**The future of diversity regulation in the UK broadcast industry - models and ownership**

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**Abstract**

This research, sponsored by the Sir Lenny Henry Centre for media diversity, examines the matter of diversity regulation in the UK broadcast industry. The findings are captured in six models of diversity clustered under the three themes of: Ofcom relinquishing the obligation; Ofcom continuing to manage the process or Ofcom devolving the matter to an independent agency. This paper explains the rationale for arriving at these models and what this means for the future of diversity regulation in the UK broadcast industry.

**Key Words: diversity, Ofcom, regulation, broadcast industry, obligation**

**Introduction**

Improvement in the diversity of the UK broadcast industry workforce to reflect the communities it serves has been an unwritten target across the sector key for almost 20 years. It was a matter enshrined in law with the Communications Act 2003, later embodied by the establishment of the Broadcast Training & Skills Regulator (BTSR) in 2005 and renamed as the Broadcast Training & Skills Regulator (BETR) in 2009. The BETR was dissolved by Ofcom in 2010. In 2016 the matter of workforce diversity was explicitly written into the renewal of the BBC Charter (DCMS 2016: 7). As part of the Charter renewal, Ofcom became the external regulator of the BBC on all aspects of its work, including matters of diversity (Ofcom 2020a).

This research paper was prompted by Professor David Olusoga’s MacTaggart lecture (Olusoga 2020) delivered to the Edinburgh Television Festival in 2020. His criticism of Ofcom provided the inspiration for this research and its terms of reference:

When our industry has made big structural changes in the past its success or failure has been measured and accessed by our industry regulator - Ofcom. But when it comes to diversity Ofcom has a history of giving the broadcasters a clean bill of health, or at worst a cursory note that they could do better, but with no consequences attached or even suggestions as to what better would look like.

 Just as there is a historic lack of trust towards the broadcasters, Ofcom, I am sad to say, lacks credibility and trust among many Black and Asian programme makers. If Ofcom is not able or not willing to hold the industry accountable on diversity and inclusion, or able to use its power to set minimum standards, then the DCMS should set up a new body willing to do so (ibid).

Despite a long list of initiatives, projects and incentives devised to improve the diversity of the UK creative industries, the workforce still fails to reflect the diversity of the wider population. As Professor David Olusoga’s lecture indicates there is the perception that Ofcom has not been able to successfully regulate the broadcasters when it comes to diversity.

**The legislative framework to monitor diversity**

The Communications Act 2003 requires Ofcom:

…to take the steps it considers appropriate to promote equality of opportunity between men and women, people of different racial groups and for disabled people, in relation to employment and training by the television and radio broadcasters it regulates’ (Ofcom 2019b)*.*

To that end, UK licensed television and radio broadcasters must, as a condition of their licences, make arrangements for promoting equal opportunities and, in making and reviewing those arrangements, must have regard to any relevant guidance published by Ofcom.

The expectation was that by monitoring and collating workforce data on gender, race and disability from the licence holders with more than 20 staff it would shine a light on the lack of diversity within the industry. It was anticipated that reporting on this matter would stimulate change to improve the situation. Ofcom initially reported on the workforce data gathered from the broadcasters. In 2005 Ofcom handed the matter over to the BTSR to monitor the training and skills component. In 2009 the BTSR, renamed BETR when the BTSR picked up the remit of monitoring equal opportunities. It was closed down by Ofcom in 2010 as a consequence of the incoming government. The model the BETR applied combined quantitative data on the workforce along with a maturity model that captured qualitative data. A maturity model evaluates progress on a hierarchy of statements mapped to a set of attributes. In this case the model mapped 22 attributes of diversity, inclusion, training and skills. This approach provided a snapshot of the progress broadcasters were making to improve the diversity of their workforce. It also captured their training and staff development programmes which underpinned their efforts to improve the diversity of that workforce (BETR 2010 & BTSR 2006).

