News-watch

News-watch response to Ofcom's consultation on the BBC Online Material Code

Section Five: due impartiality and due accuracy, and the complaints procedures

Executive summary

Ofcom's proposed BBC Online Material Code will place BBC websites, apps and BBC-controlled accounts on third-party platforms under enforceable content standards for the first time. News-watch supports that extension of independent regulation. The proposed Code nevertheless carries into online regulation the central defect of the existing broadcasting regime: it defines the unit of impartiality as an individual item or a series which the BBC has itself made editorially linked. It therefore supplies no route by which a properly evidenced pattern across separately commissioned but thematically related output can be adjudicated.

That omission matters because partiality often arises cumulatively. It is created through repeated decisions about which subjects to pursue, which contributors to invite, which claims to foreground, which parts of a programme to extract and promote, and which perspectives to omit or marginalise. Each item may be defensible when detached from the others. The direction of the coverage becomes visible only when the items are examined together. A complaints system which separates the evidence into individual items removes the pattern from the inquiry and prevents the central allegation from being decided.

The defect is established by the operation of the present system. News-watch's study of BBC and Ofcom complaints handling during 2017–2025 required more than 1,000 hours of original research. It recorded 2,275,387 complaints to the BBC, while only 4,944 reached the Executive Complaints Unit. The ECU upheld or partly upheld 38 complaints involving impartiality. Ofcom recorded four breaches by the BBC across the period, only one of which concerned due impartiality. Ofcom's own research found satisfaction with BBC complaints handling at about 18 per cent and found that many people with cause to complain did not do so because they believed it would make no difference or would not be taken seriously. These figures describe a system with enormous throughput, an exceptionally narrow route to external investigation and no procedure for the most demanding form of impartiality complaint.

Two judicial review proceedings brought by David Keighley, as principal of News-watch, define the boundaries of the problem. In 2019 the High Court held that the BBC could lawfully satisfy its Charter obligation to maintain a framework for assessing performance against its first Public Purpose through measures including reach and audience-perception polling. The court did not require the BBC to conduct systematic analysis of its output and did not adjudicate the merits of News-watch's methodology or findings. In 2025 the High Court upheld Ofcom's construction of the Broadcasting Code: due impartiality is enforceable at the level of a programme in context or, where applicable, an editorially linked series, not across a service as a whole. Ofcom and the BBC resisted the wider construction advanced by News-watch. The court decided the reach of the existing law; it did not examine whether News-watch's evidence established cumulative partiality.

The immediate purpose of this submission is to prevent that limitation from being reproduced in the BBC Online Material Code. News-watch asks Ofcom to use the present consultation to define a workable route for cumulative evidence. If Ofcom considers that the governing legislation or Framework Agreement prevents it from doing so, its final statement should identify the precise constraint and

recommend the amendment required. The new regime should not be introduced without a clear answer to that question.

1. The purpose of this response

News-watch has monitored BBC news and current-affairs output since 1999 through systematic recording, transcription, quantitative measurement and qualitative analysis. It has pursued complaints through the BBC, referred eligible matters to Ofcom, studied the complaints system across the present Charter period and tested the legal boundaries of BBC and Ofcom accountability in the High Court. This response draws on that experience to address Questions 13–17, 22, 23 and 27 of the consultation.

Ofcom proposes to mirror the Broadcasting Code's due-impartiality rules and translate 'programme' and 'series of programmes taken as a whole' into 'online item' and 'series of editorially linked online items taken as a whole'. That translation leaves the regulatory unit unchanged. The BBC will be able to rely on material it has linked as a series when showing that impartiality was preserved. A complainant who identifies the same editorial tendency across material which the BBC has not linked will remain unable to have the pattern assessed as a pattern. The BBC's packaging decisions will therefore continue to determine the admissible field of regulatory scrutiny.

News-watch therefore proposes a tightly bounded addition to Ofcom's scheme: assessment of a defined body of related output submitted by a complainant as evidence of cumulative partiality. The gateway should be demanding. It should require a defined issue and period, an identified corpus or representative sample, a transparent selection method and a reasoned account of the alleged imbalance. Once those conditions are met, Ofcom should be able to examine the evidence together rather than dismantling the complaint into isolated items.

