
Introduction to Ofcom's Operating Framework for the BBC

2. Ofcom and the BBC

Introduction

- 2.1 During 2016, the Government ran a review process for setting a new Charter for the BBC. An independent review¹ to look at how the BBC is governed and regulated was commissioned by the Government and, in March 2016, concluded that regulation of the BBC should pass to Ofcom. The Government confirmed its decision that Ofcom should regulate the BBC in a White paper published in May 2016.²
- 2.2 A new BBC Royal Charter³ for the period 2017-2027 was published by the Government on 15 December 2016, together with an accompanying Agreement between the BBC and the Secretary of State for Culture, Media and Sport. The Charter and the Agreement together set out how the BBC will operate in the new Charter period.
- 2.3 Following the publication of the Charter and Agreement, we consulted on our new responsibilities in relation to upholding Content Standards in BBC programming, how we hold the BBC to account for the delivery of its mission and public purposes and ensuring that the BBC doesn't harm fair and effective competition in the areas in which it operates.
- 2.4 The remainder of this section describes our role, and that of the BBC, in each of these areas. Section 3 sets out the individual components of the Operating Framework, and related documents such as Ofcom's Broadcasting Code and the Operating Licence.

Content Standards

- 2.5 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 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.
- 2.6 Ofcom must secure content standards for the BBC so that the BBC's viewers and listeners are appropriately protected. Under the Charter and Agreement, Ofcom has regulatory responsibility for all areas of BBC content standards including, for the first time, for the accuracy and impartiality of news, and the impartiality of any programme covering matters of political or industrial controversy and issues relating to current public policy.
- 2.7 Ofcom holds 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

¹ <https://www.gov.uk/government/publications/a-review-of-the-governance-and-regulation-of-the-bbc>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524863/DCMS_A_BBC_for_the_future_linked_rev1.pdf

³ <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

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 The Operating Framework covers the range of Ofcom's new responsibilities for the BBC across Content Standards, performance and Competition, and is made up of a series of separate documents.
- 3.3 Ofcom has consulted, or is consulting, individually on the constituent parts of the Operating Framework, and related documents, including a series of procedures and measures which will cover the range of Ofcom's new responsibilities for the BBC across Content Standards, Performance, and Competition.
- 3.4 The Operating Framework will evolve over time as individual components are completed. The first published set of finalised component parts, including related documents, cover the following.

Content Standards

- 3.5 As of 3 April 2017, Ofcom regulates the content standards of BBC broadcasting and on demand programme services against the rules in the **Ofcom Broadcasting Code**. The updated Code¹¹ can be found here:
https://www.ofcom.org.uk/data/assets/pdf_file/0031/99409/broadcasting-code.pdf
- 3.6 Ofcom imposes requirements on the BBC in relation to party political and referendum broadcasts in its **rules for party political and referendum broadcasts**. The updated rules can be found here:
https://www.ofcom.org.uk/data/assets/pdf_file/0035/99188/pprb-rules-march-2017.pdf
- 3.7 As of 3 April 2017, Ofcom handles **content standards complaints, investigations and sanctions for BBC programmes** according to our published procedures. The procedures can be found here:
https://www.ofcom.org.uk/data/assets/pdf_file/0030/99417/procedures-bbc.pdf

¹¹ Revised Broadcasting Code published on 29th March 2017

3.8 Ofcom **considers and handles complaints about BBC online material** under an arrangement between Ofcom and the BBC.¹² The procedures for how we handle online material complaints can be found here:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/101893/bbc-online-procedures.pdf

Competition

3.9 Ofcom has published final requirements, procedures and guidance on:

- **How we assess competition concerns relating to changes to the BBC's public service activities.** The guidance can be found here:
https://www.ofcom.org.uk/_data/assets/pdf_file/0028/99415/bbc-public-service-activities-proposed.pdf
- **How we assess competition concerns relating to ongoing public service activities.** The guidance can be found here:
https://www.ofcom.org.uk/_data/assets/pdf_file/0027/99414/bbc-public-service-activities.pdf
- **How we assess the relationship between the BBC and its commercial subsidiaries and how the BBC carries out its trading activities.** The guidance can be found here:
https://www.ofcom.org.uk/_data/assets/pdf_file/0025/99412/bbc-commercial.pdf
- **How we protect fair and effective competition in relation to the BBC's distribution of its public services.** The guidance can be found here:
https://www.ofcom.org.uk/_data/assets/pdf_file/0026/99413/bbc-distribtion.pdf
- **How we will enforce BBC competition requirements.** Our procedures can be found here:
https://www.ofcom.org.uk/_data/assets/pdf_file/0010/102520/Procedures-for-enforcement-of-BBC-competition-requirements.pdf

