



## Ofcom's preparations for regulation of the BBC

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## Section 1

# About this Document

- 1.1 A new BBC Royal Charter<sup>1</sup> was approved by the Privy council on 16<sup>th</sup> November, together with an accompanying Agreement between the BBC and the Secretary of State. This sets out the details of how the BBC will operate in the new Charter period. Under the Charter and Agreement, Ofcom will be the BBC's first external regulator. The 'effective date' for transfer of regulation to Ofcom is given as 3<sup>rd</sup> April 2017.
- 1.2 This document describes Ofcom's preparations for how we will regulate the BBC over the course of the new Charter.
- 1.3 It describes Ofcom and the BBC's roles under the new regulatory scheme, and sets out how over the next few months Ofcom will start to put together an 'Operating Framework' for the BBC which will contain elements of our regulation across Performance, Content Standards and Competition. At the same time, a new unitary Board will be put in place to run the Corporation.

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<sup>1</sup> <https://www.gov.uk/government/publications/draft-bbc-charter-and-draft-framework-agreement>

## Section 2

# Ofcom and the BBC

## Introduction

- 2.1 In granting a new Royal Charter and renewing the constitutional arrangement of the BBC until 2027, the Government has confirmed the BBC's place at the heart of the UK's successful broadcast ecology and creative economy, as well as its valuable contribution to many people's lives. Public expectations around the BBC's output and performance are high and scrutiny of its output and decisions is intense. As a consequence, its governance and regulation are vitally important.
- 2.2 The new Charter and Agreement also represent the biggest reform of the governance and regulation arrangements of the BBC since it was founded. In handing responsibility for regulation for the first time to an external body (Ofcom), the Government has signalled its intention for the BBC to be held to account more robustly for its content standards, potential impact on the market and overall performance. As the new external regulator, Ofcom will bring scale and experience in certain key areas of PSB delivery – as well as the value of its overview of the whole broadcast and communications sector at a time of increasing convergence and interconnectedness. Furthermore, 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.
- 2.3 Ofcom has been granted significant powers in order to discharge its new duties; 'A strong regulator for a strong BBC'<sup>2</sup>, but it is important to set out here the clear distinction between governance and regulation.
- 2.4 Under the new Charter, the BBC Board and Ofcom will have distinct roles, in line with the Clementi Review's recommendation that governance and regulation should be separated. The Charter makes clear that the Board of the BBC is responsible for the exercise of all of the functions of the BBC, in accordance with the provisions set out in the Charter and Agreement. It will be for the BBC Board to ensure that the BBC acts in the public interest and meets its wider Charter obligations, as well as continuing to oversee strategy, service delivery and efficiency. One of the key initial tasks for the new Board will be to assess the impact of the changes to the Mission and Public Purposes in the new Charter
- 2.5 Ofcom's new role is to set regulatory requirements that the BBC must meet in respect of programmes and services, to ensure that the BBC's actions don't have a disproportionate impact on fair and effective competition, and to hold the BBC to account where it fails to comply with its obligations. In carrying out our role, we will have robust enforcement powers. This will be a clean break with the old regime. The BBC Trust was responsible for both governance and regulation, Ofcom's new role will be different – the regulatory system that we construct will reflect our position as external regulator and our experience of regulating the entire broadcasting sector.
- 2.6 The BBC's independence from Government is recognised in the Charter, and Ofcom is independent of Government and the organisations it regulates. The BBC must have the space to take creative risks and choose how it organises itself – provided it continues to comply with its overarching duties – without the regulator involved in its

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<sup>2</sup> David Clementi 'A Review of the Governance and Regulation of the BBC', p.6

creative decision-making, scheduling decisions or management structures. The Operating Licence that we set for the BBC will reflect and respect this separation of responsibilities.

2.7 Ofcom's overall approach will:

- **Proceed from our principal duty** – as with all our work, our principal objective is to further the interests of citizens in communications matters and consumers in relevant markets, where appropriate by promoting competition;
- **Recognise that the BBC is the cornerstone of public service broadcasting in the UK** – we recognise that the BBC has a special status but we won't give it special treatment;
- **Recognise that responsibility for governance lies with the new BBC Board** – it is for the BBC Board, rather than Ofcom, to determine how to deliver the mission and purposes defined in the Charter. The Board must set the BBC's editorial guidelines and carry out 'public interest tests' before proposing changes to its public service activities.
- **Make good use of our depth of knowledge and experience** – we have experience of regulating the broadcasting sector, as well as existing roles in relation to the BBC in the key areas of content standards, competition and performance;
- **Ensure stakeholders are consulted** – ensure the views of citizens, consumers and stakeholders feed into our work;
- **Be clear about our expectations of the BBC** – we will be clear about the requirements that we will place on the BBC and on how we will address issues if things go wrong, to provide certainty to the BBC, its audiences and the wider sector.

