BBC Online Material Code

Implementation of a new content standards regime for BBC online material

Welsh version available

Statement

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1. Overview

1.1 As the UK's independent regulator for communications services, Ofcom has regulatory responsibilities for broadcasting, among other sectors. This includes regulatory obligations in relation to the BBC. The BBC's constitutional basis is set out in its Royal Charter and in the Agreement between the Secretary of State for Culture, Media and Sport and the BBC ("the Framework Agreement"), which sits alongside it. The Charter and Framework Agreement set out the different roles and duties of the BBC and Ofcom.

1.2 Ofcom has been regulating content standards for the BBC's TV, radio and on-demand services under the full Broadcasting Code since 2017, when the current Charter and Framework Agreement came into force. However, to date Ofcom has not had the power to set and enforce rules for BBC online material.

1.3 In December 2025 this changed, as the Framework Agreement was updated following the Government's BBC Mid-Term Review of the BBC's Charter. As part of this update Ofcom was given further functions, which included a duty to set rules under a new BBC Online Material Code ("the Code"). The Code establishes a new regime for regulating the BBC's online material that will replace the current Online Arrangement which has existed since 2017.

1.4 Earlier this year, we drafted this Code and consulted with the BBC on the standards we proposed. We then published a Consultation ("the Consultation") on the draft Code, as well on Procedures for handling complaints about the BBC's online material. We received 14 responses to that Consultation, which we have carefully considered, together with additional comments and evidence we received through our prior consultation with the BBC. We have now finalised the Code and Procedures and have set out in this statement ("the Statement") our decisions and our reasoning.

1.5 Alongside the Code, the Procedures for handling complaints about the BBC's online material include Procedures for:

a) investigating breaches of content standards;
b) the consideration and adjudication of Fairness and/or Privacy complaints; and
c) the consideration of sanctions for breaches of content standards in BBC broadcasting services, on-demand programme services and online material.

1.6 For Fairness and/or Privacy complaints, there is already a Fairness Code in force under the Broadcasting Code, which the BBC must observe.[1] In the Consultation we also sought views on our proposal for how the Fairness Code should apply to BBC online material and we have also finalised that proposal in this Statement.

1.7 Alongside this Statement we have also published Guidance to the Code ("the Guidance"), which explains how Ofcom will apply the rules to the BBC in practice. Though we did not consult on draft Guidance, we did seek views and input in our Consultation on our approach to this and the potential areas where it would be useful to provide additional guidance to the BBC.

[1] This is set out in sections Seven (Fairness) and Eight (Privacy) of the Broadcasting Code.

What we have decided – in brief

BBC Online Material Code

In accordance with the updated Framework Agreement[2], the standards Ofcom must set under the BBC Online Material Code are underpinned by the same objectives as the equivalent standards under the Broadcasting Code.[3] Therefore, we have set out to make the rules as consistent as possible with those in the Broadcasting Code. However, where needed, the rules have been tailored to reflect the differences between broadcast content and BBC online material. We have considered the specific nature of online material by adapting or omitting some rules and concepts where they are not relevant online.

Our approach to each Section of the new Code is:

- **Section One** (Protecting the under-eighteens): we have adapted and condensed rules from Section One of the Broadcasting Code, focusing on ensuring appropriate measures are in place to protect under-eighteens from online material that is unsuitable for them. We have not replicated rules which are not relevant to online material, for example on appropriate scheduling ("the watershed"). We have also provided examples of unsuitable online material for the BBC in guidance, rather than including issue-specific rules, e.g. regarding offensive language, violence, sexual material or nudity, which mirrors our approach for the Broadcasting Code.
- **Section Two** (Harm and offence): we have included equivalent rules to those in Section Two of the Broadcasting Code but have adapted them to reflect the online experience. We have adapted the meaning of "context" to incorporate online factors such as the format and type of the online item, the age of the material and the length of time material has been available online.
- **Section Three** (Crime, disorder, hatred and abuse): we have similarly adapted the meaning of "context" to reflect the online environment for rules concerning hate speech and abusive or derogatory treatment.
- **Section Four** (Religion): we have included rules covering the following areas, which we believe are appropriate in an online context for religious content included in BBC online material: exercising proper responsibility in religious programmes; avoiding improper exploitation of audience susceptibilities; and avoiding abusive treatment of religious views and beliefs.
- **Section Five** (Due Impartiality and Due Accuracy); these rules reflect the due impartiality rules in the Broadcasting Code, adapting references to "a programme" and "a series of programmes taken as a whole" to "an online item" and "a series of editorially linked items taken as a whole" for the online context.
- **Section Six** (Elections and Referendums): these rules broadly reflect the rules in the Broadcasting Code regarding coverage during election periods, adapting concepts where necessary to reflect the online environment. We have not replicated the rules relating to constituency and electoral coverage in elections, as these have not historically been adopted by the BBC under the relevant legislation.

Fairness and/or Privacy Complaints

[2] Updates to BBC Framework Agreement: December 2025, gov.uk

[3] The applicable standards objectives are contained in section 319(2)(a), (b), (c) (including the special impartiality requirements in section 320) and (d) to (f) of the Communications Act 2003.

- The updated Framework Agreement sets out that the BBC must observe the Fairness Code, so far as it is relevant to online material. This code is already in force through sections Seven and Eight of the Broadcasting Code. For this reason, the Fairness Code has been modified to apply to BBC online material. The application of the Fairness Code to BBC Online Material will be published as an Annex to the Broadcasting Code.

Responses to our proposals were broadly supportive of our approach. We now publish the Code, Procedures and Guidance, as well as the application of the Fairness Code to BBC online material, to mark the commencement of Ofcom's new standards regulation under the BBC Online Material Code.

The overview section in this document is a simplified high-level summary only. The decisions we have taken and our reasoning are set out in the full document.

2. Background

Ofcom's regulation of BBC Online Material

2.1 As part of its regulation of the BBC, Ofcom enforces content standards for the BBC's television, radio and on-demand programme services through the Broadcasting Code. In addition, the BBC's output is covered by its own Editorial Guidelines, which incorporate Broadcasting Code requirements but extend further in some areas of the BBC's editorial policy and practice.

2.2 To date, Ofcom has had an enforcement role in relation to standards for BBC broadcasting and on-demand programme services but has not had a similar role in relation to the BBC's online material. Instead, Ofcom's role in this area has, until now, been set out in an Online Arrangement which has limited Ofcom to considering BBC online material and giving an opinion, which may include a recommendation, on whether the BBC has observed the relevant Editorial Guidelines. For these purposes, the Online Arrangement has defined "online material" as referring to material provided online (on any website, application or online interface) in the BBC's UK Public Services,[4] including written text, images, audiovisual and sound content, but excluding (among other things): programmes on on-demand programme services; BBC World Service content; user-generated content; corporate material and educational and learning resources (i.e. BBC Bitesize); and BBC material on third-party online platforms and social media accounts.

2.3 Under the Online Arrangement, complaints about BBC online material needed to follow the 'BBC First' approach, where they had to be made to the BBC in the first instance. If a complainant was not satisfied with the BBC's final response to a complaint about online material, they could then refer the complaint to Ofcom for its consideration.

2.4 As part of the Government's Mid-Term Review[5] in January 2024, the Department for Culture, Media and Sport (DCMS) recommended strengthening the BBC's approach to editorial standards, impartiality and complaints handling. The review concluded that Ofcom's responsibilities should be extended to elements of the BBC's online public service material to reflect how audiences increasingly consume news and other content online. This was intended to enable Ofcom to hold the BBC to account more effectively, including on issues such as due impartiality.[6] The Government committed to this recommendation and, in consultation with Ofcom and the BBC, updated the Framework Agreement to reflect this expansion of Ofcom's regulatory remit.[7]

2.5 In setting out the requirement for new standards to be applied to the BBC's online material, the updated Framework Agreement requires Ofcom to draw up a new code for BBC online

[4] The BBC are required under Paragraph 1, Schedule 1 to the updated Framework Agreement to maintain and publish a list of UK Public services. The current listed is available online: https://www.bbc.co.uk/aboutthebbc/documents/updated-list-of-uk-public-services-september-2025.pdf.
[5] The Government's Mid-Term Review of the BBC, published in January 2024, assessed the effectiveness of the BBC's governance and regulatory arrangements, drawing on targeted engagement and evidence from a range of stakeholders, including Ofcom.
[6] See paragraph 9 of BBC Mid-Term Review 2024.
[7] The Agreement dated November 2016 between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation (the "Framework Agreement") was updated in December 2025 (the "updates to the Framework Agreement"). We refer to this as the "updated Framework Agreement".

material ("the Code") underpinned by a subset of the same statutory objectives that underpin the Broadcasting Code, while being adapted to reflect the specific characteristics of online material. The statutory framework that underpins the Code can be found at Annex A1.

2.6 As required under the updated Framework Agreement, Ofcom consulted the BBC on the standards we proposed to include the Code, before preparing and publishing a draft of the Code for public consultation ("the Consultation").

2.7 Ofcom's Consultation sought views on the proposed Code and on the following:

a) proposed Procedures for investigating breaches of content standards;
b) proposed Procedures for the consideration and adjudication of Fairness and/or Privacy complaints; and
c) proposed Procedures for the consideration of sanctions for BBC breaches of content standards in BBC broadcasting services, on-demand programme services and online material.

2.8 We received 14 responses to our Consultation. This included a formal response from the BBC, as well as other responses from: the Trans Advocacy and Complaints Collective ('TACC'), News-watch, Ofcom's Advisory Committee for Northern Ireland ('Ofcom ACNI'), the Committee for Accuracy in Middle East Reporting and Analysis ('CAMERA.org'), No Bars Ltd T/A Digital Rehabilitation Infrastructure Framework and Training ('No Bars T/A DRIFT'), and the Writers' Guild of Great Britain ('WGGB'). We also received responses from seven individuals. The non-confidential versions of these responses have been published alongside this Statement.

2.9 We have carefully considered all of the information we received in response to our Consultation and have decided to finalise the Code and Procedures without amendment from their draft form. This Statement explains our decisions and how we have taken into account the feedback we received. Ofcom's final Code and Procedures are at Annex A2 and Annex A4.

Scope of the Code

2.10 The updated Framework Agreement defines the scope of the Code and sets out the type of material and services that would be subject to the new rules and the material and services that are outside of this remit. This differs in some regards from the definition of online material which was set out in the previous Online Arrangement.

2.11 As illustrated in Figure 1 below, BBC online material captured by the Code (referred to in the updated Framework Agreement as "UK Public Online Material") refers to content provided as part of the UK Public Services by the BBC online and intended for users in the UK (or any part of the UK).[8] This includes, for the first time, BBC branded content on third party websites, applications and interfaces. It also includes content included in:

a) BBC news and sports websites;
b) BBC apps on a smartphone, television or other device;

[8] Paragraph 3A(9) of Schedule 3 to the updated Framework Agreement.

c) any BBC social media account[9] (including reposts by a BBC social media account of any content posted on any other social media account, including that of any individual working for the BBC); or

d) BBC educational and learning resources.

2.12 "Content" includes written text and still or moving images, with or without sound and content consisting of sound only.

2.13 BBC online material does not include any content to the extent that it:

i) is provided by the BBC as part of the World Service or in an on-demand programme service (including BBC iPlayer or BBC Sounds);[10]

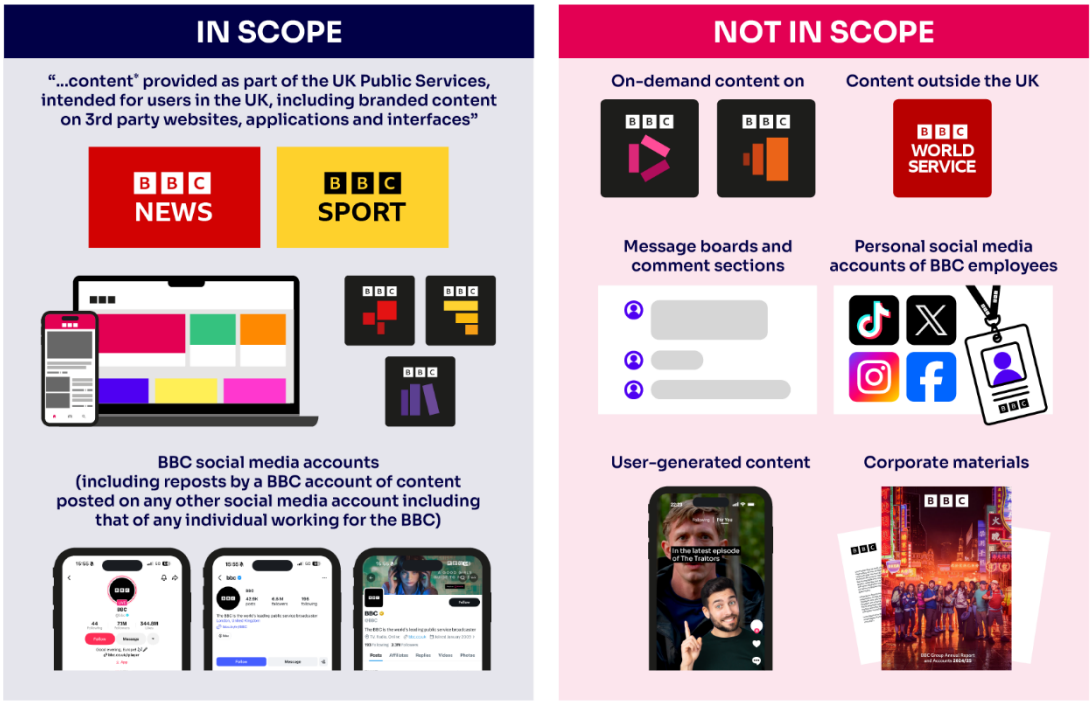
ii) consists of BBC corporate materials, including reports published by the BBC, speeches or statements by individuals working for the BBC and internal publications;

iii) is posted on a BBC message board or comments page;

iv) is user-generated and interactive content which is not directly linked to a UK Public Service; or

v) is provided by any person other than the BBC as a dissociable section of a service provided by the BBC.[11]

Figure 1: Scope of BBC Online Material



2.14 The standards objectives that Ofcom's rules must set for BBC online material are drawn from the broader set of objectives that apply to television and radio services under section

[9] "BBC social media account" means an account on any social media platform that relates to any BBC programme, service or genre and is branded and operated by the BBC as a BBC account (and, accordingly, does not include the personal social media accounts of any individual working for the BBC) (paragraph 3A(11), Schedule 3 to the updated Framework Agreement).

[10] However, we note that where the BBC on-demand programme service contains other dissociable services, such as livestreamed television programme services, those may be considered BBC online material. For example, this would likely include livestream content on BBC iPlayer that is not simultaneously broadcast.

[11] Paragraph 3A(10), Schedule 3 to the updated Framework Agreement.

319(2) of the Communications Act 2003 ("the Act"). Under the updated Framework Agreement, Ofcom is required to have particular regard to the objective that the standards it sets under the Code should be consistent (as far as appropriate) with the equivalent standards under the Broadcasting Code.[12]

Guidance

2.15 In our Consultation we set out our intention to publish Guidance for the BBC on the application of the Code ("the Guidance"). We did not consult on the Guidance. Instead, we set out in our Consultation our proposed approach to guidance where we considered it was particularly important to aid understanding of the draft Code and invited comments on our proposed approach. In the interests of fairness, we have also shared a draft of the Guidance with the BBC ahead of publication for its information.

2.16 We have taken comments from consultation respondents, including the BBC, into account in our finalised Guidance which we are publishing alongside this Statement, the final Code, Procedures and application of the Fairness Code.

2.17 The Guidance will be reviewed and updated from time to time as necessary.

[12] Paragraph 3A(4)(b), Schedule 3 to the updated Framework Agreement.

3. Our Approach

Introduction

3.1 The Code (annexed to this Statement at Annex A2) contains the rules the BBC must comply with in relation to the content of online material in the BBC's UK Public Services.

3.2 The Code was drafted in the light of the Human Rights Act 1998 and the European Convention of Human Rights (the "ECHR"), in particular Articles 9, 10 and 14 of the ECHR. Ofcom also had due regard to the matters specified in section 149(1) of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998. See Annex A1 (Statutory Framework) and Annex A5 (Impact Assessments) for further information.

3.3 In our Consultation we outlined the rules from the Broadcasting Code we proposed to reflect in the Code, as well as rules we proposed not to reflect. For the underlying rationale of what we proposed, please see our Consultation.

3.4 Several respondents provided overarching comments on our approach to the Code and the proposed rules. We summarise and respond to these below.

What respondents said

3.5 Several respondents welcomed the introduction of a new Code, though some set out suggested areas for clarity and improvement.[13]

3.6 Ofcom's Advisory Committee for Northern Ireland (Ofcom ACNI) suggested that standards should exist regardless of where BBC content is accessed, expressing its support for bringing BBC-branded content on social media and video sharing platforms into scope.[14] This view was echoed by News-watch, who supported bringing BBC websites, apps and BBC-controlled accounts on third-party platforms into regulation for the first time.[15] Other respondents highlighted the importance of reliability, trustworthiness and accuracy in BBC news and ensuring that the BBC website is high-quality.[16]

3.7 The Trans Advocacy and Complaints Collective (TACC) also welcomed the introduction of the proposed Code. It noted that "audiences should have meaningful regulatory protection regardless of whether they encounter BBC journalism through traditional broadcasting or online."[17]

3.8 The TACC, along with an individual respondent, suggested that Ofcom should consider patterns across coverage and the cumulative impact of content, as problems can emerge through repeated choices of framing or language over time.[18] News-watch similarly argued that content should be assessed cumulatively, taking into account prominence and repetition.[19]

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[13] Corvelo, D. p.3, Ofcom ACNI, p.1, Trans Advocacy & Complaints Collective, p.1, Elliott, E. p.1, The Writer's Guild of Great Britain response, p.3.
[14] Ofcom ACNI response, p.1
[15] News-watch response, p.1
[16] Name Withheld 2 response via email; Name Withheld 1 response via email
[17] Trans Advocacy & Complaints Collective response, p.1
[18] Trans Advocacy & Complaints Collective response, p.2; Elliott, E. response, p.2
[19] News-watch response, p.5

3.9 The individual respondent expanded on this point, stating that there should be a recognition of cumulative coverage as there is the potential for individually defensible items of content to become "misleading, disproportionate or foreseeably harmful through repetition, renewed prominence and cross-platform amplification".[20]

3.10 The BBC requested that Ofcom provide clarity on its approach to assessing content fragments (such as headlines and thumbnails) without further context i.e. whether a fragment would only be considered in the context of the underlying item to which it relates.[21] It said:

> "Given the significance of these content fragments, we would welcome clarification regarding how Ofcom intends to assess them under the Code. Specifically, it would be useful to understand whether a fragment will generally be considered only in the context of the underlying online item to which it relates, or whether it may, in certain circumstances, attract separate scrutiny for the purposes of accuracy, fairness, privacy, harm and offence, or due impartiality".[22]

3.11 Five respondents requested that Ofcom expand on its approach to assessing online fragments (e.g. thumbnails, clips and standalone headlines), arguing that these can often be recirculated in ways that strip them of the surrounding editorial context and that these should also be required to comply with the new Code.[23] One respondent said that the guidance should consider factors such as attribution and proximity,[24] whereas two respondents explicitly called for such material to be assessed as encountered.[25] CAMERA.org highlighted the importance of guidance in an environment where excerpts may be encountered and disseminated independently.[26]

3.12 Similarly, another individual respondent suggested that the BBC should be equally accountable for content across all its platforms including official social media accounts and that headline and social media captions should be considered as stand-alone items.[27]

3.13 The BBC welcomed Ofcom's proposals and was broadly supportive of the approach taken in developing the Code.[28] While the BBC supported a number of proposals we consulted on, it requested further clarity, for example on: our proposals to consider due impartiality across a series of editorially linked online items taken as a whole; measures to protect under-eighteens; the labelling of news content; the approach to fragments of online content; and the limits of editorial control regarding BBC material on third-party platforms.