2. What the present complaints record establishes

The scale and narrowing of complaints

News-watch's reconstruction of BBC and Ofcom complaints data for 2017–2025 found 2,275,387 complaints at the BBC's entry point and 4,944 cases reaching the ECU, approximately one in every 460 complaints. Within the ECU record, News-watch identified 38 findings in which an impartiality complaint was upheld or partly upheld. Ofcom recorded four BBC breaches during the period, only one concerning due impartiality. The precise categories must remain visible: the total comprises complaints of every kind; the ECU figure records cases reaching the final internal adjudicatory stage; the 38 are impartiality findings; and the Ofcom figures are formal Broadcasting Code breaches.

Measure	Recorded total	Meaning
Complaints received by the BBC	2,275,387	All complaint subjects recorded during 2017–2025.
Cases reaching the ECU	4,944	Cases reaching the BBC's final internal adjudicatory stage.
ECU impartiality findings	38	Impartiality complaints upheld or partly upheld.
Ofcom BBC breaches	4	Formal Broadcasting Code breaches; one concerned due impartiality.

The figures do not constitute proof that every rejected complaint was valid. They establish the need to test whether the machinery is capable of recognising the forms of failure alleged. Ofcom's own 2022 research intensifies that question: only about 18 per cent of complainants were satisfied with the

handling of their complaint; around two-thirds of adults who had cause to complain did not do so; 42 per cent of that group believed complaining would make no difference and 29 per cent believed they would not be taken seriously. A statutory regulator should regard those findings as evidence of a serious legitimacy problem.

How the pattern disappears

A cumulative complaint alleges that a repeated set of editorial choices has produced a sustained direction across coverage. The present process converts that allegation into a collection of item-level questions. An interview is defended because it need not contain every counterargument. A report is defended because other views might appear elsewhere. A programme is defended by reference to its immediate context. When the complainant identifies the recurrence across output, the wider corpus is excluded because it is not an editorially linked series. The individual item is justified by the possibility of balance elsewhere, while the evidence about what appeared elsewhere is denied a forum.

The limitation is especially serious because the BBC itself commissions thematic reviews across substantial bodies of output when it chooses to investigate an editorial field. It therefore recognises that longitudinal analysis can reveal matters which item-level adjudication cannot. Complainants are denied access to the same evidential scale. The asymmetry allows the BBC to define the subject, corpus, methodology and reviewer when cumulative scrutiny occurs, while excluding externally assembled cumulative evidence from the complaints route.

The problem demonstrated in BBC online output

The problem is not hypothetical and did not begin with social-media distribution. News-watch and its predecessor, Minotaur Media Tracking, have examined BBC-selected and repackaged bodies of output for more than two decades. The studies supplied with this response show several distinct ways in which online selection can create an editorial effect that is not captured by examining only the source programme.

In 2005, Minotaur examined 54 editions of the Today programme's new 8.10 interview podcast over nine weeks. The study found that extracting the interview from the complete programme could remove balancing contributions broadcast elsewhere that morning. The podcast was therefore not a neutral technical copy: the act of selection created a new, self-contained editorial package. That early example bears directly on Ofcom's proposed definition of an online item. An extract must be assessed as audiences encounter it online, not presumed to inherit the balance of a longer source programme which many of those users will never hear.

The BBC's post-referendum Brexit Collection illustrates a second problem: curation across a BBC-created online collection. News-watch transcribed and analysed all 31 programmes and features placed in the collection between 11 July and 23 August 2016, amounting to eleven and a half hours. Its analysis classified 23 per cent of contributors as supporting Leave or an anti-EU position, 58 per cent as supporting Remain or a pro-EU position, and 19 per cent as neutral or factual; it also found no programme which explored the benefits of leaving the EU. Whatever view is taken of those conclusions, the relevant editorial act was not confined to the original broadcasts. The BBC selected, grouped, labelled and presented the material as a collection after the referendum. The composition of that online collection was itself capable of conveying a cumulative editorial message.

