

*Championing
excellence and diversity
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



The Old Rectory Business Centre
Springhead Road, Northfleet
Kent, DA11 8HN
Tel: 01474 338716
email: info@vlv.org.uk
web: www.vlv.org.uk

RESPONSE BY THE VOICE OF THE LISTENER & VIEWER

TO OFCOM'S

PROPOSED ANNUAL PLAN 2018/19

February 2018

*Championing
excellence and diversity
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



The Old Rectory Business Centre
Springhead Road, Northfleet
Kent, DA11 8HN

Tel: 01474 338716
email: info@vlv.org.uk
web: www.vlv.org.uk

Response of the Voice of the Listener & Viewer to Ofcom's consultation on its Proposed Annual Plan for 2018-9

INFORMATION ABOUT THE VLV

The Voice of the Listener & Viewer Limited (VLV) represents the citizen and consumer interests in broadcasting and speaks for listeners and viewers on the full range of broadcasting issues. It uses its independent expertise to champion quality and diversity in public service broadcasting, to respond to consultations, to produce policy briefings and to conduct research. VLV has no political, commercial or sectarian affiliations and is concerned with the issues, structures, institutions and regulations that underpin the British broadcasting system. VLV supports the principles of public service in broadcasting. It is a charitable company limited by guarantee (registered in England and Wales No 4407712 - Charity No 1152136).

EXECUTIVE SUMMARY

1. The VLV is committed to securing a healthy future for Public Service Broadcasting (PSB) and strives to protect its place in the communications market. We value in particular its wide range of content freely available to viewers and listeners through Digital Terrestrial Television (DTT), Digital Audio Broadcasting (DAB) and analogue transmissions of radio services.
2. VLV's primary concern is that public service television and radio services should be universally available across the UK free at the point of reception. VLV interests are in spectrum issues, including broadband extension, which impacts on and is closely linked to spectrum matters, and broadcasting regulation and so our response below is limited to these two areas.
3. We broadly support Ofcom's goals as set out in the Annual Plan. These emphasise the objective of providing for the needs of consumers, recognising that those needs are not uniform across the market and across demographics. Nationhood, citizenship and social cohesion must not be sacrificed to the commercial needs of industry and commerce without a due balancing of stakeholder interests and without regular consultations with citizens including minority groups such as the elderly and disabled to whom advancing technologies are sometimes confusing and challenging.
4. We note the wide range of Ofcom's duties and responsibilities; in particular we note the principal duty of Ofcom to further citizen, as well as consumer, interests. Those interests vary across the community and so we expect that Ofcom will recognise and consider all aspects of any issues that may arise when the interests of some sectors of the community may conflict with others.

5. We are particularly interested in Ofcom's regulation of the BBC in all its aspects. We were disappointed to find out that Ofcom has no intention to consult publicly as part of its annual reporting on the BBC's delivery of its mission. We understand Ofcom will consult informally with stakeholders¹, but we question Ofcom's criteria for selecting stakeholders to engage with during this process and question the transparency of this approach.
6. While we recognise the potential benefits of more sophisticated forms of audience research which will be conducted by Ofcom to assess the BBC's performance, we do not believe that audience research should be used as a substitute for meaningful stakeholder (ie licence fee payer) engagement. We understand the BBC's plans for stakeholder engagement are still in development and therefore currently there is no forum for citizens to provide general feedback on BBC performance. It is VLV's opinion that this lack of stakeholder engagement represents a significant reduction in the accountability of the BBC.
7. We note the rapid rise in mobile data consumption and the considerable emphasis in this Plan on securing yet more spectrum to support these services. It is noted that several frequency bands in high GHz ranges are future targets. The continued demand by the Mobile Network Operators (MNOs) for even more of the DTT spectrum remains of concern to VLV insofar that these demands may disadvantage PSB. If "optimal use is made of the radio spectrum" (Clause 1.4) let it be equitable, with due consideration being given to all aspects of applications and users and all those users being required to be efficient in their use of spectrum.
8. We note that there will be a World Radio Conference in the autumn of 2019. VLV welcomes the work Ofcom has planned to prepare for this conference. However, we are concerned that there is no explicit mention whatever of the need to protect spectrum currently reserved for DTT. We consider this to be an indication that Ofcom may not be prioritising support for PSB on DTT platforms enough. We would expect that at the conference Ofcom will express its support for the continuing value of PSB/DTT.
9. Currently work is progressing to relocate DTT transmissions from the 700 MHz band which has been re-allocated to mobile data services (MDS). We welcome the inclusion in Annexe 1 of three items to monitor this work and to ensure that disruption to viewers is minimised. VLV's view is that none of the cost of this work should fall on broadcasters or viewers. There should also be a robust Help Service available to publicise the work and to provide assistance to viewers.
10. We would welcome a more definitive statement regarding the future of the Interim Multiplexes (IMs) which we consider to be an essential part of the PSB/DTT platform.
11. VLV welcomes that Ofcom will be reviewing the EPG Code and PSB prominence and looks forward to engaging with Ofcom staff on this important issue.