3.14 An individual welcomed the creation of an enforceable Code. However, they suggested that Ofcom should publish a "mixed-service routing decision tree for pages or posts that combine BBC online material with Broadcast/On-demand Programme Services ("ODPS"), World Service, dissociable third-party or linked external material."[29] They noted that issues

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[20] Elliot, E. response, p.2
[21] BBC response, p.2
[22] BBC response, p.2-3
[23] Trans Advocacy & Complaints Collective response, p.6, Elliot, E. response, p.2-8, Corvelo, D. response p.7, Ofcom ACNI response, pp.1-2 and CAMERA.org response, p.4.
[24] Corvelo, D. response, p.11
[25] Trans Advocacy & Complaints Collective response, p.5; News-watch response, p.6
[26] CAMERA.org response, p.6
[27] Name Withheld 3 response via email
[28] BBC response, p.1
[29] Corvelo, D. response, p.7

could be raised where the content falls under both the Broadcasting Code and the Code and encouraged Ofcom to consider how best to clarify which code a complaint would fall under.

3.15 The same individual also suggested that Ofcom should distinguish between the scope of the Code and the level of platform control, and that in-scope material should remain in scope even when it is distributed or recommended by third-party platforms.[30]

Our response

3.16 Many of these comments relate to the scope of the finalised Code. However, the scope is prescribed in the updated Framework Agreement as explained in our Consultation. The Code reflects the standards for BBC online material that appear to Ofcom to be best calculated to secure the applicable standards objectives under the Act.[31] As required by the updated Framework Agreement, in setting such standards, Ofcom must have regard in particular to (i) the matters in s 319(4) of the Act as appear relevant to online material and (ii) to the objective that the standards are consistent with those set for broadcast television and radio services to such extent as appears to Ofcom to be appropriate. Ofcom does not have any powers to extend the Code's scope wider than has been set down in the updated Framework Agreement. We therefore note the responses we have received on this but have not made any amendments in this regard.

3.17 With respect to the comments on headlines and social media captions, as set out in the Consultation, the definition of "content" as it applies to online material includes written text and still or moving images. Therefore, captions and headlines are already within scope of the Code. We have set out our approach to how the BBC should consider individual fragments of content such as headlines and thumbnail images in our Guidance.

3.18 We have considered the BBC's request for additional clarity around certain issues and discuss this in more detail at paragraphs 3.39-3.41, 4.29, 4.46 and 4.205-4.207. Additionally, we have set out further explanations on the implementation of the Code in our accompanying Guidance.

3.19 While we note the request from one respondent to include a decision tree for material that combines both in and out of scope content, we have decided not to do this. We acknowledge that similar content may be available on different BBC platforms and that there is potential for some confusion as to which code will apply. However, we consider that the Code, Procedures and our accompanying Guidance will provide sufficient clarity on this issue. Additionally, our website will provide relevant information for audiences in relation to complaint routes covering the BBC's different platforms and services.

Structure of the Code

What we proposed

3.20 In our Consultation we proposed that the draft Code would be comprised of six sections. These were intended to set out the relevant rules for the purpose of the standards objectives we are required to secure for BBC online material under the updated Framework Agreement. These sections matched the equivalent sections under the Broadcasting Code and used the same titles, numbering and chronology, namely:

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[30] Corvelo, D. response, p.3

[31] The applicable standards objectives are contained in section 319(2)(a), (b), (c) (including the special impartiality requirements in section 320) and (d) to (f) Communications Act 2003

1. Protecting under-eighteens
2. Harm and offence
3. Crime, disorder, hatred and abuse
4. Religion
5. Due impartiality and due accuracy
6. Elections and referendums

3.21 The Broadcasting Code also includes rules on Commercial references on TV (Section Nine) and Commercial communications on radio (Section Ten). Given that these rules are predominantly underpinned by standards objectives that are not applicable to the Code, we did not propose to reflect them in the Code.[32] Instead, we identified those rules on commercial references that we considered may be relevant to the standards objectives applicable to online material, and explained in our Consultation why we believed the rules in the Code would be sufficient to provide the necessary protections.[33] We were also mindful that, unlike commercial broadcasters, the BBC has restrictions on the use of advertising or sponsorship as part of its licence fee-funded UK Public Services.

3.22 We highlighted in our Consultation that the BBC must observe the Fairness Code in force under Section 107 of the Broadcasting Act 1996 (i.e. Section Seven (Fairness) and Section Eight (Privacy) of the Broadcasting Code), so far as Ofcom determines the standards are relevant to the provision of BBC online material. When we consulted on our draft Code, we considered what modifications were needed to apply Sections Seven (Fairness) and Eight (Privacy) of the Broadcasting Code for this purpose and sought input on the proposed changes.

3.23 As under the Broadcasting Code, each proposed section of the Code outlined the principles that underpin the rules in that section, along with the applicable meanings. These principles were intended to support readers' understanding of the standards objectives and the application of the rules, as well as to ensure that the words and phrases used in the Code would be widely understood.

3.24 As outlined above, we did not mirror certain rules or words between the draft Code and the Broadcasting Code where we considered these to be disproportionate or unnecessary. Nevertheless, even where some proposed sections of the draft Code contained fewer rules or different wording than their equivalent sections in the Broadcasting Code, the intention was to maintain the same level of audience protections. Where these changes were material, we explained our rationale in our Consultation.

3.25 We also proposed amendments to certain meanings where we considered the online context required additional or different clarification, or where the proposed rules or terms that were being clarified had been changed from the Broadcasting Code.

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[32] In particular, the standards objectives under sections 319(2)(fa), (i) and (j) relating to product placement requirements, international obligations with respect to advertising in television and radio services and unsuitable sponsorships are not applicable to the Code.

[33] In particular, the standards objectives under sections 319(2)(a) and (f) relating to the protection of under-eighteens and the application of generally accepted standards so as to provide adequate protection against offensive and harmful material.

What respondents said

3.26 The BBC welcomed Ofcom's proposal to align the Code with the established Broadcasting Code, while ensuring the recognised principles would be updated to reflect the distinct characteristics of online content and the ways in which audiences engage with it.[34]

3.27 One respondent agreed with retaining the six-section Code structure, along with the Fairness Code, but suggested further clarifications were needed to those proposed areas.[35] We address these points individually in other areas of this Statement.

Our decision

3.28 We have decided to retain the Code structure proposed in our Consultation, comprising of six sections and retaining the titles, numbering and chronology of the Broadcasting Code. In our view this is consistent with the requirement in the updated Framework Agreement for the Code to be underpinned by a subset of the same statutory objectives that underpin the Broadcasting Code. We therefore note the response suggesting further clarifications but have not made any amendments in this regard.

BBC online material on social media platforms

What we proposed

3.29 We outlined in our Consultation that Ofcom has not had any role to date in setting and enforcing content standards for BBC online material and that the draft Code would represent the first time we have had any regulatory oversight of BBC material on third-party online platforms.[36]

3.30 The updated Framework Agreement defines online material to include any BBC-branded content on a BBC social media account (including reposts of any content posted on any other social media account, including that of any individual working for the BBC). We set out in our Consultation that we interpreted this to mean that the Code would apply in the same way for both BBC online material where it is provided as part of the UK Public Services and for where it would apply to BBC-branded content on third party websites, applications and interfaces. We made clear our intention that the level of protection would not differ.

3.31 We set out in our Consultation that we considered the BBC to have editorial control of material on BBC-branded social media accounts (including reposted content). Depending on the individual third-party platform, we also broadly considered that the BBC would have some ability to control the moderation of its accounts (e.g. enabling or disabling comments or blocking accounts). However, we acknowledged that the BBC may not have wider control over the platform environment where its online material may appear, including elements such as the third-party platform's policies, guidelines, algorithms and recommendation systems.

3.32 In the light of this practical challenge, we said in our Consultation that we would consider further whether guidance on BBC online material which appears on third-party platforms could help clarify how the proposed rules might apply to the BBC's branded and operated accounts on social media and/or video sharing platforms.

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[34] BBC response, p.1
[35] Corvelo, D. response, p.26
[36] As noted in paragraph 2.2, Ofcom's current role in relation to BBC online material under the Online Arrangement does not extend to BBC material on third-party online platforms and social media accounts.

What respondents said

3.33 The BBC welcomed Ofcom's recognition that it does not have control over third-party platforms algorithms and recommendation systems.[37] It noted that the BBC has limited influence over platform operators' distribution decisions and called for greater clarity on the boundary between BBC editorial responsibility and platform responsibility. It also suggested that added clarity would reflect the reality of the online space and ensure accountability remains proportionate. It added that:

> "it would be helpful to understand whether Ofcom expects editorial consideration to be limited to the specific content being linked to, or whether it extends more broadly to surrounding material, including adjacent content, advertising, recommended content, user comments, or other dynamically served material that may appear on the destination page".[38]

3.34 The TACC suggested that the BBC should not be responsible for all third-party actions but maintain accountability for its own editorial and distribution choices.[39]

3.35 An individual expressed their strong support for including social-media material under the new Code and ensuring that it addresses "misleading or sanitising editorial framing".[40]

3.36 One organisation agreed that Ofcom should encourage distinctions between the BBC's editorial intervention and renewed interest in, or third-party search engine promotion of, a piece of BBC online material. This organisation said this was central to freedom of expression and archival preservation.[41]

3.37 An individual suggested that consideration of reasonable editorial control on third party platforms was relevant to:

> "whether a separate distribution or promotion act is attributable to the BBC, to the context the user encounters the material, to the mitigation steps reasonably available to the BBC and to the feasibility and scope of any direction. It should not operate as a general limitation on liability for the BBC's own in-scope content."[42]

3.38 They also suggested that, although Ofcom may require specific actions such as removal or alteration of a "BBC-controlled" piece of online material, care should be taken that such a direction should not be framed "as a guarantee that third-party caches or unauthorised redistribution will disappear." The respondent further said it was equally important to note that a lack of BBC control over an autonomous recommender should not draw underlying content out of scope.[43]

Our decision

3.39 We outlined in our Consultation that we considered the BBC to have editorial control of material on BBC-branded social media accounts (including reposted content). Depending on the individual third-party platform, we also broadly considered that the BBC would have some ability to control the moderation of its accounts (e.g. enabling or disabling comments

[37] BBC response, p.1
[38] BBC response, p.1
[39] Trans Advocacy & Complaints Collective response, p.8
[40] Name Withheld 3 response, via email
[41] No Bars Ltd T/A DRIFT response, p.9
[42] Corvelo, D. response, p.6
[43] Corvelo, D. response, p.6

or blocking accounts). However, we acknowledged that the BBC may not have wider control over the platform environment where its online material may appear, including elements such as the third-party platform's policies, guidelines, algorithms and recommendation systems.

3.40 We have considered the responses received and remain of this view. However, we have clarified our position on this in the Guidance which accompanies the Code. In our accompanying Guidance, we have set out that the BBC is responsible for complying with the Code in relation to content on third party platforms over which it has editorial control. However, we also recognise that audiences may engage with BBC content published on platforms operated by another organisation. Therefore, we have clarified in our Guidance that if a platform's algorithm recommends BBC online material to users on its service this does not mean that the BBC should bear responsibility for its wider dissemination across the platform. Nevertheless, we consider that the BBC is editorially responsible for publishing its material, for the way in which the material is presented on the platform, and for the experience of users engaging with its material within such parameters as the BBC may be able to foresee and control (e.g. the moderation of comments linked to BBC posts).

3.41 For further information on the distinction please see our Guidance.

4. BBC Online Material Code Rules

4.1 As outlined above, the updated Framework Agreement requires Ofcom to draw up the Code underpinned by a subset of the same statutory objectives that underpin the Broadcasting Code, while being adapted to reflect the specific characteristics of online material. Therefore, we set out in our Consultation to make the proposed Code Rules as consistent as possible with those in the Broadcasting Code. However, where needed, the proposed Rules were tailored to reflect the differences between broadcast content and BBC online material.

4.2 In this section we cover the Code sections in detail, outlining the proposals we included in our Consultation on the specific sections, the responses we received and our decisions.

Section One: Protecting under-eighteens

Principle: To ensure that people under eighteen are protected.[44] The proposed rules for Section One of the Code are included on pages 6 to 7 of Annex A2.

4.3 Section One and Section Two (Harm and offence) of the Code should be read together.

4.4 Under the proposed Section One of the draft Code, we adapted the approach in the Broadcasting Code to make these rules relevant to BBC online material. We reflected and also condensed some of the overarching protection of under-eighteens rules, as well as those that safeguard the legal and welfare rights of under-eighteens.

Broadcasting Code rules we proposed to reflect in Section One

What we proposed

4.5 We proposed that there would be two overarching rules to ensure the protection of under-eighteens in the Code, as follows:

- **Rule 1.1** – this overarching rule prohibited material that might seriously impair the physical, mental or moral development of people under eighteen. **Rule 1.2** – this rule reflected the current wording of Rule 1.2 in the Broadcasting Code, which sets out the requirement that broadcasters "must take all reasonable steps" to protect under-eighteens. The proposed Rule 1.2 also incorporated the intent of Rule 1.3 of the Broadcasting Code, which requires children (defined in the broadcasting context as "children under fifteen years") to be protected from unsuitable material through appropriate scheduling. As scheduling is a linear concept, the proposed rule required the BBC to put in place "appropriate measures" to secure the age-appropriateness of content for persons under-eighteen.

4.6 We also proposed the following rules:

[44] This is in accordance with Section 319(2)(a) of the Act. The BBC must observe section 319 in accordance with paragraph 3A(2) of Schedule 3 to the updated Framework Agreement.

- **Rules 1.3** and **1.4** – these rules exist in the Broadcasting Code to safeguard the welfare and legal rights of under-eighteens who are involved in criminal proceedings or related investigations that may be covered by the BBC. We set out in our Consultation our view that they would remain important and relevant in the online environment.
- **Rules 1.5** to **1.7** – these rules required due care to be taken over the welfare and dignity of people under eighteen who take part or are otherwise involved in BBC online material, irrespective of any consent given by the participant or by a parent, guardian or other person in *loco parentis*. We also proposed including a rule on the age-appropriateness of prizes aimed at children.

What respondents said

4.7 Several respondents generally agreed with Ofcom's proposal for Section One of the Code. However, some highlighted the need for proportionality and finding a balance between protection and access for under-eighteens to potentially beneficial information.[45]

4.8 Some respondents cautioned against approaches that could: restrict access to valuable educational information; limit access to health or support-related content; or create unnecessary barriers to public-interest journalism.[46] In particular, two respondents raised concerns about the definition of "moral development"[47] and whether it could be used to justify the exclusion of certain topics from the BBC's online material.[48]

4.9 The TACC suggested that:

> "accurate, age-appropriate information about trans people, gender identity, health, safeguarding or support should not be treated as unsuitable merely because the subject is politically contested. Conversely, sensationalised, misleading or demeaning treatment of trans young people may itself cause harm. The Code or guidance should therefore require assessment of both the risk of exposure and the risk created by restricting access." [49]

4.10 The BBC commented that BBC News online is primarily aimed at an adult audience and, whilst some articles do carry guidance warnings, the service is not aimed at young audiences.[50]

4.11 One respondent suggested that:

> "News and current affairs need separate emphasis. Distressing material can have genuine public-interest value, and a universal barrier could impede young people's access to important information. A clear warning or less prominent preview may be sufficient in one case; a stronger control may be justified where the material is severe, easily encountered out of context and has limited informational value. The Code should regulate the result rather than prescribe one response". [51]

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[45] Trans Advocacy & Complaints Collective, Corvelo, D., The Writers' Guild of Great Britain.
[46] Trans Advocacy & Complaints Collective response, p.2 & 4; Corvelo, D. response, p.3; The Writers' Guild of Great Britain response, p.3
[47] This phrase was embedded in Ofcom's proposed Rule 1.1 – "Material that might seriously impair the physical, mental or moral development of people under eighteen must not be included in BBC UK Public Online Material."
[48] Trans Advocacy & Complaints Collective response, p.5; The Writers' Guild of Great Britain response, p.3
[49] Trans Advocacy & Complaints Collective response, p.4
[50] BBC response, p.2
[51] Corvelo, D. response, p.7

4.12 The TACC also suggested that Ofcom should provide guidance to explain how the various factors are to be weighed in practice when applying these rules, particularly where there is a conflict between protecting under-eighteens and privacy, access to valuable information or other welfare considerations.[52]

Our decision

4.13 We have decided to proceed with the proposed wording and structure of Section One of the Code.

4.14 We recognise that balancing protections for under-eighteens with access to potentially beneficial information may pose a challenge for the BBC. However, we consider our accompanying Guidance, which sets out examples of unsuitable online material, will sufficiently support the BBC in this regard.

4.15 In relation to comments on "moral development", this wording is only one part of Rule 1.1. It mirrors the wording from the similar well-established rule in the Broadcasting Code, which is based on retained EU law,[53] and the duty that providers of on-demand programme services must comply with under section 368E of the Act. As this rule is designed to be proportionate and context-based in its application, we have decided to keep this wording in the Code.

Broadcasting Code rules we proposed not to reflect in Section One

What we proposed

4.16 We proposed not to reflect the broadcast definition of "children" (under the age of 15 years) for online material, with the Code referring only to "people under eighteen". This was due to there being no equivalent to the 9pm TV watershed for online material, which is what the definition supported as an age threshold for appropriate broadcast scheduling.

4.17 We proposed not to reflect a number of rules from Section One of the Broadcasting Code that are rooted in linear broadcast scheduling and granularly address certain thematic issues in content, e.g. offensive language, sexual material or nudity.

4.18 We proposed adapting a list of factors included under the meaning of "appropriate scheduling" in the Broadcasting Code to support the contextual meaning of "appropriate measures [to protect people under eighteen from material that is unsuitable for them]" in the Code.

4.19 We acknowledged in our Consultation that the BBC's online material around news and current affairs carries with it an important public interest which is relevant context when considering the inclusion of distressing and challenging real-world content. We therefore said that we would not expect unnecessarily excessive restrictions or measures around news or current affairs that would seem disproportionate or unreasonable in the online environment.

