for its previous regulator, the BBC Trust (although it was under no formal obligation to do so), and we see no reason why it cannot do the same now. If the BBC is unwilling to provide this information to Ofcom voluntarily, we will recommend the Government makes a change the Agreement so that we can require the BBC to provide this information.



- 4.29 In addition, any complaint in the run-up to an election (or referendum) may raise substantive issues. If upheld, these complaints might require swift redress before the election takes place. It is therefore important that Ofcom is confident that the BBC is doing all it can to expedite complaints during election periods. We welcome the BBC's recent agreement to provide us with regular updates about ongoing potential serious and significant election-related editorial complaints during election and referendum periods.
- 4.30 Finally, we are proposing to address a gap that we have identified in the area of election programming. At present, the BBC is not obliged to comply with Ofcom's rules on constituency and electoral area reporting, as contained in Section Six of the Code.<sup>58</sup> Although the BBC's own Election Guidelines broadly match our requirements in this area, we consider it important that the BBC complies with Ofcom's rules, consistent with other broadcasters.<sup>59</sup> We will be recommending that the Government makes the appropriate legal change to make this clear.

## To maintain public confidence the BBC must address concerns arising from perceptions of its due impartiality

- 4.31 Due impartiality is a key priority for the BBC. The first of its five public purposes as set out in the current Charter is to "*provide impartial news and information to help people understand and engage with the world around them*". Scrutiny of the BBC's due impartiality has always been high but has intensified lately in an increasingly polarised political climate. Due impartiality remains a complex challenge for the BBC.
- 4.32 Although the BBC is the most-used news source in the UK, with its audiences rating it highly for trust and accuracy, our News Consumption Survey has consistently shown that they tend to rate the BBC lower for due impartiality.<sup>60</sup> Our [2019 News Review](#) showed that audience perceptions of BBC due impartiality are driven by a range of factors – many of which do not relate to the BBC's content.<sup>61</sup> These perceptions related to broad social issues such as diversity and on-screen talent, the way people see themselves being reflected on screen, and other factors associated with the broader BBC brand and engagement with audiences.
- 4.33 Ofcom's duties in relation to the enforcement of due impartiality standards are to assess whether individual pieces of BBC content comply with the due impartiality rules of our Broadcasting Code. This means assessing whether the BBC has favoured one side over another and given adequate and appropriate time to a range of views, depending on the context and subject or nature of the programme. In doing so we take into account the BBC's right of freedom of expression and the audience's right to receive information.

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<sup>58</sup> Under the Representation of the People Act 1983 (as amended), Section 93.

<sup>59</sup> S4C is also allowed to adopt its own constituency and electoral area reporting rules but it chooses to adopt Ofcom's rules in this area contained within the Broadcasting Code (See [S4C Guidelines on Programme Compliance, Conflict of Interest and Political Interests](#), 2017).

<sup>60</sup> Ofcom 2021 News Consumption Survey online sample only.

<sup>61</sup> Ofcom, 2019. [Review of BBC news and current affairs, p.14.](#)

## Perceptions of BBC due impartiality are driven by a range of complex factors

- 4.34 To inform our review, we conducted further [research on audiences' perceptions of the due impartiality of the BBC](#). Our research into audience perceptions of BBC First suggested that the biggest cause for concern with the BBC's due impartiality was 'bias' and the BBC was significantly more likely to be considered biased (39% vs 15%) or have misleading content (26% vs 12%) than other broadcasters.<sup>62</sup> Our due impartiality research shows that perceptions of due impartiality continue to be influenced by how people view and engage with the BBC more generally.<sup>63</sup>
- 4.35 In particular, we found that audiences hold the BBC to a higher standard than other broadcasters due to their sense of ownership of the BBC. BBC TV, radio and online news are judged differently by audiences in light of their distinct roles, with BBC TV news judged more stringently than other BBC services. BBC TV news is expected to satisfy a wider range of audiences, and represent the whole of the UK, in contrast to other TV broadcast services which are seen as better able to appeal to a specific audience. Online BBC news content was used by the widest range of participants in our study – it was highly valued for its factual and informative approach and was challenged less on its due impartiality because of this focus.
- 4.36 We found that audiences' perceptions of the BBC's due impartiality are driven by a range of factors other than the BBC content they watch or listen to. Factors include the way they see themselves portrayed on screen, criticism of the BBC in the media and their views about BBC more broadly. The personal political views of audiences and their strength of feeling about the subject matter of the content also influenced audience perceptions of due impartiality. Some participants felt that the BBC's funding mechanism meant it was more likely to be pro-Government and would struggle to report stories independently. In contrast others perceived the BBC and its news coverage as left-leaning and anti-conservative.
- 4.37 The BBC is operating in a complex and demanding cultural and news landscape where audiences have access to news in more ways than ever before, including through social media. Audiences told us that access to news through online sources (including watching 'raw' footage of news events and commentary from people who are not journalists) meant that stories (or aspects of stories) not covered by the BBC are now more visible to them and could sometimes lead them to consider the BBC was 'biased by omission'. The amount of coverage the BBC gave to a particular story could also influence participants' perceptions of its due impartiality, but to a lesser degree. Discussion shows such as *Question Time* were highly valued by audiences but faced criticism from some participants about the range of views they included and the inclusion of views that some said were extreme.

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<sup>62</sup> Ofcom, 2022. [Audience perceptions of the BBC First complaints system](#), p.16.

<sup>63</sup> Ofcom, 2022. [Drivers of Perceptions of Due Impartiality](#).

- 4.38 In addition, audiences used ‘hard’ and ‘soft’ signals to make instant and intuitive judgments about due impartiality. ‘Softer’ signals included presentational cues such as the tone of voice or body language of a reporter or presenter and the degree of challenge to an interviewee. ‘Harder’ signals included showing all sides of a story or giving clear prominence to factual content.
- 4.39 All these factors continue to influence perceptions of bias and due impartiality on the BBC.

## **We continue to receive high numbers of complaints about BBC due impartiality**

- 4.40 Our latest research confirms that audiences continue to attach significant importance to the BBC being duly impartial. Although the level of complaints to Ofcom about lack of due impartiality in BBC programmes remains high, we have not found the BBC to be in breach of the due impartiality requirements of the Code over this Charter period.<sup>64</sup> The BBC has a good record of complying with broadcasting rules intended to ensure that programming is duly impartial.<sup>65</sup> For example, as noted in our last BBC Annual Report, according to the BBC, in the period April 2017 to March 2021 inclusive, the BBC Executive Complaints Unit upheld or partially upheld complaints in 22 instances (out of a total of 112) where it found that the appropriate standard of due impartiality had not been applied.<sup>66</sup>
- 4.41 Ofcom can also investigate complaints it receives about whether individual pieces of BBC content comply with the due impartiality rules of our Code. Apart from the one investigation we have launched,<sup>67</sup> we have not considered it proportionate to open a full investigation into due impartiality complaints. But in the interest of transparency and to give the BBC important guidance to help it comply with our due impartiality rules, we have published our reasoning in some cases.<sup>68</sup>

## **The BBC must improve public confidence in its approach to due impartiality**

- 4.42 As noted the range of factors shaping audience perceptions of due impartiality present the BBC with complex challenges and many of these factors fall outside the remit of Ofcom. The selections of stories, choice of guests and tone of programming are rightly areas of editorial discretion for the BBC. It is important, and in line with freedom of expression, that broadcasters can include views that some people may find offensive or challenging. Our role is to intervene only when programming raises substantive issues under the Code.
- 4.43 However, maintaining audience confidence in the BBC’s due impartiality is critical for the BBC. Transparency in how it deals with complaints about due impartiality – both those it

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<sup>64</sup> We have launched one investigation into the BBC’s due impartiality relating to *World At One*, BBC Radio 4, 24 February 2021, 13:00.