With the incoming Cameron government of 2010, Ofcom closed down the BETR with the expectation that the relevant clauses of the Communications Act 2003 would be revoked. Ofcom took no action on the matter of diversity or training within the UK television and radio industry until 2016. Under pressure from a number of stakeholders Ofcom was obliged to set up some form of diversity monitoring and regulation. In 2016 Ofcom restarted its annual monitoring of diversity in the television and radio industries and to date has published three annual diversity monitoring reports (Ofcom 2017a, 2017b, 2018, 2019a). The fourth report that amalgamated UK licensed television and radio broadcasters into a single document was published in November 2020. Despite this renewed focus by the regulator on diversity in the industry there have been many critical voices, such as Sir Lenny Henry (Fullerton 2017) and Marcus Ryder, demanding that Ofcom should be more robust on this matter. More recently Professor David Olusoga in his 2020 McTaggart lecture argued that Ofcom needs to do more or allow another organisation to pick up the mantle to hold the industry to account.

**The stakeholders and the policy network**

This research interviewed 11 stakeholders and their insights and comments informed the recommended models for diversity regulation presented in this paper. For the purposes of this research those interviewed or contacted for an opinion were classified as incumbents, challengers and independent voices. The *incumbents* represented Ofcom and the Cultural Diversity Network (CDN), the *challengers* were drawn from the Campaign for Broadcasting Equality, the BAME TV Task Force, the Coalition for change, the TV Collective along with Professor David Olusoga. The *independent* sources included representatives from the Employment and Human Rights Commission (EHRC), the BETR / BTSR, the European Platform of Regulatory Authorities (EPRA) and CAMEo a media research group at Leicester University. These interviews provided a picture of the diversity policy communities within the UK broadcast industry. The interviews also contributed an understanding of the stance taken by the different interest groups. Although three individuals representing stakeholder organisations declined or did not respond to a request for a call, it made no material impact on the recommendations presented in this paper. i

**Terminology and definitions of regulation**

The last piece of scene setting concerns matters of terminology, definitions and theory that relate to regulation in general and diversity regulation in particular. Dacko and Hart produced a helpful treatise on media regulation (Dacko & Hart 2005: 2-17). At the time Martin Hart was an employee of Ofcom and their analysis resonates well with this current work. They suggest that there are four archetypal models of regulation. These are: Regulation: ‘a state intervention in a private sphere of activity to realize public purposes’ (Francis 1993), ‘…having the components of legislation, enforcement, and adjudication—deciding whether a violation has taken place and imposing an appropriate sanction’ (Campbell 1998: 711); Statutory regulation: ‘…mandated or restricted by government rules, enforced through legal penalties’ (Boddewyn 1992); Co-regulation: ‘…self-regulatory schemes that are backed up by some statutory force’ was the model for the BTSR / BETRand Self-regulation: ‘…the voluntary control of business conduct and performance by a business itself’ (ibid).

The options ranging from self-regulation to regulation indicate a hierarchy of transfer of the levers of control from internal to external management. All four models require the trust of the stakeholders of any organization charged with overseeing the process. All parties have to sign up to the process and the models require codes of practice to be agreed by all parties and the sanctions – from remedial actions, fines and in the final analysis removal of the right to conduct business.

Regulatory models in both theory and practice indicate that a co-regulatory or self-regulatory model can result in greater stakeholder engagement. However, the ‘challengers’ to the status quo do need some convincing that the process of implied light touch regulation delivers results. BECTU was quite clear in its opposition to co-regulation during the Ofcom consultation on the matter (BECTU 2005). The demise of the BETR was applauded by some as it represented too much of the light touch regulation. The measure of any regulatory system is that it delivers on its vision and targets. Any new or revised system requires time to bed in and gain acceptance. Key to acceptance will be the oversight by a management board to whom the operational team report comprising of trusted industry voices. Ofcom indicate that the current approach launched in 2016 to monitoring diversity is a five-year plan. Unfortunately, this is not published as a strategic plan. A model that predominantly relies on data gathering from which recommendations are developed appears on the face of it a passive reactive process.

Whatever form diversity regulation takes, the Department for Business, Energy and Industrial Strategy (DBEIS) states that any regulation should be: transparent, accountable, proportionate, consistent and targeted – only at cases where action is needed (DBEIS 2020). An approach that is acceptable by all stakeholders needs to be managed and delivered by a skilled team applying justifiable interventions that are based on trust, independence and effective sanctions. It should not be just another ‘cost to do business’ data gathering exercise. Good regulation should go beyond the notion of the *‘stick’* but provide a supportive engagement with those being regulated.