4.20 We also said that we considered the proposed factors to judge the appropriateness of measures in Section One (see paragraph 4.18 above) would provide sufficient flexibility. We said this would allow the BBC to consider the nature of the content, the nature of the

[52] Trans Advocacy & Complaints Collective response, p.5
[53] See Article 6a(1) EUR-Lex - 02010L0013-20181218 - EN - EUR-Lex

platform and the likely expectation of parents and carers, amongst other factors, when considering the appropriateness of measures (e.g. warnings or labelling).

4.21 We proposed to set out in more detail our approach to news and current affairs in Guidance.

4.22 Further to our proposal to adapt and merge Rules 1.2 and 1.3 from the Broadcasting Code into a single rule (**Rule 1.2**), we said in that, in our view, this rule would ensure adequate protection for the types of material referred to in Rules 1.10 – 1.21 of the Broadcasting Code.[54] We therefore proposed not to replicate these rules in the Code. However, to assist the BBC in its interpretation of **Rule 1.2** we also proposed to include in Guidance a non-exhaustive list of potentially unsuitable online material from which people under eighteen should be protected.

4.23 We proposed not to replicate Rules 1.4 - 1.7 of the Broadcasting Code in the Code as they are specific to the watershed and TV and radio scheduling, rather than the online environment.

4.24 We also proposed not to replicate Rules 1.22 to 1.26 of the Broadcasting Code as they address films and mandatory daytime protections on broadcast services and are specific to films and BBFC film classifications, and thus not directly relevant to online material.

4.25 Finally, we proposed not to reflect Rule 1.27 of the Broadcasting Code relating to demonstrations of exorcism, the occult and the paranormal. We set out in the Consultation our view that the overarching **Rule 1.2** of the draft Code would be likely to cover any potential harm to under-eighteens arising from any such portrayals in online material.

What respondents said

4.26 The Writers' Guild of Great Britain welcomed our proposal not to limit the Code to the broadcast-specific definition of "children" and said:

> "We welcome the decision to expand the definition of 'children' to include the under-18s but believe that this expansion makes it more important that specific age-related rules are set and governed by Ofcom, rather than being left to the BBC to define. We believe that this would support the BBC to maintain the trust of children and parents". [55]

4.27 This respondent also suggested that Ofcom should require specific compliance measures to guarantee a minimum level of protection, rather than suggesting possible steps that the BBC could take. [56]

4.28 The BBC welcomed Ofcom's explanation in the Consultation that we would not expect the BBC to apply unnecessarily excessive restrictions or measures around news or current affairs that would seem disproportionate or unreasonable in the online environment.[57]

Our decision

4.29 We have decided to maintain the position set out in our Consultation that there will be two overarching rules to ensure the protection of under-eighteens. The existing Rules 1.2 and 1.3 of the Broadcasting Code have therefore been combined in our final Code and will

[54] Broadcasting Code Section One: Protecting the under-eighteens (see Rules 1.10 – 1.21).
[55] The Writers' Guild of Great Britain response, p.3
[56] The Writers' Guild of Great Britain response, p.3
[57] BBC response, p.1

provide adequate protection for the types of material referred to in Rules 1.10 – 1.21 and 1.27 of the Broadcasting Code. For the reasons outlined above, we have not incorporated Broadcasting Code Rules 1.4 - 1.7 or Rules 1.22 to 1.26 into the final Code.

4.30 For further information on Ofcom's expectations for the BBC regarding the approach to appropriate measures around news and current affairs material and the proposed non-exhaustive list of examples of unsuitable material, please see our Guidance ("Section One: Protecting under-eighteens").

Section 2: Harm and Offence

4.31 Proposed Section Two of the Code was intended to provide protection to the public from BBC online material that has the potential to cause harm and/or offence. We proposed to reflect the relevant rules from the Broadcasting Code but adapted meanings to better reflect the online environment and did not propose to replicate rules where we considered they either would not apply to online material or would be sufficiently covered by the overarching rules.

Principle: to ensure that generally accepted standards are applied to BBC online material so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive and material. The rules for Section Two of the Code are included on pages 8 to 10 of Annex A2.

Broadcasting Code rules we proposed to reflect in Section Two

What we proposed

Generally accepted standards

4.32 We proposed that **Rules 2.1, 2.2 and 2.3** of the draft Code should mirror the wording of their equivalent Rules 2.1, 2.2 and 2.3 of the Broadcasting Code.

4.33 The proposed **Rule 2.1** required that generally accepted standards must be applied to online material so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

4.34 The proposed **Rule 2.2** required that factual material or portrayals of factual matters must not materially mislead the audience. The corresponding broadcasting rule is designed to deal with content that materially misleads the audience so as to cause harm and offence and we considered the same rationale would be applicable to online material, so we proposed to reflect this rule in the Code. Where the Broadcasting Code refers to "factual programmes or items" we proposed to modify this and use the term "factual material" to reflect the online environment.

4.35 The proposed **Rule 2.3** required that: in applying generally accepted standards the BBC must ensure that material which may cause offence is justified by the context; and that appropriate information should also be published where it would assist in avoiding or minimising offence. The same rationale for replicating this wording from the Broadcasting Code applies to this rule as for Rule 2.1 and Rule 2.2.

4.36 Section Two of the draft Code included a non-exhaustive list of contextual factors that we proposed would be relevant to our consideration of **Rule 2.3** (and other rules that require a consideration of context) and which reflected and built on context-related matters that

Ofcom must have regard to under s319(4) of the Act.[58] In the Broadcasting Code, relevant "context" includes elements that are typical of linear broadcast environments for multiple broadcasters (or services). Therefore, we did not carry these particular contextual factors across from the Broadcasting Code.

4.37 We also proposed to include a new non-exhaustive list of contextual factors that we considered would be relevant when assessing whether **Rule 2.3** (and other rules that require consideration of context) has been complied with. These new contextual factors included: the format and type of online item; the way in which the content is presented and encountered; the age of the material; and the length of time for which the material is available.

Violence and dangerous behaviour

4.38 The proposed **Rule 2.4** of the Code related to material that condones or glamourises violent or dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour. We proposed that such material must not be included in BBC online material. We therefore proposed to broadly mirror the wording of the corresponding Rule 2.4 from the Broadcasting Code that prohibits this type of material in programmes, adapting the wording to "material" to fit the online environment.

Suicide and self-harm

4.39 The proposed **Rule 2.5** of the Code prohibited methods of suicide and self-harm from inclusion in BBC online material, except where they are editorially justified and are also justified by the context. We proposed to reflect this specific protection and carry over the corresponding Rule 2.5 from the Broadcasting Code. As with other examples in the draft Code, we proposed to adapt that rule and replace "programmes" with "online material" for the online environment. Given the importance of this rule for online material, we also proposed a slight change from the Broadcasting Code approach by including a specific heading that highlights the issue covered by the proposed rule, i.e. "Suicide and self-harm".

Photosensitive epilepsy

4.40 The proposed **Rule 2.6** replicated Rule 2.12 (Photosensitive Epilepsy) of the Broadcasting Code, which aims to safeguard people with photosensitive epilepsy. However, we proposed to remove the explicit reference to Ofcom guidance in relation to flashing images as we recognised that BBC online material is accessed via a vast array of devices and formats and that such guidance may not be relevant in the online environment. Our Guidance ("Section Two: Harm and offence") reflects our view that, due to technological differences, the tests for flashing images that apply in broadcasting may not protect against photosensitive epilepsy for those engaging with online material across different displays and viewing environments.

Competitions and voting

4.41 The proposed **Rules 2.7 and 2.8** were carried over from Rules 2.13 and 2.15 of the Broadcasting Code relating to Competitions and Voting.

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[58] This is a non-exclusive list of matters, as Section 319(4) of the Act states that these are matters that Ofcom must have regard to in particular and to such extent as appears to them to be relevant to the securing of the standards objectives.

a) Proposed **Rule 2.7** was designed to protect audiences from the harm which may arise from unfair competitions or voting exercises.
b) Proposed **Rule 2.8** required the BBC to draw rules for a competition or vote that are clear and transparent so as to ensure audience members can make an informed decision as whether or not to participate.

4.42 We considered both rules would be relevant in an online context and proposed to include them with necessary adaptions to reference "online" competitions and voting.[59]

What respondents said

Ofcom's proposed general approach to Section Two

4.43 Several respondents broadly agreed with Ofcom's proposal that, where relevant, Section Two of the Code should mirror the wording of the equivalent rules in the Broadcasting Code.[60]

4.44 One respondent considered that Ofcom should take into account "cumulative harm" and patterns across related material (e.g. repeated framing and terminology, as well as recurring source selection) rather than conducting an assessment of an online item in isolation.[61]

Our decision

4.45 We have decided to proceed with the proposed wording and structure of Section Two of the Code.

4.46 We have decided to provide in Guidance further clarification on our approach to online items and content presentation, including fragments of contents (e.g. headlines and thumbnail images) (see "Overarching themes for online material" in the accompanying Guidance).

4.47 Regarding what one respondent termed "cumulative harm",[62] Ofcom assesses complaints about broadcast content against the rules in Section Two of the Broadcasting Code on a case-by-case basis and does not generally take into account the cumulative effect of similar examples of material broadcast over a longer period of time. To ensure consistency, we have decided to adopt the same approach to our application of Section Two rules in the Code. However, we do commission and publish audience research on broader content standards issues from time to time.[63] We will include BBC online material in any such relevant research in the future, which may address this point. Similarly, Ofcom's interpretation of "generally accepted standards" will be consistent across both sets of rules.

4.48 We have also decided to provide in Guidance further clarification on our approach to the BBC's editorial responsibility for third-party links (see "Overarching themes for online material" in the accompanying Guidance).

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[60] BBC, p.1, Corvelo, D. p.9-10, Elliott, E. p.7-8, CAMERA.org, p.4, Ofcom ACNI, p.2, Trans Advocacy & Complaints Collective, p.5.
[61] Trans Advocacy & Complaints Collective response, p.6
[62] Trans Advocacy & Complaints Collective response, p.5
[63] We publish this research on our website. Examples include Public attitudes towards offensive language on TV and radio and Audience protection measures in practice: Review of Audience Protection Measures on On-Demand Programme Services.

What respondents said

Rules 2.1, 2.2 and 2.3

4.49 One respondent said that "generally accepted standards" should not be treated simply as prevailing public opinion and that Ofcom should have regard to relevant equality and human rights considerations when applying Rule 2.1.[64]

4.50 Another respondent highlighted the importance of having supporting guidance for Rule 2.2 regarding corrections, suggesting that the timeliness and required level of prominence would depend on factors such as the significance of the error, the reach of the item and the likelihood of harm to audiences. [65] The TACC argued that information intended to reduce harm or offence should be prominent where the audience first encounters the material, rather than in the form of a qualification later in the item.[66]

4.51 Five respondents addressed the non-exhaustive list of examples of contextual factors in the proposed Rule 2.3 in our Consultation.[67] While all agreed that they were relevant, some suggested Ofcom provide clarity by either grouping them to prevent misinterpretation or listing further examples that specifically relate to online material.[68] Suggestions included: BBC-controlled placement reposting and search presentation; repetition of substantially the same allegation, image or framing; known vulnerability, disability or mental health; adequacy of challenge or qualification; and the impact on communities in the UK in times of heightened community tension.[69] A respondent said that in the event of recirculation from a renewed interest, the age of the material would not necessarily reduce its impact on audiences. This respondent therefore recommended Ofcom provide guidance to distinguish between BBC's active recirculation and user-led resurgence. [70]

4.52 The same respondent said that Ofcom should explain the relationship between Rules 2.1, 2.2 and 2.3 of the Code and avoid using the same reasoning to record breaches of multiple rules against a single online item.[71]

4.53 Ofcom received no responses that specifically referenced our proposals for Rules 2.4 -2.8 of the Code.

Our decision

4.54 We have decided to proceed with our proposed wording for Rules 2.1, 2.2 and 2.3 in the final Code.

4.55 We acknowledge that audiences should, where appropriate, benefit from information or labelling around content to understand the proper meaning and context of factual material that may otherwise risk being materially misleading so as to cause harm and/or offence. We have decided not to provide guidance on corrections in relation to Rule 2.2 as the rule and the relevant standards objective is framed around generally accepted standards rather than

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[64] Trans Advocacy & Complaints Collective response, pp.5-6
[65] Corvelo, D. response, pp.10-11
[66] Trans Advocacy & Complaints Collective response, p.7
[67] Corvelo, D., CAMERA.org, Trans Advocacy & Complaints Collective, E. Elliott response, Ofcom ACNI.
[68] Corvelo, D. response, p.10; CAMERA.org response, p.4-5; Trans Advocacy & Complaints Collective response, p.6; Elliott, E. response, pp.4-5
[69] Corvelo, D. response, p.10; CAMERA.org response, pp.4-5; Trans Advocacy & Complaints Collective response, p.6; Elliott, E. response, pp.4-5
[70] Corvelo, D. response, p.10
[71] Corvelo, D. response, p.11

prescribing remedial measures such as corrections. Our Guidance on "Section Two: Harm and offence" sets this out in further detail.

4.56 While we acknowledge respondents' requests for the list of contextual factors in Rule 2.3 to be expanded, we consider that reflecting contextual factors from the Broadcasting Code and amending them only where necessary (e.g. for relevance) is the best way of ensuring a consistent approach between online and broadcast content. We have also made clear that this list is not exhaustive and, whilst we note the value of some of the factors that have been suggested by respondents for inclusion, we think they are issue-specific and granular in a way that would suggest we are readjusting standards around what might constitute potential justification for offence. As this would not accord with our central aim of reflecting existing Broadcasting Code rules to achieve the same underlying standards objectives, we will proceed with the contextual factors set out in the Code.

4.57 Our Guidance confirms that issues covered in the Broadcasting Code rules which we have decided not to replicate in the Code are still captured by the overarching principles reflected in Rules 2.1. In response to the concerns raised, Ofcom's Guidance explains that Rule 2.1 reflects the overarching principle of Section Two, to provide adequate protection for the public through the application of generally accepted standards. Other rules such as Rules 2.2 and 2.3 will also reflect the same principle but focus on specific areas, which is why a potential breach of the Code may engage both the specific rule and the overarching rule in Ofcom's decision.

Broadcasting Code rules we will not reflect in Section Two

4.58 In our Consultation we proposed not to carry over Rules 2.6 to 2.11 of the Broadcasting Code into the Code. This was because, as we said in our proposed approach to the draft Code, we considered that certain broadcasting rules were either not relevant or not necessary to secure the standards objective as it applies to BBC online material. We also said that where we considered an overarching rule in any section may be sufficient to provide adequate protection for online material, we proposed not to retain the more specific or prescriptive rule. We applied this reasoning to the Broadcasting Code rules that we proposed not to reflect in Section Two of the Code.

4.59 Rules 2.6, 2.7 and 2.8 of the Broadcasting Code (exorcism, the occult and paranormal demonstrations) were developed for a specific broadcast context, where genres featuring occult or paranormal demonstrations are more prevalent and could present risks of harm and/or could mislead audiences. Such content is not a regular feature in BBC online material, which is primarily factual, editorial and largely news dominant. As a result, we considered the likelihood of people encountering this type of material to be low and, in the event of any potential harm, this could be addressed under the proposed **Rules 2.1 and 2.2** and Section One more broadly.

4.60 Rule 2.9 of the Broadcasting Code (Hypnotism) was originally brought across from legacy codes on a precautionary basis.[72] This rule addresses the proper degree of responsibility required in material featuring demonstrations of hypnotic techniques. Rule 2.10 (Simulated news) of the Broadcasting Code addresses simulated news (for example in drama or documentaries) being broadcast in such a way that there is no reasonable possibility of the audience being misled into believing they are listening to, or watching, actual news. For the

[72] Consultation on the proposed Ofcom Broadcasting Code (2004).

reasons outlined in paragraph 4.58, we proposed not to carry over these rules of the Broadcasting Code.

4.61 Rule 2.11 of the Broadcasting Code states that broadcasters must not use techniques which exploit the possibility of conveying a subliminal message to viewers or listeners, or of otherwise influencing their minds without their being aware, or fully aware, of what has occurred. The rationale set out in paragraph 4.58 is also relevant here, although Rule 2.11 of the Broadcasting Code is also underpinned by a standards objective that is not required to be secured for BBC online material under the updated Framework Agreement.[73] We therefore did not propose to carry Rule 2.11 of the Broadcasting Code over to the Code.

4.62 We also did not propose to carry over Rules 2.14 (misleading competitions/voting) and 2.16 (accurate description of prizes) from the Broadcasting Code. These two rules address the risk of audience detriment arising from misleading factual information within competitions or votes. The BBC's online competition formats are limited and typically governed by published competition terms. Therefore, we considered replicating these rules would introduce unnecessary duplication. We also considered that these harms are already addressed by the proposed overarching **Rules 2.1 and 2.2**.

What respondents said

4.63 Most respondents did not comment on the proposal not to mirror these Broadcasting Code section two Rules in the Code. However, in relation to the proposal not to include more genre-specific Broadcasting Code rules, one respondent said that guidance should confirm that issues addressed by these rules in the Broadcasting Code will be covered by the overarching principles of Rules 2.1, 2.2 and 2.3 if the general rule addresses the issue. They added that if liability would otherwise depend on "a novel and uncertain interpretation" then in such instances "guidance should not quietly restore a deleted rule". [74]

Our decision

4.64 We have decided to maintain our position at Consultation and have not incorporated Rules 2.6 to 2.11, and Rules 2.14 and 2.16 into the Code. Our rationale remains that in certain instances it may be sufficient for an overarching rule to provide adequate protection. In other cases, specific rules or issues that we have not reflected in the Code may not be relevant or appropriate in the BBC's online environment.

4.65 The accompanying Guidance (Section Two: Harm and offence) confirms that the overarching principles of Rule 2.1 may apply to any potentially harmful and/offensive type of material whether the type of material is referenced in a specific rule in the Code or not.

Section 3: Crime, Hatred, Disorder and Abuse

Principle: material likely to encourage or incite the commission of crime or lead to disorder is not included[75]; and that generally accepted standards are applied to BBC Online Material

[73] See section 319(2)(l) of the Act, which requires, in relation to radio and television services, that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
[74] Corvelo, D. response, p.11
[75] Section 319(2)(b) of the Act

so as to provide protection for members of the public from the inclusion of offensive and harmful material.[76]

4.66 Section Three of the Broadcasting Code covers material that is likely to incite crime or disorder, reflecting Ofcom's duty to prohibit the broadcast of this type of programming.

4.67 As the underlying standards objective is applicable to BBC online material, we considered that the protections afforded through each of the rules in Section Three of the Broadcasting Code are highly relevant in the online environment. We therefore proposed to mirror these rules with no significant changes for Section Three of the Code. However, we proposed to modify some of the language and adapt certain meanings to better reflect the online environment.

