

*Championing
excellence and diversity
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



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RESPONSE BY THE VOICE OF THE LISTENER & VIEWER (VLV)
IN RESPONSE TO OFCOM'S RULES ON DUE IMPARTIALITY, DUE ACCURACY,
ELECTIONS AND REFERENDUMS

January 2017

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INFORMATION ABOUT THE VLV

1. 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 No 4407712 - Charity No 1152136).

EXECUTIVE SUMMARY

2. VLV agrees with Ofcom's proposal to remove the list of larger parties from Section Six of the Broadcasting Code and the PPRB Rules. This would prove more flexible and allow broadcasters greater editorial freedom to reflect the more fragmented and complex state of the political landscape as exists currently in the UK.
3. We are, however, concerned by the proposals to regulate the BBC according to Section 5 of the Broadcasting Code because they will lead to a significant reduction in the external regulation of BBC accuracy and impartiality. The standards set out in Section 319 of the Communications Act are far more limited than existing Editorial Guidelines of the BBC which the BBC Trust has used to regulate the BBC and don't apply to all content.
4. VLV believes that impartiality and accuracy of all BBC content should be subject to independent scrutiny, as it is under the BBC Trust. VLV's primary concern in making this proposal is that the accountability of the BBC to licence fee payers should be maintained.
5. VLV holds that public accountability regulation of the BBC should be distinct from regulation of other PSBs, because the public has different expectations of the BBC because they pay for it through the licence fee.
6. While VLV understands that under the new Charter the BBC will follow the 'broadcaster first' system of regulation whereby all complaints are first handled by the BBC and ultimately will be a matter for the Non-Executive Directors of the BBC Unitary Board, it is difficult to judge how effective this method of regulation will prove to be because, as yet, we have no indication of how the Unitary Board will handle complaints. The proposed new system will place a huge responsibility on the new board and this underlines how important it will be for the non-executive directors to have the necessary skills and resources to be able to fulfil their role.
7. VLV would like to know whether Ofcom plans to implement further measures, in addition to the regulation in Section 5 of the Broadcasting Code, to monitor and assess the impartiality and accuracy of content not covered by the Code.

8. If these proposals are instituted without additional measures by Ofcom of the BBC for impartiality and accuracy, VLV holds this could run contrary with the Government's ambition for the *BBC to be held to account more robustly for its content standards...*¹

INTRODUCTION

9. VLV concentrates its response to this consultation on the proposal to regulate the BBC for accuracy and impartiality according to the rules set out in Section 5 of the Broadcasting Code.
10. We agree with the other proposals in the consultation. Our responses to the questions in the consultations are set out below.
11. If the proposal to remove the larger parties list is accepted, then VLV supports the proposal by Ofcom to produce an annual digest of evidence of past electoral support and current support ahead of each set of elections that take place in May. We note that this will be particularly important for smaller broadcasters which may not have the resources to regularly reassess party support.

Question 1. Do you agree with Ofcom's proposal to remove the list of larger parties from Section Six of the Code and the PPRB Rules? Give reasons for your answer.

12. VLV does agree with Ofcom's proposal to remove the list of larger parties from Section Six of the Broadcasting Code and the PPRB Rules.
13. We agree that the most logical criteria for determining editorial decisions in relation to election coverage of Section Six of the Code and the allocations of PEBs under the PPRB Rules are evidence of past electoral support and/or evidence of current support and that this evidence should be applied to all parties, rather than just non-larger party candidates.
14. This would prove more flexible and allow broadcasters greater editorial freedom to reflect the more fragmented and complex state of the political landscape as exists currently in the UK. It would allow them to more easily reflect changes occurring in the UK political landscape as they occur. It would also allow broadcasters which have a smaller broadcast footprint to reflect more accurately the political situation in their local area. There is a risk that the current larger parties list may not accurately reflect the varying levels of support for different political parties across the nations of the UK.

Question 2. Do you agree with the proposal laid out in paragraph 3.30 that Ofcom produce an annual digest of electoral support? Give reasons for your answer.

15. If the proposal to remove the larger parties list is accepted, then VLV supports the proposal by Ofcom to produce an annual digest of evidence of past electoral support and current support ahead of each set of elections that take place in May. We note that this will be particularly important for smaller broadcasters which may not have the resources to regularly reassess party support.