The first step in this research was to review the literature that has examined workforce diversity in the broadcast industry and the data models that describe the size and composition of the sector.

**Creative Industries (CI) data matters**

The matter of confidence in the industry’s data requires particular attention. Definitive data about the broadcast workforce is essential to enable any meaningful analysis of the industry (Block 2020). Robust, reliable, transparent and consistent data is needed to monitor changes in the industry workforce.

For this review a high-level scan of key data sources was conducted along with papers that have referenced the data. It included: -

* The Ofcom dataset 2016/17 to 2019 drawn from its three annual reports and methodology documents on diversity in both television and radio (Ofcom 2019c)
* The Ofcom dataset drawn from its 2020 annual report that combined diversity data from television and radio broadcasters with more than 100 full time UK based staff (Ofcom 2020b)
* Project Diamond – the ‘three cuts’ plus the more detailed analysis released during this research (CDN 2018, 2019, 2020)
* DCMS economic estimates for the Creative Industries up to 2018 along with the use of an economic estimates tool on the DCMS website (DCMS 2019 & 2020)
* BFI Employment in the film industry requests of the ONS and collated in its reports (BFI 2019)
* ScreenSkills, Government Equalities Office and academic research sources
* Various ONS Freedom of Information (FOI) data requests from the Greater London Authority and other independent researchers, of which, the data tables remain in the public domain on the ONS site, and finally,
* Searches using Nomis (Nomis online), the ONS service that provides current UK labour market statistics

The CI data as presented by the agencies cited above gives rise to issues that make it easy to misunderstand, and according to the Office for Statistics Regulation (OSR), possibly misusethe data (OSR 2018). There is a degree of ambiguity over the composition of the workforce within the creative industries as it comprises of those deemed to have a creative job and those who are non-creative.

With the exception of the ONS, the Ofcom dataset should be the most reliable source within the broadcast industry. However, changes in the datasets over the period 2016 -20, and the format and style of presentation makes it difficult for even the informed reader to set each Ofcom report in context with its predecessor. It is argued that there is on the face of it a lack of transparency on the data and the actions taken by Ofcom to engage and challenge individual broadcasters. An integrated database is needed for the independent researcher and analyst to access. Furthermore, there is little to suggest that any changes in gender balance or BAME diversity are as a consequence of any industry wide interventions and not due to individual broadcasters’ efforts to change their practices and their support for an individual’s development. The data suggests that the television industry is at best just tracking the changes across the wider industrial base.

In its reports Ofcom take as its datum line the national figure of 12% BAME in the UK workforce. In the creative industries (particularly in London) this is closer to 20%. This review of the industry data gives rise to three recommendations for improved reporting. There needs to be clearly delineated data models for the creative industries which avoid the ambiguities of the current framework. Defining and reporting on an audio-visual (AV) sector could be a step in the right direction. Secondly, Ofcom in partnership with the ONS should produce an annual definitive industry benchmark dataset for the AV sector overall along with specific data on the Film, TV and Radio workforces. Other reports make similar calls, but further research is required. Thirdly, all research should validate labour market data on the creative industries by triangulating third party findings with ONS data.

**The academic literature**

Much has been written about the creative industries workforce; particularly about those working in the film and television industries. This research examined 42 studies and reports from 2005 to 2020 that offer insights into the UK broadcast industry. It covers academic research that is sponsored and independent, independent research groups and think tanks, sector-based organisations, EU regulators and other international comparisons plus third-party research that cite the media sector along with other sectors.