2.8 The Charter and Agreement require Ofcom to issue an Operating Framework setting out how it will regulate the BBC. We are committed to developing a clear, efficient and easy to understand framework for BBC regulation.

2.9 The Charter and Agreement define Ofcom's role in three main areas; content standards, competition and performance. The Operating Framework will set out the regulatory tools that Ofcom will use to hold the BBC to account in these areas. We will consult separately on the detail of our role (section 3) and set it out in an Operating Framework, once initial consultations are completed.

2.10 Summaries of the areas of regulatory responsibility are set out below.

## The BBC's Mission and Public Purposes

2.11 The BBC's object is the fulfilment of its Mission and the promotion of the Public Purposes.

2.12 The Mission of the BBC is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain.

2.13 In summary, the Public Purposes are:

- To provide impartial news and information to help people understand and engage with the world around them;

- To support learning for people of all ages;
- To show the most creative, highest quality and distinctive output and services;
- 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;
- To reflect the United Kingdom, its culture and values to the world.

## Performance

- 2.14 Having duties in relation to the BBC's performance is a new and high priority area of responsibility for Ofcom. We are tasked with holding the BBC to account in relation to its output and services. Reflecting the distinction between Ofcom's role and the BBC Board's, the Charter establishes that it is the BBC's job to set and fulfil its creative and strategic remit
- 2.15 We have numerous regulatory tools at our disposal in this area: we must set and publish one or more operating licences; we can set quotas for the BBC; we can publish a range of annual; periodic and ad hoc assessments of delivery; conduct research; investigate complaints; and we can set regulatory requirements and enforce compliance. We will consult on our proposals<sup>3</sup> for how these tools will fit together.
- 2.16 It is important to acknowledge that fulfilling new aspects of the BBC's Mission and Public Purposes in the Charter cannot happen overnight: the very nature of programme commissioning and production means that some genres in particular (drama, entertainment, specialist factual) have long lead in times. We therefore expect to see adjustments to commissioning and delivery where required over time, and we will direct our early attention to performance assessment of these areas, or where we have identified clear gaps in performance - based on evidence gleaned from a number of sources.

## Priorities in measuring the BBC's performance against its Mission and Public Purposes

- 2.17 The BBC is now required to ensure that its services and outputs are distinctive, that the specific needs of people in the Nations and Regions are met, and that they reflect, represent and serve all the diverse communities of the UK. The Government ran a consultation process to understand the views of audiences and stakeholders which then fed into the White Paper<sup>4</sup> and subsequent Charter and Agreement. Ofcom's early work will focus on these areas to ensure that there is a clear baseline for our ongoing analysis of the BBC's performance. In addition, we will carefully and comprehensively assess the BBC's performance against the entirety of the requirements set out in the BBC's Mission and Public Purposes.
- 2.18 The new Public Purposes are a clear expression of the importance of news, learning and high quality, creative programmes which inform, educate and entertain. Audiences recognise these as the core purposes of the BBC and rightly expect that BBC outputs and services will reflect and serve the nation in all its diversity.

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<sup>3</sup> We have grouped together a number of our functions under the Charter and Agreement into our 'Approach to Performance' [3.11]

<sup>4</sup> <https://www.gov.uk/government/publications/a-bbc-for-the-future-a-broadcaster-of-distinction>

Audiences are also clear that they expect the BBC to offer a wide range of content which is original and innovative, ambitious, sometimes challenging and always of high quality.

## **Distinctiveness**

2.19 Distinctiveness is at the heart of the new Charter and Agreement, and embodied in the BBC's new Mission and Public Purposes. Ofcom will regulate with this in mind and to ensure that the BBC delivers high-quality, distinctive output for all its audiences. This requires complex and nuanced judgement that will allow the BBC to take creative risks. An important part of Ofcom's role is to monitor what the BBC is providing and to measure the impact that this is having on viewers and listeners. We recognise that tastes, and therefore what is likely to be distinctive to audiences, will change over time, and do not underestimate the challenge of creating meaningful measures for distinctiveness.

## **Nations and Regions**

2.20 Providing output and services that meet the needs of the United Kingdom's Nations and Regions and contribute to their development via investment in their creative economies now forms the basis of one of the Public Purposes. In commissioning and delivering output the BBC should invest in the creative economies of each of the nations and contribute to their development.