Proposed general approach and Broadcasting Code rules we proposed to reflect in Section Three

What we proposed

4.68 The proposed **Rule 3.1** of the Code prohibited material likely to encourage or incite the commission of crime or lead to disorder from being included in BBC online material. This replicated Rule 3.1 in the Broadcasting Code, with necessary adaptation to reflect the online environment.

4.69 This proposed Section included a non-exhaustive list of significant contextual factors that we considered may be relevant to our consideration of the proposed **Rule 3.1**. In setting out these proposed factors, we reflected wording from the Broadcasting Code, with necessary adaptions to align with the BBC online environment. These included:

- the editorial purpose of the online item;
- the status or position of anyone featured in the material; and/or
- whether sufficient challenge is provided to the material.

4.70 Given that online material may include multiple diverse and fragmented online items that may be encountered in different ways by the audience, we acknowledged that these contextual factors might operate quite differently in practice from the broadcasting environment. Therefore, we sought responses on what guidance might be helpful to support the BBC and audiences in understanding how these contextual factors might work in practice for BBC online material.

4.71 Mindful that there are different types of online material, e.g. text-based articles or video clips, we outlined in our Consultation that guidance would provide more detail on how contextual factors, such as "editorial purpose", "status or position of anyone featured" and "sufficient challenge is provided", should be assessed for online items. We also asked whether it may be helpful for the guidance to suggest other contextual factors that may also be relevant in an online environment.

4.72 The proposed **Rule 3.2** (hate speech) and **Rule 3.3** (abusive or derogatory treatment) reflected the standards objective on the provision of adequate protection for members of the public from the inclusion of offensive and harmful material. As under the Broadcasting Code, these rules were designed to protect people from hate speech and abusive or derogatory treatment of individuals, groups, religions or communities. Under the proposed rules, material which contains these elements must not be included in BBC online material,

[76] Section 319(2)(f) of the Act.

except where it is justified by the context. We considered these rules highly relevant to the online environment.

4.73 The equivalent Broadcasting Code rules include a non-exhaustive list of contextual factors that we considered would be relevant to assessing compliance with **Rules 3.2 and 3.3.** Drawing on the factors in section 319(4), we set out an adapted non-exhaustive list of key contextual factors to help explain the meaning of "context" when applying these rules to online material.[77]

4.74 In our Consultation we acknowledged the public interest value in news and current affairs and said that, where this type of material was being considered under these rules, we would take account of the importance of the genre and editorial context of such an online item (or series of online items taken as a whole). We therefore proposed to include news and current affairs (alongside other genres such as drama, comedy or satire) in the non-exhaustive list of contextual factors as an example of such a genre where there may be editorial justification for including challenging or extreme views.

4.75 Other contextual factors that we proposed to include were:

- the extent to which sufficient challenge was provided;
- the status or position of anyone featured in the online material;
- the way the content was presented and encountered;
- the nature of access to the content; and
- the likely size and composition and likely expectation of the audience.

4.76 These proposed contextual factors reflected existing considerations in the Broadcasting Code which we considered remained relevant to the online environment, with certain modifications to reflect the change from broadcasting. As already referred to in this section, we proposed to use guidance to provide detail on how these, and other, factors may work in practice for BBC online material.

4.77 The proposed **Rules 3.4 to 3.8** related to portrayals of crime and criminal proceedings. They broadly reflected the equivalent rules in the Broadcasting Code, modifying terminology to online material, as we considered these protections to be equally relevant in an online context.

4.78 The proposed **Rule 3.4** prohibited from BBC online material any descriptions or demonstrations of criminal techniques which contain essential details that could enable the commission of crime, unless editorially justified.

4.79 The proposed **Rule 3.5** prohibited direct or indirect payments being made to convicted or confessed criminals in connection with their contribution to the production of online material relating to their crime(s). The only exception we proposed was where it would be in the public interest.

4.80 The proposed **Rule 3.6 and Rule 3.7** reflected restrictions on paying convicted or confessed criminals for a programme contribution, as well as witnesses in active proceedings and individuals who may reasonably be expected to become witnesses. These rules were intended to protect the integrity of the criminal justice process and the fairness of proceedings.

[77] We had regard to the matters set out in Section 319(4) of the Act in proposing this list of contextual factors.

4.81 The proposed **Rule 3.8** required the BBC to use its best endeavours so as not to post material that could endanger lives or risk successful attempts to deal with a hijack or kidnapping.

What respondents said

Ofcom's proposed general approach to Section Three

4.82 Four respondents agreed with Ofcom's proposal that the rules in Section Three of the Broadcasting Code should be replicated in the Code with the necessary changes to reflect the online environment.[78]

4.83 One respondent suggested that the proposed guidance should identify particular contextual factors in its approach to Section Three. They said, "Ofcom should recognise that abusive or derogatory treatment can be produced through repetition, juxtaposition and coded framing even where the BBC does not itself use a slur." [79]

4.84 One respondent requested that Ofcom clarify its approach to "overlap". They submitted that "a single extract might be alleged to be offensive, abusive and encouraging unlawful content". In this scenario, they argued that "separate findings are justified only where distinct elements and harms are established."[80]

4.85 The same respondent also suggested that "sufficient challenge" as a contextual factor would "depend on format: a live interview, a text report, a short quotation, an archive item and a documentary can discharge the editorial purpose differently. Ofcom should assess the complete editorial arrangement and the BBC-controlled fragment actually distributed".[81]

4.86 Two respondents asked that the guidance acknowledge and consider the risk that repeated exposure to online items could create a cumulative impression which may differ from each item in isolation.[82]

4.87 CAMERA.org argued that the guidance should go further by recognising the risk of providing "an uncritical platform for an authoritative figure to make extreme, inflammatory or prejudicial allegations concerning an identifiable national, ethnic or religious group".[83]

Our decision

4.88 We have decided to proceed with the proposed wording and structure for Section Three of the Code. Regarding any potential "cumulative impression", as set out above in our decision section for Section Two of the Code, Ofcom assesses complaints about broadcast content against the rules in Section Three of the Broadcasting Code on a case-by-case basis and does not generally take into account the cumulative effect of similar examples of material broadcast over a longer period of time.

4.89 We acknowledge the difference between the way online material and broadcast material are accessed. Our Guidance therefore states that factors such as the extent to which

[78] Corvelo, D., CAMERA.org, Ofcom ACNI, Trans Advocacy & Complaints Collective.
[79] Elliott, E. response, p.5
[80] Corvelo, D. response, p.12
[81] Corvelo, D. response, p.11
[82] Corvelo, D. response, p.21; Trans Advocacy & Complaints Collective response, p.7
[83] CAMERA.org response, p.5

sufficient challenge is provided to material will vary depending on whether it is a written article or programme-like audiovisual clip, for example.

4.90 To ensure consistency, we have decided to adopt the same approach to our application of Section Three rules in the Code. However, our Guidance clarifies that we would expect the BBC to consider not just the nature of the material but also the experience of the online audience in how it encounters the material across different services, platforms and devices.

What respondents said

Rule 3.1

4.91 Two respondents broadly agreed with the inclusion of the three proposed contextual factors carried across from the Broadcasting Code in relation to our proposed Rule 3.1.[84] Others also agreed but said that further clarity on how Ofcom would consider these contextual factors would be valuable in guidance.[85] For example, it was suggested that the guidance highlight that the status or perceived authority of a speaker would be a relevant but not decisive factor and that relevant expertise should be distinguished from institutional authority or celebrity status.[86]

4.92 One respondent recommended that the guidance underline the importance of audiences being able to recognise the distinction between presenting a controversial view for examination and adopting or endorsing it.[87] Other additional contextual factors suggested for the guidance included: the severity and evidential basis of allegations; the existence of heightened community tensions; and the use of recognised hateful or prejudicial tropes.[88]

4.93 Several respondents requested that Ofcom provide further guidance on what it considers to be "sufficient challenge"[89] [90], with some respondents suggesting that Ofcom include factors such as proximity and timing, the format of the item (e.g. whether it is live or rapidly updated material) and the strength of the challenge itself.[91]

Our decision

4.94 We have decided to proceed with the proposed wording for Rule 3.1. However, in response to the concerns raised, we have provided clarification in the accompanying Guidance on how the significant contextual factors that support Rule 3.1 may apply in an online environment. We have also provided some clarity in Guidance on the different application of "sufficient challenge" as set out in our decision on the general approach to Section Three at paragraphs 4.89 - 4.90.

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[84] Corvelo, D. response, p.11; Ofcom ACNI response, p.2
[85] Trans Advocacy & Complaints Collective response, p.7; CAMERA.org response, p.5
[86] Trans Advocacy & Complaints Collective response, p.7
[87] Corvelo, D. response, p.12
[88] CAMERA.org response, p.5
[89] This was associated with Ofcom's proposed meaning of the part of Rule 3.1 which referred to material "likely to encourage or to incite the commission of crime or to lead to disorder". Ofcom's proposed meaning of this in our Consultation included reference to the proposed contextual factor of "whether sufficient challenge is provided to the material."
[90] CAMERA.org response, p.6
[91] Corvelo, D. response, p.12; Trans Advocacy & Collective response, p.8

What respondents said

Rules 3.2 and 3.3

4.95 Three respondents expressed broad support for the proposed wording for Rules 3.2 and 3.3[92] and some made suggestions on what the accompanying guidance on these rules should include.[93] It was recommended that the guidance should clarify the boundary between robust criticism and abusive treatment,[94] with one respondent arguing that detailed guidance is important because the "contextual exception will materially affect Rules 3.2 and 3.3". [95]

4.96 One respondent said that the guidance should confirm that Rules 3.2 and 3.3 would cover abusive treatment across a range of formats and expressions including images, captions, comparisons, insinuation or repeated questioning of a group's legitimacy.[96]

4.97 Another respondent expressed concern that dramatic and scripted content was not sufficiently separated from news and current affairs in the proposed list of contextual factors for Rules 3.2 and 3.3. They suggested that a lack of clarity could result in regulation being inappropriately applied to restrict legitimate content.[97]

Our decision

4.98 We have decided to proceed with the proposed wording for Rules 3.2 and 3.3 in the Code. However, in response to the concerns raised, Ofcom's Guidance to Rules 3.2 and 3.3 reflects our expectation that, when considering context, the BBC should understand the specific nature of the material itself, e.g. whether it is a written article or a video clip, as well as the experience of the online audience and how it encounters the material across different services, platforms and devices.

4.99 The proposed contextual factors for Rules 3.2 and 3.3 identified discrete genres where there would be likely editorial justification for more challenging or extreme views. We do not consider that the proposed juxtaposition of "news and current affairs" with "drama, comedy or satire" implies that these genres provide the same level of contextualisation or have similar audience expectations. We have therefore decided to finalise the list of contextual factors as proposed in the draft Code.

What respondents said – Rules 3.4 – 3.8

4.100 Respondents to this Section of the draft Code did not specifically reference our proposals for Rules 3.4 – 3.8.

Our decision

4.101 We therefore will proceed with the proposed wording for Rules 3.4 – Rule 3.8 of the Code.

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[92] Corvelo, D. response, pp.11-12; Elliott, E. response, p.5; Ofcom ACNI response, p.2
[93] Corvelo, D. response, pp.11-12; Elliott, E. response, p.5; Ofcom ACNI response, p.2; CAMERA.org response, pp.5-6; Trans Advocacy & Complaints Collective response, pp.7-8
[94] Corvelo, D. response, p.12
[95] Trans Advocacy & Complaints Collective response, p.7
[96] Trans Advocacy & Complaints Collective response, p.8
[97] The Writers' Guild of Great Britain response, p.3

Section Four: Religion

Principles: to ensure that the BBC exercises the proper degree of responsibility with respect to online material that constitutes religious online items[98]; that religious online items do not improperly exploit any susceptibilities of the audience[99]; and that the religious views and beliefs of those belonging to a particular religion or religious denomination are not subjected to abusive treatment.[100] The proposed rules for Section Four of the Code are included on page 14 in Annex 2.

What we proposed – Ofcom's proposed general approach to Section Four

4.102 In our Consultation we explained that the standards objectives that underpin Section Four of the Broadcasting Code were relevant and applicable to BBC online material. We proposed that those objectives should be reflected in three overarching rules (Rules 4.1, 4.2 and 4.3) in the Code to deliver adequate and proportionate protection to online audiences.

4.103 We proposed using the term "religious online items" across these overarching rules to cover material that deals with religion as a central subject, or as a significant part. This would mean that items consisting wholly of devotional material, acts of worship or prayerful reflection, as well as other items, such as current affairs or historical content where religion or belief is a significant part, would be in scope. We acknowledged that this type of material is not typical of BBC online output and that we expected few religious online items to fall under the proposed rules.

4.104 We explained that our proposals did not reflect existing rules in Section Four of the Broadcasting Code that address particular concerns that are associated with certain types of specialist programming found on broadcast services.[101] We considered that, were any such concerns to arise in relation to BBC online material, they could be addressed under the scope of proposed Rules 4.1, 4.2 and 4.3 of the Code and proposed Section One of the Code. We shared our view that this approach would be sufficient to enable the BBC to exercise its proper responsibilities for religious online items and to ensure protections for audiences from improper exploitation and abusive treatment on the basis of their religious views and beliefs.

What respondents said

4.105 Respondents were broadly supportive of Ofcom's proposed general approach to Section Four of the Code, with some further suggestions for qualification provided.[102] The TACC agreed that having three overarching rules in Section Four provided a proportionate basis for the Code to be effective in protecting "against improper and abusive treatment while preserving legitimate criticism, debate and freedom of expression".[103]

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[98] Section 319(2)(e) of the Act.
[99] Section 319(6)(a) of the Act.
[100] Section 319(6)(b) of the Act.
[101] In particular, the Broadcasting Code has rules on: identifying specific religions or denominations to the audience when dealing with religious subjects (Rule 4.3); prohibiting the promotion of religious views or beliefs by stealth (Rule 4.4); prohibiting the "seeking of recruits" to religions on certain programmes (Rule 4.5); and protecting children from religious programmes that contain claims of living persons having special powers (Rule 4.7).
[102] Trans Advocacy & Complaints Collective response, p.9, Corvelo, D. response, pp.12-13, CAMERA.org response, pp.6-7
[103] Trans Advocacy & Complaints Collective response, p.9

4.106 Another respondent agreed with our proposal that the term "religious online items" should apply to wholly devotional content, acts of worship or prayerful reflection, as well as other types of material, such as "current affairs or historical content where religion is a significant part".[104] They added that the scope for assessing such material should consider contextual factors, such as "criticism, satire and public interest reporting". They also suggested that the Code "should not become a general power to require theological balance or to suppress critical treatment". They clarified that, "where equality impacts are considered, Ofcom should test whether the same principles protect minority religions and non-religious beliefs without applying a lower threshold to controversial or unfamiliar views." This respondent further suggested that guidance should be provided to clarify: when online items will be considered as addressing religion as a central subject or otherwise; the treatment of online items that are used independently from their origin material; and how to distinguish personal accounts or belief statements from unqualified claims that could cause harm.[105]

4.107 Another respondent said that the proposed definition of "religious online item" was too broad and that it could be understood in ways that "could be used to stifle legitimate criticism of religious groups and practices." This respondent was also concerned that our proposals did not sufficiently separate dramatic and documentary content from other types of programming. They added that this could lead to risk aversion and be detrimental to the public interest.[106]

Our decision

4.108 We have decided to proceed with our proposal to have three overarching rules for Section Four of the Code. We are confident that this will be sufficient in ensuring adequate and proportionate protection to online audiences.

4.109 We recognise that interpreting and applying the Code to fragments of online material brings a different set of challenges to those associated with broadcast media under the Broadcasting Code. We have, therefore, included a section on "Overarching Themes for Online Material" in our accompanying Guidance. This section broadly addresses the issues raised by respondents in response to our proposals under Section Four of the Consultation, as well as several others that respondents raised in regard to other Sections of this Code that deal with "online items" by describing a non-exhaustive set of factors that may be considered by Ofcom when assessing fragments, depending on the context.

Broadcasting Code rules we proposed to reflect in Section Four

What we proposed

4.110 The proposed **Rule 4.1** reflected the standards objective that the BBC exercises the proper degree of responsibility with respect to the content of online material that constitutes a religious online item. This proposed rule replicated the equivalent Rule 4.1 in the Broadcasting Code.

4.111 The proposed **Rule 4.2** reflected the standards objective in section 319(6) designed to ensure that religious online items do not involve any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination. The

[104] Corvelo, D. response, p.12
[105] Corvelo, D. response, p.12
[106] The Writers' Guild of Great Britain response, p.73

proposed rule closely mirrored Rule 4.2 of the Broadcasting Code, which secures the same objective. When considering abusive treatment, we outlined in our Consultation that Ofcom expected to take a similar approach to that proposed in Rule 3.3 (see paragraph 4.72). This would include, for example, considering whether the material included statements which sought to revile, attack or vehemently express condemnation towards religious views and those belonging to a particular religion or religious denomination, without sufficient contextual justification.

4.112 The proposed **Rule 4.3** also reflected the standards objective under section 319(6) of the Act, which is also designed to ensure that religious online items do not improperly exploit any susceptibilities of the audience. This rule also closely mirrored Rule 4.6 of the Broadcasting Code, which has the same purpose.

What respondents said

4.113 The TACC said that Rule 4.2 should be applied consistently with Section Three of the Code and "should not shield religious institutions, doctrines or public-policy positions from evidence-based criticism". [107] They suggested that Ofcom develop guidance to support this aim. They added that Ofcom should "consider the complete presentation of online items, including headlines, images, captions and separately distributed fragments, and recognise that abusive treatment can arise through framing and repeated presentation, rather than through explicit language alone". [108]

4.114 CAMERA.org pointed out that statements about religious belief "may be technically accurate" but "through selective contextualisation" can also present "complex historical, cultural or national identities as simply irrational or doctrinal claims". [109] It also said Ofcom should provide guidance to address the representation and contextualisation of religious belief for audiences who might not share, or be familiar with, the religious worldview being described. [110]

A respondent said the Rules in Section Four should be read alongside Articles 9 (Freedom of thought, conscience and religion) and 10 (Freedom of expression) of the Human Rights Act 1998, as "they can protect audiences from improper exploitation and abusive treatment without insulating beliefs or institutions from criticism, satire, investigative journalism or policy debate". [111]

4.115 They added that offence might "not by itself be proof of improper exploitation or abusive treatment". They also advised that, in cases where Section Four overlaps with Section Two (Harm and Offence) and Section Three (Crime, Disorder, Hatred and Abuse of the Code), multiple breaches should be reflected in Ofcom's approach to regulating under the Code. [112]

Our decision

4.116 We have decided to proceed with the proposed wording for Rules 4.1 - 4.3 of the Code.

4.117 Several respondents noted concerns about the appropriate understanding of context in relation to this proposed section of the Code. Context is a central component to assessing

[107] Trans Advocacy & Complaints Collective response, p.9
[108] Trans Advocacy & Complaints Collective response, p.9
[109] CAMERA.org response, pp.6-7
[110] CAMERA.org response, pp.6-7
[111] Corvelo, D. response, p.12
[112] Corvelo, D. response, p.12

compliance throughout the Code (for example, see our decisions regarding proposed rules in Sections Two, Three and Five)) and our accompanying Guidance can assist stakeholders in understanding the various ways in which it should be considered in relation to BBC online material. Paragraphs 2.10 - 2.14 and 3.2 - 2.2 of that Guidance outline particularly relevant considerations in relation to the kind of concerns that might arise under Section Four.

