

Response by the National Association of Deafened People (Registered Charity no 294922) to the Review of Ofcom’s Code on Television Access Services and Guidance on BBC Accessibility.

1. The National Association of Deafened People (“NADP”) is a nationwide charity run by its members who are deafened. Our members have experienced hearing loss to varying degrees during their lifetimes. Some have had a hearing loss since birth or early childhood, others may have become deafened suddenly during adulthood. Many share a gradually deteriorating hearing loss with age and as a result have an increasing need and use of subtitles to complement audio on content. Our members have a wide ranging experience dealing with their hearing loss, many use hearing aids while others have been fitted with cochlear implants, which may enhance their use of audio but even so they are likely to still rely on subtitles for all or part of the viewing experience. Our membership covers a broad age range of people from early adulthood to retirees with varying degrees of hearing loss and associated experience. NADP welcomes the opportunity to respond to this consultation and in our responses to the questions raised we have attempted to incorporate the views and practical experiences of our members.
2. Before we answer the individual questions posed in the consultation paper we would like to make clear our extreme disappointment at the way that Ofcom has chosen to carry out this consultation, especially the decision to split it into two parts and to consult on the guidelines currently contained in annex 4 of the Code separately. It is those guidelines that contain the most urgent issues regarding the standard of broadcast subtitles, which should have been consulted on first or together with issues around targets. NADP has been constantly pressing for improvements in this area and stressing the need for the guidelines to be revised, and we have grave concerns that Ofcom has chosen to downgrade the opportunity to investigate these matters. This is not in the interests of users. We will consider this in more detail in our response to questions 3 and 6.

Question 1: Do you agree with our proposal to continue to apply guidance to BBC UK Public Television services, and not to introduce guidance for the BBC’s radio programme services for the foreseeable future?

3. NADP does not agree with Ofcom’s view not to introduce guidance for radio programmes. People with a hearing loss are no different from other members of the population except that they have impaired hearing. They should be entitled to the same benefits and be able to enjoy radio.
4. As NADP highlighted in its response to the BBC consultation on the funding of the TV licence for people over 75¹, people with a hearing loss do not get a reduction in their TV licence and yet revenues for the TV licence helps fund BBC radio services. Yet without subtitles the majority of people with a hearing loss are unable to access the full service offered. This has been further exacerbated by the fact that people over 75, who coincidentally are more likely to have a hearing loss compared to the general population, are now required to pay for the TV licence. We argued in our response to the BBC consultation that any additional revenue from the TV licence revenues should be used to improve accessibility and as such believe radio services should be improved in this way.

¹ <http://downloads.bbc.co.uk/aboutthebbc/reports/consultation/age/nadp.pdf>

5. NADP has emphasised in previous consultations by Ofcom the varied needs of the deaf population and yet this appears not to have been understood. As a reminder, many deaf people can still hear speech and music but need help with clarity. Subtitles offer support to achieve this clarity, just as lip reading helps because if they see the words then they can hear the speech better. While this concept is widely recognised in the deaf community it is difficult for hearing people to appreciate fully. We would encourage Ofcom to support liaising directly with the full range of the deaf population and its representatives to ensure that no one is overlooked (see our response to question 8 for further discussion).
6. Whilst the use of hearing aids improves clarity for people with moderate, severe and profound hearing loss such that their hearing is closer to a mild loss, they still struggle with some comprehension. Similarly, people fitted with cochlear implants, who would otherwise have more profound hearing loss, still will not enjoy perfect hearing. They still need support on occasions, particularly when audio is not clear. Many deaf people still hear music, sound effects, accents and dramatic emphasis, it is just the clarity of content that is reduced.
7. Our members have reported that they enjoyed listening to the radio when they had better hearing but feel saddened when no longer able to enjoy it due to their hearing loss. Radio offers access to numerous services such as the Arts and literature which are presented in a different way on TV. By not including subtitles deaf people are excluded from this area of culture. It is therefore not clear why Ofcom believes continuing to exclude deaf people from enjoying radio programs fits the BBC Public Purposes
 - 1: To provide impartial news and information to help people understand and engage with the world around them
 - 2: To support learning for people of all ages
 - 3: To show the most creative, highest quality and distinctive output and services
 - 4: To reflect, represent and serve the diverse communities of all of the United Kingdom's nations and regions and, in doing so, support the creative economy across the United Kingdom.
8. We note that radio can be, and is, broadcast through the internet and the BBC has on occasions broadcast subtitles with radio through the web and its BBC iPlayer. We therefore believe that Ofcom should support this development, particularly in light of improvements in technology which can both provide automated subtitles (albeit with limited accuracy but useful as a first draft) but also automatically time stamp prepared subtitles as audio is played. There is a significant proportion of content on radio that is scripted alongside known lyrics which can be shown automatically as available on Apple Music or Amazon Music, for example. We believe this technology, or similar, could be used to provide subtitles cost effectively on live radio.
9. In summary, NADP believes that there would be a considerable benefit for all consumers should timed subtitled content be available for radio and that Ofcom should review its decision not to provide guidance for radio services for the foreseeable future.