¹ *Ofcom's preparations for regulating the BBC* Para 2.2

Question 3. Do you agree with the proposed amendments to Section Six set out in Annex 5 a) in relation to larger parties and b) to include BBC broadcasting services and BBC ODPS? Give reasons for your answer.

16. VLV agrees with the proposed amendments to Section Six set out in Annex 5 in relation to larger parties and to include BBC Broadcasting services and BBC ODPS. Our reasons are as stated above in answer to Question 1.

Question 4. Do you agree with the proposed amendments to the PPRB Rules set out in Annex 4 a) in relation to larger parties and b) to include BBC broadcasting services? Give reasons for your answer.

17. VLV agrees with the proposed amendments to the PPRB Rules set out in Annex 4 in relation to larger parties and to include BBC Broadcasting services and BBC ODPS. Our reasons are as stated above in answer to Question 1.

Question 5. Do you have any comments on Ofcom's proposed amendments set out in Annex 5 for the purpose of regulating BBC broadcasting services and BBC ODPS in the area of due impartiality and due accuracy?

18. VLV believes that impartiality and accuracy of all BBC content should be subject to independent scrutiny, as it is under the BBC Trust. VLV's primary concern in making this proposal is that the accountability of the BBC to licence fee payers should be maintained.
19. VLV does not want to suggest through its response to this consultation that we advocate more regulation per se. What we want is for future regulation to be maintained at existing levels to ensure that the public are able to hold the BBC to account in delivering the Mission and Public Purposes to the standards which are set out in the Charter and Agreement.
20. VLV has a number of concerns about this consultation which largely arise as a result in the changes which need to take place to move governance and regulation from the BBC Trust to a combination of the BBC Unitary Board and Ofcom.
21. Separating the roles of governance and regulation of the BBC is a complex task. These are important issues for VLV because the audience needs to know that there is a body looking after their interests. It needs to be very clear where regulatory responsibilities lie – whether they lie with Ofcom or the BBC. We understand that Ofcom is required under the new Charter to devise an Operating Framework² which will set out a process and methodology to assess the delivery of the BBC mission, explaining clearly the roles and responsibilities of the BBC board and the relationship between the BBC and Ofcom. This Framework has not yet been prepared and without such a Framework, it is difficult to assess the current proposals fully.

BBC Governance and Regulation

22. VLV identifies governance as being the strategic job of running the BBC at the highest level. It should be ethical and publicly-focused, as well as business-like, and should reside at the top of, but within, the BBC.

² BBC Agreement, Clause 5 (2), November 2016

23. We believe regulation is about ensuring compliance with editorial standards of accuracy, standing up for complainants when those standards have been breached, and setting the wider public and commercial framework within which the BBC operates, with due regard to the interests of other organisations in the media market.
24. There is a third area of concern which needs to be addressed in any wider structure which concerns public accountability and the representation of the interests of licence fee payers.
25. With regards to regulation, there are three areas of concern to VLV:
- public accountability
 - content regulation
 - market regulation
26. VLV holds that public accountability regulation of the BBC should be distinct from regulation of other PSBs, because the public has different expectations of the BBC because they pay for it through the licence fee.
27. It is our view that this consultation relates to both public accountability and content regulation.
28. While VLV understands that under the new Charter the BBC will follow the ‘broadcaster first’ system of regulation whereby all complaints are first handled by the BBC and ultimately will be a matter for the Non-Executive Directors of the BBC Unitary Board, it is difficult to judge how effective this method of regulation will prove to be because, as yet, we have no indication of how the Unitary Board will handle complaints. The proposed new system will place a huge responsibility on the new board and this underlines how important it will be for the non-executive directors to have the necessary skills and resources to be able to fulfil their role. We are therefore concerned that there should be an adequate level of regulatory oversight of impartiality and accuracy by Ofcom to ensure that the BBC is effectively held to account.
29. The reasons for the need for external regulatory oversight are that:
- Expectations have moved on since the BBC Trust took over regulation of the BBC, with the focus now very much on external regulation. Senior management within the BBC will need to adapt to not having an external regulator and this could necessitate a change in culture to successfully institute, especially in the early days of the new regulatory model.
 - VLV is concerned whether the Non-Executive members of the BBC Unitary Board will be in a position to operate effectively as an appeals body when they sit alongside the Director-General on the Board. Any appeal about editorial standards will effectively be against the Director-General, who is the final arbiter of editorial decisions. This situation could potentially undermine the authority of the Director-General on the Board.
 - In light of this, the Non-Executive members of the Board will need to be held to account, but the proposals in this consultation will not achieve this ambition.