For over 15 years, various academic research groups have examined the matter of inclusion and diversity in the creative industries. The CAMEo Evidence Review (CAMEo 2018) collated 80 research studies on diversity that had examined film, television, animation, video games and visual effects (VFX) industries published between 2012 and 2016. 34 were academic articles, 40 were industry reports and six were a mix of books, book chapters, and other sources. By co-incidence, the CAMEo review identified 42 documents that focused on the television industry of which interventions to increase diversity were mentioned by 26 studies. The CAMEo Review noted two forms of interventions discussed in the literature: to empower or transform. Empower was defined enhancing an individual’s capacity to enter and progress within existing industry pathways. In this research the efforts of the TV Collective and Women in Film & Television (WFTV) fall into that category. Transform was defined as sector practice to remove barriers to more equal participation is exemplified by the BFI Diversity standards, Diamond and the work of Ofcom to monitor the sector. The CAMEo recommendations inform the regulatory options put forward in this research.

The academic literature indicates that the industry is data rich but information poor.There has been a great emphasis on monitoring and gathering quantitative data measures but limited focus on practical interventions and qualitative research. Some academic studies have referred to this situation as an empty shell (Block 2017). There is a danger of insufficient information to enable change. The focus on monitoring the industry addresses the *what* but not enough about the *why* and *how* to change it. This is evidenced by the number of initiatives, pledges, guidebook and projects set up by the industry to address the issues of the lack of diversity. As the CAMEo Review notes ‘The UK Screen Sector devotes significant resources to reproducing at best unproven intervention strategies’ (CAMEo 2018: 7). However, the broad sweep of findings and recommendations from the academic community have changed little over the period from the earliest reports up to now (Randle & Wing-Fai 2018).

**Regulation in the European Community and a global perspective**

By way of comparison, an analysis of EU media regulatory bodies was conducted along with a review of relevant international Public Service Broadcast (PSB) companies. Within the EU Ofcom is the only media regulator with an explicit remit to address diversity and training. On the matter of diversity, the European Platform of Regulatory Authorities (EPRA) and the European Regulators Group for Audiovisual Media Services (ERGA) try to avoid any direct overlap. For European regulators, the focus is on gender both on and off screen. France in particular monitors the representation of women.

The matter of ethnic diversity has much to do with the terms of reference for broadcasting regulators and their perceived competences. The majority of media regulators in Europe are responsible for issues of on-screen representation but not for off-screen diversity issues (Jones 2018). 19 out of 31 regulators indicate that this is a national matter and not their role (ERGA 2018). There are a few exceptions with the UK and Ofcom a case in point. The Comisión Nacional de los Mercados y la Competencia (CNMC) in Spain is required to *‘*adopt all necessary measures so that audio-visual service providers comply with the legal framework*’.* CNMC publish an annual report. PSBs across the EU report more *‘*stringent requirements to improve gender representation’ (Jones 2018: 19).

The global perspective is exemplified by the Australian Broadcasting Corporation (ABC) and Canadian Broadcasting Corporation (CBC). These are both noteworthy because ABC provides a clear presentation of data and targets, while CBC makes it easy to find all data tables and view progress against plan.

In analysing diversity initiatives both home and abroad the conclusion has to be that the industry devotes ‘significant resources to unproven strategies’that in the ‘majority of cases little real measurement of the effectiveness of these initiatives’is apparent (ibid 24).

**Independent research**

A great deal has been written on the matter issue of diversity and inclusion (D&I) across all the dimensions of workforce inequality and employment sectors in the UK – public and private. This paper shows that the broadcast industry is no exception and has the attention of academics, think tanks and industry insiders. While the moral imperative for tackling D&I is well made, the UK broadcast industry of television and radio, along with its fellow traveller the film industry, still struggle to increase workforce diversity.

The Chartered Institute of Personnel & Development (CIPD) states ‘Given all this attention, it is perhaps surprising that we find little discussion of evidence on ‘what works’ in diversity. Or more precisely, what strategies and practices seem to be the best bet for increasing workplace diversity and inclusion’ (CIPD 2019).

*Green Park Leadership 10,000* notes the accidental D&I improvement through company listing changes and concludes that business leaders need to: ‘tone down meaningless rhetoric’ (Green Park 2018 & 2019)*.*

In the *Parker Review Update* it was noted that the target of ‘One by 2021’ *–* one BAME member on a FTSE100 or 250 board was unlikely to be met (Parker 2020). The FT report from 2019, *Striving for Inclusion*, ranks the top 700 European companies. This places Sky as the highest ranked media company at 113, the BBC at 403 and Channel 4 at 409 (Boulton 2019). A reader might be forgiven for concluding that this is not a great testament to change, given the public pronouncements and implied efforts by the two PSB organisations.