2.21 Ofcom's duties here are clear; we must create the conditions to ensure the BBC serves audiences in all four nations. Where appropriate this may include requirements relating to certain requirements on the range, quality, and scheduling of programmes, as well as determining the proportion of programme production in the nations and regions. Our performance measurement work will capture the extent to which audiences feel their national and regional identity is portrayed fairly by BBC output and services.

## **Diversity**

2.22 The Charter and Agreement require the BBC to reflect the diversity of the UK in its output and services, and to represent and portray the lives of the people in the UK today accurately and authentically. It must ensure that it provides output and services that meet the needs of the UK's nations, regions and communities. The Charter specifically requires the BBC to assess and meet the needs of the diverse communities of the whole of the UK, with particular regard to reflecting underrepresented communities. In addition, the BBC has a requirement to promote equal opportunities for its employees.<sup>5</sup>

2.23 Ofcom will hold the BBC to account for how it meets these obligations. We will measure and scrutinise what the BBC is doing, and report on its delivery. We will also have the power to set appropriate regulatory requirements on the BBC's output in this area.

## **Content Standards**

2.24 Audiences should be able to expect that the programmes they watch and listen to are high quality, original, entertaining and thought provoking. They should be able to trust what they see and hear. They should be able to feel confident that the BBC has

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<sup>5</sup> The BBC has a series of requirements in relation to equal opportunities and training



produced its content to the highest editorial standards, taking appropriate steps to avoid airing content that might cause unjustified offence and providing viewers and listeners with adequate protection from harmful content.

- 2.25 Ofcom must secure content standards for the BBC so that the BBC's viewers and listeners are appropriately protected. The previous Charter and Agreement<sup>6</sup> gave Ofcom shared regulatory oversight of some of the BBC's content standards with the BBC Trust. The new arrangement hands Ofcom regulatory responsibility for all areas of BBC content standards including, for the first time, for the accuracy and impartiality of BBC news and current affairs programming.
- 2.26 Ofcom will hold the BBC to account under the rules of its Broadcasting Code ("the Code"). These rules reflect the standards objectives set out in the Communications Act 2003 which Ofcom already applies to all licensed broadcasters. The Code will be amended so it applies in full to BBC licence-fee funded broadcasting services<sup>7</sup>, and also to apply for the first time, as relevant, to BBC iPlayer content.
- 2.27 Complaints about BBC programmes will be considered under a 'BBC First' complaints framework. The BBC will handle complaints in the first instance<sup>8</sup>, and complainants will be able to refer their complaints to Ofcom if they are dissatisfied with the BBC's response or if the BBC fails to respond in a timely manner. To ensure the effectiveness of the 'BBC First' framework and to have assurance that audiences are being appropriately safeguarded, Ofcom will put in place oversight mechanisms (such as regular reports from the BBC on complaints handling). Importantly, Ofcom will have the power to 'step in' and intervene in a BBC editorial case at an earlier stage, or to launch an investigation in the absence of a complaint, where considered necessary.
- 2.28 Ofcom will set and publish transparent and accessible complaints procedures for the handling of BBC content standards complaints. These will make clear to consumers and other stakeholders how Ofcom will consider complaints referred on a 'BBC First' basis and how Ofcom will handle content standards investigations (including fairness and privacy cases) for BBC broadcasting services and BBC on demand programme services. Our procedures will also set out how Ofcom would consider the imposition of sanctions on the BBC.
- 2.29 Ofcom also has the ability under the Charter and Agreement to carry out and publish reviews addressing any specific issue of concern relating to the BBC's regulated activities, such as in content standards. Ofcom will undertake thematic reviews of content standards when it considers it appropriate.
- 2.30 BBC complainants will also be able to obtain an independent opinion from Ofcom on whether the BBC has observed editorial guidelines on the content of online material in its UK Public Services. Ofcom will enter into an arrangement with the BBC making provision for this and will publish procedures to inform consumers and other interested stakeholders as to how we will consider and handle complaints about BBC online material.
- 2.31 Ofcom has powers to ensure that provision is put in place so that people with hearing and/or visual impairments are able to understand and experience television

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<sup>6</sup> [http://www.bbc.co.uk/bbctrust/governance/regulatory\\_framework/charter\\_agreement.html](http://www.bbc.co.uk/bbctrust/governance/regulatory_framework/charter_agreement.html)

<sup>7</sup> Ofcom will have no remit over the BBC World Service.

<sup>8</sup> With the exception of Fairness and Privacy complaints which Ofcom has a statutory duty to accept directly from complainants.

programming. The BBC's UK Public Services will be required to observe a code drawn up by Ofcom giving guidance on its access service requirements.