4.118 We recognise that respondents saw value in the Code being applied consistently across its various sections and for potential breaches that might span multiple sections to be considered in a broad manner. We have followed such an approach in enforcing the Broadcasting Code and we intend to do the same with this Code, assessing potential breaches of content standards in BBC online material across multiple areas of harm where appropriate, proportionate and necessary.

4.119 Ofcom must perform its duties in accordance with the Human Rights Act 1998 and the rights set out in the European Convention Human Rights ("ECHR"). The Code has been drafted in the light of these, in particular Articles 9, 10 and 14 of the ECHR, which encompass freedom of thought, conscience and religion, freedom of speech, and protection from discrimination. Ofcom will have careful regard to the respective rights of the parties when it assesses compliance with relevant standards. However, we note that the Code does not prohibit legitimate criticism of any religion or its founder. This means that there is scope for religious debate, satire and for followers of one religion to criticise other religions, providing such criticism does not amount to pejorative abuse. Further, as a public body, Ofcom is subject to the public sector equality duty under section 149 of the Equality Act 2010, under which Ofcom must have regard, in exercising its functions, to the factors set out in subsection (1). The protected characteristics encompass religion or belief. Ofcom's rights assessment can be found in Annex A5.

Broadcasting Code rules we will not reflect in Section Four

What we proposed

4.120 The Broadcasting Code has rules on identifying specific religions or denominations to the audience when dealing with religious subjects (Rule 4.3), prohibiting the promotion of religious views or beliefs by stealth (Rule 4.4), prohibiting the "seeking of recruits" to religions on certain programmes (Rule 4.5) and protecting children from religious programmes that contain claims of living persons having special powers (Rule 4.7).

4.121 We described in our Consultation that these rules stem from specific concerns about certain types of specialist broadcast programming (e.g. a religious programme aimed at a particular religion's devotees), which might not be as relevant to the BBC's broad and diverse online audience. As noted earlier in this section, we considered that audiences would be sufficiently protected from any potential harm associated with these rules under Rules 4.1, 4.2 and 4.3, as well as Section One of the Code.

4.122 We said that we could consider whether it might be helpful to provide additional guidance for the BBC on these rules and pointed out that, as with the Broadcasting Code, the draft Code does not prohibit legitimate criticism of any religion or its founder. This means that there is scope for religious debate and for followers of one religion to criticise other religions, providing such criticism does not amount to pejorative abuse.

What respondents said

4.123 Respondents to the Consultation did not share any specific views on our proposals to not reflect Broadcasting Code Rules 4.4, 4.5, 4.6 and 4.7 in the Code as described.

4.124 Respondents did offer views about our proposals for Rules 4.1, 4.2 and 4.3 of the Code and we have summarised these above in paragraphs 4.113 – 4.115. These views are pertinent to understanding how we have decided to proceed with the final formulation of Section Four of the Code.

Our decision

4.125 We have decided to proceed with not mirroring Broadcasting Code Rules 4.4, 4.5, 4.6 and 4.7 in the Code, as we have considered that Rules 4.1, 4.2 and 4.3 will be sufficient in ensuring effective protections for audiences. We have also decided to include guidance on implementing Section 4 of the Code in our accompanying Guidance.

Section Five: Due Impartiality and Due Accuracy

Principles: to ensure that: the BBC's UK Public Online Material that constitutes news, in whatever form, is reported with due accuracy and presented with due impartiality; and that the special impartiality requirements in the Act are complied with. The rules for Section Five of the Code are included in pages 15 to 17 in Annex A2.

4.126 Section Five of the Broadcasting Code relates to the concept of "due impartiality" as it applies to news and other programmes.

4.127 In our Consultation we proposed to mirror all of the rules in Section Five of the Broadcasting Code, but with some proposed modifications to language and definitions, as appropriate, to take account of the online environment and characteristics such as its multi format, non linear and dynamic nature.

Broadcasting Code rules and definitions we proposed to reflect in Section Five

The meaning of "due impartiality"

4.128 The proposed Code included a definition of "due impartiality" which mirrored the definition in the Broadcasting Code, but with limited adaptations to ensure it would operate effectively in an online environment. We proposed to maintain the wording that "impartiality itself means not favouring one side over another" and that ""due" is an important qualification when it comes to impartiality, meaning "adequate or appropriate to the subject and nature" of the specific online material (see definition of "online item"). However, we proposed to clarify the definition to highlight that, in addition to time, due impartiality does not require that an equal division of "focus" has to be given to every view. This recognised that editorial emphasis in online material may be conveyed in different ways, including through structure, layout, prominence and format, rather than through time alone. This proposed adaptation also clarified that due impartiality does not require symmetry in word count, screen space, duration or prominence, while maintaining the underlying impartiality standard.

4.129 The proposed definition also reflected the role of updated and amended contextual factors in the application of due impartiality. In addition to those factors already recognised in the Broadcasting Code, the draft Code made clear that relevant considerations in relation to BBC online material regarding due impartiality may also include the format and type of the online item and the way in which content is presented and encountered. These additions recognised the range of formats and content types found in online material, as well as the

range of services through which it is made available (including third party platforms) and the differing ways in which audiences access and engage with BBC Online Material.

Due impartiality and due accuracy in news

4.130 Proposed **Rule 5.1** required that "news, in whatever form, must be reported with due accuracy and presented with due impartiality". This was based on the wording of the standards objective for news in the Act and mirrored Rule 5.1 of the Broadcasting Code. We proposed in our Consultation that, in assessing compliance with this rule, we would take account of the characteristics of online items, in particular, the fact that news material may remain accessible after events have developed, which we said may form part of the contextual assessment of due accuracy and due impartiality.

4.131 In applying proposed **Rule 5.1**, we proposed to also consider on a case-by-case basis whether an item of online material constitutes news, recognising the range of content on BBC news branded services.

4.132 Proposed **Rule 5.2** required that "significant mistakes in news should normally be acknowledged and corrected quickly" and that "corrections should be appropriately signalled to the audience". It adopted wording introduced into the Broadcasting Code in 2017 to reflect its application to BBC ODPS, which we considered also to be appropriate in an online environment. We said that the requirement that corrections "should be appropriately signalled" would allow the BBC to determine the most appropriate way of ensuring that users are made aware of corrections where necessary.

4.133 Proposed **Rule 5.3** restricted politicians from being "a newsreader, interviewer, reporter or author in any online item that constitutes news, unless, exceptionally, this is editorially justified and their political affiliation is made clear". This reflected the current wording of Rule 5.3 of the Broadcasting Code but was adapted in our Consultation to acknowledge that online news is frequently presented in authored formats, rather than through broadcast-style news reading, interviewing or reporting. The addition of "or author" was also intended to ensure it is clear on the face of the rule that politicians are restricted from writing a news story for inclusion in the BBC's online material.

Special impartiality requirements: news and other content

4.134 Proposed **Rules 5.4 to 5.12** reflected the special impartiality requirements in section 320 of the Act, which require broadcasters to ensure the preservation of due impartiality in output dealing with matters (and major matters) of political or industrial controversy and matters (and major matters) relating to current public policy.

4.135 Proposed **Rule 5.4** required that the BBC's online material excludes all expressions of the views and opinions of the BBC on matters of political or industrial controversy and matters relating to current public policy, subject to the exclusions set out in the rule. The proposed rule reflected the wording of Rule 5.4 of the Broadcasting Code, adapted to apply to BBC online material.

4.136 The exclusion in Rule 5.4 of the Broadcasting Code refers to "views and opinions relating to the provision of programme services"; the equivalent exclusion in our Consultation to proposed **Rule 5.4** was expressed as "views and opinions relating to the provision of the UK Public Services", encompassing both the BBC's broadcast and online UK Public Services. This provision, which reflects section 320(3) of the Act, was intended to ensure that BBC journalists are not prevented from giving views and opinions on matters relating to the BBC

and the provision of the UK Public Services, provided this is presented in line with the due accuracy and due impartiality requirements set out in the Code.

4.137 Proposed **Rule 5.5** required that due impartiality on matters of political or industrial controversy and matters relating to current public policy should be preserved in BBC Online Material and made clear that this may be achieved either within an online item or across a series of editorially linked online items taken as a whole.

4.138 The proposed rule reflected Broadcasting Code Rule 5.5 and sections 320(1)(b) and 320(4)(a) of the Act, which provide that due impartiality may be achieved within a programme or across a series of programmes taken as a whole. However, we adapted Rule 5.5 of the Code to achieve a functionally equivalent outcome in the online environment. In particular, the broadcasting concepts of "programme" and "series of programmes taken as a whole" were translated in our Consultation into the online context through the use of the terms "online item" and "a series of editorially linked online items taken as a whole".

4.139 An "online item" was a new definition proposed in our Consultation which does not have an equivalent in the Broadcasting Code, to supplement a revised definition of a "series" (see below). It was defined in our draft Code as:

> "an arrangement of online material presented to audiences as a single, identifiable item, which may include written text, still or moving images with or without sound), sound only online material, or any combination of these, and which may be updated over time while remaining identifiable as the same item".

4.140 We outlined our view that an online item might include, for example, a text-based article with embedded links, images, audio or video; an individual video or audio item, including a livestreamed programme; or other standalone content.

4.141 We also proposed a definition of a "series of editorially linked online items taken as a whole", which broadly reflected the approach in the Broadcasting Code in allowing for due impartiality to be achieved across a series, while adapting it for an online environment. It was defined in the draft Code as meaning more than one editorially linked online item, dealing with the same or related issues within an appropriate period.

4.142 We said in our Consultation that the definition retained the concept that items should deal with "the same or related issues over an appropriate period of time" but did not include a requirement for the content to be aimed at a "like audience". We said this was because the concept of a "like audience" is closely associated with broadcasting and the notion of a single channel, whereas online audiences may access content through multiple routes within a service or across platforms. It also reflected the fact that audiences are harder to measure or identify in an online environment.

4.143 We recognised in our Consultation that the application of this concept in an online context may benefit from further elaboration and explained our intention that accompanying guidance would set out how relevant factors will be applied in practice, including through examples. We said that this would be likely to include consideration of the following:

- **Editorial linkage:** whether there is a sufficient editorial linkage between items, beyond a shared subject matter, such that they can properly be treated together as part of the same series.
- **Appropriate period:** whether items are sufficiently proximate in time to be regarded as forming part of the same series, having regard to the nature of the issue and the development of the coverage.

- **Illustrative examples of a series:** a series may include, for example, (i) a clearly signposted editorial strand or "special report" comprising a number of related standalone articles; or (ii) a cluster of closely related articles on the same story published within a short period.

4.144 Where due impartiality is preserved across a series of editorially linked online items rather than within individual items, the draft **Rule 5.6** required that this would normally be made clear to users through appropriate signalling. We proposed in our Consultation that this would entail presenting content so that the relationship between items is sufficiently clear for users to understand them as connected and intended to be considered together.

4.145 We outlined in our Consultation our consideration that, in the online environment, the ways to provide this signalling would differ from broadcast. We proposed that signalling in an online context may include, for example; explicit labelling or branding; direct cross-linking between items; or the presentation of content as a clearly defined set. Content that is only loosely related by subject matter or linked solely through general navigation features (such as "related articles" or broad topic pages) is unlikely to constitute a series for these purposes. We proposed that a continuously updated item (such as a live page) would be likely to be considered as ordinarily constituting a single online item rather than a series. The proposed **Rule 5.6** did not prescribe specific methods, and we proposed that the approach to signalling – like the preservation of due impartiality itself – would remain an editorial matter for the BBC. However, we also proposed that further detail on how Ofcom would interpret and apply this concept would be set out in accompanying guidance.

4.146 Proposed **Rule 5.7** required that "views and facts must not be misrepresented in online material in a manner which would call into question the preservation of due impartiality"[113] and that views must be presented "with due weight over appropriate timeframes". We explained in our Consultation that due accuracy is not a statutory requirement outside of news. This proposed rule, which reflects Rule 5.7 of the Broadcasting Code, therefore prohibited misrepresentation of facts or views as would undermine the preservation of due impartiality in relation to the matters dealt with in the online material. We highlighted in our Consultation that the second limb of the proposed rule would be important in determining whether, where there may have been misrepresentation, due impartiality was nevertheless preserved in the online material.

4.147 Proposed **Rule 5.8** required that "any personal interest of a reporter, presenter or author which could call into question the due impartiality of the material must be made clear to the audience". This proposed rule reflected the Broadcasting Code requirements, with an adaptation to include "author" in recognition of how online content can be attributed.

4.148 Proposed **Rule 5.9** made clear that presenters and reporters (other than those in online material that constitutes news), presenters of personal view or "authored" online items, and chairs of online items that are a discussion programme or livestream may express their own views on matters of political or industrial controversy and matters relating to current public policy. This proposed rule reflected Rule 5.9 of the Broadcasting Code, while adapting it to apply to online items. We highlighted in our Consultation that due

[113] This proposed wording is an addition to the wording in Rule 5.7 of the Broadcasting Code and reflects how we consider it will be applied in practice in an online context. It also mirrors the similar relevant wording in Ofcom's proposed Tier 1 Standards Code – see Consultation Tier 1 Standards Code.

impartiality under Section Five does not require all views expressed in an online item to be given the same degree of prominence. This proposed rule therefore made clear that presenters of personal view items may express their own views on the matters to which it applies, providing alternative viewpoints are adequately represented and presenters do not use the advantage of regular appearances in a way that compromises the requirement for due impartiality. In relation to online material, adequate provision of alternative viewpoints may be achieved either within the online item itself or across a series of editorially linked online items taken as a whole.

4.149 In our Consultation we removed the existing reference within this rule in the Broadcasting Code to presenter phone-ins This was because Ofcom understood that this format is not typically included by the BBC in its online material and we therefore considered it would be disproportionate to include a specific reference to it in the proposed rule. However, we also proposed that, should any such content be featured in BBC online material, due impartiality would still need to be preserved within it by the BBC in accordance with the proposed **Rules 5.1** (see paragraph 4.130) **and 5.5** (see paragraph 4.137).

4.150 Proposed **Rule 5.10** required that any personal view or "authored" online item must be clearly signalled to the audience at the outset. This proposed rule reflected the Broadcasting Code Rule 5.10 with an adaptation to apply to online items rather than "programmes". As with proposed Rule 5.9, we proposed to remove the existing reference within Rule 5.10 in the Broadcasting Code to personality phone-in hosts, for the same reasons as for proposed Rule 5.9.

4.151 Proposed **Rules 5.11 and 5.12** applied to matters of major political or industrial controversy and major matters relating to current public policy. In line with the Broadcasting Code, proposed Rules 5.11 and 5.12 set out heightened due impartiality requirements for 'major matters'. These are generally matters of national or international importance. Consistent with Ofcom's guidance on Section Five of the Broadcasting Code, we explained in our Consultation that we would consider these additional rules necessary for matters of major political or industrial controversy or major matter relating to current public policy and that major matters are likely to be of the moment. As with broadcast content, Ofcom would treat the threshold for these heightened requirements, given the additional restrictions on a broadcaster's freedom of expression, as a high one.

4.152 Proposed **Rule 5.11** required that due impartiality is preserved on such matters either within an online item or across a series of editorially linked online items taken as a whole. Proposed **Rule 5.12** required that an appropriately wide range of significant views are included and given due weight in each online item or across a series of editorially linked online items taken as a whole, and that views and facts are not misrepresented. As explained above, these proposed rules reflected Broadcasting Code Rules 5.11 and 5.12 which give effect to the enhanced due impartiality requirements for such matters under section 320(6) of the Act.

General approach and the meaning of "due impartiality"

What respondents said

4.153 Many respondents were broadly supportive of the proposed general approach to Section Five and meaning of "due impartiality" as set out in the Consultation.[114] However, some stated clarification should be given in certain areas, as outlined below.

4.154 The TACC supported Ofcom's proposed Section Five of the Code but asked for "clearer treatment" of evidence-based due weight, linked series, recurring editorial patterns and corrections. The TACC elaborated that "due weight" should depend on "editorial quality and relevance, contributor expertise, informed support for a position, factual uncertainty and the adequacy of scrutiny." It also highlighted that political prominence alone "should not make a claim factually credible or entitle it to equal editorial weight." The TACC highlighted the importance of testing the factual premise of policy disputes involving trans people. It noted that "due impartiality should not require established facts to be treated as competing opinions merely because they arise within a politically contested subject." Regarding the consideration of linked items and due weight over time, the TACC said that Ofcom should also explain "how Ofcom will assess recurring patterns that do not constitute a qualifying series, including source selection, framing, prominence, terminology and omission." [115]

4.155 Ofcom's ACNI was also supportive of the proposed approach to Section Five. It noted that:

> "due impartiality has always carried particular weight in Northern Ireland, given the region's constitutional position and its history of political division along community lines. Matters that would be treated as routine political controversy elsewhere in the UK, such as the constitutional question, legacy prosecutions, parading disputes or language rights, sit close to the fault lines of a divided society here. The same standard of due impartiality and due accuracy that applies to BBC broadcast news in Northern Ireland should apply with equal force to its online material."[116]

4.156 One respondent said it was "justified" to mirror the established principles of due accuracy and due impartiality in the Broadcasting Code. However, they argued the online adaptations "require greater precision than a simple change of nouns."[117] CAMERA.org was also broadly supportive but said the proposed approach "does not yet adequately account for the permanent, cumulative and searchable nature of online news."[118]

4.157 News-watch supported the creation of the Code in general but, in reference to due impartiality, said that it:

> "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."[119]

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[114] Corvelo, D. response, p.13; Elliott, E. response, p.5; CAMERA.org response, p7; Ofcom ACNI response, p.2; Trans Advocacy & Complaints Collective response, p.9
[115] Trans Advocacy & Complaints Collective response, p.9
[116] Ofcom ACNI response, p.2
[117] Corvelo, D. response, p.13
[118] CAMERA.org response, p.7
[119] News-watch response, p.1

4.158 News-watch defined this as an "omission" which "matters because partiality often arises cumulatively.[120] News-watch also said such partiality:

> "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."[121]

4.159 News-watch therefore asked Ofcom to use the Code Consultation "to define a workable route for cumulative evidence."[122]

4.160 An individual respondent also echoed this sentiment, referring to "cumulative coverage" and stating that several items, while "individually defensible", can become "misleading, disproportionate or foreseeably harmful through repetition, renewed prominence and cross-platform amplification." This respondent supported Ofcom's proposed Code in general but said that it contained a "central weakness" in that "it still reads mainly as an item-by-item system. It needs an explicit way to assess a related course of BBC publication as a whole."[123]

4.161 The WGGB responded that the drafting of Ofcom's proposed Section Five was unclear, "considering the breadth of content the BBC produces." The WGGB argued that "to reduce its entire dramatic, entertainment and musical coverage as simply 'other content' when placed alongside 'news' is unhelpful in a regulatory context."[124]

4.162 Several respondents did not comment specifically on Ofcom's proposed Section Five general approach or Code rules in any detail but gave consultation responses about the issue of due impartiality on the BBC in general.

