

*“Working for quality
and diversity in
British broadcasting”*



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Response from the Voice of the Listener & Viewer (VLV)

to the DCMS Consultation on changes to the Office of Communications' (Ofcom's) statutory duties and functions

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Response from the Voice of the Listener & Viewer (VLV) to the DCMS Consultation on changes to the Office of Communications' (Ofcom's) statutory duties and functions

VLV welcomes the opportunity to respond to this DCMS consultation on changes to the Office of Communications' (Ofcom's) statutory duties and functions.

Voice of the Listener & Viewer (VLV) is an independent, non-profit-making association, free from political, commercial and sectarian affiliations, working for quality and diversity in British broadcasting. VLV represents the interests of listeners and viewers as citizens and consumers across the full range of broadcasting issues. VLV is concerned with the structures, regulation, funding and institutions that underpin the British broadcasting system. VLV is a charitable company limited by guarantee.

VLV has been involved for over 30 years in the scrutiny of broadcasting legislation and regulation. We were very involved in monitoring the passage of the 2003 Communications Act¹ through Parliament. We have been involved with Ofcom since it was established. We respond to the majority of consultations within our remit and are a member of the Ofcom Consumer Forum. We meet with Ofcom staff when necessary.

A . SUMMARY

VLV would like to make detailed comments about several of these proposals which for clarity need to be elaborated beyond the three questions below. Our submission is therefore structured around the seven proposals. As part of this summary we briefly respond to the consultation questions.

VLV is very concerned that these changes are to be introduced via two statutory instruments. We consider that several of these recommendations make significant changes to the regulation of Public Service Broadcasting and the role of the Secretary of State. Therefore VLV believes the scrutiny provided by the proposed process will not be adequate. A Communications White Paper is expected this summer and these changes should be included in this Parliamentary legislation, thus receiving the full scrutiny they require and merit.

¹ For the rest of this submission referred to as The Act

Q1: Do you agree with the proposed changes to Ofcom's statutory duties and powers? If you disagree then please set out, in detail, the reasons why.

VLV does not support proposals 1, 2, and 6 and requests that proposal 2 on advisory committees be withdrawn.

With minor adjustment VLV supports proposals 3, 4 and 5.

VLV has no comment to make on proposal 7.

The detailed reasons for our opposition to these changes are in the main text of this submission below.

Q2: Are there alternative/better ways to make these changes to Ofcom's duties?

All seven proposals should be included in the Communications White Paper so they can be considered in a comprehensive manner, allowing for democratic debate and discussion.

Q3: Do you have any other comments that might aid the consultation process as a whole?

These proposals may appear as technical governance matters to many citizens and consumers. However, the move from procedures determined by legislation to procedures determined by the Secretary of State with discretionary actions by the regulator Ofcom are a very significant change and we hope DCMS and Ofcom will give these proposals much wider publicity before any further action is taken. This will give an opportunity for a fuller public debate.

B. CONCERNS ABOUT THE PROCESS

VLV accepts that at a time of austerity it is important to ensure public bodies such as Ofcom undertake their duties in an efficient manner and at a suitable regularity. However we are very concerned that these changes are to be introduced via two Statutory Instruments. The Public Bodies Act 2011 allow for this way forward, however we consider that several of these proposals make significant changes to the regulation of Public Service Broadcasting and the role of the Secretary of State and should be more widely debated in Parliament.

A Communications White Paper is expected this summer and these changes should be included in this Parliamentary legislation and receive the full scrutiny they require and merit. We elaborate further on this in detailed comments below.

C. THE PROPOSALS

Introduction

The proposals in this consultation modify procedures that were established by the Communications Act 2003 so after ten years we agree that it is appropriate to review the processes and make changes. The introduction to the consultation paper states:

'As part of the Government's drive to increase the efficiency, transparency and accountability of public bodies, an analysis of the Office of Communication's duties was undertaken'.

While the changes proposed may lead to an increase in efficiency, we suggest that they significantly reduce the transparency and accountability of Ofcom and the Public Service Broadcasters.

VLV accepts that after ten years there is need for change, but this total change from legislation-determined direction to permissive guidance removes too many essential regulatory roles from Ofcom, putting them into the hands of politicians. It is our view that these changes are not suitable to be made by regulation but should be part of the forthcoming Communications Bill.