## Competition

- 2.32 The Charter and Agreement place specific duties on the BBC, requiring it to consider and address potential adverse impacts of its activities on fair and effective competition.
- 2.33 The Charter sets out that, when carrying out functions relating to the BBC, Ofcom must have regard to the desirability of protecting fair and effective competition in the UK. The Charter and Agreement further contain particular provisions according to which Ofcom must set requirements for the protection of fair and effective competition in relation to the Public Services as well as provisions to ensure that the BBC commercial activities do not gain an unfair competitive advantage from their relationship with the public service arm of the BBC. This is consistent with our principal duty under the Communications Act to further the interests of consumers, where appropriate by promoting competition.
- 2.34 We will assess the impact of the BBC's activities on competition and provide rules to guide how the BBC should behave, taking into account its impact on others in the market. When we review the impact of the BBC's services on competition, we will consult with the BBC and others, and take account of the need for the BBC to fulfil its Mission and promote its Public Purposes, as well as the potential benefits of future investment and innovation by the BBC and other firms.
- 2.35 By nature, a public policy decision to fund an organisation from public resources - in this case the BBC - has an impact on markets. Successive governments have continued to support the BBC's place in the market by renewing its Charter and developing its remit to secure various public policy objectives. It is the BBC's role to fulfil its remit, including in new and innovative ways, having regard (among other things) to its impact on competition. It is not Ofcom's role to prevent the BBC from fulfilling a remit set by government.
- 2.36 However, the way that the BBC delivers its public service activities, the way it distributes its content and services and the way it interacts with its own commercial subsidiaries, can all have an impact on competition.
- 2.37 Ofcom's starting point is that fair and effective competition is good for consumers and citizens. It can increase choice, and stimulate investment and innovation, including a wider range of high quality and varied content, and different ways to access it. It can also stimulate efficiency. The BBC plays a part here and has a long history of creative and technological innovation in broadcast and content areas.
- 2.38 Any expansion into new markets could have an effect on the innovation and investment of others, including content providers, platform operators and firms in related markets. The BBC's unique status may give it an advantage over competitors (or potential competitors), and could crowd out competition or deter others from investing or innovating if its activities undermine their ability to develop profitable ventures. Ofcom's role in this area is to ensure that such impacts are properly taken into account alongside public benefits.
- 2.39 In order to protect fair and effective competition in the areas in which the BBC operates, Ofcom will use a variety of tools including:

- Competition Assessments - of whether proposed changes to BBC public service activities, which may have a significant impact on competition and including new UK Public Services, are justified in light of the potential public value and impacts on fair and effective competition.
  - Competition Reviews - a review of an existing BBC public service activity (or part of an existing service) where there are reasonable grounds to believe it is having a significant adverse impact on fair and effective competition.
  - Distribution - Ofcom will consider specific competition concerns about the distribution of the BBC's UK Public Services, within the context of the BBC seeking to fulfil its Mission and Public Purposes.
- 2.40 Under the Agreement, Ofcom must also set requirements on the BBC to avoid the relationship between the Public Service and the commercial subsidiaries distorting the market or creating an unfair competitive advantage. These requirements will address competition concerns that could arise from this relationship. For example, there could be a concern that the Public Services will discriminate in favour of the commercial subsidiaries by providing access to goods and services supplied by the Public Services at below market prices.
- 2.41 Complaints processes will reflect the "BBC First" structure explained above for content standards, and we will explain elements where differences could arise.

## Section 3

# Ofcom's Regulatory Functions

## Development of the Operating Framework

3.1 Ofcom has been tasked with creating a new regulatory framework for the BBC, called "the Operating Framework". This will contain the provisions that Ofcom considers appropriate to secure the effective regulation of the BBC's activities set out in the Charter and Agreement.

3.2 Ofcom will do this by consulting on a series of procedures and measures which will cover the range of Ofcom's new responsibilities for the BBC across Performance, Content Standards and Competition. The Operating Framework will evolve over time as individual components are completed (see 3.3-3.11). The first set of component parts will cover the following<sup>9</sup>:

### Content Standards

3.3 We are currently consulting [[Link](#)] on new **rules for election and referendum periods, and rules for party political and referendum broadcasts (including proposed revisions to the Broadcasting Code rules for due accuracy and due impartiality)** which we will publish by late February/early March 2017.