Performance

3.10 Ofcom has published the first BBC Operating Licence and a performance measurement framework together with the processes for setting and amending these. They are as follows:

- **The BBC's Operating Licence** can be found here:
https://www.ofcom.org.uk/_data/assets/pdf_file/0017/107072/bbc-operating-licence.pdf
- **Procedures for setting and amending the Operating Licence** can be found here:
https://www.ofcom.org.uk/_data/assets/pdf_file/0025/107089/procedures-bbc-operating-licence.pdf
- **Procedures for setting and amending the performance measures** can be found here:
https://www.ofcom.org.uk/_resources/documents/consultations/ofcom-and-the-bbc/operating-framework-setting-amending-perf-measures.pdf

¹² https://www.ofcom.org.uk/_data/assets/pdf_file/0021/101892/bbc-online-arrangement.pdf

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

- 3.11 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 and must include an assessment of the BBC's compliance with what the Charter and Agreement call "the specified requirements"¹³. 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

- 3.12 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 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. The performance measures and annual research reports will inform these more extensive, periodic reviews.

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

- 3.13 Ofcom must 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

- 3.14 Under the 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.
- 3.15 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 are set out in Ofcom's Broadcasting Code ("the Code") which has been revised so that it applies in full to BBC UK Public Broadcasting Services and, as relevant, to BBC ODPS.

¹³ Clause 59 of the Agreement.

- 3.16 Ofcom does not regulate standards for the BBC World Service. BBC commercial broadcast services, provided by BBC companies, are not UK Public Services but are subject to Ofcom's content standards regulation under the terms of their Ofcom licences.

Consideration by Ofcom of BBC content standards complaints

- 3.17 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 Privacy¹⁴, 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.
- 3.18 Ofcom has set and published procedures for the handling and resolution of relevant complaints about the BBC¹⁵ which are referred to Ofcom in the following circumstances:
- 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.
- 3.19 These published procedures set out the process Ofcom 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
- 3.20 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 in the absence of any complaint. The procedures for carrying out such investigations are set out in the above documents.
- 3.21 Ofcom's published procedures ensure that its 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

- 3.22 As noted above, the BBC's UK Public Broadcasting Services and BBC ODPS are required to comply with the Broadcasting Code; in both cases, compliance is enforceable by Ofcom.
- 3.23 Ofcom has 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 breaches of rules for Fairness and Privacy) on such services.

¹⁴ Ofcom has a statutory duty to adjudicate on Fairness and Privacy complaints.

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

- 3.24 The procedures set out the circumstances in which a case will normally be considered for sanction and the types of sanction we might impose.

Online material

- 3.25 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.
- 3.26 Ofcom and the BBC are required to enter into an arrangement to make provision for matters including the relevant editorial guidelines and meaning of online material¹⁶. Ofcom has set and published procedures for how it will handle complaints about BBC online material.

Publication of BBC complaints findings

- 3.27 Ofcom's Decisions on all BBC content standards complaints it considers are 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

- 3.28 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.
- 3.29 Ofcom imposes such requirements on certain licensed broadcasters under section 333 of the Communications Act 2003. Ofcom's Rules on Party Political and Referendum Broadcasts¹⁷ make provision regarding the allocation, length and frequency of PEBs, PPBs and RCBs and identify the broadcasters required to transmit them. Ofcom has extended the rules to cover BBC services.

Competition

Protecting fair and effective competition

- 3.30 The Charter and Agreement place a range of duties on the BBC and Ofcom to protect fair and effective competition.

¹⁶ https://www.ofcom.org.uk/__data/assets/pdf_file/0021/101892/bbc-online-arrangement.pdf

¹⁷ https://www.ofcom.org.uk/__data/assets/pdf_file/0035/99188/pprb-rules-march-2017.pdf

- 3.31 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.
- 3.32 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.
- 3.33 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.
- 3.34 An outline of Ofcom's role in each of these areas is set out below.