INTRODUCTION

12. The VLV welcomes the opportunity to respond to the consultation on Ofcom's proposed work plan for 2018/19.
13. We note the wide range of Ofcom's duties and responsibilities; in particular we note the principal duty of Ofcom to further citizen, as well as consumer, interests. Those interests vary across the community and so we expect that Ofcom will recognise and consider all aspects of

¹ Siobhan Walsh response to a question at the public stakeholder Ofcom Annual Plan event, London, January 2018

any issues that may arise when the interests of some sectors of the community may conflict with others. Furthermore, we also expect that all activities that involve the public interest will continue to be communicated transparently so that citizens and consumers, including listeners and viewers, may be made aware of these activities and have opportunities to respond.

PSB Regulation

14. VLV's primary focus is on supporting high quality public service broadcasting content which is free at the point of consumption.
15. VLV believes that the chief threats to the future of PSB are:
 - i. further reductions in the purchasing power of the BBC as a result of a reduced licence fee settlement in July 2015;
 - ii. the loss of cultural distinctiveness of programming as a result of an increased need by the Public Service Broadcasters to source co-production funding from international partners; increased competition from global subscription services; and the rise of global production companies;
 - iii. the competition for spectrum capacity; and
 - iv. the increasing challenge to ensure prominence and discoverability of the Public Service Broadcasters as more and more people access television on a range of devices including mobile.
16. With reference to (iv) above, VLV welcomes that Ofcom will be reviewing the EPG Code and PSB prominence and looks forward to engaging with Ofcom staff on this important issue.
17. VLV notes that according to Ofcom research, while average time spent viewing broadcast TV declined in 2016, broadcasting has been resilient and an important part of Ofcom's work in 2018/19 will be to maintain and strengthen public service broadcasting through its work in broadcast and content regulation.
18. We welcome research in Ofcom's Annual PSB Report which shows there was a 2% increase in investment in new programme content by the public service broadcasters in 2016 to £2.6bn and the fact that the number of first-run UK-originated hours was the highest it has been since 2008. We note that all the Public Service Broadcasters increased their spending on new originations except for ITV which reduced its spend by 4%. These findings suggest that commissioning of UK culturally relevant new content is being maintained. While we understand that efficiency gains and third-party finance will have contributed to the overall 18% decline in spend by the Public Service Broadcasters since 2006, VLV still considers this decline to be significant and of concern.²
19. In light of the challenges to the future of PSB as set out above, VLV urges Ofcom to seek all means for maintaining and improving quality and diversity in public service broadcasting. PSB programmes are valuable not only in respect of leisure activities but as importantly in respect of understanding, tolerance, public debate and practical support for the exercise of well-informed citizenship.

² Ofcom: PSB Annual Research Report 2017, pg 6

Regulation of the BBC

20. We note with particular interest Ofcom's role in relation to the BBC. We look forward to engaging with Ofcom staff during this period when it will be carrying out its first annual assessment of the BBC's delivery of the requirements set out in its 2017 Operating Licence.
21. We were disappointed to find out at the Ofcom stakeholder meeting, held on January 10th 2018 in London, that Ofcom has no intention to consult publicly on the BBC's performance as part of its assessment process. Siobhan Walsh, Director of Content Policy, said at the meeting that the process of assessing the BBC's performance will 'involve discussion with stakeholders' but that there would be no formal public consultation. VLV questions Ofcom's criteria for selecting stakeholders to engage with during this process and questions the transparency of this approach.
22. While we recognise the potential benefits of more sophisticated forms of audience research which will be conducted by Ofcom and the BBC, we do not believe that audience research should be used as a substitute for meaningful stakeholder (ie licence fee payer) engagement. We understand the BBC's plans for stakeholder engagement are still in development and therefore currently there is no forum for citizens to provide general feedback on BBC performance. It is VLV's opinion that this lack of stakeholder engagement represents a significant reduction in the accountability of the BBC and that Ofcom should ensure it therefore maintains stakeholder engagement in its work regulating the BBC.