**The history of diversity regulation in the UK broadcast industry**

**2003 – 2005: Complying with the Communications Act 2003**Initially Ofcom gathered data and reported in general terms on the composition of the broadcasters. Broadcasters were specifically required to report their training and development priorities and programmes. No-one was happy with the situation. It did not deliver any value to the broadcasters and was not a process to stimulate change in the industry.

Following consultation with the industry, the proposal for a co-regulator embodied in the Broadcast Training and Skills Regulator (BTSR) was accepted by the Ofcom Content Board. It was endorsed by the Main board:

…the BTSR represents an audacious attempt by the Broadcasting industry to keep its advantage. It is audacious because it is a co-regulatory body, designed to bring together training and development expertise from within and outside the industry, and designed to work with the industry in raising its training and development game (BTSR 2006).

**2005 – 2010: The Broadcast Training & Skills Regulator (BTSR) and the Broadcast Equality & Training Regulator (BETR)**

The ambition of the co-regulatory approach was to build a partnership model focusing on development and improvement. The BTSR set up a media national training award, aligned the broadcasters’ returns with the ‘Investors in People’ programme and held an annual conference at BAFTA. The objective of this approach was to use the data gathered as an impetus to stimulate change. Another aim was to share best practice and support broadcasters who were struggling to make a difference. A mentoring scheme was set up based on a portfolio of case studies. Initially the BTSR focused on training & skills (T&S) and in 2009 reported on workforce diversity. The final report from the renamed BETR was published in 2010.

**2010 – 2016: Ofcom took no action to monitor or issue guidance to broadcasters**

During this period, the requirement to take action over diversity was set aside by Ofcom in the expectation the matter would be revoked by the 2010 Cameron Government. The literature review for this project attests that Ofcom along with most EU media regulators considered equal opportunities (EO) and training & skills (T&S) a national issue. However, campaigns by some of the stakeholders interviewed for this study were making it difficult for Ofcom to continue to ignore the matter (Chapman 2014).

In 2015 Ofcom was obliged to act as the duty to offer guidance on workforce diversity was not removed from the Communications Act 2003 post the BETR closure. The joint project with the EHRC *Thinking outside the Box* publication, revised in 2019, was considered (certainly by the EHRC) a 'first step' in the process of engaging with the issue of diversity in the sector (EHRC 2019).

**2016 - 2020: Ofcom (re)launches its diversity monitoring framework**

The intention by Ofcom was to collect a range of information regarding the diversity of people employed by broadcasters:

Ofcom is to launch an annual monitoring scheme designed to hold broadcasters to account on diversity. The move was announced by Sharon White, the regulator’s CEO, speaking in London at a debate on diversity organised by Ofcom and Sky. White said: “We will be looking at diversity data across the broadcasters we regulate helping us to get the most comprehensive picture yet of how well each broadcaster is doing. This is an important step towards greater transparency and greater accountability (Clarke 2016).

Ofcom also aimed to examine the steps broadcasters were taking to monitor and improve diversity. The first report was published in 2017.

**Diversity regulation today**

Turning to the current situation, in 2020 there are three key reporting systems; Diamond, the BFI diversity standards and Ofcom’s diversity monitoring annual report. This paper focuses on Ofcom’s approach. It is argued as a matter of opinion that an examination of Ofcom’s current regulatory framework (2016 - 2019) reveals a lack of transparency. Although the additional data provided by Ofcom to support its 2020 report through the on-line tool (Ofcom 2020c) is very helpful, the matter remains a challenge to unpack. In 2020 only, those broadcasters with over 100 staff were assessed due to the pandemic and the understandable pressures on staff at the smaller companies to submit data to Ofcom.