Question 2: Do you agree with our proposal to consider relevant guidance in relation to the BBC's UK ODPS separately?

10. NADP recognises the merit in deferring relevant guidance whilst the government reviews the potential requirements. However, we believe there is considerable merit in Ofcom leading the industry by setting out what it would expect these guidelines to look like. This would allow the industry to target these guidelines in their developments and so ensure that their platforms are able to deliver as and when the government makes its decision. Our members have witnessed first hand how they have been unable to access online services since accessibility was not considered at the development stage and yet in many cases have been required to pay the same charge for these services as the general population despite this lack of access.
11. It is also worth noting that some providers of ODPS already offer a considerable range of content that is subtitled. There is therefore an opportunity for Ofcom to use this experience to help draft the guidelines. NADP believes that guidelines could be offered by Ofcom in the short term to assist ODPS with developing their platforms to ensure they would meet them.
12. As NADP pointed out in its response² to the Ofcom consultation on guidelines for accessibility of ODPS, we believe there is a clear commonality between the ODPS and broadcasting content particularly as the majority of content on ODPS has been broadcast previously with subtitles. Furthermore, as is required by the FCC in United States, any content originating or destined for broadcast or made available on demand must include subtitles. Given that the majority of content on ODPS would fit this category we believe there is no real reason why this content could not be made available on ODPS with subtitles/captions. NADP believes that if Ofcom followed the FCC regulations then there would be no need to specify detailed subtitling guidelines as currently is the case with broadcast subtitles.

Question 3: Do you agree with our approach to maintain the existing targets and guidance for the BBC's UK Public Television Services?

13. No. NADP does not believe that the current guidelines offer Fairness for Consumers who have a hearing loss. We believe that given advances in technology, abundance of existing content with subtitles and associated reduced costs for providing content with subtitles compared to when the original targets were set, then all verbal audio on broadcasts should be subtitled.
14. NADP believes further detail is required as to what the quantity measure represents. For example we have stated in the past that to a layman 100% of content subtitled would suggest that all verbal audio in a broadcasts is subtitled. However, in our members experience this is not the case in reality. For example song lyrics are rarely subtitled at the end of a program particularly a film. Similarly adverts on the BBC for latter programs are not subtitled. Also announcements between broadcasts are not always subtitled. As such 100% of content subtitled is inaccurate and offers no opportunity for improvements which by these examples is clearly not the case. The measure should therefore be of the total verbal audio broadcast. We are aware that it is possible to

² https://www.ofcom.org.uk/data/assets/pdf_file/0016/131119/NADP.pdf

subtitle this content consistently as it is achieved in various degrees in other global regions and by other providers.

15. As we stressed at the beginning of this response NADP is extremely disappointed that this consultation makes no reference to the quality of subtitles. In previous responses we have stressed that subtitles are pointless if they are inaccurate or poorly timed. We firmly believe a quality measure needs to be included. We feel this issue is of such prime importance that it should have been consulted on first rather than left to a later date. The issue of quality does not just apply to live subtitling, though that is where the major problems exist, but also more could be done in this consultation to address the quality of pre recorded content.
16. We further note that it is over four years since the last report on the quality of live subtitles³ and it is disappointing to see that the actions to improve latency have barely materialised. We believe that further research to reassess the quality of subtitles for live subtitles is well overdue and should be a priority for Ofcom particularly given how reliant older and people with a hearing loss are on news items and current affairs through live broadcasts.
17. In its response to the BBC Consultation on the TV licence fee, NADP highlighted that the viewing habits of people with a hearing loss differ from the general population partly as a result of their age and also as a result of the level of accessibility available. It is far more likely that political broadcasts such as BBC Parliament are of interest to the older population who are keen to remain involved in political discussion and current affairs, yet are excluded by the lack of subtitles on this key public service. Whilst viewing figures of these channels may be lower we believe that the proportion of people watching being older would therefore be more likely to have a hearing loss. Having subtitles on this content would not only improve the enjoyment for these viewers but also potentially increase viewing figures as more people will be able to enjoy this content.
18. NADP believes that BBC Alba should also show subtitles for Welsh speaking people to enjoy in the same way that an English speaking person enjoys subtitles. It is not clear why they would be excluded from full access. Becoming deafened can impact Welsh speaking people just as it does the English speaking population of the UK. They should therefore be able to enjoy similar and equivalent access. NADP cannot condone discrimination in this way.

Question 4: Do you agree with the proposed modifications of the TV Access Code set out in Annex 3 to ensure it applies to BBC UK Public Television Services under the 2016 Agreement?

19. We have not reviewed these modifications in detail as we understand that they simply reflect the changes in the 2016 Agreement and assume that they are not detrimental in anyway to the enjoyment of content by deafened people now or in the future.

Question 5: Do you have any other comments regarding our proposals in relation to how the BBC should make its UK Public Services accessible under the 2016 Agreement?