4.163 One submitted a response which they termed an "evidence review" of "BBC Accuracy and Impartiality" to "examine whether documented BBC errors and editorial choices reveal a recurring political pattern [in the framing choices regarding political figures and positions], while giving proper weight to evidence that weakens or rebuts that view." They concluded that there was "a risk of asymmetric treatment" and "sufficient evidence" to justify a further review into this matter (more information on this "evidence review" is in paragraphs 4.179-4.180 below).[125] ✂.[126]

A third expressed strong support for Ofcom's proposal to bring BBC social-media content within the new Code and elaborated by outlining an editorial standards complaint about the due impartiality of a recent BBC News post published on X.[127] A fourth stated that "high quality, balanced, fair and accurate reporting on the BBC website is vital to democratic processes not just in the UK but globally."[128] A fifth stated their view that "the BBC [i]s

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[120] News-watch response, p.1
[121] News-watch response, p.1
[122] News-watch response, p.1
[123] Elliot, E. pp.1-2
[124] Writers' Guild of Great Britain response, p.4
[125] Skinner, R. response, pp.1-2
[126] ✂
[127] Name Withheld 3 response, via email
[128] Name Withheld 2 response, via email

increasingly reporting with an agenda" and "has become judgemental, kneejerk, is into the same sort of anecdotal human interest reporting of news rather than just giving us the facts correctly and in a balanced way."[129]

Our decision

4.164 We have decided to proceed with our proposed approach to Section Five. However, we address specific requests for clarifications in the relevant sections below.

4.165 Some respondents also proposed that Ofcom should introduce a mechanism for assessing cumulative patterns of coverage, recurring editorial trends or collections of content which are not connected through an identifiable editorial relationship. We have not adopted these proposals. Consistent with the approach under the Broadcasting Code, the Code is structured around the assessment of individual online items and, where appropriate, series of editorially linked online items taken as a whole (See discussion on Rule 5.5 and 5.6 below). We discuss these proposals further in Section 7 below when outlining our decisions regarding our proposals for the Procedures for investigating breaches of content standards in BBC Online Material.

Due impartiality and due accuracy in news (Rules 5.1 to 5.3)

What respondents said

4.166 Very few respondents made any specific comments on proposed Rules 5.1, 5.2 or 5.3. However, Ofcom's ACNI supported the proposed rules in general.[130]

4.167 In relation to proposed Rule 5.1, the TACC argued that due accuracy should apply to the complete presentation of online news, including headlines, standfirsts, images, captions, social media text and notifications. It suggested that Guidance should address the assessment of evidential quality in online news, including the treatment of weak or self-selecting evidence, polling, anecdotal material, preliminary research, legal and medical claims, omitted qualifications and allegations presented as fact. The TACC also argued that Guidance should explain how expertise, informed opinion, factual uncertainty and the distinction between fact and opinion may be relevant to the assessment of due accuracy.

4.168 In relation to proposed Rule 5.2 (correcting mistakes), one respondent said a correction "must address the significant mistake at materially live BBC-controlled distribution points." This respondent explained this may require changing a headline, summary, excerpt or social post as well as the source item, but the "legal basis" should be identified in each case: Rule 5.2 for significant news mistakes, Rule 2.2 for materially misleading non-news factual material, voluntary BBC remediation, or a lawful Ofcom remedy. This respondent also suggested that "not every refinement requires formal correction across every distribution point." [131]

4.169 The TACC further argued that Guidance should require significant errors to be corrected in a proportionate and visible manner, including associated presentation where appropriate, and should address reasonable steps to reach the audience of the original material. News-

[129] Name Withheld 1 response, via email
[130] Ofcom ACNI, p.2
[131] Corvelo, D. response, p.13, p.15

watch similarly argued that Guidance should require corrections to bear a reasonable relationship to the reach and prominence of the original material.[132]

4.170 One respondent argued that online material differs fundamentally from broadcast material because it may remain searchable, accessible and shareable indefinitely. The respondent suggested that Guidance should explain what constitutes an adequate correction in these circumstances and address factors including the seriousness of the original error, the prominence and clarity of any correction, subsequent evidence, the continuing accessibility of the original material and the likelihood that audiences encountering the material subsequently may continue to be misled. The respondent also argued that Guidance should address circumstances in which correction or annotation may be insufficient and where material may instead need to be substantially revised or withdrawn.[133]

4.171 No respondents commented specifically on Rule 5.3.

Our decision

4.172 We have decided to proceed with the proposed wording of Rules 5.1 - 5.3 in the Code.

4.173 In relation to Rule 5.1, respondents raised questions about how due accuracy should be assessed in an online environment, including the relevance of headlines, images, captions and other constituent elements of online news material. Some respondents also suggested that guidance should address matters such as evidential quality, factual uncertainty and the distinction between fact and opinion.

4.174 The accompanying Guidance to the Code explains that Ofcom's assessment will take account of the particular characteristics of online news material. In particular, it explains that online items may comprise multiple constituent elements, including text, images, audio, video and embedded links, and that such elements may be relevant contextual factors where they influence users' understanding of the material. It also explains that, in considering whether news in whatever form is duly accurate or duly impartial, Ofcom will take account of the fact that online news material may remain accessible after events have developed, such that factors including the age, persistence and ability to update content may form part of the contextual assessment.

4.175 We have not included detailed frameworks or prescriptive criteria concerning evidential quality, the assessment of particular categories of evidence, expertise, factual uncertainty or the distinction between fact and opinion. Consistent with our wider approach to Section Five, we consider that such matters are more appropriately assessed in light of the particular circumstances of individual cases rather than through prescribed methodologies.

4.176 In relation to Rule 5.2, respondents commented on how significant mistakes should be corrected and how corrections should be signalled to users in an online environment. Some respondents suggested that the Code or accompanying guidance should prescribe particular approaches to correcting material across different formats, services or platforms. We said in our Consultation that the requirement that corrections "should be appropriately signalled" would allow the BBC to determine the most appropriate way of ensuring that users are made aware of corrections where necessary. Whilst acknowledging the responses on this point, this remains our view.

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[132] Trans Advocacy & Complaints Collective response, p.11
[133] CAMERA.org, pp.9-11

4.177 However, the accompanying Guidance explains that one of the purposes of Rule 5.2 is to promote transparency and accountability where significant mistakes have occurred. It also explains that, in considering whether the signalling of a correction is appropriate, Ofcom may take account of factors including the nature and significance of the mistake, the visibility and prominence of the correction, and the format of the online item concerned. The Guidance further explains that, where material has been distributed across multiple services or platforms, Ofcom may take account of the extent to which appropriate steps have been taken to address a significant mistake in the various forms in which that material was made available.

Special impartiality requirements: news and other content

What respondents said

Proposed Rule 5.4: Exclusion of views or opinions

4.178 No respondents gave any direct comments on proposed Rule 5.4 ("the exclusion of views or opinions"). However, some gave comments which related to the gist of this proposed rule.

4.179 The respondent who submitted the "evidence review" of "BBC Accuracy and Impartiality" (see paragraph 4.163 above) explained that the intention of their review had been to test the following hypothesis:

> "[That,] when reporting politically contentious matters, BBC News and BBC Verify may be more likely to adopt, amplify or inadequately challenge assumptions associated with the establishment centre-left, while applying more suspicious framing, loaded language or evidential demands to centre-right or populist right actors." [134]

4.180 To conduct the "evidence review" the respondent analysed eight pieces of historic BBC content which they said constituted "documented BBC errors and editorial choices".[135] Their "provisional conclusion" was as follows:

> "The evidence supports concern about a recurring centre-left directional tendency in several serious failures. It does not yet prove that BBC output overall is institutionally Labour-aligned. A credible final claim requires matched comparison, transparent inclusion rules and measurement of correct prominence."[136]

4.181 Another respondent referenced what they termed the BBC's "blatantly skewed and distorted material on the BBC website"[137] and a third reported their view that the BBC "was increasingly reporting with an agenda".[138]

Proposed Rules 5.5, 5.6: Online items, a series of editorially linked online items taken as a whole and signalling

4.182 Several respondents commented on Ofcom's proposed approach to preserving due impartiality across a series of editorially linked online items taken as a whole and on the related concepts of editorial linkage, appropriate period and signalling.

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[134] Skinner, R. response, p.3
[135] Skinner, R. response, p.1
[136] Skinner, R. response, p.9
[137] Name Withheld 2 response, via email
[138] Name Withheld 1 response, via email

4.183 The TACC welcomed Ofcom's efforts to adapt the concept of a series for the online environment but argued that removal of the broadcasting concept of a "like audience" did not fully address audience encounter concerns. It submitted that "a user who encounters one item through search, social media or recommendation may never see the material relied upon to establish impartiality".[139] The TACC argued that where the BBC relies upon a series to preserve due impartiality, the items should have a direct editorial relationship, be prominently signalled and cross-linked, be published within an appropriate period, receive reasonably comparable prominence, be distributed through routes likely to reach substantially overlapping audiences and remain connected while the BBC relies upon them as a series.

4.184 The TACC also argued that Ofcom should explain how it would assess "recurring patterns that do not constitute a qualifying series", including issues such as source selection, framing, prominence, terminology and omission. In its view, these factors may be relevant even where content does not form part of a qualifying series of editorially linked online items.[140]

4.185 News-watch similarly argued that balancing material relied upon to achieve due impartiality should address substantially the same issue, be published within an appropriate period and receive reasonably comparable prominence. In its view, "users exposed to the first item should have a realistic opportunity to encounter the second" and material directed to significantly smaller audiences or buried in archives should not automatically be capable of balancing prominently promoted material.[141]

4.186 Ofcom's ACNI broadly supported the proposed approach but highlighted concerns regarding how content is encountered in practice. It noted that BBC content is frequently encountered as "a single shared item, a headline, a clip or a repost, separated from the companion pieces that would otherwise complete the picture" and cautioned that cross-linking and signalling mechanisms operating on BBC platforms may not remain visible once content is shared via third-party services.[142]

4.187 One respondent similarly suggested that where an earlier item remains prominent after balancing material has been published, the BBC should consider adding a proportionate link or notice directing audiences to the subsequent content.[143]

4.188 Several respondents also proposed areas that should be addressed in accompanying Guidance. News-watch argued that the Guidance should address edited extracts, cross-platform publication, cumulative prominence and the distinction between editorial decisions under BBC control and recommendation decisions made solely by third-party platforms.[144]

4.189 One respondent argued that the Guidance should explain how continuously updated live pages should be treated; how editorial linkage differs from "topic similarity, automatic tagging and search co-occurrence"; how signalling and "functional discoverability" may be achieved in practice; and how archived material, content fragments and content

[139] Trans Advocacy & Complaints Collective response, p.10
[140] Trans Advocacy & Complaints Collective response, p.11
[141] News-watch response, p.6
[142] Ofcom ACNI response, p.2
[143] Corvelo, D. response, p.14
[144] News-watch response, p.6

distributed through third-party services should be assessed.[145] He also suggested that Guidance should explain how reasonable BBC control should be assessed where content is distributed via third-party services.

4.190 In relation to Rule 5.6 (appropriate audience signalling when preserving due impartiality over an editorially linked series) the TACC said that compliance with this rule should require clear signalling. In its view, general topic pages, algorithmically generated related-content boxes and ordinary navigation would not be sufficient. The TACC also commented that each online item should meet a minimum independent standard and that reliance on a series should not permit a materially misleading headline, misrepresentation of facts or views or the presentation of an allegation as established fact.[146] Ofcom's ACNI also requested that the guidance which was intended to accompany Rule 5.6 in the final Code makes clear that the requirement for a series to be "normally made clear to users" is interpreted with regard to how BBC content actually circulates once it leaves the BBC's own platforms.[147]

Rule 5.7: Due weight and misrepresentation

4.191 Several respondents argued that the proposed rule would benefit from further explanation of how due weight should be assessed in practice. Their comments focussed in particular on the relevance of expertise, evidential quality, factual uncertainty and appropriate timeframes.

4.192 The TACC argued that "due weight" should depend on "evidential quality and relevance, contributor expertise, informed support for a position, factual uncertainty and the adequacy of scrutiny". It submitted that political prominence alone "should not make a claim factually credible or entitle it to equal editorial weight". [148]The TACC also argued that Ofcom should explain how expertise, informed opinion, the distinction between fact and opinion and factual uncertainty may affect the assessment of due weight. Further, it suggested that political activity, media attention or repetition should not themselves establish evidential significance.[149]

4.193 The TACC also argued that "due impartiality should not require established facts to be treated as competing opinions merely because they arise within a politically contested subject."

4.194 One respondent requested further clarification regarding the meaning of due weight and appropriate timeframes. The respondent argued that Guidance should define the factors relevant to determining both "due weight" and an "appropriate timeframe" when assessing due impartiality across online content.[150]

Rules 5.8: Personal interests of reporters, presenters and authors

4.195 The WGGB interpreted Rule 5.8 through the prism of writers for the BBC. The WGGB contended that it is "essential that dramatists have the freedom to explore the widest possible range of topics, including controversial ones. They also, as freelance workers, have the right to privacy in terms of their political viewpoints and for their work to be assessed

[145] Corvelo, D. response, pp.15-16
[146] Trans Advocacy & Complaints Collective response, p.10
[147] Ofcom ACNI response, p.2
[148] Trans Advocacy & Complaints Collective response, p.10
[149] Trans Advocacy & Complaints Collective response, p.11
[150] CAMERA.org, p.9

on its own merits."[151] However, they argued that the word "author" in proposed Rule 5.8 had been placed in the context of the way in which online articles are attributed but "does not address the other, more widely used use of the term." The WGGB stated this left the proposed Code unclear regarding how it would be applied to the authors of scripted content. The WGGB also argued that the proposed Rule did not currently explain "what it is about an author that might call into question the 'impartiality of the online material".[152] They also outlined their concerns that, in its current form, the proposed Rule could result in writers being excluded from projects for the BBC on the basis of personal characteristics or assumed political affiliation.[153]

4.196 The TACC argued that Guidance should clarify the circumstances in which contributor interests may require disclosure where they are material to questions of accuracy, impartiality, due weight or misrepresentation, while avoiding any general requirement for disclosure by all contributors.[154]

4.197 Another respondent argued that Guidance should explain the types of personal interest that may be capable of calling due impartiality into question. The respondent suggested that these may include political campaigning, advocacy activity, organisational affiliations, family connections, previous employment and other significant relationships connected to the subject matter being reported.[155]

Rules 5.9 and 5.10: Personal view and authored content

4.198 Few respondents commented directly on the proposed wording of Rule 5.9. However, one respondent requested further clarification regarding the treatment of personal-view and authored content in an online environment.[156]

4.199 The same respondent argued that "attribution can inform audience expectation but does not remove the BBC's responsibility for hosting or publishing the material".[157] While supporting provision for personal-view and authored content, the respondent argued that the Code should preserve room for distinctive and challenging voices while ensuring that opinion labels cannot be used to avoid requirements that would otherwise apply.

4.200 The same respondent also highlighted contributions from politicians as a particular area requiring care. In the respondent's view, a politician's contribution should not automatically become the BBC's own view. However, the respondent argued that repetition, framing and the absence of material challenge may remain relevant to any overall assessment of due impartiality.[158]

4.201 One respondent requested further clarification regarding the signalling and attribution of personal-view and authored online items. They argued that Guidance should explain how such material ought to be labelled and attributed so that audiences understand its nature. The respondent suggested that Guidance should address the operation of attribution and

[151] Writers' Guild of Great Britain response, p.4
[152] Writers' Guild of Great Britain response, p.4
[153] Writers' Guild of Great Britain response, p.4
[154] TACC response, p.11
[155] CAMERA.org, p.9-10
[156] Corvelo, D. response, pp.15-16
[157] Corvelo, D. response, p.16
[158] Corvelo, D. response, p.16

signalling across common online contexts and should make use of examples of compliant and non-compliant outcomes rather than relying solely on detailed checklists.

Rules 5.11 and 5.12: Major Matters

4.202 A small number of respondents commented on the proposed application of the heightened due impartiality requirements relating to matters of major political or industrial controversy and major matters relating to current public policy.[159] One respondent argued that Guidance should explain how the BBC should identify an "appropriately wide range of significant views" and determine the weight afforded to those views.[160] The respondent suggested that particular consideration should be given to the distinction between authority and neutrality, noting that governments, international organisations, NGOs, academics, campaign organisations and other institutional sources may possess expertise or authority while also having interests, positions or involvement in the subject matter under consideration. In the respondent's view, appropriate scrutiny may be particularly important where experts or organisations present themselves as neutral despite a track record of partisan positions.

4.203 One respondent argued that major matters should be applied "with discipline" and should not be engaged merely because a subject is contentious or politically criticised. The respondent suggested that Guidance should include criteria to assist in determining when the heightened requirements for major matters are engaged, arguing that this would provide greater certainty for both audiences and editorial decision-makers.[161]

Our decision

4.204 We have decided to proceed with the proposed wording of Rules 5.4 to 5.12 of the Code. We explain our reasoning below, including how we have responded to requests for clarification and additional guidance.

Rules 5.5 and 5.6: Online items, a series of editorially linked online items taken as a whole and signalling

4.205 A significant number of responses focussed on the practical application of the concepts of an online item and a series of editorially linked online items taken as a whole, together with the related concepts of editorial linkage, appropriate period and signalling. Respondents also raised issues in connection with our proposed Section Five relating to content fragments, audience encounter, links and the ways in which users discover and engage with online material.

4.206 As set out in our Consultation, we considered that these concepts would benefit from further explanation in accompanying Guidance rather than additional rules in the Code. We have therefore addressed these matters through the accompanying Guidance, including guidance on:

- the meaning of an online item;
- the meaning of a series of editorially linked online items taken as a whole;
- editorial linkage and appropriate period;
- the preservation of due impartiality within an online item and across a series of editorially linked online items;

[159] Corvelo, D, p.15, CAMERA.org, p.10
[160] CAMERA.org response, p.10
[161] Corvelo, D. response p.16

- the role of links and related content; and
- appropriate signalling where the BBC relies on a series of editorially linked online items.

4.207 In response to requests for greater clarity regarding the concept of a series of editorially linked online items taken as a whole, we have expanded the illustrative examples included within the meaning of that term in the Code. This is intended to make clear that the concept may encompass a range of editorial approaches and is not limited to pre-planned, branded or formally designated editorial projects.