3.4 We will be consulting shortly, and will have final versions in place by the effective date, on:

- **Amendments to Ofcom's Broadcasting Code**
- **A new complaints handling framework**

3.5 Ofcom plans to publish new procedures in advance of the effective date to inform consumers and other stakeholders **how Ofcom will consider and handle complaints about BBC online material.**

### Competition

3.6 We will be consulting shortly and plan to have final versions in place by the effective date, on:

- **How we assess competition concerns relating to changes to the BBC's public service activities**
- **How we assess competition concerns relating to ongoing public service activities**
- **How we assess the relationship between the BBC and its commercial subsidiaries**
- **How we protect fair and effective competition in relation to the BBC's distribution of its public services**

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<sup>9</sup> Note: this is non-exhaustive.

- **How we enforce our requirements to ensure fair and effective competition**

### **Performance**

3.7 In due course, we will be consulting on:

- **How we will set and administer the operating licence regime for the BBC's public services**

3.8 This will include the procedures for setting regulatory conditions in an operating licence and considerations we will have regard to in setting regulatory conditions. We will consult on these procedures and considerations in due course, and we will also consult on an operating licence in due course.

- **How we will set appropriate performance measures (further to those set by the BBC) and procedures**

3.9 Ofcom is able to set appropriate performance measures further to those set by the BBC. In the Operating Framework we will consult on how we would set performance measures to assess the performance of the BBC's public services against the Mission and the Public Purposes and the procedures to be followed.

3.10 The final statements in these areas will be key parts of the Operating Framework. The Operating Framework is likely to evolve over the course of the charter period.

3.11 The remainder of this document describes the component parts of our regulation in greater detail.

## **Approach to Performance**

3.12 A number of our functions under the Charter and Agreement are relatively interdependent and accordingly we have grouped them together. These functions relate to:

- (a) setting of an operating licence for UK Public Services;
- (b) setting any appropriate measures further to those set by the BBC ("Performance Measures");
- (c) preparing and publishing an Annual report;
- (d) carrying out and publishing Periodic reviews; and
- (e) carrying out and publish Ad hoc reviews.

### **Operating Licence**

3.13 Ofcom must set an operating licence<sup>10</sup> for UK Public Services which must contain regulatory conditions we consider appropriate for ensuring the BBC: (a) fulfils its Mission and promotes the Public Purposes; (b) secures the provision of distinctive

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<sup>10</sup> Ofcom may set one or more operating licences, however, for simplicity it is referred to in the singular throughout this document.

output and services; and (c) secures that audiences in Scotland, Wales, Northern Ireland and England are well served<sup>11</sup>. In particular, Ofcom must impose on the BBC the regulatory conditions set out in, and in accordance with, Schedule 2 of the Agreement (operating licence regulatory conditions). The conditions that we set in the licence will be enforceable regulatory requirements. Before setting an operating licence Ofcom must consult the BBC and any person we consider appropriate.

- 3.14 In the Operating Framework, Ofcom will explain how it will set and administer the regime and the procedures to be followed, including the procedures for setting regulatory conditions in an operating licence for the BBC's public services; and considerations we will have regard to in setting regulatory conditions<sup>12</sup>. Ofcom must consult on those procedures and considerations.

### **Performance Measures**

- 3.15 We may determine appropriate measures (further to those determined by the BBC) to assess the performance of the UK Public Services against the BBC's Mission and Public Purposes. In the Operating Framework, we would explain how we will set performance measures and the procedures to be followed. At least annually, Ofcom must publish these measures together with evidence about the BBC's performance against them.
- 3.16 These performance measures will build on the wide range of research and performance data Ofcom already routinely collects and publishes, to ensure that we have an appropriate evidence base with which to assess the BBC's delivery of its Mission and Public Purposes. Our initial thinking, on which we will be consulting, is that the performance measures will draw on:
- investment in original UK content;
  - the availability of the BBC's content and how accessible it is;
  - how many people consume the BBC's content, and how much content people consume;
  - audience research to understand public opinion on the BBC's performance and its impact on audiences; and,
  - any contextual factors relevant to assessing the BBC's performance.

### **Ofcom's assessment of the BBC's performance in the Annual Report**

- 3.17 Another way that Ofcom will assess the BBC's performance is through the preparation and publication of an Annual Report. This will report on how we have carried out our principal BBC functions across the whole of the UK and must include an assessment of the BBC's compliance with what the Charter and Agreement call "the specified requirements"<sup>13</sup>. These are essentially the requirements that Ofcom is responsible for enforcing (and therefore include the conditions in an operating licence).

### **Ofcom's assessment of the BBC's performance in Periodic Reviews**

- 3.18 In addition to the Annual Reports described above, Ofcom must also conduct at least two in-depth Periodic Reviews during the Charter period. These more substantial reviews will evaluate the extent to which the BBC is fulfilling its Mission and

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<sup>11</sup> Article 46(3) of the BBC Charter.