The Proposals Under Consultation

30. VLV notes that the current proposals which are being consulted on have been drafted in response to direction in the BBC Agreement (2016) that *the BBC must observe the standards set under section 319 of the Communications Act 2003 (Ofcom's "Standards Code")*.³
31. We are concerned that these proposals will lead to a significant reduction in the external regulation of BBC accuracy and impartiality. The standards set out in Section 319 of the Communications Act are far more limited than existing Editorial Guidelines of the BBC which the BBC Trust has used to regulate the BBC. The Act solely demands accuracy and impartiality in broadcast news; and for impartiality in broadcast programmes on matters of political or industrial controversy and matters relating to current public policy.
32. While we understand that Section Two of the Broadcasting Code (Harm and Offence), which is being consulted on by Ofcom separately, also provides redress in the case of factual content which is considered harmful because it is *materially misleading*, this current proposal still constitutes significantly less external oversight than exists currently whereby **all** BBC content (including online and social media content) is required to be duly accurate and impartial by the BBC Trust.⁴
33. If these proposals are instituted without additional measures by Ofcom to assess and monitor the BBC for impartiality and accuracy, VLV holds this could run contrary with the Government's ambition as noted in Ofcom's document *Ofcom's preparations for regulation of the BBC*, namely:

*... the Government has signalled its intention for the BBC to be held to account more robustly for its content standards... and, in resetting the BBC's Mission and Public Purposes, the Government has made clear that it expects the BBC to do much more in certain key areas, in order to justify its unique funding and privileged status.*⁵

34. The consultation document summarises key clauses in the Communications Act which refer to accuracy and impartiality regulation as follows:

4.5 Section Five of the Code contains standards required to secure objectives set out in section 319 of the Communications Act ("the Act") which relate to due accuracy and due impartiality, which are that:

- a) "news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with" (section 319(2)(c)); and*
- b) "news included in television and radio services is reported with due accuracy" (section 319(2)(d)).*

4.6 The "impartiality requirements" set out in section 320 of the Act, and referred to in paragraph 3.4(a), in summary require:

³ BBC Agreement, Clause 3 (1), November 2016

⁴ BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F, November 2015

⁵ Ofcom's preparations for regulating the BBC Para 2.2

- c) *the exclusion of “all expressions of the views or opinions of the person providing the service” on matters of political or industrial controversy and matters relating to current public policy (section 320(1)(a));*
- d) *the preservation of due impartiality on matters of political or industrial controversy and matters relating to current public policy (section 320(1)(b));*

35. Another concern of VLV’s relating to Section 391 of the Communications Act being used as a code for the regulation of the BBC for accuracy and impartiality is that, with reference to complaints, it is stated in the Agreement⁶ that complaints to the BBC will be judged according to BBC editorial guidelines (paragraph 2 of Schedule 3) whereas if complaints are then sent onto Ofcom because they have not been satisfied by the BBC, Ofcom will judge them according to Section 319 of the Communications Act (paragraph 3 of Schedule 3). As stated above, Section 319 of the Communications Act is far less detailed than the BBC’s Editorial Guidelines and does not require accuracy and impartiality across all content. This could not only lead to great confusion, but it is likely to lead to less rigorous regulation of the BBC which could be detrimental to licence fee payers.

Comparison between the Ofcom proposals and current BBC Regulation

36. VLV considers that as a result both of its more detailed editorial guidelines and the fact that its rules apply to all content, the BBC Trust has regulated to a higher, more rigorous standard than Ofcom has the other UK broadcasters which is in accordance with Section 319 and 320 of the Communications Act (2003).