BBC Ideas provides the clearest large-scale example. News-watch viewed, logged and transcribed the complete catalogue of 599 short films available at 11 January 2021: 37 hours 13 minutes of material and approximately 371,000 transcribed words. It classified 345 films as agenda-driven; of these, 320 were assessed as advancing a liberal-left perspective, while 10 were clearly conservatively themed and 15 contained incidental reference to conservative ideas. The associated complaint stated expressly that it was not about a particular programme but about the overall content of a continuing, BBC-curated

collection. That is exactly the form of allegation for which an item-only process has no adequate vocabulary. The scale and transparency of the corpus made the complaint more methodologically testable, not less; yet its cumulative character placed it outside the ordinary editorial-complaint form.

These studies concern different periods, subjects and forms of output. Their relevance here does not depend upon Ofcom accepting every News-watch conclusion. Together they establish that the regulatory problem has several observable forms: a selected extract may lose the balance present in its source programme; a BBC-curated collection may acquire a direction through inclusion and omission; and a large continuing catalogue may reveal a pattern that no individual item can establish. A Code confined to single items and BBC-defined linked series will be unable to decide the second and third forms unless the BBC has itself packaged the evidence in precisely the way the complainant needs.

3. The legal background relevant to this consultation

R (Keighley) v BBC [2019] EWHC 3331 (Admin)

The 2019 renewed application for permission concerned Article 20(3)(d) of the BBC Charter. That provision required the BBC Board to put in place a framework to assess the BBC's performance in fulfilling its Mission and promoting its Public Purposes. News-watch argued that the first Public Purpose – duly accurate and impartial news and current affairs – required a method capable of assessing the BBC's output, rather than relying primarily on audience perceptions of impartiality.

The BBC opposed the application. It argued that the Charter prescribed no particular framework or performance metric and that its existing measures supplied a complete answer. Mr Justice Supperstone accepted that submission. He held that the BBC had a wide margin of discretion and that reach, impartiality, trust and accuracy scores, platform perceptions and household survey evidence constituted performance measures for Charter purposes. He also held that the claim was out of time.

The judgment did not decide whether BBC coverage of the EU and Brexit was impartial. The plaintiff had not asked the court to endorse News-watch's conclusion. The judge expressly stated that it was not for the court to assess the comparative merits of the BBC and News-watch methodologies. The legal result was that the Charter did not compel the BBC to use systematic content monitoring as its measure of impartiality performance.

Ofcom's position formed part of the institutional case against the application. Shortly before the hearing, Ofcom had declined to investigate a collective complaint based on News-watch reports, saying that it raised no potentially substantive issue under the Code. The BBC relied on that decision, and the court treated Ofcom's approach as consistent with the BBC's. The formal defendant in 2019 was the BBC; the substantive positions of the BBC and Ofcom nevertheless converged in resisting the proposition that News-watch's cumulative analysis required independent examination.

R (Keighley) v Office of Communications [2025] EWHC 416 (Admin)

The 2025 proceedings addressed Ofcom's enforcement jurisdiction directly. They challenged Ofcom's refusal of 23 March 2022 to proceed with three linked complaints submitted on 7 July 2020, 19 October 2020 and 10 February 2021. Ofcom had concluded that Section Five of the Broadcasting Code applied only at the level of an individual broadcast or an editorially linked series. It had also decided that the complaints would not pass its filtering test even if the wider construction were correct.

The plaintiff argued that due impartiality should also be capable of measurement across the programmes within a service as a whole. Ofcom and the BBC opposed that construction. Mr Justice Fordham recorded their shared position explicitly: a wider service-level approach was not a measure of lack of due impartiality under the Code. The court upheld that construction. It also upheld as reasonable Ofcom's alternative conclusion under the filtering test.

