

Preparing for the new BBC Trust: Service Licences and the Public Value Test: Summary of responses to consultation

April 2006

The way in which the BBC's services are governed will change radically in 2007, when the Board of Governors is replaced with a new BBC Trust. Service Licences and the Public Value Test will be important tools for the Trust in carrying out the duties placed on it as part of the new Charter. To ensure swift implementation of these arrangements once the Trust is in place, the Governors and their Governance Unit have undertaken preparatory work and this has included gathering views on how they might work.

The eight-week consultation closed on Friday 16 December.

Since the consultation closed, the Government has published its White Paper on the BBC's Charter Review to Parliament. This sets out the requirement that every BBC service operate according to a Service Licence issued by the BBC Trust and requires that any significant changes to existing BBC services, or proposed new services should undergo scrutiny via a Public Value Test.

Respondents

There were 33 responses in total: 18 from individuals and 15 from organisations.

Organisations

3WE (Third World Environment Broadcasting Project)
Broadcasting Council for Wales
British Sky Broadcasting
Channel 4
Chrysalis Radio
Commercial Radio Companies Association (CRCA)
Friends of Radio 3
ITN
ITV
Pact
Public Voice
Satellite and Cable Broadcasters Group (SCBG)
SMG
UK Film Council
Voice of the Listener and Viewer

In addition, the BBC Governance Unit met with representatives of the following organisations during the course of the consultation. Many of these subsequently made written responses (see list above.)

British Internet Publishers Association
Channel 4
Chrysalis Radio
Commercial Radio Companies Association (CRCA)

GCap
ITN
ITV
Ofcom
Satellite and Cable Broadcasters Group (SCBG)
Voice of the Listener and Viewer

Summary of responses

The following questions are all taken from the main consultation document which is available on the BBC Governors website. The responses given here have been summarised by the BBC Governance Unit, on behalf of the BBC Governors, from the individual responses which were submitted.

Overview of responses

Overall, respondents welcome the introduction of more accountable, robust and transparent processes to define and evaluate BBC services and support the principles of the Public Value Test (PVT) and Service Licences. However, many think greater clarity and transparency is required in order to show how they will achieve this.

1. Are there circumstances, other than those described in this document, in which the PVT should be used?

There was general agreement with the proposals, although most respondents requested greater clarity over what a 'significant change' to a service might mean in practice. One respondent also raised the question of whether the PVT could be carried out retrospectively for services already in existence, rather than only following a significant change to an existing service.

2. Is the proposal for a “structured, evidence-based framework” the best option for the PVT?

The principle of a structured, evidence-based framework was widely supported. However, respondents highlighted that the process required a high level of confidence in the objectivity of the Trust. Therefore many respondents requested that the evidence used by the Trust in reaching its decision should be made publicly available.

Respondents also called for a more thorough description of the Market Impact Assessment (MIA) and 'negative market impact'; more consideration over what the course of action might be if a service were to fail a PVT; and a suggestion to give the MIA equal (if not greater) weighting to the PVA and allow it to be triggered at the earliest possible stage.

3. Does the PVA consist of the right components? Could it be improved or made more effective?

The components were considered largely comprehensive, but some respondents were concerned that the parameters may be too wide to permit failure by a proposed service. Respondents were generally keen to know more about the methodological approach to the Public Value Assessment (PVA) and how the four drivers of public value would be assessed. It was noted that Quality is an amorphous and difficult metric.

Suggestions for improvement included asking whether there are better alternatives to the service being proposed (including non-licence fee-funded options); rethinking the use of trial or pilot services which may distort the market; improving the definitions of 'citizens'

and 'citizen value'; and the BBC drawing up a public document defining Public Value, making reference to how this is used by other public bodies.

Sky state that the PVA should be a BBC Management tool and not be adopted by the Trust as a method of objective measurement of public value, forming part of the PVT. The SCBG believes that, if an independent MIA - including public consultation - finds no adverse market impact, then a decision could be made without a PVT.

4. Do the respective roles of the Governors and BBC Management in undertaking the Public Value Assessment and PVT seem appropriate?

The roles were seen as being broadly appropriate. Some respondents questioned the objectivity of the Trust in conducting preliminary MIAs. Many respondents believe that Ofcom would be better placed to conduct a MIA. Pact suggested that the Trust and Ofcom jointly appoint a third party to carry out a MIA. Others suggested that, if the MIA is conducted by the Trust, every element of it should be transparent. ITN requested a longer consultation period than currently proposed.

5. Do you agree that the Board of Governors should use the PVT for approving either new services or significant changes to existing services prior to the beginning of the new Charter period?

