

Bethan Jenkins AM
Chair
Culture, Welsh Language and Communications Committee
National Assembly for Wales
Cardiff
CF99 1NA

Rhodri Williams
Director, Ofcom Wales

Direct line: 029 2046 7201

Mobile: 07786 636888

Rhodri.williams@ofcom.org.uk

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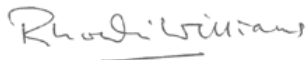
Dear Bethan

The Big Picture – The Committee’s Initial Views on Broadcasting in Wales

Thank you for your letter dated 16 February requesting Ofcom’s response to the recommendations regarding Ofcom included in the report. I enclose our reply on both recommendations along with a response to the view expressed by the Committee regarding ITV Wales’ licence.

If there is any further information that you require, please do not hesitate to let me know.

Many thanks



Rhodri Williams

Director, Wales

Ofcom Response to Culture Welsh Language and Culture Committee

Concerning recommendation 8. “That the UK Government and Ofcom consider amending Ofcom’s Code of Practice for EPG providers to ensure that S4C receives greater prominence in Wales on Electronic Programme Guides and smart TV applications, such as the BBC’s i-player.”

The origin of and stipulations in the current Ofcom EPG code regarding prominence

The Communications Act 2003 (“the Act”) gives Ofcom a duty to ensure that public service channels have sufficient prominence on EPGs. More specifically, section 310 of the Act requires “...Ofcom to draw up, and from time to time review and revise, a code giving guidance as to the practices to be followed in the provision of electronic programme guides. This includes the practices for giving such degree of prominence as Ofcom consider appropriate to the listing or promotion, or both the listing and promotion, for members of its intended audience, of the programmes included in each public service channel; ...”

In order to implement this duty, Ofcom has issued a Code of Practice on Electronic Programme Guides (“the Ofcom EPG Code”)¹. It sets out the general principles that EPG providers have to comply with (paragraph 3 of the Ofcom EPG Code), but leaves it to their discretion to determine the detail of how they comply with these general principles:

“Ofcom considers that ‘appropriate prominence’ permits a measure of discrimination in favour of PSB channels. However, it does not propose to be prescriptive about what appropriate prominence means, as there are many possible ways in which EPGs could display information about programmes included in PSB services. Accordingly, EPG providers are required to comply with the following general principles:

- a. EPG providers should ensure that the approach they adopt to the requirement for appropriate prominence is objectively justifiable and should publish a statement setting out their approach;*
- b. Ofcom will have regard to the interests of citizens and the expectations of consumers in considering whether a particular approach to listings public service channels constitutes appropriate prominence; and*
- c. in giving appropriate prominence to PSB channels, EPGs should enable viewers in a region to select the appropriate regional versions of those channels through the primary listings for those channels provided the PSB in question has secured services that enable this.”²*

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0031/19399/epgcode.pdf

² Paragraph 3 of the code

We have recently affirmed Ofcom’s awareness of the important role that EPG prominence has played in supporting the PSB system: our last PSB Review concluded that the core principles that underpin public service content and delivery endure; that public service content should be universally available, easily accessible on systems that viewers use, and prominent for ease of selection. We also noted that there were some issues for further consideration resulting from our review, including prominence.³

In 2016 the Government considered the potential for reform in respect of the regulation of prominence on EPGs, and concluded that the system remains effective and ruled out legislative reform.⁴

Services covered by the prominence requirement

The list of channels covered by the prominence requirement is set out in section 310 of the Act: i.e. the digital versions of BBC services, as well as the digital services of Channels 3, 4 and 5, Teletext and S4C. The Act also states that the Secretary of State may add to, or subtract from, the list of relevant public service broadcasting channels. The Secretary of State added local television services to the list in 2012 by way of an order⁵.

No other changes have been made to the list of channels or the legislative provisions regarding prominence since the Act came into force.

Smart TV applications such as the BBC’s i-player or any other video on demand service are not listed under section 310. Subsequently, they are not subject to the Ofcom EPG Code, and Ofcom has no role in securing the prominence of such services, or of particular content providers within these services.

Prominence for S4C on Electronic Programme Guides

As stated above, EPG providers are required to comply with Ofcom’s EPG Code in the allocation of EPG positions and, in particular in this context, the section of the Code relating to the granting of prominence to public service channels. The Code is not prescriptive about what appropriate prominence means in relation to any particular service, but sets out general principles.

³ https://www.ofcom.org.uk/data/assets/pdf_file/0025/63475/PSB-statement.pdf

⁴ This is set out in “*The balance of payments between television platforms and public service broadcasters consultation report. Government Response 5 July 2016.*”

⁵ *Code of Practice for Electronic Programme Guides (Addition of a Programme Service) Order* ('s.310 Order').