<sup>65</sup> Of the total 5,429 BBC complaints we received in 2020/21, 1,530, or 28% of all BBC complaints to Ofcom, were about due impartiality. Of the 185 complaints we assessed, 82 (44%) related to due impartiality. <sup>65</sup> Ofcom, 2021. [Ofcom Annual Report on the BBC 2020-21, p.83.](#)

<sup>66</sup> Ofcom, 2021. [Ofcom Annual Report on the BBC 2020-21](#), p.5.

<sup>67</sup> See footnote 64.

<sup>68</sup> Ofcom, 2021. [Ofcom Annual Report on the BBC 2020-21](#), pp.85-86.

upholds and those it does not – will help to: maintain confidence by giving audiences and stakeholders more clarity about how the BBC approaches this issue; allow effective oversight by Ofcom; and demonstrate the BBC’s publicly-stated commitment to due impartiality. We have therefore required the BBC to publish its reasoning for all due impartiality and due accuracy complaints that reach Stage 2 of its complaints process.

4.44 In addition, it is important that the BBC addresses the apparent disparity between audience attitudes to its due impartiality and its own good record of compliance with the Code. This may require the BBC to find creative ways of demonstrating its approach and commitment to due impartiality. In his first speech as Director-General in 2020, and in Parliamentary Select Committee appearances since, Tim Davie identified due impartiality as a key commitment, and that the BBC urgently needs to “*champion and recommit to impartiality*”.<sup>69</sup> In response to the Serota Review, the BBC also set out a number of actions in its Impartiality and Editorial Standards Action Plan. Although these are matters for the BBC Board, we intend to monitor how these actions are implemented over the remainder of the Charter period. We expect the BBC to keep us regularly updated on implementation of all relevant aspects of the Serota Review and Action Plan, including:

- regular updates on the BBC’s thematic impartiality reviews;
- sight of the BBC’s ongoing research on due impartiality;
- further information on the BBC’s intention to strengthen the processes in place to share information at a senior level on emerging editorial trends, risks and issues; and
- further details of the plans to implement actions regarding whistleblowing complaints.

4.45 The BBC must rigorously assess and transparently report on these actions to retain audience trust in this important area. Given the importance of the BBC’s delivery of due impartiality, we will carry out further research on audience perceptions of the BBC’s due impartiality in the next two to three years, alongside our further research into BBC First.

### Summary of recommendations to the Government

We are recommending that the Government should consider:

- (1) Changing the Agreement as part of its Mid-Term Review of the BBC Charter to require the BBC to provide Ofcom with information of potential serious editorial breaches at an early stage, if the BBC does not agree to provide this information to Ofcom voluntarily.
- (2) Making the appropriate legal change to require the BBC to comply with Ofcom’s rules on constituency and electoral reporting.

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<sup>69</sup> BBC, 2020. [Tim Davie's introductory speech as BBC Director-General](#).

## 5. Proposals for changes to the BBC Operating Licence

### In this section we propose to update the Operating Licence so that:

- (1) It sets new requirements on the BBC's online services.
- (2) It gives the BBC more flexibility where this can enable it to better serve audiences, but retains quotas where specific safeguards are necessary, including in relation to delivery of news and current affairs and to secure distinctiveness.
- (3) It requires the BBC to publish more and better information with its Annual Plan and Annual Report.

### We need to update the Operating Licence to enable the BBC's transformation to a digital first organisation

- 5.1 As set out in Section 2, the fast-changing media landscape creates a number of challenges and opportunities for the BBC, and it needs to modernise and transform to respond to these. To continue to deliver for audiences, the BBC must adapt how it informs, educates and entertains to ensure it reaches and resonates with all audiences across the UK.
- 5.2 We set the first BBC Operating Licence when we began regulating the BBC in 2017. The Licence ensures that audiences across the UK are well served by the BBC, that it fulfils its Mission and promotes the Public Purposes, and provides distinctive output and services. This is an important part of how we hold the BBC to account for delivering for audiences.
- 5.3 However, the Operating Licence must keep up with changes in the media environment and not restrict the BBC as it transforms. Currently, the Licence consists largely of quotas which are specific to individual BBC TV and radio services, with limited recognition of the content it delivers online. This is not aligned with audience behaviour and technological developments and could stand in the way of the BBC's transformation. Further, the Licence does not currently require the BBC to be transparent about its plans and performance.

### To effectively hold the BBC to account, we are proposing a multiplatform digital Licence supported by increased transparency

- 5.4 The new Operating Licence must ensure the BBC continues to deliver for all audiences, now and in future. To achieve this, we have three main principles:
  - a) **The Licence must incorporate the BBC's online services.** BBC iPlayer, BBC Sounds, the BBC website, and other online services forming part of BBC Online have become increasingly important for reaching audiences. We want to ensure we hold the BBC to account for its online delivery to audiences, as well as recognising the contribution of these services to the BBC's Mission and Public Purposes. In response to our initial

consultation, stakeholders were generally supportive that a new BBC Operating Licence should incorporate the BBC's online services.<sup>70</sup>

- b) **The Licence needs to give the BBC more scope to determine how to meet audience needs.** The BBC is best placed to decide what content to make and how it is delivered so that all audiences are well served. We are proposing to replace some quotas with new conditions where we consider more flexibility would benefit audiences, but to retain quotas where we think they are still needed, for example to safeguard news and current affairs. Stakeholders were concerned that removing quotas could have a negative impact on audiences and competition and lead to a reduction in public value and distinctiveness if the BBC stopped providing content that is less likely to be provided elsewhere.<sup>71</sup> We have carefully considered where it is necessary to retain quotas to protect audiences. Where we propose to remove them, the BBC will still be expected to deliver a broad range of distinctive UK content and we will put in place requirements for additional transparency.
- c) **The Licence will require greater transparency from the BBC.** We have repeatedly asked the BBC to improve its reporting for the benefit of audiences and stakeholders. Our proposed Licence requires the BBC to set out specific information with its Annual Plan and Annual Report, including its plans for hours of output where we propose to remove quotas. There was widespread agreement from stakeholders that there should be greater transparency and more effective reporting from the BBC.<sup>72</sup>
- d) **We will hold the BBC to account on behalf of audiences.** The proposed Licence will require the BBC to be more transparent, and this, together with our ongoing monitoring, will enable us to take swift action if we are concerned about the BBC's compliance with its Licence conditions. In addition, we monitor the BBC's wider performance through our extensive programme of audience research, from information provided to us by the BBC and through stakeholder engagement. If we have serious concerns about the BBC's plans or performance, we will not hesitate to

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<sup>70</sup> [All-Party Parliamentary Group on Commercial Radio response to consultation](#), p.1; [AudioUK response to consultation](#), pp.1-2; [CAMERA-UK response to consultation](#), p.1; [Campaign for Regional Broadcasting Midlands response to consultation](#), p.3; [Professional Publishers Association response to consultation](#), pp.1-2; [Radiocentre response to consultation](#), pp. 2, 15; [S. Stein response to consultation](#), pp.1-2; [Teledwyr Annibynnol Cymru \(TAC\) response to consultation](#), p.1; [Voice of the Listener and Viewer \(VLV\) response to consultation](#), p.3; and [Writers' Guild of Great Britain response to consultation](#), p.1.

<sup>71</sup> [Pact response to consultation](#), p.5; [Radiocentre response to consultation](#), pp.2, 5, 6, 16, 17; All-Party Parliamentary Group on Commercial Radio response to consultation, p.2; Writers' Guild of Great Britain response to consultation, p.2; AudioUK response to consultation, pp.3-4. Ofcom's Advisory Committee for Northern Ireland response to consultation, pp.2-3; VLV response to consultation, p.4; AudioUK response to consultation, p.2; TAC response to consultation, p.1; ITV response to consultation, p.4.