37. We note key areas which will **not** be covered by the proposed new arrangements but have been regulated by the BBC Trust since 2006 are as follows:

- Editorial standards, such as accuracy in all non news/non-factual broadcast content;
- Impartiality and accuracy of online content
- Impartiality and accuracy of social media content
- Impartiality and accuracy of the output of the World Service
- Appeals about fair trading, television licensing and any other appeal (described in the complaints procedure as general appeals)
- The BBC Trust has also conducted a number of reviews of impartiality since its inception which have provided valuable insight into whether the BBC has fulfilled its impartiality commitment in coverage of subjects such as rural affairs, the environment, Africa, the Arab Spring.⁷

38. Other issues included in the Editorial Guidelines set by the Trust which are regulated by the Trust but are not included in the Agreement (2016) or in the Communications Act 2003 are editorial integrity and independence from external interests, conflicts of interest, and external relationships and funding. The Trust has taken and upheld significant complaints from industry in this area.⁸

39. In its response to the DCMS Charter Review consultation in November 2015, the BBC Trust said,

⁶ BBC Agreement, Clause 56 (2), November 2016

⁷ http://www.bbc.co.uk/bbctrust/our_work/editorial_standards/impartiality.html

⁸ BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F, November 2015, para 19

The Trust sets, and considers appeals against, higher editorial standards with more detailed requirements than Ofcom is required to do as a minimum standards regulator established under the Communications Act and in particular the Trust specialises in detailed accuracy and impartiality complaints.⁹

Recommendations

40. VLV would like to know whether Ofcom plans to implement further measures, in addition to those in Section 5 of the Broadcasting Code, to oversee the impartiality and accuracy of content not covered by the Code. This includes information about the impartiality and accuracy regulation of online content, social media content, the World Service and the impartiality of content in all genres which is not related to public policy or controversial subjects, such as that in documentaries, current affairs, children's content, drama, entertainment and sport which we consider crucial in delivering the BBC's Mission and Public Purposes.

All BBC Content should be regulated for due accuracy and impartiality

41. VLV recommends that **all** BBC content should be regulated for being duly accurate and impartial in order to maintain trust in the BBC across all genres. We support the BBC Trust's suggestion that Ofcom must be able to consider complaints about editorial standards which result from breaches of the BBC's Editorial Guidelines across the entirety of the BBC's output in the UK and abroad. We understand that the Charter rules that this responsibility should fall on the BBC Board¹⁰ but we consider that Ofcom should be able to act as a backstop if the BBC fails to satisfy complainants.
42. In making this recommendation we also consider that Ofcom should judge appeals on the basis of BBC Editorial Guidelines and not Section 319 of the Communications Act which is far less detailed and rigorous.¹¹
43. VLV expects Ofcom to propose rigorous methods within the Operating Framework to assess and measure whether BBC content across all platforms is accurate and impartial. If such measures are not instituted this will represent a significant loss of accountability towards audiences. If Ofcom is to deliver the level of regulation the public currently expect for the BBC then it will need to work to a higher degree of intervention than it currently applies to other UK broadcasters. This may require additional time and resources.

Regulation of the World Service

44. While we understand that the Charter requires the BBC to be wholly responsible for assessing the performance of the World Service¹² this removes all external regulation of the World Service, as exists under the current model. Under the new system of regulation Ofcom will only be responsible for assessing the World Service's contribution to the fulfilment of the Mission and Public Purposes of the BBC in its periodic reviews.¹³ Even though there is no statutory basis for Ofcom regulating the World Service, VLV would like Ofcom to have regulatory oversight of the World Service. This is necessary in order to ensure that standards and trust are maintained.

⁹ BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F, November 2015, para 46

¹⁰ BBC Charter, Clause 20 (3) (f) (g), December 2016

¹¹ BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F, November 2015, para 55, 56

¹² BBC Agreement, Clause 33 (4), November 2016

¹³ BBC Agreement, Clause 35 (7), November 2016

Online Content

45. In what is being called the ‘post-truth era’, where online content is unregulated, the reliability of BBC content, both broadcast and online is crucial. In the atomized, multi-faceted age of social media, the BBC provides a recognised source of information to which people instinctively turn in crisis or celebration, when great events happen and there are major occasions to be broadcast and recorded. The BBC remains, in the digital age, a glue electronically bonding the nation. In order to retain its universal appeal the BBC needs to remain trustworthy. Appropriate, transparent and accessible regulation is one of the key ways in which trust will be maintained in BBC output, including online and social media content.