The judgment therefore establishes the boundary of Ofcom's present enforcement power. A broadcaster can breach the Code through an individual programme viewed in context or through a relevant linked series. A complaint which seeks to establish partiality only through a wider service-level corpus falls outside that jurisdiction. The court did not adjudicate the impartiality of the corpus assembled by News-watch and did not rule that cumulative analysis was incapable of revealing a genuine editorial failure. It ruled that the existing Code did not make that failure justiciable through Ofcom's content-standards process.

The combined effect

The cases concern different duties and must be kept distinct. Their relevance to this consultation is practical. The 2019 judgment confirms that the BBC's Charter performance framework need not provide systematic content measurement. The 2025 judgment confirms that the present Broadcasting Code does not permit Ofcom to determine a complaint whose alleged breach exists only across a wider body of unlinked programmes. Neither proceeding decided the evidential merits of News-watch's analysis.

Ofcom is now drafting a new Code for a different medium under an updated regulatory framework. It should decide expressly whether the online scheme will contain a route for cumulative evidence. Silence will carry the broadcasting limitation into the online regime by default. If Ofcom concludes that it has no legal power to create the proposed route, that conclusion should be stated clearly in the final consultation response so that the point can be addressed through the Framework Agreement, Charter Review or legislation.

4. Why the online environment makes reform more urgent

Online journalism intensifies cumulative editorial power. The BBC chooses subjects, contributors, headlines, standfirsts, thumbnails, clips, push notifications, links, home-page placement and posts from BBC-controlled social-media accounts. It decides which passage from a long interview becomes a short video and which part remains inside the complete programme. It can renew the prominence of old material and circulate the same framing across several platforms. These choices determine what audiences encounter and with what frequency.

A clip extracted from an impartial programme can create a distinct editorial effect. The words may be quoted accurately while the selection omits qualification, challenge or countervailing argument. A later headline, caption or thumbnail can change emphasis again. Each act of selection and republication is an editorial decision and must be assessable as part of the online item. Where the same perspective is repeatedly selected for promotion, Ofcom must be able to assess the pattern, including data held by the BBC about reach, placement, referrals, plays and recirculation.

Ofcom's proposal recognises structure, layout, prominence, format and the way material is encountered as relevant to online impartiality. That recognition is valuable. It cannot operate fully while the admissible evidence remains confined to one item or a set which the BBC has deliberately linked. Prominence and repetition are cumulative phenomena; the Code must provide a cumulative unit of assessment.

5. Responses to the consultation questions

Questions 13 and 14: Section Five and the "online item"

News-watch supports enforceable due-accuracy and due-impartiality rules for BBC online material. It does not support the proposed Section Five in its present form because replacing 'programme' with 'online item' reproduces the existing jurisdictional boundary. The definition of an online item should encompass the full presentation encountered by the user, including headline, standfirst, image, thumbnail, caption, embedded material, labels, notification wording and accompanying text on BBC-

controlled third-party accounts. An independently selected, headed, captioned or promoted extract should be separately assessable even when its source programme complied with the Code.

The Code should also define a ‘body of related online output’. That term should cover material connected by a defined subject, period and editorial characteristic, supported by a transparent evidential sample, whether or not the BBC has branded or linked the items as a series.

Question 15: editorially linked items

Ofcom should distinguish two regulatory exercises. When the BBC relies on a series to show that balance was achieved across several items, it must demonstrate a meaningful editorial and audience connection. When a complainant presents a body of related output to establish a repeated failure, the connection should be established by the subject, period, selection method and alleged editorial pattern. Applying the BBC-defined ‘editorially linked’ test to both exercises gives the regulated body control over whether cumulative evidence can be heard.

Where one item is relied upon to balance another, the balancing material should address substantially the same issue, appear within an appropriate period and receive reasonably comparable prominence. Users exposed to the first item should have a realistic opportunity to encounter the second. Material buried in the BBC archive or directed to a markedly smaller audience cannot automatically balance prominently promoted material.

Questions 16 and 17: guidance and a systemic-complaint procedure

The Code and procedures should establish a gateway for repeated or systemic complaints. The complainant should identify the relevant issue, period, services or accounts, corpus or sample, selection method and alleged form of imbalance. Ofcom should assess whether the submission raises a potentially substantive cumulative question. If it passes that gateway, Ofcom should investigate the corpus as submitted and obtain relevant BBC-held data about commissioning, linking, prominence, reach and distribution.