<sup>72</sup> [Ofcom's Advisory Committee for Northern Ireland response to consultation](#), p.3; [Ofcom's Advisory Committee for Scotland response to consultation](#), pp.1-2, 5; All-Party Parliamentary Group on Commercial Radio response to consultation, p.1; AudioUK response to consultation, p.4; Campaign for Regional Broadcasting Midlands response to consultation, p.3; [Directors UK response to consultation](#), pp.1-2; ITV response to consultation, p.2; [MG ALBA response to consultation](#), pp.1-2; [News Media Association response to consultation](#), p.1; Pact response to consultation, pp.5-6; Professional Publishers Association response to consultation, p.2; Radiocentre response to consultation, pp.6, 10, 46; TAC response to consultation, p.2; VLV response to consultation, p.3; [Wireless Group response to consultation](#), pp.1, 6; and Writers' Guild of Great Britain response to consultation, pp.2-3.

impose new Licence conditions. Our approach is explained in greater detail in Section 5 of [our consultation](#).

## **We are consulting on how these principles can be incorporated into each Public Purpose**

5.5 Our proposals for requirements which underpin delivery of each Public Purpose are set out in full in our BBC Operating Licence consultation – here we summarise the main proposals.

### **Public Purpose 1 – news and current affairs**

5.6 The BBC is the most used news provider in the UK, and it plays an important role in keeping audiences across the UK informed with up to date and accurate news. This was particularly evident during the pandemic. In addition, recent research found that most audiences feel the BBC’s informative content is more reliable and accurate than from other providers.<sup>73</sup> While TV remains the main way in which many people get their news, and BBC One remains the most used individual news source, online news is increasingly popular.<sup>74</sup>

5.7 For Public Purpose 1, the current Operating Licence mainly contains quotas which apply to TV and radio, and requirements which specify how frequently news and current affairs should be provided. There are only two Licence conditions for BBC Online; these relate to children’s news online and adequate links to material provided by third parties.

5.8 Providing high quality, trusted and accurate news is central to the BBC’s remit. We therefore propose to retain the existing quotas to ensure that such output is readily available, including at times when audiences are most likely to be accessing that service.<sup>75</sup> We recognise, however, that audiences are consuming more news online, so propose to introduce new requirements for the BBC to make news and current affairs programmes available each day on both BBC iPlayer and BBC Sounds, and for this content to be easy to discover.

### **Public Purpose 2 – learning**

5.9 The BBC is an important provider of both formal and informal learning content for audiences of all ages. This content is consistently highly used and well perceived by audiences, with nearly 70% of parents with children under 16 agreeing the BBC’s education offer supported younger children with their learning.<sup>76</sup> Research shows that both parents and children trust the educational content provided by the BBC.<sup>77</sup> The BBC’s education offer was particularly valued during the pandemic, providing learning content across BBC

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<sup>73</sup> Ofcom research: [Exploration into audience expectations of the BBC in the current media environment](#), 2021, p.24.

<sup>74</sup> Ofcom 2021 News Consumption Survey online sample only.

<sup>75</sup> The current Licence contains a mix of daily, weekly and annual quotas. Although we propose to retain the news and current affairs quotas, we plan to change all daily and weekly quotas to annual quotas (with the same overall level of output required) to reduce the administrative burden on both the BBC and Ofcom.

<sup>76</sup> Ofcom BBC Performance Tracker 2020/21.

<sup>77</sup> Ofcom research: [Exploration into audience expectations of the BBC in the current media environment](#), 2021, p.24.



Bitesize and BBC TV services, aligned to the curricula of each nation, to ensure all children were served.

- 5.10 The current Operating Licence sets quotas for the BBC to deliver at-risk genres, documentaries and specialist music on specific television channels and radio services. It also sets descriptive requirements for the BBC to deliver content that supports pre-school learning on CBeebies and for formal learning for children and teenagers across the UK on BBC Online.
- 5.11 The BBC has performed strongly to date in delivering learning content and we expect this to continue over the remainder of the Charter period. In a new Operating Licence, our proposals therefore focus on strengthening the information the BBC provides about how it is delivering Public Purpose 2. With this in mind, we consider the BBC should have flexibility to determine how best to deliver learning content for audiences of all ages across its broadcast services and online and we are proposing that no quotas be set under Public Purpose 2. We are also proposing to move the requirements for the BBC to deliver different genres, documentaries, and music programming to Public Purpose 3.

### Public Purpose 3 – distinctiveness

- 5.12 The Charter and Agreement put the need for the BBC to be distinctive at its core, requiring the BBC to offer output and services that are substantially different to comparable providers. We have found over this Charter period that the BBC has continued to maintain a distinctive position in the UK media landscape, with 61% of audiences rating the BBC highly for providing a broad mix of content.<sup>78</sup> The BBC also continues to provide a significant amount of original UK content – the foundation of BBC distinctiveness – although this is in decline, particularly in some at-risk genres.<sup>79</sup> In particular, research has found that audiences particularly associate the BBC with high-quality dramas, which they consider to be distinct from other providers.<sup>80</sup>
- 5.13 The Operating Licence currently sets service-specific quotas for original productions and first-run UK originations,<sup>81</sup> as well as for comedy, music, and sports commentary. Given that original UK content is core to the BBC’s distinctiveness, we propose to retain quotas for original productions (as required by the Agreement) and for first-run UK originations. We propose however to give the BBC flexibility to deliver some of its first-run UK origination quota with content on BBC iPlayer, to allow it to meet the needs of online audiences while still safeguarding the distinctiveness of BBC TV services.
- 5.14 We propose to move away from quotas for genres and documentaries, and for some of the music programming conditions. Instead, we propose to place obligations on the BBC to provide a wide breadth of output in a range of genres and content types on its services. In

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<sup>78</sup> Ofcom BBC Performance Tracker 2020/21.

<sup>79</sup> At-risk genres include arts and music, children’s, comedy, specialist factual (e.g. science and history) and religion.

<sup>80</sup> Ofcom research: Exploration into audience expectations of the BBC in the current media environment, 2021, p.25.

<sup>81</sup> First-run UK originations are programmes which are commissioned by or for a BBC television service and have not previously been shown on television in the UK.

support of this, we propose to require the BBC to set out specific information with its Annual Plan, such as its planned hours in different genres, and to report on how it has delivered this with its Annual Report.

- 5.15 We also propose to safeguard the distinctiveness of individual BBC radio services by retaining music quotas on BBC Radio 1 and BBC Radio 2, live or specially recorded music on BBC Radio 3, and sports commentary on BBC Radio 5 Live. We consider these quotas play an important role in ensuring the BBC is distinctive from commercial radio providers. We propose to remove quotas for all other existing radio requirements, in favour of new obligations. The BBC would instead be required to provide a wide breadth of output, and new transparency requirements would require it to set out specific information on how it is serving all audiences with its radio output, such as the number of musical works it plans to commission and broadcast on Radio 3.
- 5.16 To ensure that online audiences are well served with distinctive content, we also propose to introduce new requirements for the BBC to explain how BBC Sounds and BBC iPlayer contribute to its overall distinctiveness.