Other regulatory matters

46. We also support the BBC Trust’s suggestion that Ofcom must be able to consider general matters which would include fair trading appeals, TV licensing, and out of remit complaints about operational matters or editorial and creative decisions if they raise significant issues of general importance.¹⁴

Why the BBC should be regulated differently from other broadcasters for impartiality and accuracy

47. VLV’s fundamental concern about the proposal as set out in the consultation document is that it represents a significant reduction in external regulation of the BBC unless further measures are implemented through the Operating Framework which Ofcom will consult on later in 2017.
48. VLV considers that the public expects a higher degree of impartiality and accuracy from the BBC and that therefore it should be regulated differently from other UK and global broadcasters to ensure that trust in all the output of the BBC is maintained.
49. To quote VLV’s submission to the DCMS Green Paper on the BBC in November 2015:

*With regards to regulation, there are important distinctions to be made between public accountability, content regulation and market regulation. Public accountability regulation of the BBC should be distinct from regulation of other PSBs, because the public has different expectations of the BBC because they pay for it through the licence fee. Therefore VLV suggests that we need a structure for regulation which satisfies the need for a considered balance between these three areas of regulation.*¹⁵

50. It is clear from research conducted by the BBC Trust that the public expects the BBC to deliver higher editorial standards across all output than it does from other broadcasters:

*In research commissioned by the Trust for the Charter Review by ICM published in February 2015, 86% of the 2,111 surveyed put being impartial in news and current affairs as quite or very important. The same work established what was most important to people. Being impartial in news and current affairs was at the top of the list and setting higher editorial standards than other broadcasters was high on the list of those things judged most important to deliver.*¹⁶

¹⁴ BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F, November 2015, para 60

¹⁵ VLV response to DCMS BBC Charter Review Consultation, para 98, November 2015

¹⁶ BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F, November 2015, para 16.

51. As Richard Tait said in the Foreword to *From Seesaw To Wagon Wheel, Safeguarding impartiality in the 21st century* impartiality is one of the BBC's defining characteristics:

Impartiality has always been (together with independence) the BBC's defining quality. It is not by chance that all BBC staff carry an identity card which proclaims as the first of the BBC's values that they are independent, impartial and honest....

The reach of the BBC's services, the trust which the public places in them and the tradition of impartiality in the culture of the organisation are the keys to ensuring that the BBC delivers in this, the most important of its responsibilities.¹⁷

52. The BBC has established itself as the UK's and the world's most trustworthy source of information. VLV considers accuracy and impartiality to be basic rights of licence fee payers. It has been seen that trust in the BBC in the past has been severely undermined when accuracy and impartiality regulations have not been followed and that audience trust is not merely based on news and factual output. This is the rationale for regulating all BBC content for impartiality and accuracy.

Too often impartiality is regarded as a shibboleth for News and Current Affairs. It does of course apply there. It extends to other factual areas: Science, Religion, Arts, History, Documentaries and Natural History. But it also applies in Drama, Children's Programmes, Comedy, Light Entertainment, Sport, Live Events, Education and Music.

Impartiality is required not only in network television and radio, but equally in the nations and regions, local and community radio, and the BBC's online services and interactive sites. It also applies to publications, publicity, marketing and programme trails.

The audience assesses a programme by its content, not its departmental provenance. It makes no allowance for it being produced by Religion rather than Documentaries, by Light Entertainment rather than Live Events, or by Education rather than Current Affairs. Nor does YouTube or Google. Topical, cultural or factual issues arise in all forms of output. Two recent programmes which provoked the fiercest audience reaction, Jerry Springer – the Opera and Celebrity Big Brother show how explosive entertainment can be when it rubs shoulders with real life.¹⁸

¹⁷ *From Seesaw to Wagon Wheel, Safeguarding impartiality in the 21st century*, BBC Trust 2007, p 3

¹⁸ *From Seesaw To Wagon Wheel, Safeguarding impartiality in the 21st century* BBC Trust 2007, Pg 47