VLV Comments on the Annual Plan

Section 1: What Ofcom Does

23. We note the legal duties listed in Clause 1.4 and are particularly interested in the duty to ensure that "optimal use is made of the radio spectrum". While we recognise that this duty is set out in the Communications Act 2003, VLV has concerns about what precisely the words "optimal use" mean given the wide range of demands on a limited resource. VLV would like Ofcom to ensure that broadcast viewers' and listeners' needs are taken fully into account when developing its policy on the 'optimal' use of radio spectrum.

Section 2: Market Context

24. VLV recognises the market context that Ofcom describes in this section and the corresponding need to adapt to these circumstances.
25. We acknowledge the growing importance of the internet as a public resource. Therefore we welcome steps to promote improvements in performance from delivery networks. We note the rapid rise in mobile data consumption and have commented on its impact on spectrum requirements in previous consultations. This remains of concern to VLV insofar that spectrum demands may disadvantage PSB delivery via DTT. If optimal use of spectrum is to be ensured (see Clause 1.4) let it be equitable, with due consideration being given to all aspects of applications and users and all those users being required to be efficient in their use of spectrum.

26. We note Clauses 2.8 and 2.9 in relation to broadcasting. We note in particular the changes in the viewing habits of the public caused by the emergence of different sources and means of accessing content.
27. VLV is concerned about the increasing consumption of news content on unregulated platforms and the impact this is having on public trust and society as a whole. We agree with Ofcom's suggestion in paragraph 2.11 of its Annual Plan document that this trend could have implications for the consumption and sustainability of news in the PSB framework and therefore it needs proper assessment and analysis.
28. The role of PSB in this context of continuing change is all the more vital. By all means the Public Service Broadcasters should be accountable, but not more so than those with commercial interests which provide content to viewers and listeners and may be controlled from outside the UK. In this context Mergers and Acquisitions are of concern.

Section 3: Ofcom goals and highlights for 2018/19

29. We understand the purpose of the discussion presented in this section. We note the assessment of regulation options by means of three goals that address the major factors defining the market and where regulation is useful.
30. We note that these Goals emphasise the objective of providing for the needs of consumers, recognising that those needs are not uniform across the market and across demographics. Nationhood, citizenship and social cohesion must not be sacrificed to the commercial needs of industry and commerce without a due balancing of stakeholder interests and without regular consultation with consumers and citizens including minority groups such as the elderly and disabled to whom advancing technologies are sometimes confusing and challenging.
31. Currently work is progressing to relocate DTT transmissions from the 700 MHz band which has been re-allocated to MDS. We welcome the inclusion in Annexe 1 of three items to monitor this work and to ensure that disruption to viewers is minimised. This work is done for the benefit of the Mobile Data Operators and so VLV's view is that none of the cost of this work should fall on broadcasters or viewers. There should also be a robust Help Service available to publicise the work as it progresses around the regions of the UK and to provide assistance to viewers.
32. In Clause 6.11 of the Annual Plan reference is made to the task of relocating DTT transmissions from the 700 MHz band and to the associated budget. The declared intent is "to maximise the benefits to the wider UK economy". Given that one of the three major goals identified in Section 3 of the Plan is the protection of "consumers", it is disappointing that the steps that Ofcom intends to take for the protection of viewers from the impact of this project are not more explicitly stated.
33. VLV agrees with the observation in Clause 3.14 that *competition alone cannot deliver the full range of desirable outcomes* and we welcome Ofcom's approach to make *targeted interventions to improve consumer and citizens outcomes* if appropriate.
34. With reference to Clause 3.19, VLV has made a submission to Ofcom's Review of Children's content and looks forward to being an active stakeholder as Ofcom's work progresses in assessing how to ensure that children in UK have access to a plural supply of high quality TV content.

35. VLV welcomes Ofcom's work to promote diversity and equality of opportunity in broadcasting and looks forward to Ofcom's second annual report on the UK TV industry and its first report on the UK radio industry.

Section 4: Delivering Ofcom goals cross the UK

36. We welcome the proposals in this section and the attempt to ensure, as far as is practical, that all citizens across the UK obtain the optimum quality of communication services. VLV's primary concerns are in the areas of spectrum allocation, broadband access and PSB availability and quality.
37. We note the separation of common issues from those relating to the nations.