#### **Public Purpose 4 – nations and regions, and diversity**

- 5.17 The BBC must reflect, represent, and serve the diverse communities of all the UK's nations and regions, and in doing so, support the creative economy across the UK. Audiences have told us that they strongly value diversity and representation. When asked what was most important to them personally for the BBC to deliver, "showing a wide range of different types of programmes" and "content made for UK audiences" were both ranked high.<sup>82</sup> However, we have consistently seen that some audience groups are less satisfied with the BBC, including disabled audiences, those in Scotland and those from less well-off backgrounds.<sup>83</sup> In addition, recent research found that audiences rated "content that features my region / Scotland / Wales / Northern Ireland" as one of the lowest aspects.<sup>84</sup> While we have highlighted this as an area for improvement, concerns around representation and portrayal persist – 56% of all audiences rated the BBC highly in this area, the lowest positive rating of all the Purposes.<sup>85</sup>
- 5.18 The Operating Licence currently sets requirements for diversity, audience portrayal and representation. It also sets quotas for production in the nations and regions and programming for the nations and regions across TV and radio, as well as requirements for the nations and regions on BBC Online. While some of these conditions remain effective, we think others could go further to ensure all audiences are well served by the BBC.
- 5.19 For example, as with Public Purpose 1, we consider that quotas for national and regional news and current affairs are required to ensure the BBC provides all audiences with

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<sup>82</sup> Ofcom research: Exploration into audience expectations of the BBC in the current media environment, 2021, p.27.

<sup>83</sup> Socio-economic group is determined by several factors including income and occupation. In general terms, the highest groups, A and B, are more likely to be well-off, the C1 and C2 groups are in the middle and the lowest groups, D and E, are less likely to be well-off.

<sup>84</sup> Ofcom research: Exploration into audience expectations of the BBC in the current media environment, 2021, pp.28-29.

<sup>85</sup> Ofcom BBC Performance Tracker 2020/21.

relevant and high-quality information. We also believe that quotas for production in the nations and regions continue to play an important role in securing investment in their creative economies. We are proposing that the BBC should be able to deliver some of its nations and regions production quotas on BBC iPlayer and BBC Sounds.

- 5.20 Consistent with our proposals to remove quotas for genres, we are also proposing to remove the BBC's non-news and non-current affairs programming quotas on the national and regional versions of BBC One and BBC Two ('the opt-out services'). Instead, we propose to require the BBC to deliver a broad range of content, including non-news and non-current affairs programming in the nations and regions, set out its plans for how it will meet this obligation and report on how it is delivering for audiences.
- 5.21 We also propose to strengthen the transparency requirements that seek to hold the BBC to account for how it represents the diverse communities of the UK both on-and off-screen. This includes requiring the BBC to report publicly on its representation and portrayal obligations and strengthening reporting requirements in relation to the BBC's Diversity Commissioning Code of Practice.

## **We will work with Government where we consider changes to the Agreement could support a new Operating Licence**

- 5.22 Alongside our proposals for a new BBC Operating Licence, we have set out recommendations on where changes to the Agreement could support the delivery of the Mission and Public Purposes. These views may be subject to change, dependent on the outcome of our consultation. We will engage with Government on our provisional views over the coming months.

### **Production in the nations and regions**

- 5.23 The Agreement requires Ofcom to set quotas for production in the nations and regions to ensure that a suitable proportion of all network programmes in the UK are made outside the M25. We consider these quotas remain important in ensuring the BBC continues to support the creative economies across the UK, including in each of the nations. However, the BBC can currently only deliver this quota on its network broadcast TV services.
- 5.24 One of the key principles of our proposed Operating Licence is that the BBC should be able to deliver content where it best meets the needs of audiences – across both broadcast and online services. We therefore recommend that Government consider amending the Agreement so that Ofcom is able to set quotas for programmes made in the UK outside the M25 Area that apply to programmes produced for both the network and BBC iPlayer.

### **Programming for the nations and regions**

- 5.25 The Agreement requires Ofcom to set quotas for programming for the nations and regions that apply to the opt-out services taken together to ensure that a certain amount of news

and non-news programming is provided across all the national and regional versions of BBC One and BBC Two.<sup>86</sup>

- 5.26 We consider that for non-news content, audiences would be better served by a requirement for the BBC to deliver this content, combined with transparency requirements, rather than a quota. We therefore recommend that Government consider amending the Agreement to remove the requirement for Ofcom to set quotas for non-news programming in the nations and regions.

## Original productions

- 5.27 The Agreement requires Ofcom to set quotas for original productions on each of the UK Public Television Services. At this time, we consider these quotas continue to play an important role in ensuring that the BBC serves audiences with a significant amount of original UK content and in capping acquisitions on individual broadcast TV services. However, as the broadcasting sector evolves further, and the BBC continues to transform how it delivers its content, there may come a time when the BBC should be given additional flexibility to respond to changing audience habits and have more scope to structure its original programming across the range of its TV services and BBC iPlayer, where it best meets audience needs. In particular, a service neutral<sup>87</sup> original productions quota would allow the BBC to determine how best to deliver this content across all its TV and online services.
- 5.28 We therefore recommend that the Government consider amending the Agreement, so that Ofcom is no longer required to set original production quotas on each TV service. Instead, Ofcom would be required to set original productions quotas that give the BBC flexibility to decide on which TV and online services they would meet the quotas.

### Summary of recommendations to the Government

We are therefore recommending that the Government should consider the following changes to the Agreement as part of its Mid-Term Review of the BBC Charter:

- (1) Allow Ofcom to set the quotas for programmes made outside the M25 that apply to programmes produced both for the network and BBC iPlayer.
- (2) Remove the requirement for Ofcom to set regulatory conditions for non-news programming in the nations and regions.
- (3) Modify the requirement for Ofcom to set original production quotas on each TV service so that we can set a service neutral quota for original productions.

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<sup>86</sup> Schedule 2(6)(1) of the Agreement.

<sup>87</sup> We refer to service neutral as delivery via broadcast TV or radio, or online.

## 6. Proposals for changes to the competition framework

**We are recommending that the Government makes changes to the Agreement to give more flexibility to Ofcom about when and how to undertake a competition assessment.**

In addition, in a consultation this autumn we are intending to propose a more targeted, flexible competition framework that can adapt as competitive conditions in the market change. This includes:

- (1) Giving greater clarity about our view of competition in the main sectors in which the BBC operates and how we are likely to approach future assessments of competition and public value.
- (2) Working with stakeholders to develop a practical approach to engagement to ensure that the BBC can appropriately take account of the potential competition impacts of its planned changes.

### **The Charter and Agreement set requirements on the BBC and Ofcom to consider the impact of the BBC's activities on competition**

- 6.1 The BBC is a large, publicly funded organisation which operates across the television, radio and online sectors in the UK. In meeting the requirements set out in the Charter and its Mission and the Public Purposes, the BBC has an impact on competition in the media industry. This impact may be positive and stimulate demand or encourage innovation. But the BBC's activities may also harm the ability of others to compete effectively.
- 6.2 As we have discussed, the BBC must adapt its services so that it can continue to deliver against the Mission and Public Purposes as the evolution of media changes the way audiences consume content. However, if the BBC changes its public services in a way that leads audiences to switch away from commercial services to BBC services, commercial providers' revenue may diminish. This may in turn limit commercial providers' ability to invest in their services, reducing the overall choice, quality and range of content available for UK audiences. We refer to this effect as 'crowding out'.<sup>88</sup> In some extreme cases companies may cease providing services altogether, undermining plurality and choice within the UK media sector.
- 6.3 The BBC is constantly evolving and making different kinds of adjustments to its services. Most changes are too minor to have any impact on competition.
- 6.4 The BBC is responsible under the Agreement for assessing whether changes may be "material". Where a change is material, the BBC conducts an initial assessment of whether