4.208 Several respondents suggested more prescriptive approaches in relation to issues such as discoverability, prominence, audience reach and signalling. We recognise the importance of these issues in an online environment, where audiences may encounter BBC online material through a variety of formats, services and routes of access. Rather than introducing fixed requirements or thresholds, we have addressed these concerns through the contextual framework set out in the Guidance. In particular, the Guidance explains how the format and type of online material, the way in which content is presented and encountered, and the ways in which audiences are likely to engage with content may be relevant to the assessment of due impartiality, whether within a single online item or across a series of editorially linked online items taken as a whole. We consider that this approach better reflects both the statutory framework and the inherently contextual nature of due impartiality assessments.

Rule 5.7: Due weight and misrepresentation

4.209 Some respondents requested further clarification regarding due weight, appropriate timeframes, evidential quality and the treatment of competing viewpoints. We have addressed these matters through Guidance, including clarification of the relationship between due weight, misrepresentation and the preservation of due impartiality, and the relevance of the "appropriate period" considerations discussed under Rule 5.5.

4.210 We have not introduced detailed frameworks or hierarchies relating to expertise, authority, evidential quality or source weighting. Consistent with our wider approach to Section Five, we consider that such matters are more appropriately assessed in light of the circumstances of individual cases rather than through prescribed methodologies.

Rule 5.8: Personal interests of reporters, presenters and authors

4.211 Respondents requested further clarification regarding the types of interests that may be relevant to due impartiality and the circumstances in which disclosure may be required. Concerns were also raised regarding the application of the rule to authors of scripted content.

4.212 We do not consider it appropriate to prescribe exhaustively the interests that may be capable of calling due impartiality into question. Whether a personal interest is capable of engaging Rule 5.8 will depend on the facts and context of the individual case.

[For the purposes of Rule 5.8, the Guidance adopts the same approach to authorship as is explained in relation to Rule 5.3.]

Rules 5.9 and 5.10: Personal view and authored content

4.213 Some respondents requested further clarification regarding the application of the rules to personal-view and authored content, including attribution, the representation of

alternative viewpoints and the signalling of such material. We have addressed these matters through Guidance, including clarification of the concepts of personal-view and authored content, the application of authorship in an online environment and the signalling of personal-view and authored online items.

4.214 In particular, we have clarified the meaning of "author" for the purposes of these rules. The inclusion of "author" is intended to address situations where an individual performs an authorial role in relation to online material to which the special impartiality requirements apply. It is not intended to create new obligations in relation to writers of dramatic, entertainment or other scripted content as a class. Rather, the amendment reflects the role that attributed authors may perform within BBC Online Material and ensures that the rules can operate effectively in an online environment.

Rules 5.11 and 5.12: Major matters

4.215 Some respondents requested additional guidance regarding major matters of political or industrial controversy and major matters relating to current public policy, including the concepts of significant views and due weight. We have decided not to develop new criteria for these concepts in the online context. Instead, the Guidance cross-refers to the established concepts contained in the Broadcasting Code Guidance where the underlying principles remain unchanged, while confirming that, as in broadcasting, the threshold for the application of these heightened requirements in relation to BBC online material remains a high one.

Proposed Guidance and any further comments

What respondents said

4.216 Several respondents commented on the form and scope of the accompanying Guidance. While most comments concerning Guidance related to the application of particular Section Five Rules and are addressed under the relevant rule sections above, some respondents made broader suggestions regarding the development and design of the Guidance itself.

4.217 The TACC suggested that Ofcom should engage with stakeholders before finalising the Guidance.[162]

4.218 One respondent broadly supported Ofcom's proposed approach to Guidance and argued that it should explain how the Code's obligations and definitions would operate in common online settings "without creating new liability by example". The respondent also suggested that Guidance should make use of examples of compliant and non-compliant outcomes, rather than relying heavily on detailed checklists.[163]

4.219 One respondent also suggested that Guidance should require a recorded cumulative public-interest and proportionality assessment where coverage of particular events or individuals becomes especially intensive.[164]

[162] Trans Advocacy & Complaints Collective response, p.11
[163] Corvelo, D. response, pp.15-16
[164] Elliott, E. response, p.5

Our decision

4.220 We have considered respondents' comments in finalising the Guidance accompanying Section Five of the Code.

4.221 The majority of the Guidance-related issues raised by respondents concerned the application of particular Rules and have been addressed under the relevant rule sections above and reflected, where appropriate, in the accompanying Guidance.

4.222 Consistent with the approach taken throughout the Code, we have sought to provide additional explanation where necessary to assist the interpretation and application of the Rules in an online environment, while avoiding an unduly prescriptive approach. We consider that the Guidance should assist the BBC in applying the Code across a wide range of online formats and contexts without creating additional requirements beyond those contained in the Code itself.

4.223 We have not adopted proposals to introduce additional procedural requirements through the Guidance. The Guidance is intended to support understanding and application of the Rules rather than establish separate compliance obligations.

Section Six: Elections and Referendums

Principle: to ensure that the special impartiality requirements in the Communications Act 2003 and other relevant legislation relating to elections and referendums are applied to the BBC's UK Public Online Material at the time of elections and referendums. The proposed rules for Section Six are included in pages 18 to 20 in Annex 2.

4.224 Our proposed rules for Section Six of the Code were intended to secure the same statutory standards objectives as Section Five for due accuracy and due impartiality in news and due impartiality in certain non-news material. They were envisaged to provide heightened protections, designed to safeguard the integrity of democratic debate, which is of particular importance during an election period. We recognised in our Consultation the important role of BBC online material in ensuring that audiences are able to access news and current affairs they can trust.

4.225 We therefore proposed to substantially mirror relevant rules in Section Six of the Broadcasting Code. However, we also proposed not to replicate rules in the Broadcasting Code relating to constituency and electoral coverage in elections, as historically these have not been adopted by the BBC under the relevant legislation. The BBC instead incorporates these requirements into its own Editorial Guidelines.

Broadcasting Code rules and definitions we proposed to reflect in Section Six

What we proposed

4.226 The highest requirement of due impartiality applies during election periods and proposed **Rule 6.1** made clear that the rules in Section Five, in particular those relating to major matters of political or industrial controversy and major matters relating to current public policy, would apply to coverage of elections and referendums.

4.227 Proposed **Rules 6.2 and 6.3** reflected the requirement to give due weight to different participants in the coverage of elections and referendums, respectively and supported the preservation of due impartiality during these periods. Although the concept of "due weight" is reflective of the nature of linear broadcasting, we also considered it to be relevant and

appropriate in the context of BBC Online Material because of the BBC's role as a public service provider and the nature of its news and current affairs output. While online material is not scheduled in a linear way, the BBC exercises editorial control over how content is presented, signposted and made available across its services. In this context, we said in our Consultation that the requirement to give due weight would provide an important mechanism for ensuring that coverage appropriately reflects the relative significance of different parties, candidates and participants and supports the preservation of due impartiality.

4.228 Proposed **Rule 6.2** required that due weight be given to the coverage of parties and independent candidates during the election period. In determining the appropriate level of coverage, we said in our Consultation that the BBC should take into account evidence of past electoral support and/or current support. We also said the BBC should consider giving appropriate coverage to parties and independent candidates with significant views and perspectives.

4.229 Proposed **Rule 6.3** required that due weight be given to designated organisations in coverage during the referendum period and that the BBC also considers giving appropriate coverage to other permitted participants with significant views and perspectives.

4.230 Proposed **Rule 6.4** required that discussion and analysis of election or referendum issues must finish when the poll opens. Proposed **Rule 6.5** required that the BBC must not publish the results of any opinion poll on polling day itself until the election or referendum poll closes. These rules were proposed to reflect the Broadcasting Code requirements and were designed to ensure that coverage does not influence voters' decisions during the polling period. This also reflected the statutory prohibition on publishing polling data whilst polls are open.[165]

4.231 Proposed **Rule 6.6** prohibited candidates in UK elections and representatives of permitted participants in UK referendums from being used as presenters, interviewers, reporters or authors in online material during the election period. This rule reflected Rule 6.6 of the Broadcasting Code, with the addition of "authors" to reflect the importance of text-based content in BBC Online Material.

4.232 Proposed **Rule 6.7** provided that appearances or contributions by candidates or representatives in non-political online material planned or scheduled before the election or referendum period may continue, but no new appearances or contributions should be arranged or published during that period.

4.233 Both proposed **Rules 6.6 and 6.7** also made clear that previously published archive online material need not be removed whilst the polls are open or during the election or referendum period, respectively. This reflected the continued availability of online content and aligned with the approach taken in the Broadcasting Code for BBC ODPS content, where existing material is not required to be removed during these periods.

[165] Section 66A, Representation of the People Act 1983.

General approach, specific Section Six Rules and Guidance

What respondents said

4.234 Three respondents commented on our proposed Section Six of the Code.[166] Their comments combined responses on Ofcom's proposed general approach, specific proposed Rules and supplementary guidance for this section.

4.235 All three respondents were supportive of mirroring the existing rules on election and referendum coverage in the Broadcasting Code for the BBC's online material. In particular, the TACC said it supported extending the heightened impartiality requirements applying during elections and referendums to BBC online material[167] and an individual respondent also considered this "appropriate" since public interest is heightened during election and referendum periods.[168] However, all three respondents also suggested further considerations for Ofcom to take into account.

4.236 In relation to Ofcom's proposed general approach, the individual respondent noted that online pages and posts can remain available across several elections, serve several nations or localities and move between passive archive and active promotion. They therefore recommended that the final framework should distinguish "four states": ordinary archival availability; a substantive update; deliberate BBC recirculation or renewed prominence; and third-party or organic renewed attention. The individual also suggested that multi-location coverage "also requires sensitivity", in that a contribution that is relevant in one electoral area should not be treated as nationally representative without clear framing. At the same time, "online accessibility across the UK should not turn every local item into a UK-wide balance exercise."[169]

4.237 All three respondents made reference to the concept of "due weight" which was included in proposed Rules 6.2 and 6.3. The TACC suggested that due weight should take account of relevant evidence, including past and current electoral support, "rather than online attention alone". The TACC also recommended Ofcom consider the prominence and audience pathways through which election and referendum material is distributed.[170] The individual respondent suggested rolling live pages would require particular care and that "due weight" should be assessed over an appropriate period and with attention to the structure and persistence of the page, not solely to the order of individual updates. This respondent also suggested material corrections or candidate clarifications should be attached where they remain practically useful.[171] Finally, Ofcom's ACNI pointed out the specific context of Northern Ireland's electoral system, incorporating several parties holding significant levels of support. They contended that the application of "due weight" therefore "should reflect this multi-party reality". Ofcom's ACNI acknowledged, in its view, Ofcom's current awareness of this context but stated the importance of formally reflecting it in the final Code.[172]

4.238 Regarding proposed Rules 6.6 and 6.7 (candidate appearances), Ofcom's ACNI supported the proposed treatment of previously published archive online material, i.e. the direction

[166] Trans Advocacy & Complaints Collective response p.12, Corvelo, D. response p.16, Ofcom ACNI response p.1
[167] Trans Advocacy & Complaints Collective response, p.12
[168] Corvelo, D. response, p.16
[169] Corvelo, D. response, p.16
[170] Trans Advocacy & Complaints Collective response, p.12
[171] Corvelo, D. response, p.16
[172] Ofcom ACNI response, p.2

that it need not be removed for the election or referendum period. It noted that this appeared to it to be proportionate, given the frequency of electoral events in Northern Ireland across Westminster, Assembly, local government and potential referenda. However, it requested this provision be reviewed after a full election cycle.[173]

4.239 The individual respondent also made comments on suggested areas for further guidance by Ofcom. They highlighted the importance of any guidance aligning with current electoral law and Ofcom's standards role and the need to avoid any suggestion that the Code might replace statutory restrictions. They also suggested guidance should explain how a later correction or clarification is made visible when an election item continues to circulate. Finally, they suggested any guidance give "practical treatment" to:

1. "the start and end of the relevant election or referendum period, including material published or updated at the transition;
2. the evidence used to assess due weight, such as editorial plans, significant item groupings and the nature of contributions, without imposing mechanical counting;
3. passive archives, deliberate recirculation, homepage placement, feed inclusion, search presentation and BBC-controlled social reposting;
4. rolling pages, election hubs and explainers that change throughout a campaign;
5. candidate contributions, interviews and embedded material, including clear identification of status and constituency or electoral relevance;
6. personalisation and recommendation where the BBC controls the editorial settings, and the boundary where it does not;
7. national, devolved and local contests occurring at the same time;
8. treatment of independent candidates and significant viewpoints without reducing due weight to equal numerical treatment;
9. polling-day changes and restrictions, including the difference between an unchanged archive and a newly selected or refreshed item; and
10. retention of proportionate records sufficient to explain editorial treatment after the event."[174]

Our decision

4.240 We have decided to proceed with our proposals for Rules 6.1 – 6.7 of the Code, as respondents were broadly supportive of Ofcom's general approach. This will deliver parity between the Broadcasting Code and the Code in relation to Rules that apply to election and referendum coverage, thus enabling continuity and regulatory certainty for both the BBC and users/audiences.

4.241 Some respondents made suggestions that the Code should account for different stages in the lifecycle of content, and the relationship between content and locality, in the context of election and referendum periods. Ofcom considers that these are chiefly issues of BBC editorial responsibility. They would, therefore, be for the BBC to account for in the creation and management of its content and it would not be appropriate for Ofcom to have an influence over this. Such issues could be considered by Ofcom, but only post-publication and where relevant to a complaint made to us under the scope of the Code. Ofcom's handling of such a complaint would be supported by the Procedures for investigating breaches of content standards that are described in Annex A4 of this Statement. Ofcom has

[173] Ofcom ACNI response, p.2
[174] Corvelo, D. response, p.16

decided to publish specific Guidance to offer direction on these and other related concepts, covering e.g. the treatment of archive online material during election and referendum periods and the treatment of parties, candidates and independent candidates during election periods.

4.242 In deciding to proceed with our proposals under Rules 6.2 and 6.3 of the Code, Ofcom has drafted Guidance in response to comments from respondents about the concept of due weight in the context of election and referendum periods. This Guidance is informed by the Rules and Guidance under Section Five of the Code, particularly where they relate to matters of major political or industrial controversy and major matters relating to current public policy. As with the Broadcasting Code, the concept of due weight is flexible, and its application is dependent on the electoral context. This will enable the BBC to account in its online material for evidence of past electoral support and/or current support and to consider giving appropriate coverage to parties and independent candidates with significant views and perspectives, depending on the context.

4.243 Regarding comments from respondents on the application of due weight in the context of the multi-party electoral system in Northern Ireland, Ofcom considers that the Code as published should provide a fully flexible framework to respond to the specifics of that context. In addition, as noted in our Equality Impact Assessment, Ofcom considers that the Code should not have any adverse impacts on specific groups of persons within Northern Ireland that would be likely to be affected differently to the rest of the UK.

4.244 As in relation to the Broadcasting Code, and in accordance with the provisions of the updated Framework Agreement[175], we will undertake reviews of the Code and its related guidance as necessary. This will include scope to consider Rules 6.6 and 6.7, which cover candidate appearances in online material, and the provisions in those Rules for previously published archive online material to not require removal during an election or referendum period.

4.245 In response to the submission from one respondent that outlined a series of considerations that should be addressed in Ofcom's guidance, we consider that these are all covered by the Guidance that we have published to accompany to Code. The sections of Guidance which cross-reference the Rules and Guidance under Sections Five and Two of the Code are particularly relevant in this regard, as they allow for flexibility to be applied in relation to BBC online material across its various iterations and types, and the contexts in which appears. In addition, the Procedures enclosed at Annex A4 of this Statement address the point made about the availability of relevant information post-publication.

Broadcasting Code rules we did not propose to reflect in Section Six

4.246 The Broadcasting Code includes additional rules relating to constituency and electoral area coverage (Rules 6.8 to 6.12). These rules implement section 93 of the Representation of the People Act 1983 ("RPA") which requires Ofcom to adopt a code of practice for certain services[176] with respect to the participation of candidates at a parliamentary or local

[175] See para 3A(7) of Schedule 34 of the updated Framework Agreement.
[176] Ofcom must adopt a code of practice in relation items included in "relevant services". Section 93(6) defines these as services licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996 and also services that are Tier 1 Services within the meaning given by section 368HA of the Act.

government election in items about the constituency or electoral area in question. In our Consultation we proposed not to carry over these rules into the Code.

4.247 We acknowledged in our Consultation that, although Ofcom is not required under section 93 RPA to adopt a code of practice in relation to BBC online material, Ofcom could incorporate equivalent rules to Rules 6.8-6.12 into the Code in order to secure the standards objectives contained in sections 319(2)(c) (including the special impartiality requirements in 320). However, we did not consider that it would be appropriate or proportionate at this time to include such equivalent rules in the Code, since the BBC is already required to adopt its own code of practice[177] which historically has been substantially similar to Rules 6.8-6.12 of the Broadcasting Code and is already applied to its online material. We were also mindful of our objective of setting standards under the Code which are consistent with those set under the Broadcasting Code, where those rules do not currently apply to the BBC. We therefore did not consider that there were any compelling reasons that these rules should be replicated in the Code.

4.248 Ofcom did, however, note the difference in the regulatory frameworks that apply to the BBC compared to other services in relation to constituency coverage rules. As previously identified by Ofcom[178], this reflects a broader issue arising from the statutory framework governing BBC services. While Ofcom has previously indicated to the Government that this difference should be addressed through legislative change to ensure greater alignment with other broadcasters, for the reasons outlined above we took the position that it remains outside the scope of the Code. However, we committed to keeping this issue under review.

What respondents said

4.249 There were no responses on Ofcom's proposals not to carry over Rules 6.8 - 6.12 of the Broadcasting Code into the final Code.

Our decision

4.250 We have decided not to carry over Rules 6.8 – 6.12 of the Broadcasting Code into the final Code.

Application of the Fairness Code to BBC Online Material

4.251 As set out in our Consultation, the updated Framework Agreement sets out that: 'In providing the UK Public Online Material, the BBC must observe the Fairness Code in force under section 107 of the Broadcasting Act 1996, so far as Ofcom determine the standards are relevant to the provision of that Online Material'.

4.252 Section 107(1) of the Broadcasting Act 1996 ("the 1996 Act") places a duty on Ofcom to draw up and review a code giving guidance as to the principles to be observed, and practices to be followed, in connection with the avoidance of:

a. unjust or unfair treatment in programmes; or

Provisions in relation to Tier 1 Services are currently being consulted on – see Consultation: Tier 1 Standards Code.

[177] The BBC must do so as a "broadcasting authority" under section 93(6) RPA. It did so most recently through its "Fairness to Candidates – Code of Practice" included in its 2026 Election Guidelines.

[178] See How Ofcom regulates the BBC, 22 June 2022, page 31.

b. unwarranted infringement of privacy in, or in connection with, the obtaining of materials included in such programmes.