Some respondents believe the role described for the Governors should be left to the Trust, rather than pre-empting the new governance framework in the new Charter; however, views on this were split.

Pact, ITV and ITN agreed to interim arrangements to be put in place before the new Charter (subject to adjustment following consultation responses and the White Paper). However, the CRCA believed that in adopting the PVT, the Governors would undermine any claim that the Trust and new governance frameworks represent real change.

6. Do the suggested structure and contents of the Service Licence seem appropriate?

Most respondents believed that they should provide much of the certainty required by commercial broadcasters and provide an important tool of governance for the Trust. However, the caveats to this are that: service licences are drafted in a sufficiently clear and detailed manner, tailored to each service and reflecting, at a minimum, what is contained in broadcast commercial licences; that there are appropriate mechanisms for review and sanctions when terms are breached.

Specific suggestions for contents of service licences included making hours conditions more explicit, reflecting distribution as well as content, including marketing activities in budgets, making the remit longer and inclusion of detail on how each service will operate its commissioning under the BBC's Window of Creative Competition (WOCC) proposals.

7. Do you believe that Service Licences, as described here, will provide sufficient clarity about the nature of each of the BBC's services and their contribution to the BBC's public purposes?

Many respondents sought greater clarity about how each service will contribute to - and be assessed against - each purpose. 3WE suggested that the more mainstream and mixed schedule the service, the more it should be attempting to meet all of the purposes. FoR3 believed that it would be useful if the aims and purposes of the service are stated clearly enough in the licence to give reassurance that unreasonable targets, especially for reach and cost, are not being set, nor inappropriate comparisons made.

8. Do you believe that Service Licences, as described here, will ensure that the BBC offers to commercial broadcasters sufficient clarity over the activities and intentions of each of its services?

Most respondents believed that licences should show how the BBC services will be distinctive, complementary and offer value for money in the wider market. Chrysalis and CRCA call for the licences to provide a more detailed description of the character of the services' output, similar to the 'Format' section of independent radio licences.

Some respondents highlighted individual services as requiring particular clarity: bbc.co.uk, News and Local Radio, where it was requested that each BBC local radio service should have its own licence.

9. While the Charter and Agreement may provide some qualifying criteria for which services receive a Service Licence, what factors do you think ought to be taken into account by the Trust?

Most respondents agreed that service licences should be given to all services that commission content and are recognised as distinct services by licence fee payers. Channel 4 was concerned that some major BBC activities would not qualify as services in their own right. Sky and ITV stressed that service licences should not be defined solely in relation to their primary distribution platform, but by reference to all platforms on which the service is offered or has an impact.

10. Do the suggestions for the Trust's performance reviews seem adequate?

Most respondents were satisfied by the proposals, although there were some alternative suggestions on how often performance reviews should take place. It was suggested that new services should be reviewed more often and most requested that reviews are published in full. Sky was concerned about the objectivity of the Trust in undertaking reviews and some respondents suggested that Ofcom should undertake reviews.

11. Do you agree with the Governors' view on the principles which should underpin the Trust's sanctions?

Many respondents believed that the proposed sanctions for non-compliance with a service licence could be more robust. However, most agreed with the principle that licence payers should not lose out as a result of sanctions.

A graded series of sanctions was suggested and some alternative sanctions, such as budget reallocation or cuts to directors' bonuses. Some respondents asked for clarification on whether persistent breach of the licence could result in a licence being withdrawn or a service closed down by the Trust. Some respondents requested a clearer mechanism for reporting complaints about alleged breaches of a licence and the suggestion that Ofcom should handle complaints.

12. Do you believe the principles outlined by the Governors regarding duration of licences, and grounds for varying a licence, are broadly suitable?

The proposals were widely supported. The SCBG suggested that new services should be licensed for a maximum term of three years with a review after two years. There was some confusion over what kinds of changes would be permitted without licence variation although many accepted that there should be scope for minor changes without a licence variation. ITV also suggested that external parties should be able to recommend licence variation.

13. Are there any particular considerations the Trust should take into account when assessing a request for licence variation?

Some respondents were concerned that licences would be drafted too broadly, allowing the changes to a service to take place without proper accountability. FoR3 asked for the potential impact on the audience to be taken into account and SMG requested that a series of incremental changes should result in a proper licence variation process or a PVT.

Next Steps

The BBC Governors will consider the responses to this consultation together with the White Paper, Charter and Agreement. The Board's recommendations will be presented to the Trust, when it is constituted, in order to help it reach key decisions on the governance of the BBC's services under the new Charter.