<sup>12</sup> Article 15(2) of the BBC Agreement.

<sup>13</sup> Clause 59 of the Agreement.

promoting each of the Public Purposes. They will also address any specific issues of concern identified by Ofcom, as well as any other areas central to the delivery of the BBC's Mission and Public Purposes.

### **Ofcom's assessment of the BBC's performance in Ad hoc Reviews**

- 3.19 Ofcom may carry out, where appropriate, additional reviews on an ad hoc basis to address any specific areas of concern we identify. Triggers for such work could include concerns over particular areas of delivery or the need to help build an evidence base ahead of a Periodic Review.

## **Content Standards**

### **Standards and Fairness Codes**

- 3.20 Under the new Charter, Ofcom must regulate the standards of relevant BBC UK Public Service content to ensure it meets the requirements of Ofcom's Standards and Fairness Codes.
- 3.21 Schedule 3 to the Agreement provides further detail. It requires that: BBC UK Public Broadcasting Services comply with the requirements of the Standards and Fairness Codes; and BBC UK Public On Demand Programme Services ("BBC ODPS") also comply with those requirements so far as Ofcom determines them relevant. These requirements will be set out in Ofcom's Broadcasting Code ("the Code") which Ofcom is revising so that it will apply in full to BBC UK Public Broadcasting Services and, as relevant, to BBC ODPS.
- 3.22 We are currently consulting on the proposed amendments to Section Five (Due Accuracy and Due Impartiality) and Section Six (Elections and Referendums) of the Code together with the party political and referendum broadcast rules [\[Link\]](#) and will consult on amendments to the remaining sections of the Code shortly.
- 3.23 Ofcom will not regulate standards for the BBC World Service. BBC commercial broadcast services, provided by BBC companies, are not UK Public Services and are already subject to Ofcom's content standards regulation under the terms of their Ofcom licences.

### **Consideration by Ofcom of BBC content standards complaints**

- 3.24 The Charter and Agreement requires that the BBC and Ofcom must set and publish procedures for the handling and resolution of complaints about the BBC's compliance with its obligations, including content standards. The BBC's procedures must provide that, with the exception of complaints relating to Fairness and/or Privacy<sup>14</sup>, a complaint must normally in the first instance be resolved by the BBC before a complainant can refer a complaint to Ofcom. This is known as the 'BBC First' approach.
- 3.25 Ofcom is required to set and publish procedures for the handling and resolution of relevant complaints about the BBC<sup>15</sup> which are referred to Ofcom in the following circumstances:

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<sup>14</sup> Ofcom has a statutory duty to adjudicate on Fairness and Privacy complaints.

<sup>15</sup> Ofcom will only consider complaints about those aspects of the BBC's activities that it regulates.

- If a complainant is not satisfied with the resolution of a complaint by the BBC;
  - If a complainant considers, following the resolution of a complaint by the BBC, that the imposition by Ofcom of a sanction, where available, may be appropriate;
  - If the BBC has failed to resolve a complaint within the time period set in its procedures.
- 3.26 Ofcom may, in exceptional circumstances, intervene at an earlier stage to handle and resolve a relevant complaint which has not been resolved by the BBC. Ofcom may also carry out investigations on its own initiative and must set procedures for carrying out such investigations.
- 3.27 Ofcom will consult on the procedures it will normally follow in relation to the BBC's UK Public Broadcasting Services and BBC ODPS when:
- considering and investigating content standards issues under the Code;
  - considering and adjudicating Fairness and Privacy complaints under the Code; and
  - considering the imposition of sanctions for breaches of the Code.
- 3.28 Ofcom's procedures will ensure that the complaints system is transparent and accessible. Complaints will be resolved effectively and in a timely fashion, and handled in a proportionate manner.

### **Procedures for the consideration of sanctions for breaches of content standards on BBC UK Public Broadcasting Services and BBC ODPS**

- 3.29 As noted above, the BBC's UK Public Broadcasting Services and BBC ODPS will be required to comply with the Broadcasting Code; in both cases, compliance is enforceable by Ofcom.
- 3.30 Ofcom will set procedures that it will normally follow when considering the imposition of a sanction against the BBC in relation to a breach of content standards (including in relation to Fairness and Privacy) on such services.
- 3.31 The procedures will set out the circumstances in which a case will normally be considered for sanction and the types of sanction we might impose. Before setting these procedures, Ofcom will consult the BBC and the public.