Changes to the UK Public Services and non-service activities

Assessment of BBC proposals for material changes to public service activities

- 3.35 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 activities¹⁸.
- 3.36 The BBC has published its own policy¹⁹ 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:
- i) 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.
 - ii) 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

¹⁸ i.e. services that support or enable the provision of the BBC's public services

¹⁹

http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/policy_material_changes.pdf

an initial materiality assessment, and if necessary conduct either a short form or fuller BBC competition assessment. The BBC cannot implement its proposed change until this process is complete.

3.37 Ofcom has published guidance as to how it intends to assess material BBC proposals.

https://www.ofcom.org.uk/_data/assets/pdf_file/0028/99415/bbc-public-service-activities-proposed.pdf

Review of ongoing impact of public service activities

3.38 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.

3.39 BBC Competition reviews are a regulatory tool intended to complement BBC 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 BBC 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.

3.40 When Ofcom decides to carry out a BBC competition review, we will set out over what time period we intend to complete our review. The outcome of a BBC competition review 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.

3.41 Ofcom has published guidance as to how it intends to carry out BBC competition reviews.

https://www.ofcom.org.uk/_data/assets/pdf_file/0027/99414/bbc-public-service-activities.pdf

Commercial activities undertaken by the BBC

3.42 Under the Charter and Agreement, the BBC may only carry out commercial activities through commercial subsidiaries. The BBC's current commercial activities include BBC Worldwide, BBC Studioworks, BBC Global News and BBC Studios. The activities 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.

3.43 The BBC Board is 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.

- 3.44 Under the Agreement, the BBC may carry out 'trading activities', which involve the use of assets by the UK Public Service. These activities are commercial in nature and are not designed to make a profit, but may do so incidentally. 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.
- 3.45 Ofcom's role is focussed on the risk of market distortion resulting from either the relationship between the BBC and its commercial subsidiaries or the way it carries out its trading activities. 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.
- 3.46 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.
- 3.47 Ofcom has published requirements and guidance as to how we intend to carry out our functions in relation to its commercial and trading activities.

https://www.ofcom.org.uk/_data/assets/pdf_file/0025/99412/bbc-commercial.pdf

Additional requirements to protect fair and effective competition

Distribution

- 3.48 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, the BBC must develop and publish its strategy and policy for doing so. It may only place reasonable limits and conditions on the distribution of its output and services to third parties and ensure that it acts on a fair, reasonable and non-discriminatory basis.
- 3.49 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.
- 3.50 Ofcom has published requirements and guidance as to how we intend to carry out our functions in relation to the distribution of BBC public services.

https://www.ofcom.org.uk/_data/assets/pdf_file/0026/99413/bbc-distribution.pdf

General Provisions

BBC complaints handling

- 3.51 In accordance with clause 56 of the Agreement, and after consultation with the BBC, Ofcom has determined:
- the period for which the BBC must retain records of its handling of relevant complaints;
 - the form in and intervals at which the BBC must report to Ofcom in relation to relevant complaints it has received which are editorial complaints; and
 - the form in and intervals at which the BBC must publish information about the operation and effectiveness of its procedures in relation to relevant complaints which are editorial complaints.
- 3.52 A copy of Ofcom's determinations can be found here:
https://www.ofcom.org.uk/_data/assets/pdf_file/0025/106855/bbc-complaints-handling-determination.pdf
- 3.53 Ofcom will set out the further requirements for complaints relating to BBC performance and competition issues in due course.

How Ofcom will exercise enforcement

- 3.54 Ofcom will enforce compliance with various provisions contained in: (a) the BBC Charter and Agreement; (b) the Operating Framework; and (c) the Operating Licence.
- 3.55 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.
- 3.56 As set out above, we have produced specific procedures for handling content standards complaints, investigations and sanctions for BBC programmes and for the enforcement of BBC competition requirements.²⁰

²⁰ Our procedures setting out how we will enforce BBC competition requirements can be found here: https://www.ofcom.org.uk/_data/assets/pdf_file/0010/102520/Procedures-for-enforcement-of-BBC-competition-requirements.pdf.

- 3.57 However, the Agreement also places requirements on the BBC, in addition to competition requirements and content standards, which are enforceable by Ofcom. These include compliance by the BBC with requirements in the Operating Framework and other matters specified in the Agreement, such as the requirement to retain and provide recordings to Ofcom.
- 3.58 We have published the procedures we will normally follow when investigating potential breaches by the BBC of requirements set out in the Agreement, other than competition requirements and content standards.

https://www.ofcom.org.uk/data/assets/pdf_file/0024/99420/bbc-agreement.pdf