It is worth noting that any broadcaster who has concerns about the position it has been allocated by an EPG provider can approach that EPG provider directly to try to resolve the issue. Ofcom has no regulatory role in such discussions. Broadcasters can also lodge a complaint with Ofcom if they believe that a licenced EPG provider is in breach of the requirements of our EPG Code. We have to date not had specific representations from S4C to this effect.

Finally, we recognise that under section 310 of the Communications Act 2003, we are required to review the prominence provisions from time to time. However, Ofcom has limited resources and reassesses how those resources are best deployed at regular intervals. In light of the absence of legislative reform and competing policy priorities, we have currently no plans to carry out a review of the EPG Code in respect of the prominence provisions. We are aware that the current Code may have some limitations and may therefore revisit this position in the future.

Concerning recommendation 11. “We call on Ofcom to assess what powers it has to increase Channel 4’s out of England quotas ahead of the next licence renewal in 2024 and in doing so revisit the more challenging options for increasing the quota that were considered in 2013-14.”

Under the Communications Act, Ofcom must issue a licence for the broadcast of Channel 4 and is obliged to impose a range of obligations in the Channel 4 licence, including:

- Quotas for a minimum proportion of qualifying original production to be commissioned from independent producers and out of London;
- Quotas for a specific minimum proportion of programming to be originated for the channel; and
- Requirements to include an appropriate volume of UK news, current affairs and schools programming;
- A specific public service remit that is set as condition in the licence.

In setting licence conditions, Ofcom must consider whether the obligations imposed on Channel 4 contribute to the purposes of public service television broadcasting overall. We must also consider the contribution and cost of the different licence conditions and that the licence overall is sustainable.

Ofcom considered this in its second Public Service Broadcasting Review⁶ and subsequently amended some of the licence conditions for Channel 4. This included increasing its quota for programming produced out of London to 35% of spend and hours. In addition, we also set a new quota for production out of England (i.e. in the UK Nations: Scotland, Wales and Northern Ireland) of 3%.

As part of the licence renewal process for Channel 4 in 2014, we increased the out of England quota to 9% of spend and volume by 2020. After considering the evidence and stakeholder responses we received as part of the consultation process, we considered that a figure of 9% to be achieved by 2020 was a proportionate and achievable requirement to impose. The requirement must be referable to production centres in each of Scotland, Wales and Northern Ireland. We set out the reasons for this in the licence renewal statement.⁷

Given the new quota level has yet to come into force, we are unable to review its effectiveness. While we do not currently propose to reconsider the level of this quota, we will continue to monitor Channel 4’s progress in this area as part of our annual response to its Statement of Media Content Policy. From this, we note that Channel 4 has progressed towards the 9% requirement over the last few years:

	2011	2012	2013	2014	2015
Out of England: Proportion of spend	4.2%	5.4%	5.9%	6%	7%
Out of England: Proportion of hours	5%	7%	6.6%	6.1%	9%

We also note that C4C has increased its engagement with a range of nations representatives to develop further relationships and report on progress, including at each of the Ofcom Nations Advisory Committees.

⁶ http://stakeholders.ofcom.org.uk/consultations/psb2_phase2/statement/

⁷ <https://www.ofcom.org.uk/consultations-and-statements/category-3/renewal-c4-licence-out-of-england-quota>

Concerning the Committee’s view on the Channel 3 licence for Wales: *“Although some way off, when considering a new Channel 3 licence for Wales, we believe consideration should be given to relaxing some of the requirements placed upon the licence holder in return for a greater volume of Welsh-specific output. However, given that the license is not up for renewal until 2024, we believe there is a case for Ofcom to look at these issues ahead of the license mid-point to see if some requirements can be relaxed in return for more Welsh-specific output.”*

As the ITV Wales licence is part of the Channel 3 network, there are a number of obligations in the licence related to network programming as well programming specific to the licence area. Under the legislation Ofcom is required to set minimum requirements for each of these obligations to apply throughout the licence period. We do not have discretion as to whether to include these obligations in the licence.

In our statement on renewal of the Channel 3 licences, we considered that ITV’s estimates of the cost and benefits of the licence were reasonable and were likely to continue to secure the obligations for a significant proportion of the next licence period. We have not received evidence to contradict this view.

We appreciate the desire of stakeholders to see enhanced provision of both Welsh news and non-news programming, and noted in the statement that the current obligations do not prevent the Channel 3 licensees from providing more content specific to any given licence area where this is viable.