### **Online material**

- 3.32 Ofcom will consider and give an opinion, including such recommendations as Ofcom considers appropriate, on whether the BBC has observed relevant editorial guidelines on the content of online material in the UK Public Services.
- 3.33 Ofcom and the BBC will enter into an arrangement to make provision for matters including the relevant editorial guidelines and meaning of online material, and will set and publish procedures for the handling of complaints.



## Publication of BBC complaints findings

- 3.34 Ofcom's Decisions on all BBC content standards complaints it considers will be published in its Broadcast and On Demand Bulletin, fortnightly on its website: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>

## Other broadcast related requirements

### Set and enforce Party Political and Referendum Broadcast requirements

- 3.35 Ofcom must impose on the BBC the requirements that Ofcom considers appropriate for requiring the inclusion, in such of the UK Public Services as Ofcom considers appropriate, of party political broadcasts ("PPBs") (including party election broadcasts ("PEBs")) and referendum campaign broadcasts ("RCBs"), and for requiring the BBC to observe rules with respect to such broadcasts.
- 3.36 Ofcom imposes such requirements on certain licensed broadcasters under section 333 of the Communications Act 2003. Ofcom's Rules on Party Political and Referendum Broadcasts make provision regarding the allocation, length and frequency of PEBs, PPBs and RCBs and identify the broadcasters required to transmit them. Ofcom is consulting on amendments to the Rules, including to remove the concept of 'larger parties' and extend them to BBC services.
- 3.37 [Link](#) to consultation.

## Competition

### Protecting fair and effective competition

- 3.38 The Charter and Agreement place a range of duties on the BBC and Ofcom to ensure that fair and effective competition is protected.
- 3.39 In addition, the Charter identifies certain specific topics which Ofcom must address within the Operating Framework to ensure fair and effective competition is protected. These are:
- Material changes to the UK Public Services and non-service activities;
  - The impact on fair and effective competition of ongoing UK Public Services, non-service activities and trading activities; and
  - Agreements with and conduct affecting third parties in relation to UK Public Services, non-service activities and trading activities.
- 3.40 Ofcom must also set requirements to ensure that BBC commercial activities do not distort the market or gain an unfair competitive advantage due to their relationship with the public services functions of the BBC.
- 3.41 Finally, the Agreement also places an obligation on Ofcom to include within the Operating Framework any other requirements that we consider necessary to impose on the BBC, in order to protect fair and effective competition in relation to UK Public Services. This can include requirements relating to the distribution of the UK Public Services. Over the course of the Charter period, Ofcom may decide it is appropriate to set requirements in additional areas.

- 3.42 An outline of Ofcom's role in each of these areas is set out below.
- 3.43 We be consulting shortly on how we enforce the competition provisions.

## **Changes to the UK Public Services and non-service activities**

### **Assessment of BBC proposals for material changes to public service activities**

- 3.44 The Charter and Agreement give the BBC Board responsibility for considering the competitive impact of certain planned changes, either to the BBC's UK Public Services or to non-service activities<sup>16</sup>.
- 3.45 The BBC will publish its own policy as to how the BBC Board will meet its separate but related obligations to ensure competitive impact is properly taken into account in making changes to public service activities. The Agreement provides that:
- 3.45.1 The BBC carries out an assessment of whether or not a proposed change is material in that it *may* have a significant adverse impact on fair and effective competition. If it is material, the BBC carries out a process known as a public interest test. As part of that test, the BBC must satisfy itself that a proposal will generate sufficient public value through its contribution to the Mission and Public Purposes in order to justify any adverse impact on competition which it is unable, via reasonable steps, to eliminate.
- 3.45.2 If the BBC is satisfied that its public interest test has been met and wishes to proceed with the proposal, it must publish its decision. Ofcom will then carry out an initial materiality assessment, and if necessary conduct either a short form or fuller competition assessment. The BBC cannot implement its proposed change until this process is complete.
- 3.46 Ofcom will be consulting shortly on proposed guidance as to how it intends to assess material BBC proposals.

### **Review of ongoing impact of public service activities**

- 3.47 The Charter and Agreement give Ofcom the ability to carry out a competition review of the ongoing impact of a UK Public Service or non-service activity, where there are reasonable grounds to believe that a BBC public service activity is having a significant adverse impact on fair and effective competition.
- 3.48 Competition reviews are a regulatory tool intended to complement competition assessments. They allow Ofcom to respond, for example, to negative competitive impacts resulting from a series of small incremental changes to BBC public service activities, or other changes in the market which have a bearing on the ongoing impact of such activities, without the trigger of a single material change which would be subject to the competition assessment process. In carrying out a competition review, Ofcom must take into account the level of public value generated by the service in question relative to the scale of any adverse impact on competition which Ofcom has identified.
- 3.49 When Ofcom decides to carry out a competition review, we will set out over what time period we intend to complete our review. The outcome of a competition review

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<sup>16</sup> i.e. services that support or enable the provision of the BBC's public services

will be a determination that the BBC may continue with the activity that Ofcom has reviewed, or that it may do so subject to appropriate modifications or conditions.