Guidance should cover edited extracts, cross-platform publication, cumulative prominence and corrections. It should separate editorial choices controlled by the BBC from recommendation decisions made solely by a third-party platform. It should require a correction to bear a reasonable relationship to the reach and prominence of the original material.

Question 22: procedures and BBC First

BBC First should not oblige a complainant alleging a cumulative pattern to submit and exhaust a separate complaint for every item. Ofcom should accept direct or expedited referral where the BBC has already adopted a settled position on the governing editorial issue, where item-by-item exhaustion would be disproportionate, where the evidence concerns a continuing pattern, or where delay would frustrate effective adjudication. The regulator should publish the number of online complaints received, rejected procedurally, assessed, investigated and upheld; the reasons and elapsed time; and the number involving impartiality or cumulative allegations.

Question 23: first posting and renewed promotion

Active republication, reposting or renewed promotion should restart the complaint period because it constitutes a current editorial decision. The same rule should apply when the BBC relies on older material as part of present balance. Research-based complaints should qualify for an extension where identification, collection, transcription and analysis of a representative corpus cannot reasonably be completed within 30 working days.

Question 27: impact assessment

The impact assessment should examine whether individuals and small organisations can use the process; whether Ofcom has the analytical capacity to investigate a substantial digital corpus; whether the BBC must supply reach and prominence data; and whether Parliament and the public will receive sufficient information to judge the regime's effectiveness. It should address the resource asymmetry between a large publicly funded broadcaster and an external complainant who can observe only the public-facing material.

The principal regulatory risk is that Ofcom will add enforceable sanctions to a process which rarely reaches investigation and cannot formulate the alleged failure. A sanctioning power has little value when the evidential route to a decision remains closed.

6. Amendments requested in this consultation

News-watch asks Ofcom to make the following changes before issuing the final Code and procedures. The definition of the assessable material should recognise a defined body of related online output as a permissible unit of cumulative assessment. The procedures should create a gateway for methodologically sound repeated or systemic complaints. The Code should treat headlines, captions, notifications, thumbnails, extracts and BBC-controlled promotional text as parts of the relevant editorial material. Guidance should require a meaningful relationship of timing, subject, discoverability, reach and prominence before one item can be relied upon to balance another. The procedures should treat active republication and renewed promotion as fresh editorial acts, allow additional time where cumulative research reasonably requires it, enable Ofcom to obtain relevant reach and distribution data from the BBC, and require publication of complete operational data about the complaints regime.

These are procedural and definitional changes directed to the questions Ofcom has asked. They do not require routine monitoring of every subject, numerical equality between views or an unrestricted jurisdiction over allegations of institutional bias. They create a controlled means of adjudicating a complaint which cannot fairly be decided at item level.

If Ofcom believes that any requested amendment falls outside its powers, News-watch asks it to identify the relevant statutory or Framework Agreement provision, explain the boundary in its final statement and advise government of the change needed. That response is essential because the 2025 judgment makes clear that the present Broadcasting Code supplies no alternative route.

Conclusion

Ofcom is designing the first enforceable regime for BBC online journalism. The immediate decision is whether the Code will assess only an online item and a BBC-defined editorially linked series, or whether it will also contain a controlled route for evidence of cumulative partiality across related output.

News-watch's proposed route is precise. A complainant must submit a defined, transparent and sufficiently evidenced corpus or sample. Ofcom must then be able to assess the alleged pattern as a pattern and reach a reasoned decision on its merits. Where Ofcom considers itself legally unable to do so, it must identify the constraint and place the need for amendment before government.

The consultation provides the opportunity to settle this point before the Code comes into force. News-watch asks Ofcom to do so in the final Code, procedures and guidance.

Principal sources

- Ofcom, Consultation: BBC Online Material Code, 2 July 2026, especially paragraphs 3.66–3.92 and Questions 13–17, 22, 23 and 27.

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