D. DETAILED RESPONSES TO THE SEVEN PROPOSALS

1. Amend the duty to review Public Service Broadcasting at least every 5 years, under Part 3 section 264 of the Communications Act 2003, in order that a review will only be conducted at the discretion of the Secretary of State, who will also determine the scope of the review

This change involves a significant alteration in the process of regulating Public Service Broadcasting in the UK. If this proposal goes ahead a major principle of broadcasting regulation will allow a politician, the Secretary of State, to control what should be an independent, apolitical process.

This part of the submission outlines VLV's concerns about the changed roles of the Secretary of State and Ofcom which have impact on all seven proposals in this consultation to varying degrees.

Role of the Secretary of State

The consultation paper states:

'It will provide the powers to the Secretary of State, who will be able to request Ofcom to undertake a review of Public Service Broadcasting, as and when she thinks it most appropriate. Perhaps more importantly it is also proposed that the Secretary of State will also have powers to decide which parts of the PSB landscape should be reviewed'.

VLV cannot accept that the timing and scope of vital reviews of PSB will move from a process which is determined by the Communications Act 2003 to a process which will be determined by political interests. These reviews of PSB must be totally free from political interference. The UK's independent public broadcasting system, which dates back over nearly 100 years, is the envy of the world. While the broadcasters have been subject to regulation it has generally been at arms' length.

If the Secretary of State can choose the time and scope of PSB reviews, it is likely these will be at a time and cover matters convenient for the Government of the day. This means that politicians would gain direct power over Public Service Broadcasting.

In the worst case scenario, reviews could be required as a result of short term concerns of either politicians or powerful media operators who might lobby them.

The advantage of fixed term reviews in which politicians are not involved is that they are neither driven by political expediency nor determined by short term concerns.

Role of Ofcom

VLV is also concerned by the proposal for major change in the responsibilities of Ofcom which appear to be 'softer' and less binding in the proposed new wording.

In the parts of the Communications Act 2003 that will be changed by these proposals the role of Ofcom is currently prefaced by phrases such as: *It shall be the duty*², *Ofcom must make arrangements*³, *Obligation as to making and continuance of approval arrangements*⁴.

In describing the proposed changes the following words are used to describe Ofcom's new role: *as Ofcom thinks best enable it to deliver its key functions*⁵, *power to conduct such a review if it deems it necessary*⁶, *Ofcom would have the discretion to carry out a "change of control" review in cases where they feel it is warranted*⁷.

Changes in the process

VLV believes that the proposed reduction in regular PSB reviews undertaken by Ofcom would weaken an important check on the performance of PSBs.

Section 264 of the Act provides four clear purposes for public service broadcasting elaborated into ten points on how the purposes are to be delivered. VLV does not see how any of these provisions can be cut without it having a detrimental impact on

² Section 12 (1) of the Act

³ Section 14 (1) of the Act

⁴ Title of Section 291 of the Act

⁵ Final phrase of proposal 2

⁶ Proposal 4

⁷ Proposal 6

the quality and range of provision of PSB content. We also think it would be impossible to decide which parts of PSB should be reviewed within the new media landscape and do not think it is wise to be selective in reviews, which the Secretary of State would decide.

We give examples to support our conviction that are illustrative rather than comprehensive:

- The regularity and scope of the current reviews provide a discipline on broadcasters to ensure they maintain quality and diversity; that they do not water down programme schedules and content to meet the purposes by tokenistic programming.
- The UK wide remit of Ofcom ensures that regional and national diversity is regularly reviewed and that production of diverse and quality programmes is maintained across the UK.
- In a highly competitive market-place, broadcasters want to achieve good ratings and, apart from the BBC, to attract advertising revenue. It is cheaper to buy acquisitions than to make original programming and often these attract ratings as high as home-grown content. We want to encourage the PSBs to maintain their level of high quality, original, UK-produced programming. It is only through proper independent regulation undertaken regularly that we will know whether this is happening.

Possible 10 year reviews

As well as potentially reducing the scope of the PSB Reviews, there is an implication in the proposals that the frequency of PSB reviews will reduce from every five to every ten years. *This is on the assumption that a review takes place every ten years.* This proposal flies in the face of a key characteristic of the current media landscape – which is rapidly changing all the time. Regular reviews will be needed to ensure that our regulation is fit for purpose.

We highlight some key changes in the last ten years, many in the last five. We have no reason to believe that the pace of change will reduce.

Had there been no review between 2003 and 2013 there would not have been any check on the impact of these changes on PSBs.

- The total switch to digital transmission of television and the availability of many more services.