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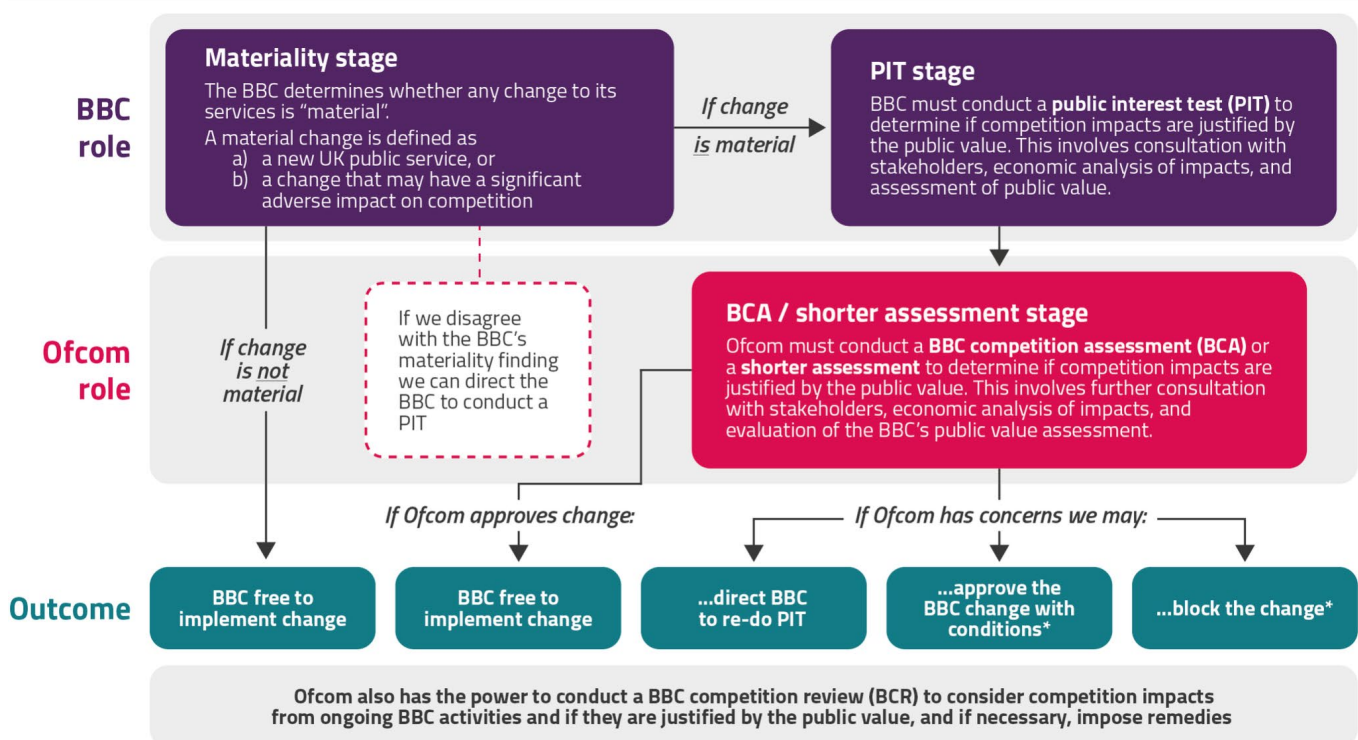
<sup>88</sup> Crowding out is not the only way in which the BBC can harm competition – for example, there is a risk that BBC activity may cause harmful impacts on services elsewhere in the UK media supply chain.

competition impacts are justified by the public value.<sup>89</sup> Under the Agreement a change is material if the BBC is launching a new UK public service, or if it is a change to an existing service that may have a significant adverse impact on fair and effective competition. This approach requires the BBC to understand the potential impact of a change at an early stage, allowing it to shape its plans while they are still in development in order to mitigate competition impacts.

6.5 Ofcom is required to review and approve all material changes to BBC services before they are implemented. While we do not have a specific role to review materiality conclusions where the BBC has found that a change is not material, we have the power to step in and direct the BBC to conduct a PIT if we disagree on materiality. Where evidence emerges of harm to competition from ongoing BBC activities, Ofcom has regulatory tools to step in and address these using a BBC competition review (BCR).

6.6 Figure 4 below provides a summary of the BBC and Ofcom’s roles in regulating the competition impact of the BBC’s public services. The processes are set out in more detail in our [guidance](#).<sup>90</sup>

**Figure 4: Summary of the BBC and Ofcom’s roles under the Charter and Agreement for regulating the competition impact of the BBC’s public services**



\*Using a shorter assessment we may only approve a change or direct the BBC to re-do its PIT.

<sup>89</sup> A change is material if it constitutes the launch of a new UK public service, or if it is a change to an existing service that may have a significant impact on competition. For material changes, under clause 8(1) of the Agreement the BBC must carry out a PIT.

<sup>90</sup> Ofcom, 2017. [Assessing the impact of proposed changes to the BBC’s public service activities: Ofcom’s procedures and guidance](#).

6.7 We also have a role in preventing competitive harm that could arise from the BBC's commercial activities as a result of their relationship with the public service. Where the BBC engages in commercial activities, the Charter requires it to undertake these through separate commercial subsidiaries, of which BBC Studios is by far the largest. Without appropriate regulatory safeguards, the BBC's public funding could be used to subsidise or benefit its commercial subsidiaries by offering them services on favourable terms, or distort competition by giving those commercial subsidiaries an unfair competitive advantage.

## **The need for the BBC to innovate is stronger than ever, while the risk of crowding out from some areas of BBC activity may have decreased**

6.8 As we set out in Section 2, increasing numbers of people are choosing to consume media online, using services that allow them to watch or listen to content tailored to their interests when and where they want to.<sup>91</sup> Global companies providing online media services have driven this trend further by making substantial investments in original content to attract people to their services. The BBC will need to continue to adapt its online services to ensure that it reaches those audience groups who now mostly consume content online. The BBC has announced strategic plans to adapt its services so that it becomes a 'digital-first' organisation.<sup>92</sup>

6.9 The changing market trends also make it likely that the risk of the BBC crowding out its rivals has been falling in some areas of BBC activity. The presence of global competitors is significantly affecting the market, with both the BBC and its UK competitors losing audiences to online services. As the BBC's market position declines, its ability to crowd out rivals decreases. As discussed in Section 2, the BBC is also facing financial pressures that to some extent constrain its ability to make changes that significantly impact competition. We expect that the impact of changes to the BBC's services in some parts of the market is likely to be relatively small compared to the impact that global companies are having, given the scale of the leading global providers and their ability to deploy sizeable budgets to invest in the UK media markets.

6.10 Nonetheless, while the effects of global competition are felt across all areas of the market, the BBC's scale and competitive role varies according to market area. In response to our consultation, Radiocentre and Wireless argued that the BBC's share of the UK radio audience means that it is particularly likely to cause harmful impacts in the radio and audio sector.<sup>93</sup> The Professional Publishers' Association (PPA) and the News Media Association (NMA) raised concerns about the BBC's ability to harm commercial publishers.<sup>94</sup> On the

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<sup>91</sup> We have found that audiences increasingly favour on-demand services that give them flexibility to consume content in their own time, and wherever they are – and that they value services that cater for personal preference and individual choice. [Ofcom research: Exploration into audience expectations of the BBC in the current media environment](#), 2021

<sup>92</sup> BBC Media Centre, 26 May 2022. [Plan to deliver a digital-first BBC](#) [accessed 16/06/2022].

<sup>93</sup> [Radiocentre response to consultation](#), p.4; [Wireless response to consultation](#), p. 2-3.