³ https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/live-subtitling/sampling_results_4

20. Please see responses to earlier questions. NADP would welcome the opportunity for an open discussion in light of our response to BBC iPlayer proposals where we highlighted how accessibility could be improved.⁴

Question 6: Do you have any comments on our proposed changes to Ofcom's Code on Television Access Services?

21. NADP is extremely disappointed at the decision to remove the current Annex 4 from the Code in order to consult on it separately. As we have said above this is one of the most important parts of the Code as it is the main place where guidelines are set out concerning quality and usability of subtitles. This should have been the priority area for consultation and should not have been delayed. We are even more concerned that the document merely says the separate consultation will be "at a later date" with no timescale given. We would strongly urge Ofcom to reconsider its approach, to retain Annex 4 for the time being, and to consult on these vital issues as a matter of urgency.
22. NADP is also concerned that guidelines may not be enforceable in the same way as mandatory regulations, as these issues of quality and usability are vital to the effectiveness of subtitles. We therefore totally disagree with the plan to remove two paragraphs from the existing Code (relating to equal opportunities legislation and to seeking advice from disability groups). We do not believe this wording should be removed before suitable replacements have been agreed. We express our concerns in more detail in response to question 8.

Question 7: Do you have any comments on our proposed amendments to the guidance in relation to the dates by which broadcasters should apply to Ofcom for alternative signing arrangements, and request exemptions on technical grounds?

23. NADP represents members of the deaf population who use English as their first language. We welcome any proposals to improve the accessibility for people who use BSL as their first language and understand that technology improvements mean that BSL translation can now be provided more cost effectively through accurate and timely subtitles through native BSL interpreters using English subtitles to provide the translation. We support this provision as we believe it will help improve the quality of subtitles since the BSL translation needs timely and accurate subtitles.

Question 8: Do you agree with our assessment of the impact of our proposals on the relevant equality groups? If not, then please explain why you do not agree.

24. We do not agree that by maintaining the status quo of continuing with the current quantity requirements that the deaf population are in a neutral position. The current requirements were set as part of the Communications Act 2003. The whole industry has changed significantly since then as has technology and the profile of viewers watching broadcast content. Ofcom's own media nations research⁵ published last year echoes this change in demographics with over 65s being the increasingly highest proportion of viewers. This population is much more likely to have an acquired hearing loss. As such they would most likely have had good hearing when the regulations were set up and enjoyed all content with that hearing. As far as these individuals as concerned their

⁴ <http://www.nadp.org.uk/app/download/5814943740/BBC+iplayer+consultation+Feb+19+Final.pdf>

⁵ https://www.ofcom.org.uk/__data/assets/pdf_file/0019/160714/media-nations-2019-uk-report.pdf

viewing experience has deteriorated as they are no longer able to enjoy all the content they could. Retaining the status quo does not help these people.

25. Furthermore, the experience of our members suggests frustrations as the quality of the subtitles appears to have deteriorated. When the targets were originally set, subtitles were predominantly produced by Stenographers who had professional standards of accuracy and speed to maintain. Since then subtitle providers have utilised technology to replace Stenography with revoicing or respeaking. Since there are no measures of quality in place for this the quality of subtitling has reduced. Research has shown that Stenography continues to be faster and more accurate than the revoicing that is predominantly used in the UK to produce subtitles.
26. It is worth also noting that older people with a hearing loss in particular are more reliant on the television to maintain social connection. Recent research has shown a high correlation between hearing loss and mental illness. It is obvious that loneliness impacts on mental health and as the population ages more people are likely to left alone and with a hearing loss. We have highlighted in our response that many of the channels with a smaller viewing population show repeated content which is most likely to be attractive to this older population. Keeping the status quo of not requiring these channels to provide subtitles is impacting on these people directly.
27. It is difficult to express fully in this consultation how subtitles impact on the deaf population without actually involving those people affected and understanding the emotion involved. Many feel that they are being forgotten because they are no longer able to enjoy broadcasts without subtitles and more often repeated content that they had previously enjoyed.
28. It is not clear how Ofcom has engaged with the various deaf representatives in this consultation nor in other consultations by Ofcom during 2019. NADP has not been actively approached. Previously NADP would be made aware of relevant consultations through its membership of the Consumer Forum for Communications. We also had the opportunity to discuss such consultations with Ofcom and other interested parties in these or similar forums. Since the Ofcom decided to cease funding for the CFC, NADP has not been made aware of any alternative forum for such discussions.
29. In our response⁶ to the DCMS consultation on Consumer Advocacy, NADP proposed a Disability Advisory Group be set up to ensure that all interested parties in accessibility in communications have a say in how the industry develops. NADP believes that this framework would help improve understanding by all parties to ensure that the needs of deafened people are met. We expect that Ofcom would be a key contributor to this framework given its regulatory role and could commence facilitating this group to ensure that it can satisfy its requirements of this and other consultations to involve relevant consumer groups such as NADP and its members.

⁶<http://www.nadp.org.uk/app/download/5814943642/Response+to+DCMS+Consultation+on+Telecommunications+Consumer+Advocate+Final.pdf>