Section 5: Ongoing work to fulfil our duties

38. We note the detailed discussion of the current topics of primary interest and recognise their extent and purpose.
39. The rapidly changing environment in communications requires a flexible and timely response to issues as they arise and this, in turn, requires that a balance between powers to act promptly and due consultation with stakeholders is struck. As an aid to that balance, more regular consultation with interest groups may perhaps need strengthening.
40. VLV has a particular interest in spectrum matters and will follow closely Ofcom's activities in this area. We note the comments in Clauses 5.10 to 5.13.
41. We note that there will be a World Radio Conference in the autumn of 2019. Preparatory work for that event may fall mostly in the Plan for 2019/20. However, VLV considers that it is right that the current Plan should also have activity relating to WRC-19 and welcomes the task noted in Annexe 1. Whilst the task summary notes the need *inter alia* for the conference to consider spectrum for MDS there is no explicit mention whatever of the need to protect DTT from further aggressive demands. We consider this to be an indication of Ofcom's lack of concern regarding the crucial support required for PSB on DTT platforms which requires necessary spectrum. The lack of mention of DTT signifies a lack of consideration for viewers. We would expect that at the WRC-19 Ofcom will express its support for the continuing value of PSB/DTT.
42. We would welcome a more definitive statement regarding the future of the Interim Multiplexes (IMs) which we consider to be an essential part of the PSB/DTT platform. We are fully aware of the licence conditions for these multiplexes.
43. We welcome the continued role of Ofcom in providing protection to UK viewers and listeners from potentially harmful content. We would welcome a stronger Ofcom role in dealing with non-UK providers, especially where those which operate via the internet and may lie outside the direct control of UK regulation. VLV is also concerned about the important issue of those non-UK operators which profit from UK consumers without contributing to UK tax revenues. Whilst policing this is beyond current Ofcom capacities, the changing market is raising new regulatory concerns which affect viewers and listeners.

Section 6: Ensuring value for money

44. We note that there are budgetary constraints under which Ofcom has to operate.
45. In Clause 6.11 reference is made to the task of relocating DTT transmissions from the 700 MHz band and to the “robust assurance framework in place”. The declared intent is “to maximise the benefits to the wider UK economy”. Given that one of the three major goals identified in Section 3 of the Plan is the protection of “consumers”, it is disappointing that the steps that Ofcom intends to take for the protection of viewers from the impact of this project are not more explicitly stated.

Annexes

Annexe 1: Work plan for 2018/19:

46. We particularly welcome this Annexe for its table of detailed objectives and goals and for its identification of key leaders. It is a wide list across a number of areas.
47. We note the three listed tasks related to the clearance and subsequent auction of the 700 MHz band. We note Ofcom’s task to administer a grant scheme to fund incremental costs to broadcasters and to assist PMSE users to replace equipment. It is disappointing to note that no explicit reference is made to the costs to viewers in adapting to the re-location of DTT services. In many cases viewers will only need to retune their receivers, once the transition is completed, but some may need to acquire new aerials as a result of significant channel shifts. We would appreciate clear guidance from Ofcom on the degree to which viewers will be inconvenienced by the change of use of the 700 MHz band and what steps will be taken to provide timely information to the viewing public.
48. We note the task related to WRC-19 but regret that it has no explicit reference to any intent to protect viewers and PSB/DTT from further attacks on its spectrum allocations. We consider this to be a major omission given Ofcom’s own intent as expressed in Section 1.
49. We note the task to publish the first annual report on the BBC’s compliance. As noted above, we are disappointed that Ofcom is conducting no formal stakeholder engagement in relation to this task. We do not consider audience research to be an adequate measure of the public’s satisfaction with the BBC’s delivery of its mission and purposes and believe both Ofcom and the BBC should devise means to engage with the licence fee payers who fund the BBC more effectively.
50. As noted above, VLV welcomes the announcement that Ofcom will be reviewing the EPG Code and its impact on PSB prominence.
51. As in previous years, VLV welcomes Ofcom’s role in responding to the Channel 4 annual Statement of Media Content Policy (SMCP). We note that the report which accompanied the response to the SMCP in 2017 was more detailed than it had been previously and provided useful research and background to support Ofcom’s conclusions which we welcomed.
52. We note the announcement of a new Ofcom annual report which will report on outcomes for UK audiences including video on demand and radio content which will be most useful. We look forward to seeing the report when it is released.