<sup>94</sup> [PPA response to consultation](#), p.5-7; [NMA response to consultation](#), p.4-5.



other hand, the BBC argued that Ofcom's decisions on whether to approve changes to the BBC's services should take into account that the market and the BBC's main competitors are now global.<sup>95</sup>

## **Regulation must maintain the right balance between allowing the BBC to innovate and deliver for all audiences, and protecting competition in the UK media market**

- 6.11 Regulation helps to maintain competition and plurality in the UK media market. This ensures that audiences enjoy the benefits of a wide choice of high-quality content that is truly reflective of UK culture in ways that cannot be matched by content from global providers.
- 6.12 Market developments mean that over time the BBC's impact on competition is likely to diminish in some areas, while the need for the BBC to adapt has become increasingly important. In this context, it is essential that competition regulation strikes the right balance between allowing the BBC to make the necessary changes to its services and protecting fair and effective competition.
- 6.13 We have considered whether it would be appropriate for Ofcom to rely only on a backstop power to step in and assess the impact of ongoing BBC activities where evidence of harm to competition has been identified. This would be a significant change from the current regime, which is primarily focused on identifying and addressing potential harm before changes to the BBC's services are implemented.
- 6.14 A regime based purely on step-in powers would mean there would be no delay to the BBC implementing the more substantial changes to its services. However, incentives for the BBC to take measures to mitigate competition impacts at an early stage would be weaker, and any regulatory intervention could only take place after competitors to the BBC have already been harmed. Regulatory remedies imposed at this point may not be sufficient to undo harmful effects on competitors' ability to invest in their services.
- 6.15 Many stakeholders responding to our consultation were concerned that BBC activities can cause real harm to UK competitors, with several calling for greater regulatory scrutiny of BBC competition impacts in certain market areas, such as the radio and audio sector.<sup>96</sup> A number of responses called for a more formal materiality process, involving consultation with stakeholders.<sup>97</sup> In addition, Radiocentre and Wireless argued that there should be more intensive regulatory processes required to approve BBC changes in areas that are particularly likely to impact competition.<sup>98</sup> For example, Radiocentre argued that it should

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<sup>95</sup> [BBC response to consultation](#), p. 9.

<sup>96</sup> [Wireless response to consultation](#), p.14-15; [AudioUK response to consultation](#) p.3; [All-Party Parliamentary Commercial Radio Group response to consultation](#), p.2; [Radiocentre response to consultation](#), p.44-47; [PPA response to consultation](#), p. 8-10.

<sup>97</sup> [Radiocentre response to consultation](#), p.44; [PPA response to consultation](#), p. 7; [TAC response to consultation](#), p.2; [AudioUK response to consultation](#), p.6.

<sup>98</sup> [Wireless response to consultation](#), p.14-15.

be mandatory for the BBC to conduct a public interest test (PIT) for changes in certain market areas regardless of whether the BBC considers them to be material.<sup>99</sup>

- 6.16 We do not consider that market conditions have changed to the point where it is appropriate to step back from competition assessments before the implementation of a BBC change. Nor do we think that it is appropriate to increase the level of regulatory scrutiny, including in sectors where changes to BBC services may have more potential to lead to competitive harm. Any increase in the length or complexity of the current processes would make it harder for the BBC to make the changes that are urgently required so that it can deliver its Mission and Public Purposes.
- 6.17 We consider that there is scope to improve the way the current framework operates, while retaining sufficient protection against the potential for unjustified competition impacts. There could be greater flexibility for the BBC to implement changes more quickly in areas where the BBC's impact on competition is likely to have diminished, and where changes are targeted at areas where there may be the potential for the BBC to deliver significant additional public value.
- 6.18 We set out below our emerging thinking on how we can achieve this. We will consult on our detailed proposals in the autumn and will continue engaging with stakeholders about potential changes to the competition framework over the summer.

## **BBC competition regulation should adapt to become more effective and flexible, supported by greater transparency**

### **We will set out further thinking on the competitive impact of the BBC, and on the types of impact that changes to BBC services can deliver to generate significant public value**

- 6.19 Our experience of regulating the BBC over the last five years has developed our understanding of how the BBC's public service activities impact competition. Drawing on this and taking into account the views of the BBC and other stakeholders, we are planning to look at the main sectors in which the BBC operates so that we can set out our current views on competitive conditions.
- 6.20 This includes considering how the sectors have been affected by global players and the potential impact the BBC can have on its UK competitors. We also aim to draw on our experience of reviewing public value assessments to set out our thinking on the types of impact that changes to BBC services can deliver to generate significant public value. For example, we have previously<sup>100</sup> said that changes that enable the BBC to reach underserved audiences, which is important to the long-term resilience of the BBC, could deliver significant public value.

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<sup>99</sup> [Radiocentre response to consultation](#), p.44.

<sup>100</sup> Ofcom, 2019. [BBC iPlayer Competition Assessment: Final determination](#), p.17- 24; Ofcom, 2021. [BBC Three television channel competition assessment: Final determination](#), p.11 and p.18

- 6.21 Setting out our thinking in these areas will give the BBC and stakeholders more certainty about how we will approach competition assessments for different types of BBC changes.<sup>101</sup> For instance, it should provide clarity on circumstances where we may be able to carry out a shorter competition assessment.<sup>102</sup>
- 6.22 We are proposing to consult on this in the autumn, setting out our thinking and inviting stakeholder views and evidence to further inform our views.

## **We have identified a number of changes to the Agreement that could be made to streamline regulatory processes**

- 6.23 We consider that there is scope for the Government and the BBC to amend the Agreement to allow regulatory processes to work more effectively. The main purpose of these changes would be to give us the flexibility to limit our regulatory input where we think the BBC has successfully assessed and addressed competition issues, allowing the BBC to make changes more rapidly in a fast-changing market.
- 6.24 If the Government and the BBC choose to amend the Agreement, this will have an impact on our regulation in this area in the long term, and it is likely that we will need to review our guidance.<sup>103</sup>

**1) Recommended change to the Agreement: Ofcom should have discretion over whether or not to conduct a BCA or a shorter assessment following a BBC PIT**

- 6.25 Under the Agreement, Ofcom is required to undertake a BCA or a shorter assessment where the BBC considers a change to be material (and has therefore undertaken a PIT). We recommend that the Agreement be changed to allow Ofcom to allow a BBC change having reviewed the findings of its PIT, without being required to conduct an additional assessment.
- 6.26 This option would provide additional flexibility to reduce the overall length of the process if we find that the BBC has appropriately assessed in its PIT both the competition impacts and the public value of its change, effectively engaged with stakeholders and appropriately taken account of their concerns, and found that any remaining competition impacts are justified. Removing the BCA or shorter assessment, where it is appropriate to do so, would further incentivise the BBC to engage constructively with stakeholders and allow it to implement changes faster, supporting its ability to adapt its services to better serve audiences. It would also reduce unnecessary duplication of work between the BBC and Ofcom.

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<sup>101</sup> For example, at the materiality stage, greater clarity should enable the BBC and stakeholders to have a more focused dialogue to establish whether changes to BBC services are likely to be material.

<sup>102</sup> A shorter assessment is set out in the Agreement as an alternative to the BCA, which can be used when there is a narrower range of issues for Ofcom to consider. To date, we have not conducted a shorter assessment.

<sup>103</sup> Alternatively, if changes to the Agreement are completed before we have made the changes to the guidance that we will be consulting on in the autumn, we may not need to conduct a further review of the guidance as any necessary changes could be made during the same process.

6.27 We would retain the ability to conduct a BCA or a shorter assessment if we considered it appropriate and proportionate – for example, if the BBC’s PIT was clearly insufficient or if we disagreed with its conclusions; if we had access to important additional information about market impacts that was not available to the BBC during its PIT; or if the BBC had not engaged appropriately with stakeholders.