The complexity of sizing the workforce in the UK broadcast industry has been already highlighted. This raises a number of issues regarding Ofcom’s data model. It uses the national Labour Market Intelligence (LMI) figure of 12% BAME as a performance baseline (ONS 2018). Ofcom notes that the London workforce has a minority ethnic group (MEG) of 35% and 31% in Manchester, the two cities where ‘most broadcasters are based’.

The ONS data indicates that the creative industries in London have almost 20% of their workforce drawn from the BAME community and this is a more realistic measure. The Ofcom annual data request removed ‘board/non-execs (NEDs)’ from the job level categories in 2018, 2019 and 2020. It is argued by Ofcom there is insufficient (robust) quantitative data to report on.

Ofcom makes the case that non-executive directors (NEDs) are not ‘employed’ by the organisation. This should be challenged – or be made a condition to be a NED that the composition in aggregate form is made public. Independent reports such as McGregor-Smith’s *Race in the Workplace* highlight that change at the top is vital (McGregor-Smith 2017). The summary section of the 2020 report notes that ‘Broadcasters (TV and Radio combined) appear to be employing a greater proportion of women (48%) minority ethnic people (14%) and disabled people (7%) in the UK than they did last year’ (Ofcom 2020b 3). This is a nebulous assertion and hard to validate from the data offered to the reader.

There is no clarity on how *Project Diamond* informs Ofcom’s efforts – Ofcom’s 2019 report mis-quotes double disability (sic) – not double diversity. There is no detail on how broadcasters’ diversity interventions are assessed and validated. This research questions what quantitative measures are used to assess these qualitative interventions. The Ofcom report draws our attention to a diversity advisory panel who were consulted by Sharon White (Ofcom CEO till 2019), and their membership and role are not published. No reference is made to this panel in the 2020 report.

The recommendations of Ofcom’s diversity report 2019 do not appear to have been explicitly discussed at the Ofcom Content Board (160 1/10/19) which reported that it had ‘updated and discussed a wide range of topics’ (Ofcom 2019e). In addition, nothing regarding diversity was carried forward from the Content Board in February 2020 to the Main Board that met in September 2020. The refreshed diversity hub on the Ofcom site is a passive repository of documents with minimal sign-posting. There is no evidence of its use or of feedback from users.

Ofcom argues that the monitoring and the improved dataset are having an impact. This research suggests that any change has tracked the wider industrial landscape reported elsewhere – the cause and effect not due to Ofcom’s intervention. An improved or more complete dataset is not necessarily an indicator of change but a greater response from the industry. The improvement by four percentage points(pp) from 2016 to 2019 still leaves 16% unknown or not disclosed, and this still raises questions about the confidence level in the dataset. An inspection of the data drawn from this subset of the UK broadcast industry workforce for the 2020 report still shows 12% not collected not disclosed data gap in the television industry, with 6% for radio. Although the Ofcom 2020 report notes the lack of progress and underrepresentation of those drawn from minority ethnic groups (MEG) to senior management (8%); it does not highlight the significant data gap of 18% not collected, not reported within this senior management cohort. Furthermore, given that this report is from companies with 100 or more staff, it would be expected that these companies have effective workforce HR systems for data gathering. This matter requires more investigation by Ofcom.

Ofcom has focused on its obligation to monitor diversity but not training & skills. There are numerous reports to indicate that to do the first, you need the second. This is a lost opportunity to encourage, support, and if needed, hold to account the licence holders.

Evaluation is a key enabler to effect change. A matter that Ofcom recognises in its latest report:

This year, we asked broadcasters to describe how they evaluated their most successful initiatives and actions. We are disappointed that generally broadcasters did not provide a detailed response to this question, beyond noting outcomes against targets. This is a barrier to demonstrating the transparency and accountability which our diversity monitoring and reporting aims to increase (Ofcom 2020b 26).

There is a need for Ofcom to hold broadcasters to account on the evaluation of their diversity and inclusion programmes. Ofcom asserts that it will ‘Take enforcement action against those broadcasters who did not respond to our request for information*’* (ibid). According to the document linked to the Ofcom 2020 report it would seem that only one company has been put on notice of the possible imposition of a statutory sanction for breaching its requirement to report on the diversity of its workforce in 2017 and 2018 (Ofcom 2019f 19).