- The availability of BBC iPlayer and similar devices which allow delayed listening and viewing.
- The potential to watch TV easily on the move through new generations of mobile devices.
- The rapid growth of the number of viewers willing to pay around £500 and more a year for various services.

Costs of PSB Reviews

The proposed changes seem to be driven by possible annual savings at Ofcom of between £135,000 to £180,000. We suggest that £135,000 is a modest sum to maintain one of the essential checks and balances on the PSBs.

We note that there are unquantifiable savings at the PSBs. The PSBs already have to provide much of the information required by these reviews. All broadcasters have to produce annual reports and both BBC and Channel 4 have to appear before Select Committees annually. These hearings often cover similar areas of concern but not with the same rigour. The BBC services are also subject to service reviews by the BBC Trust. The work of Ofcom provides an economical and essential independent check on these processes.

2. Allow Ofcom to design changes to governance – amending part 1, sections 12-21 of the Communications Act 2003

Sections 12 to 21 of Part one of the Communications Act 2003 run to 10 pages of detailed legislation. The consultation states:

'We therefore propose to remove many of the requirements in sections 12-21 of the Communications Act 2003, and permit Ofcom, with the consent of the Secretary of State, to establish and maintain such advisory committees or consultation mechanisms as Ofcom thinks best enable it to deliver its key functions'.

We assume this power will be restricted to the six panels or committees. However without more detail our comments are restricted to general points of principle.

The general duties of Ofcom are stated at the beginning of part one of the Communications Act 2003:

3 (1) It shall be the principal duty of Ofcom, in carrying out their functions
(a) To further the interests of citizens in relation to communications matters and
(b) To further the interests of consumers in relevant markets, where appropriate by promoting competition.

The rest of part one provides detail including the establishment of the panels and committees that are the subject of this recommendation. The remainder of this section lays out how this duty will operate across the tele-communications and media industries.

VLV considers that these Ofcom consumer-led groups are central to the role of Ofcom in furthering the interests of citizens and consumers. The legislation should not be changed so the existence of these groups is at the whim of the Ofcom Board and the Secretary of State. Therefore we request that this proposal be removed from this proposal and, if considered essential, included instead in the next Communication White Paper and Bill.

3. Remove the requirement that Ofcom promote development opportunities for training and equality of opportunity – amending section 27 of the Communications Act 2003

In general we support this proposal as it is no longer a role for Ofcom to "police" training and equal opportunities in detail.

However the widespread use of low or unpaid interns is still common in the communications industry and is a concern regularly brought to the attention of the VLV Board by our members. Therefore we would request that some high-level oversight in the appropriate training and remuneration of new entrants to the industry remains as one of the duties of Ofcom.

4. Amend the duty to assess Channel 3 Networking Arrangements – amending section 290-294 and schedule 11 of the Communications Act 2003

VLV agrees that this review does not need to be undertaken every year. Also there is now in effect one dominant company in the marketplace. However, in the fast changing media landscape and greater devolution to the UK nations we do consider there should be some form of regular review of Channel 3 networking arrangements.

The consultation document states Ofcom should have the *power to perform such a review as it thinks fit*. This should not be left to Ofcom as *it thinks fit*. It is our view that the regulation should state 'at least every five years'. Ideally this change should be incorporated in the new Communications White Paper and Bill, not in this process.

5. Remove the requirement that Public Sector Broadcasters (PSB) provide annual statements of programme policy – amending sections 256 and 270 of the Communications Act 2003

We agree that the requirement to provide statements of programme policy is no longer useful. VLV has not recently monitored this area but is familiar with the annual publication from Ofcom on the delivery of quotas and key areas of programme making. Different monitoring by the BBC Trust was introduced for BBC services, especially five yearly service reviews, and VLV has contributed to these.

6. Amend the duty to review a change of control of a Channel 3 or Channel 5 license – amending sections 351 and 353 of the Communications Act 2003

VLV cannot accept this proposal. With the changing ownership of media companies there should be a legislative requirement for Ofcom to undertake these reviews when *there is a relevant change of control* [of a service]⁸. There has been a decline in the broadcasting of public service content by these licence holders and any changes in ownership must safeguard what remains.

7. Provide Ofcom powers to charge fees to recover costs for satellite filings made to the International Telecommunications Union (ITU) – amending section 28 of the Communications Act 2003

We have no comment to make on this proposal.

June 2013

⁸ Section 351 (1) (a)