**2) Recommended change to the Agreement: Ofcom should have the power to use a shorter assessment to approve a BBC change with conditions**

6.28 In some cases, it may be necessary to impose regulatory conditions to address unjustified competition impacts that are identified in a BBC PIT. Under the Agreement, Ofcom is only able to approve a BBC change with conditions if we conduct a full BCA process. However, a full BCA may not be necessary if the BBC has conducted a thorough and effective PIT process.

6.29 We recommend that the Agreement should be amended to allow Ofcom to conditionally approve a BBC change using a shorter assessment. This would allow greater flexibility for Ofcom to take any necessary measures to mitigate competition concerns that are identified in the BBC’s PIT without the need to first conduct a full BCA. Again, this would help to remove unnecessary delays to the BBC implementing changes.

**3) Recommended change to the Agreement: New BBC services should not automatically be considered ‘material’ changes**

6.30 Under the Agreement, any new BBC service is automatically classed as a ‘material’ change.<sup>104</sup> This means that even very small new services that are highly unlikely to have a significant impact on competition are required to undergo a PIT. We recommend removing this aspect from the materiality definition to avoid unnecessary PIT processes where the level of risk to UK competitors from a new BBC service is low.

6.31 Removing the ‘new services’ aspect of the materiality definition would not reduce our ability to scrutinise competition impacts, as any new services would still fall within the main definition of a ‘material change’ if they might have a significant adverse impact on fair and effective competition. In any case, given constraints on BBC finances, the BBC is much more likely to make changes to its current services rather than introduce new ones.

### **Additional flexibility in how Ofcom consults with stakeholders will increase the efficiency of processes**

6.32 In addition to the changes to the Agreement that we have suggested, we have been working to ensure that our current processes are efficient and used flexibly.

6.33 We have worked constructively with the BBC to increase efficiencies in the current processes. For example, we provided guidance on constructing an appropriate evidence base and economic model for the BBC’s most recent PIT on the re-launch of BBC Three as a

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<sup>104</sup> BBC Agreement Clause 7(7)(a)

broadcast channel.<sup>105</sup> We agree with the BBC's comment in its consultation response that working together at the evidence gathering stage has helped reduce duplication of work between the BBC and Ofcom, and that we should develop this approach further.<sup>106</sup>

- 6.34 We think there is potential to further reduce the risk of duplication in current processes. Our guidance currently sets out that, following a BBC PIT, we will invite third party comments to inform our view on whether a BBC change is material before beginning a BCA or shorter assessment (which includes a further consultation).<sup>107</sup> But by this stage in the process the BBC would already have found a change to be material and conducted a PIT, so there is likely to be little benefit in Ofcom consulting specifically on materiality. We are therefore proposing to amend our guidance to clarify that we will only invite third party comments at the initial assessment stage where it is necessary to do so, for example, if we disagree with the BBC that a change is material.

### **The BCR tool remains an important backstop to ensure that we can step in and address harms from ongoing BBC activities**

- 6.35 As part of a more flexible approach to regulating BBC competition impacts, it is important that we retain the ability to step in and address any unjustified competitive harm that may emerge from ongoing BBC activities. This includes impacts that may occur from a series of incremental changes to BBC services, which taken individually may not be material, but which add up over time to cause significant competitive impacts.
- 6.36 We consider that our power to launch a BBC competition review (BCR) remains sufficient to allow us to investigate and to take measures to address impacts from ongoing BBC services, and complements our role to identify and address impacts from planned changes. In addition, there is scope for Ofcom to examine specific areas of BBC activity and provide clarity to stakeholders on our view of the BBC's role in the market, as we did when we set out our views on the market position and impact of BBC Sounds in the UK audio sector in 2021.<sup>108</sup>
- 6.37 In its consultation response, the Professional Publishers' Association (PPA) said that Ofcom's BCR power should be extended to allow for greater consideration of future impacts in rapidly developing market areas.<sup>109</sup> While we do not consider that any changes need to be made to the BCR process, we will draw on our emerging view of how the BBC's role in the market is changing to inform regulatory processes, including BCRs, wherever this is relevant.

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<sup>105</sup> Ofcom, 2021. [BBC Three BCA – Final determination Annex 1: Our approach to modelling market impacts and assessment of impact on SVoD and pay-TV services](#)

<sup>106</sup> [BBC response to consultation](#), p.9.

<sup>107</sup> Ofcom, 2017. [Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance](#), p.16.

<sup>108</sup> Ofcom, 2021. [Market position of BBC Sounds Statement](#).

<sup>109</sup> [PPA response to consultation](#), p.8-10.

## There needs to be open and transparent engagement between the BBC and stakeholders so that it can understand its impact on competition

- 6.38 We consider that to understand its impact on competition, the BBC needs to understand how stakeholders will be affected by a proposed change to its services. In most cases, this will mean engaging with stakeholders and providing them with enough information about the planned changes so that they can consider the potential impact on their business.
- 6.39 Early engagement with stakeholders is important to help the BBC understand how it might amend a planned change to mitigate the impact on competition – for example, by adjusting plans so that a change will deliver more distinctive output. We consider that this process is likely to be about the specifics of a change rather than the principle of whether the BBC can or should develop its services in an area. Seeking partnerships with affected parties may also help to mitigate competitive impacts if these are built into plans at an early stage. The potential for BBC partnerships with industry to deliver mutual benefits was highlighted in Wireless’s response to our consultation.<sup>110</sup>
- 6.40 Where the BBC is transparent and engages with stakeholders effectively, it will help us to take a more flexible approach to our role in assessing the BBC’s impact. For instance, under our recommended changes to the Agreement as set out above, we would expect the BBC to have undertaken effective engagement with stakeholders during its PIT in order for us to step back from undertaking a BCA. We would expect the PIT consultation to include sufficient information about the BBC’s plans and their potential impact to allow stakeholders to comment meaningfully.<sup>111</sup>
- 6.41 Effective engagement is also a crucial part of the BBC’s consideration of whether a change is material, as it is easier for the BBC to amend its plans to mitigate any unnecessary competition impacts while these plans are at an early stage. The BBC’s approach in this area was particularly criticised by some respondents to our consultation as being opaque, with some stakeholders calling for a more formal materiality process involving consultation.<sup>112</sup> In contrast, the BBC argued that the materiality process is already too lengthy and has potential to stifle its ability to innovate quickly.<sup>113</sup>
- 6.42 Given that the BBC is constantly evolving its services, there will be some changes which are very minor and some which involve the transformation of existing services. The BBC has a duty to consider competition impacts, and as part of that it will need to consider the appropriate way to engage with stakeholders, given the nature of the change being considered. We do not consider that it would be proportionate to require that the BBC conducts a formal consultation every time it is thinking about a change as most changes are unlikely to have a significant impact.

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<sup>110</sup> [Wireless response to consultation](#), p.9.

<sup>111</sup> Some responses to our consultation raised concerns about the level of information that the BBC publishes in its PIT consultations: for example, [Directors UK response to consultation](#), p.2-3; [Pact response to consultation](#), p.6.

<sup>112</sup> [NMA response to consultation](#), p.4-5; [Radiocentre response to consultation](#), p. 43-44, p.46; [PPA response to consultation](#), p.4-7; [TAC response to consultation](#), p. 2; [AudioUK response to consultation](#), p.5-6.

<sup>113</sup> [BBC response to consultation](#), p.9.