**Findings and regulatory options**

**Data models**
There needs to be clearly delineated data models for the creative industries workforce. The models should avoid the ambiguities of the current framework. Defining and reporting on an audiovisual sector would be a step in the right direction. Ofcom in partnership with the ONS should produce annual definitive industry benchmark datasets for Film, TV, Radio and AV. All research should validate labour market data on the creative industries and sub-sectors by triangulating third party findings with ONS data.

**The future of diversity regulation**The options set out below fall under three themes; (A) Ofcom relinquishes, (B) Ofcom manages or (C) Ofcom devolves. None are mutually exclusive and elements within each could form part of a final proposition.

1. **Ofcom relinquishes the obligation**
2. **The national diversity model**There is a case to be made that despite the Communications Act 2003 and the matter of diversity being written into the BBC Charter that this is not for Ofcom to regulate. However, it is a matter for the Employment and Human Rights Commission (EHRC) to lead as the counterfactual model. In this option regulation is provided by the EHRC based on the public duty requirement that the BBC and the other PSBs implicitly have to comply with. The EHRC could intervene on the basis that the PSBs have a public duty and employ between them the majority of employees in the sector. It could also look at the supply chain of Independent production companies (The ‘Indies’) and non-qualifying suppliers to the broadcasters. It removes the ambiguity of regulatory ownership, as previously stated an obligation unique to the UK. A team at EHRC could take a watching brief over the UK Broadcast industry and be more robust in following up on the expectations set in the *Thinking Out of the Box* publication.
3. **The whistleblower**Although not directly related to this study, interviewees in the challenger group made it clear that many media workers not only feel discriminated against but disenfranchised and unsupported. This is more keenly felt if they are not members of BECTU. Alongside the EHRC role is the need for a media workers ombudsman to protect the whistleblower. This would be set up as an independent arbitrator on matters above and beyond the EHRC remit.

**(B) Ofcom manages**

1. **Ofcom ‘light touch’ Diversity & Inclusion (D&I)**This approach maintains the ‘as is’ model where Ofcom retains the light touch D&I regulatory function of the annual monitoring process. However, it needs to be more rigorous in following up on its annual reports and to be more robust in requiring compliance from the licence holders with its recommendations and reporting on the matter. A significant aspect of any monitoring system is the skillset of the regulatory team. Ofcom could continue to gather the data but devolve the qualitative evaluation of the broadcasters’ efforts to an independent assessment by D&I and Training & Skills specialists. This external team could provide the supportive function to assist organisations in their development of policy to improve diversity and inclusion.
2. **Ofcom diversity regulation with a focus on leadership and supply chain**This is as model 3 for data monitoring with the addition of gathering information on training and skills along the lines of the work conducted by the BTSR. Once again, an independent validation and inspection body should be appointed by Ofcom to review and validate the published reports by broadcasters and to follow up on its recommendations to the broadcasters. The focus could be on ‘great places to work’ using a performance framework similar to the Teaching Excellence Framework (TEF), there are other models to reference. They key factor is that it is a measure specific to the organisation. The number of poor performers should be published. Data on board composition, NEDs and senior management to be published in the Ofcom report would go some way to address the concerns of some stakeholders and hold the broadcasters to account. Reports across all sectors highlight the need for diverse leadership and that changes at the top of organisations are an indicator of a wider transformation.
3. **Ofcom devolves**
4. **Co-regulation redux - beyond compliance**

This option is about the development of a diversity regulator as a partnership between broadcasters, Ofcom and EHRC. It will apply an amalgam of quantitative and qualitative measures to fully evaluate the broadcasters. Research shows that monitoring is not sufficient to stimulate and encourage change. Evaluation is the key to encouraging and supporting change. This approach underpinned the BETR model with a National Training Award, alignment with *Investors in People* and co-mentoring based on a portfolio of case studies. There should be a focused push at the leadership of the industry to be exemplars who demonstrate change. This would be an independent body established by Ofcom to deliver on its remit. It would cover all who broadcast, supply and work to those companies that have an Ofcom licence. With the fragmentation of the sector there is a case to be made that it should gather evidence from all licence holders and all suppliers who employ 20 or more UK based staff (circa 43 companies) or are subsidiaries of international groups. It would also gather data on the freelancers employed across the sector.