- 3.50 Ofcom will be consulting shortly on proposed guidance as to how it intends to carry out competition reviews.

### **Commercial activities undertaken by the BBC**

3.51 Under the Charter and Agreement, the BBC may only carry out commercial activities through commercial subsidiaries. The BBC's current commercial activities centre around BBC Worldwide and BBC Global News, but these may soon be joined by BBC Studios (subject to regulatory approval by the BBC Trust). The role of these subsidiaries must fit with the BBC's Mission and Public Purposes, but these companies are not funded by the licence fee and they must therefore seek to generate a profit.

3.52 The BBC Board will be responsible for setting the strategy and governance arrangements for the BBC's commercial activities. It must ensure, among other things, both that subsidiaries are "commercially efficient", and that they do not gain an unfair competitive advantage as a result of their relationship with the public service functions of the BBC. The Board must also assess whether any proposed material changes to a commercial activity are compatible with these criteria.

3.53 Ofcom's role is focussed on the risk of market distortion resulting from the relationship between the BBC and its commercial subsidiaries. We must set requirements to address this concern, which may include:

- appropriate separation requirements, including that commercial subsidiaries operate under normal market principles and have arms-length relationships with the BBC UK public services; and
- appropriate transparency requirements, including publication or provision to Ofcom of necessary information to demonstrate how the BBC's commercial subsidiaries meet the separation rules.

3.54 We are also required to consider proposals from the BBC to make material changes to its commercial services. Where Ofcom considers that a change is material, we will conduct an assessment which will determine that the BBC may carry out the change, that it may not, or that it may do so subject to conditions.

3.55 Ofcom will be consulting shortly on proposed requirements and guidance as to how we intend to carry out our functions in relation to commercial subsidiaries. Ofcom anticipates that the expected launch of BBC Studios will be an important aspect of its work in this area.

### **Trading activities undertaken by the BBC**

3.56 Under the Agreement, the BBC may carry out 'trading activities', which are commercially oriented activities involving the use of assets by the UK Public Services. Examples of trading activities include: the sale of excess capacity on the digital multiplex the BBC uses to transmit its services to Freeview homes; disposal or sub-licencing of rights acquired as part of a larger package but not required by the Public Services; trading between the UK Public Services and the BBC's commercial subsidiaries; and securing up-front investment in BBC content from third parties.

- 3.57 The BBC is required to comply with any requirements included within the Operating Framework to protect fair and effective competition. Ofcom will set out in due course any additional steps we consider are necessary to regulate trading activities and protect fair and effective competition, but are not planning to consult on this yet.

## **Additional requirements to protect fair and effective competition**

### **Distribution**

- 3.58 The BBC is required to do all that is reasonably practicable to make its public services widely available and to distribute them in a range of convenient and cost effective ways. As part of its obligations, it must develop and publish its strategy and policy for doing so that only places reasonable limits and conditions on the distribution of its output and services to third parties and ensures that it acts on a fair, reasonable and non-discriminatory basis.
- 3.59 Ofcom's role in relation to distribution is to set requirements to protect fair and effective competition. We will step in where it is, or it may be, the case that the BBC has failed to follow our requirements. We will act only where it is necessary to do so and, in doing so, we will take into account the object of the BBC to fulfil its Mission and Public Purposes.
- 3.60 We will be consulting shortly on our approach.

## **General Provisions**

### **How Ofcom will exercise enforcement**

- 3.61 Ofcom will enforce compliance with various provisions contained in: (a) the BBC Charter and Agreement; (b) the Operating Framework; and (c) the Operating Licence.
- 3.62 Under the Charter, if Ofcom is satisfied that the BBC has failed to comply with a specified requirement, Ofcom may:
- (a) direct the BBC, or accept undertakings from the BBC, to take such steps as Ofcom considers will:
    - i. remedy the failure to comply;
    - ii. ensure that the BBC complies with its requirements properly in future,
  - (b) serve on the BBC a notice requiring it to pay them, within a specified period, a specified financial penalty.
- 3.63 We will be setting out, and consulting on, how we will exercise our enforcement powers in due course.

## **Next Steps**

- 3.64 Between now and the effective date, Ofcom will be working hard to ensure that we have the right people and procedures in place so that we can deliver our new responsibilities effectively and efficiently.