- 6.43 We also recognise that stakeholders may have a commercial incentive to try to delay the BBC's implementation of changes even where there is little likelihood of significant competitive impacts. A further difficulty is that stakeholders may have concerns about sharing confidential information about their businesses with the BBC.
- 6.44 We want to talk to stakeholders (including the BBC) to understand how engagement between the BBC and its competitors might work better in practice, so that we can set out clear expectations for the consideration of materiality within our guidance.<sup>114</sup> While formal consultation may not be proportionate when considering materiality, we consider that an informal dialogue between the BBC and relevant stakeholders would ensure that the BBC has a good understanding of the potential impacts of its proposals and how it can mitigate these if necessary. We will set out our proposals to update the guidance as part of our autumn consultation.

### **The BBC must also provide more clarity about its future plans and strategy**

- 6.45 In section 5, we explain how our proposals for a more flexible Operating Licence are reliant on the BBC being transparent about how it plans to meet its obligations. Similarly, moving towards a more flexible approach to competition regulation relies on the BBC providing clear information about its future plans and strategy.
- 6.46 Stakeholders must have a reasonable level of information about the BBC's plans so that they can raise specific concerns at an early stage. Some respondents to our consultation were concerned that a lack of sufficient information about the BBC's strategic plans might mean that the cumulative competition impacts of a series of small, incremental changes to BBC services may not receive sufficient regulatory scrutiny.<sup>115</sup>
- 6.47 As part of our Review of the Market Position of BBC Sounds (2021), we concluded that the BBC should provide sufficient information about its future plans and strategy to allow stakeholders to comment meaningfully, which would in turn allow the BBC to make decisions about changes to its services in a more informed way.<sup>116</sup> We said that, where appropriate, the information we expect the BBC to share with stakeholders regarding planned changes to BBC Sounds includes:
- identification and description of the content or functionality that is new;
  - where possible, take-up forecasts of new content or functionality;
  - the target demographics that the change is aimed at; and
  - timescales for implementation of the change.
- 6.48 To help deliver the transparency necessary to support a more flexible approach to competition regulation, it may be appropriate to update our guidance so that the expectations that we set regarding the BBC's sharing of information on BBC Sounds apply across the full range of the BBC's public services. This would mean setting out sufficient

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<sup>114</sup> Ofcom, 2017. [Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance.](#)

<sup>115</sup> [PPA response to consultation](#), p. 4; [ITV response to consultation](#), p.4; [Radiocentre response to consultation](#), p.10.

<sup>116</sup> Ofcom, 2021. [Market position of BBC Sounds Statement](#), p. 63-64.



information in Annual Plans or, if the change emerges outside the timetable for inclusion in the Annual Plan, with sufficient publicity to allow stakeholders to be aware of the change. For example, a dedicated part of the BBC website which is consistently updated with details of upcoming plans for change would be an effective way to ensure stakeholders are kept up to date.

- 6.49 The level of detail provided by the BBC should be proportionate to the scale of proposals. This includes taking into account whether the plans affect market areas where the BBC's impact on competition is likely to have decreased over time, as discussed above. In addition, it is crucial that stakeholders raise any concerns with the BBC promptly and with sufficient reasoning and evidence to justify these concerns.

### **We think it remains important for the BBC to consider formal complaints about its approach to competition in the first instance**

- 6.50 Another key aspect of the BBC's engagement with stakeholders is the way it deals with formal complaints about its regulatory processes or its impact on competition. As with complaints about BBC content standards, under the Agreement regulatory complaints are subject to BBC First. This means that, in most cases, stakeholders would not be able to bring a complaint to Ofcom without having first sought resolution through the BBC's formal complaints process.
- 6.51 Some stakeholders have raised concerns about whether it is appropriate for the BBC to first consider regulatory complaints before these are brought to Ofcom. For example, Wireless's consultation response argued that the BBC cannot reach a robust or objective judgement when considering complaints about competition issues.<sup>117</sup> The NMA criticised the length of the BBC's process and suggested that this may discourage commercial publishers to complain.<sup>118</sup>
- 6.52 There may be cases where it is appropriate for Ofcom to consider such complaints in the first instance, and the Agreement allows Ofcom to investigate an issue before the conclusion of the BBC's complaints process under exceptional circumstances.<sup>119</sup> Stakeholders can also raise concerns with us informally at any time, which may in practice provide a more efficient route to resolving issues before they are escalated to a formal complaint. For these reasons, we consider it remains appropriate for regulatory complaints to be subject to BBC First.

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<sup>117</sup> [Wireless response to consultation](#), p.13.

<sup>118</sup> [NMA response to consultation](#), p.4.

<sup>119</sup> BBC Agreement, 57(2).

## We propose to set out more detail in our guidance on how public value is assessed

- 6.53 Ofcom's role in relation to public value is to review the BBC's assessment of the public value associated with a proposed change. This differs from our role in relation to considering the effects on competition where we conduct our own assessment.
- 6.54 We have considered whether we should recommend any changes to the regulation, or make changes to our guidance in relation to how the BBC should approach its assessment of public value in a PIT, in the light of our experience to date. The BBC has also sought more guidance from Ofcom to inform how it will further develop its approach to assessing and measuring public value.<sup>120</sup>
- 6.55 We do not propose wholesale changes to our guidance on how public value should be assessed. However, we think there is benefit in some areas to setting out more detail on our expectations as to how the BBC should approach its assessment of public value in the future.

## BBC's commercial activities

- 6.56 As set out above, our role in relation to the BBC's commercial activities is to ensure that they do not distort the market or gain an unfair competitive advantage as a result of the relationship with the BBC public service. The Agreement requires the BBC to undertake commercial activities through separate subsidiaries at arm's length and on commercial terms. We have put in place Trading and Separation requirements and guidance to ensure that this is done. These cover operational separation, transfer pricing (where goods and services are traded between the commercial subsidiaries and the public service) and ensuring that the commercial subsidiaries and their lines of business earn a commercial rate of return over an appropriate period of time.

## Our review of BBC Studios has found two areas of concern

- 6.57 We have also published today a report setting out the findings of our review of BBC Studios, the BBC's main commercial subsidiary. Our key objective in this review was to better understand how the BBC has implemented our rules and to provide additional transparency on this to stakeholders.
- 6.58 In this review we found that in some areas the BBC has appropriate processes and measures in place – for example in relation to operational separation. In other areas, we have some concerns. This includes where BBC Studios is distributing content for which the public service owns the intellectual property. The BBC has long-standing co-production agreements in place whereby BBC Studios is entitled to the entirety of the profit related to

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<sup>120</sup> The BBC commissioned a study from the UCL Institute for Innovation and Public Purpose to inform its approach: see Mariana Mazzucato, Rowan Conway, Eleonora Maria Mazzoli, Eva Knoll, Sarah Albala, 2020. [Creating and measuring dynamic public value at the BBC.](#)

the distribution of the associated secondary content rights. From the evidence we have seen to date, it is not clear how the BBC is satisfying itself that it is complying with our rules.

- 6.59 In addition, we have found some issues with the administrative processes that the BBC has in place in relation to how it trades goods and services between the public service and BBC Studios. We expect the BBC Board to take action to update its approach for these two issues, to look more broadly at the issues raised and satisfy itself that its processes and arrangements are in accordance with our rules. We will consider in our autumn consultation whether any changes to our rules are needed to address our concerns, taking account of any changes made by the BBC.

### **Summary of recommendations to the Government**

We are recommending that the Government should consider the following changes to the Agreement as part of its Mid-Term Review of the BBC Charter:

- (1) Remove the link between the BBC undertaking a public interest test and Ofcom doing a BBC competition assessment, so that we can approve the change without conducting a competition assessment, if we agree with the BBC's analysis and it has effectively engaged with stakeholders.
- (2) Enable Ofcom to approve a BBC change with conditions using a shorter assessment.
- (3) Change the definition of a 'material' change so that new public services are not automatically considered to be material (they would still be subject to the test of whether the change/new service may have a significant adverse impact on fair and effective competition).