1. **The digital media regulator**
In a radical shift from the demarcation between the broadcast industry and film this option would establish a single regulator that incorporates all efforts to date from Ofcom, BFI, PACT, and CDN. Bar the incumbents, stakeholders expressed the view that the efforts to date to address the lack diversity in the sector are in silos. This approach recognises the paradox of fragmentation of the industry while at the same time having concentration of powers. It is an aspirational model for the sector to develop over the next two to three years.

**Indicative cost models**

It is not usual to provide a cost model in a study of this nature. However, this project is all about the practical realities of delivering an effective diversity regulator. The staffing and management of this regulatory function are key to its success. The impression gathered in this research is that the current arrangements for diversity regulation as managed by Ofcom are not given sufficient resources.

It does not require a large team to manage and deliver diversity regulation in the UK broadcast industry. What is needed is a supportive board and an advisory panel that can bring expertise to support an effective administrative team. In addition, all models need sufficient funds to call upon the services of qualified contractors at particular periods in the reporting cycle.

This would include: a data analysist to interrogate and present the data from the broadcasters whilst cross referencing it with data from the ONS; a small team of D&I specialists who can inspect, validate and assist the efforts of the broadcasters to meet the specific and general recommendations made by the regulator, and workshop facilitators to run developmental workshops possibly in partnership with ScreenSkills and CDN.

With the exception of the first two regulatory model, with Ofcom handing over the remit to a third party and the ‘as is’ model, the requirement to staff and resource a regulator is broadly the same at about £150,000 per year. Under the co-regulatory model of the BETR the funding was provided by the broadcasters in proportion to their size. The smaller organisations, particularly small radio stations, were not required to contribute.

**Addressing outstanding issues, questions and further research**

Whatever the model of diversity regulation to emerge from this current debate, it does need to be framed by a clear set of requirements, task and targets. Even if it remains an internal entity within Ofcom it needs to be clearly differentiated from other departments at Ofcom. It needs to operate as a free-standing regulator.

There is a need for Ofcom to demonstrate how it has followed up on its recommendations in its diversity reports to date and develop a quantitative evaluation tool. It is not clear why Ofcom dropped gathering data on training and skills, which would have indicated the action taken by broadcasters to develop their workforce, including explicit actions over diversity and inclusion. It has already been stated that a self-evaluation maturity model can provide an effective quantitative tool to gather qualitative data on an organisation’s progress in improving D&I.

Although this research has proposed six regulatory frameworks, there are many matters of scope and powers that require further discussion. For example, should the regulator set targets with each broadcaster?

This also raises the issue about defining diversity within the sector. There is a need for further research on this this matter. However, as an interim measure more could be added to the Ofcom document *Guidance: Diversity in Broadcasting* (Ofcom 2019d).

On data gathering, there is a need to have further research to establish an agreed data model for the sector that can be used by all interested parties. For the regulator, should data on production supply companies, contractors and freelancers be gathered as part of the annual data gathering exercise?

**Closing remarks**

There is a view across the UK television and radio industries that Ofcom has not been effective in delivering on its diversity remit. Whilst the greater transparency of the 2020 report is to be welcomed many issues remain unclear, particularly how Ofcom intends to hold the broadcasters to account. There is a need for Ofcom to engage in the D&I agenda proactively and strategically with transparent reporting and engagement with the sector; to go beyond monitoring. It needs to set out clear ambitions for the industry, with KPIs for itself and the broadcasters. It needs to allocate sufficient resources, processes, and systems to encourage change in the industry. This could be achieved through qualitative developmental tools and research. The combination of a D&I maturity model that records progress coupled with targeted evaluation of interventions at the company and sector level would provide a more rounded picture of the industry and stimulate change. This regulatory function should go beyond Ofcom licence holders if it is going to address the many concerns voiced by stakeholders such as Professor David Olusoga and Sir Lenny Henry.

**Notes**

i The full list will be made available in the full report once clearance has been obtained.

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