4.253 This is known as the "Fairness Code". Ofcom applies the Fairness Code through the application of the principle, rule and "practices to be followed" set out under Section Seven (Fairness) and Section Eight (Privacy) of the Broadcasting Code. The "practices to be followed" are intended to provide guidance to broadcasters, including the BBC, on the actions that can be taken to avoid unjust or unfair treatment or an unwarranted infringement of privacy. Following the practices in Sections Seven and Eight does not necessarily avoid a breach of the rule and failure to follow the practices would only constitute a breach where it results in unfairness to an individual or organisation, or an unwarranted infringement of privacy, in the programme. Further, the list of practices is non-exhaustive, and our consideration of fairness and privacy complaints ultimately depends on whether the rule itself has been breached.

What we proposed

4.254 For the purposes of enforcing the BBC's observance of the Fairness Code in relation to BBC Online Material, we proposed to apply the existing Sections Seven and Eight of the Broadcasting Code, in so far as Ofcom determines the standards are relevant to the provision of that online material. We recognised that the existing wording of the rules and practices in Sections Seven and Eight of the Broadcasting Code may not always be applicable to BBC online material. As such, we prepared an Annex (included within the Consultation document) which provided proposed adapted wording for the application of the Fairness Code in an online material context. We explained that we intended for this to be published as an Annex to the Broadcasting Code.

4.255 In our proposed adapted wording, in place of references to "filming"/ "filmed" or "recording"/"recorded" we proposed to adopt the more catch-all terms "obtaining"/"obtained" across both Sections Seven and Eight. The wording of the Broadcasting Code was tailored to traditional broadcast content which is typically in video or audio format. For BBC Online Material, not all material gathered will be audio-visual content. For example, news articles may refer to written interviews, correspondence or general information from sources. We therefore considered that in some practices the term "obtained" may better suit the range of content that may be gathered by the BBC. This terminology is also more consistent with the wording of section 107(1)(b) of the Broadcasting Act 1996 (and consequently Rule 8.1) which is concerned with the avoidance of unwarranted infringement of privacy "in connection with obtaining of material included in programmes". Following this approach, we also proposed to adopt the broader terms "material" or "content", where appropriate, in place of existing references to specific types of content, such as "sound" or "images".

4.256 Additionally, we added proposed further wording to Practice 8.21 to better reflect the approach already taken under the Broadcasting Code and to make the drafting clearer as to who can provide informed consent on behalf of under sixteens and vulnerable people respectively. The proposed wording also reflected that there may be occasions where a person is vulnerable but still able to provide informed consent themselves.

What respondents said

4.257 Respondents agreed with Ofcom's proposed adapted wording for the application of the Fairness Code to BBC online material. The majority of comments related to Ofcom's overall approach to assessing fairness in an online material context, rather than the substance of

the rules and practices themselves.[179] Some respondents also made comments relating to Ofcom's proposed procedures for Fairness and/or Privacy complaints, which we address in paragraphs 5.47 - 5.62 below.

4.258 The BBC did not comment on Ofcom's proposals for Fairness and/or Privacy complaints specifically, but, as with other sections, it requested that Ofcom provide clarity on its approach to assessing the fairness of content fragments (such as headlines and thumbnails) without the context of the full article.[180] Similarly, the TACC commented that unfairness can arise from the combined effect of headlines, thumbnails and captions and that Ofcom should issue guidance which addresses the complete presentation of online material.[181]

4.259 The TACC also said that the contributor welfare provisions should cover foreseeable harassment, unwanted disclosure of identity or trans status, hostile social media attention and repeated circulation.[182]

4.260 One individual respondent said that "informed consent" from contributors should be re-assessed if there is a material change in the use of a contribution over time.[183]

4.261 CAMERA.org requested that Ofcom issue further guidance on the application of the Fairness Code to modern conflict reporting, such as in circumstances where material is obtained in territories where contributors cannot necessarily operate freely.[184] It also said that protections for children and vulnerable people also require particular consideration in conflict reporting and that Ofcom should issue specific guidance in this respect.

4.262 This respondent also said that Ofcom should make clear that the presence of a right of reply does not in itself establish fairness.[185]

4.263 Another organisation invited Ofcom to consider that the fairness of online material may change over time, such as if material facts change after the original event was reported on. The organisation also highlighted that search engines and AI systems mean that archive content may be resurfaced at a later date. It said this was particularly important in the context of reporting on criminal convictions and referred to the policy objectives underlying the Rehabilitation of Offenders Act 1974. The organisation also referred to the European Court of Human Rights (ECHR) case *Hurbain v Belgium* [GC] (2023), which it said identified relevant considerations including the time elapsed since publication, the conduct and circumstances of the person concerned, the negative consequences of continued availability and the degree of accessibility of archived material. This organisation requested guidance from Ofcom to clarify that we would have regard to these types of factors when assessing fairness in online material. It also made comments on Ofcom's proposed interpretation of when BBC online material is "first posted", which we discuss in paragraphs 5.27 - 5.29 below. [186]

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[179] Trans Advocacy & Complaints Collective response, p.13, No Bars Ltd T/A DRIFT response, pp.5-8, CAMERA.org response, pp.11-14, Elliott, E. response, p.6
[180] BBC response, pp.3-4
[181] Trans Advocacy & Complaints Collective response, p.13
[182] Trans Advocacy & Complaints Collective response, p.13
[183] Corvelo, D. response, p.36
[184] CAMERA.org response, p.11
[185] CAMERA.org response, p.11
[186] No Bars Ltd T/A DRIFT response, pp.5-8

Our decision

4.264 We have decided to proceed with the proposed adapted wording of the Fairness Code for the purposes of BBC Online Material. This will be published as an Annex to the Broadcasting Code.

4.265 With regard to the BBC's request for further clarification on how Ofcom will consider "fragments" of content (such as thumbnails or headlines) under the Fairness Code, as noted in our accompanying Guidance, Ofcom intends to consider the online material as a whole, taking into account its full content and surrounding material, as we do when considering broadcasting complaints. However, if a Fairness and/or Privacy complaint relates to a specific element of the content, such as a headline, we may take into account the context in which this would likely to be accessed by audiences, such as the likelihood that audiences would encounter the additional context provided by the full article. In any case, Ofcom encourages the BBC to ensure that all aspects of its online material are compliant with the Fairness Code and that any "fragments" taken in isolation do not in themselves result in unjust or unfair treatment or an unwarranted infringement of privacy.

4.266 We note the suggestions by respondents on how Ofcom should assess fairness in an online context. Ofcom intends to apply the Fairness Code to online material in the same way as we do under the Broadcasting Code. As well as containing principles to be observed, the Fairness Code sets out "practices to be followed" by broadcasters when dealing with individuals or organisations participating in or otherwise directly affected by programmes. These provide guidance in connection with the avoidance of unjust or unfair treatment in programmes and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes. Importantly, the Fairness Code does not and cannot seek to set out all the "practices to be followed" in order to avoid unfair treatment and Ofcom's assessment will consider the particular circumstances of each case having regard to all relevant contextual factors.

4.267 With regard to responses arguing that Ofcom should consider assessing fairness over time, Ofcom recognises that there may be exceptional circumstances in which material facts change after online material was first posted and where this may have the potential to result in unfairness to an individual or organisation. For example, outstanding investigations or legal proceedings may conclude or a criminal conviction could be quashed. In considering whether or not the online material as currently available results in unjust or unfair treatment to an individual or organisation, Ofcom may consider factors such as: the timeline of the change in material facts; the likelihood of audiences accessing the online material after the material facts changed; and/or the extent to which the BBC could reasonably have known about a change in material facts. However, any Fairness and or Privacy complaint made to Ofcom must be made in accordance with paragraph 5.2 of our procedures, which states that complaints should be brought within 30 days of the online material being "first posted". We address responses to this part of the procedures in section 5.47 - 5.62 below.

4.268 Ofcom intends to update in due course the existing Guidance Notes to Sections Seven and Eight of the Broadcasting Code to take into account the above.

5. Procedures

Background to procedures

5.1 As set out in Section 2 of this Statement, Ofcom's regulatory role to date in relation to BBC online material has been set out in the BBC Charter and Agreement and also outlined in the Online Arrangement. Under this Online Arrangement we have had responsibility to consider and give an opinion (including such recommendations as we consider appropriate) on whether the BBC has observed the relevant BBC Editorial Guidelines in its online material.

5.2 However, since the publication of the updated BBC Framework Agreement in December 2025, Ofcom's regulatory responsibilities have been extended to include enforcement of content standards of online material published as part of the BBC's UK Public Services. As outlined above, in addition to observing the BBC Online Material Code[187], the BBC must also observe Ofcom's Fairness Code[188] to the extent that Ofcom determines that the standards in the Fairness Code are relevant to the provision of BBC Online Material.

5.3 We included in our Consultation Figure 2 (below) which sets out how this has changed our role in relation to assessing and investigating complaints about BBC online material:

Figure 2: Previous and new regulatory powers in relation to BBC online material

Previous regulatory oversight in relation to the BBC's Editorial Guidelines	Enforcement of the new Code
Complainants were required to submit their complaint to the BBC in the first instance, before Ofcom could consider a complaint ('BBC First').	Complainants must complete the BBC First process before Ofcom can consider a complaint, unless exceptional circumstances apply. The BBC First process does not apply to those raising a Fairness and/or Privacy complaint under Section Seven or Section Eight of of the Broadcasting Code, as modified for BBC online material.
Complaints were assessed against the BBC's Editorial Guidelines.	Ofcom assesses complaints against the Code.
Ofcom assessed the complaint. If accepted, Ofcom issued a non-binding opinion (including such recommendations as Ofcom considers appropriate) on whether the BBC had adhered to its Editorial Guidelines.	Ofcom assesses the complaint. If a content standards complaint raises issues which warrant investigation under sections 1-6 of the Code, Ofcom launches an investigation. Investigations can lead to 'breach' findings. In relation to Fairness and/or Privacy complaints under section Seven and Eight of

[187] Paragraph 3A(8), Schedule 3 to the updated Framework Agreement.
[188] As outlined above, Ofcom's Fairness Code is contained in Sections Seven (Fairness) and Eight (Privacy) of the Broadcasting Code.

Previous regulatory oversight in relation to the BBC's Editorial Guidelines	Enforcement of the new Code
	the Broadcasting Code, as modified for BBC online material, Ofcom will issue an Entertainment Decision, which sets out whether certain criteria have been met for Ofcom to investigate. If these criteria are satisfied, Ofcom will reach a final adjudication on whether the Code has been breached.
Opinions and recommendations were non-binding and enforcement of standards through sanctions was not an option.	Serious, deliberate, repeated or reckless breaches may attract the imposition of sanctions.
Definition/oversight of 'online material' was limited to material on BBC websites and apps.	Definition/regulation of online material includes content on BBC websites, apps and BBC-branded content on third-party websites, applications and interfaces (such as social media and video sharing platforms).

Procedures for investigating breaches of content standards

What we proposed

5.4 We explained in our Consultation that Clause 57 of the Framework Agreement (as amended by Clause 4 of the updates to the Framework Agreement) requires Ofcom to "set and publish procedures for the handling of relevant complaints" referred either after the completion of the 'BBC First' process or otherwise in exceptional circumstances, and stipulates what the procedures must make provision for. "Relevant complaints" are complaints that the BBC has failed to comply with a specified requirement.[189] The specified requirements include any of the regulatory obligations in schedule 3 (except paragraph 2 and 3A(1)).[190] The same core framework therefore applies to our handling of content standards complaints in relation to the Broadcasting Code as the draft Code. However, the updates to the Framework Agreement amended Clause 57 so as to include additional provisions for complaints procedures relating to BBC online material. This includes setting timeframes in which complaints must be made to the BBC and to Ofcom in relation to BBC online material and which are specific to online material.

5.5 The title we proposed for these procedures was 'Procedures for investigating breaches of content standards in BBC UK Public Online Material' (the "BBC OMC Content Standards Procedures").

Procedures for the consideration and adjudication of Fairness and/or Privacy Complaints

5.6 We explained in our Consultation that complaints regarding the BBC's observance of the Fairness Code (so far as Ofcom determine the standards are relevant to the provision of

[189] Clause 56(9), updated Framework Agreement.
[190] Clause 59, updated Framework Agreement.

BBC online material) do not have to follow the 'BBC First' process, so the procedures for investigating breaches of content standards do not apply to such complaints.[191] As the Framework Agreement (as amended by the updates to the Framework Agreement) does not provide for, or set, procedural requirements on Ofcom regarding the handling of complaints relating to the Fairness Code we have drafted separate procedures which closely mirror Ofcom's procedures for the consideration of complaints regarding the BBC's observation of the Fairness Code in relation to broadcast and ODPS material.[192] However, in our Consultation we explained that we had also had regard to the procedural requirements set out in Clause 57 of the Framework Agreement (as amended by Clause 4 of the updates to the Framework Agreement) relating to complaints about BBC online material as the same underlying considerations for the specific provisions relating to content standards complaints about BBC online material will also apply to complaints about BBC online material under the Fairness Code.

5.7 The title we proposed for these procedures was 'Procedures for the consideration and adjudication of Fairness and/or Privacy complaints: BBC UK Public Online Material' (the "BBC OMC Fairness and/or Privacy Procedures").

Procedures for the consideration of sanctions for BBC breaches of content standards

5.8 We explained in our Consultation that Clause 57 of the Framework Agreement (as amended by Clause 4 of the updates to the Framework Agreement) also requires that the content standards procedures must also give clear guidance explaining the remedies and sanctions Ofcom has the power to apply.[193,194] In order to achieve this, and to provide procedures for sanctions regarding complaints about the BBC's observance of the Fairness Code, we proposed amending the Procedures for the consideration of sanctions for breaches of content standards on BBC broadcasting services and BBC on-demand programme services to give clear guidance explaining the remedies and sanctions Ofcom has the power to apply in relation to complaints under the Code.

5.9 The title we proposed for these updated procedures was 'Procedures for the consideration of sanctions for BBC breaches of content standards: BBC broadcasting services; BBC on-demand programme services; BBC online material (the "Sanctions Procedures")'.

Procedures for investigating breaches of content standards in BBC online material

Overview

5.10 The BBC OMC Content Standards Procedures that we proposed set out the relevant legal framework for the handling and resolution of complaints (or the conduct of Ofcom's own investigations) about the BBC's compliance with the content standards set under section

[191] Clause 55(5), updated Framework Agreement, which notes that, under the BBC's own complaint procedures, complaints relating to the Fairness Code do not normally have to be resolved by the BBC in the first instance.
[192] See Ofcom's Procedures for the consideration and adjudication of Fairness and Privacy complaints on BBC broadcasting services and BBC on demand programme services.
[193] Clause 59(3)(b)(ii), updated Framework Agreement.
[194] Article 49 of the BBC Charter provides Ofcom with enforcement powers to ensure compliance with "specified requirements", as defined in the updated Framework Agreement or Operating Framework.

319 of the Act, the requirements set under section 320 of the Act, the BBC Charter, and the Framework Agreement (as amended by the updates to the Framework Agreement).

5.11 The proposed BBC OMC Content Standards Procedures set out, amongst other things: the proposed process which Ofcom would follow to assess and investigate content standards complaints; the requirement that a complainant raise content standards complaints directly to the BBC in the first instance (the 'BBC First' process); the circumstances in which Ofcom can depart from the procedures; and examples of exceptional circumstances in which Ofcom may expedite its processes.

Proposed approach

Alignment with the updated Framework Agreement

5.12 The updated Framework Agreement sets procedural requirements on Ofcom, namely that:

a) Ofcom must not accept a complaint referred to them, or intervene in a complaint, about BBC online material unless the BBC online material was posted after the commencement date. The commencement date is defined as the date on which Ofcom publishes the first procedure (or procedures) which makes provision for the handling and resolution of complaints about BBC online material;
b) in determining a complaint made about BBC online material posted after the commencement date Ofcom may take into account material posted before that date, if they consider it appropriate to do so; and
c) Ofcom must not accept a complaint referred to them, or intervene in a complaint, about BBC online material unless the complaint was initially made to the BBC within 30 working days of the date when the BBC online material was first posted, unless exceptional circumstances apply.[195]

5.13 Our proposed BBC OMC Content Standards Procedures were therefore drafted in accordance with these requirements.

"First posted"

5.14 We set out in our Consultation our considerations regarding the date upon which BBC online material is "first posted", which determines when the "clock" starts for a person to complain. We acknowledged that, unlike for broadcast content, which concerns a static moment in time (the point of broadcast), online material can be continuously amended, updated and re-shared in different contexts.

5.15 To address the realities of regulating content in an online world, our proposed procedures set out how we proposed to assess when BBC online material was "first posted". We explained that our starting point would be to determine the date upon which the relevant content was first published on a platform. However, our proposed procedures recognised that where there has been a significant editorial intervention, for example, where the BBC makes material changes to the content and/or the prominence of BBC online material after it was originally first posted, Ofcom may consider the date the material changes were made to be the date upon which the material was "first posted".

5.16 We set out in our Consultation our proposal that material changes to the content of BBC online material could include, for example, significant amendments to online material, the publication of a correction or clarification, or changes to images and/or video content which

[195] This does not apply to Fairness and/or Privacy complaints.

alter the meaning of the online material. We said in our Consultation that we would not expect changes, such as corrections of typographical errors, to be material, unless such changes alter the meaning of the online material.

5.17 We also proposed that material changes to the prominence of BBC online material could include moving the online material to a more visible location on an online interface, or the online material becoming accessible via a hyperlink included in another item of online material. We said that material changes to the prominence of BBC online material would require an editorial intervention and so would not include, for example, the same article organically appearing in a more visible location on an online interface due to reader interest.

"BBC First" process

5.18 The "BBC First" process is an established and long-standing principle which underpins the processes by which Ofcom handles BBC broadcasting and ODPS content standards complaints.

5.19 Clause 56(5)(a) of the updated Framework Agreement provides that all complaints about content standards broadcast on BBC broadcasting services and ODPS "must normally in the first instance be resolved by the BBC". As referenced above, the Updated Framework expressly provides for the BBC First process in the context of Ofcom's consideration of content standards complaints: "Ofcom must not accept a complaint referred to them, or intervene in a complaint, about BBC online material unless the complaint was initially made to the BBC within 30 working days of the date when the BBC online material was first posted, unless exceptional circumstances apply".

5.20 Clause 56(5) of the updated Framework Agreement provides an exception to this general rule in "complaints relating to the Fairness Code". A complainant raising a Fairness and/or Privacy complaint is not obliged to complain to the BBC in the first instance and may submit a complaint directly to Ofcom. See below for further details.

Consistency with Broadcasting Code Content Standards Procedures

5.21 We explained in our Consultation that, where the updated Framework Agreement does not provide for, or set, procedural requirements on Ofcom, we aimed to be consistent with the BBC Broadcasting Code Content Standards Procedures. [196]

5.22 We also recognised that a complainant may seek to complain under the Broadcasting Code about content broadcast on BBC linear channels or uploaded on an ODPS[2] and, at the same time, complain about the same or similar content posted in the context of BBC online material. We therefore explained that our intention was for our procedures to be as consistent as possible, to achieve our aim of procedures which are accessible, transparent and straightforward for both the BBC and complainants.

What respondents said

5.23 Six respondents gave comments on these proposed Procedures. The majority of these were supportive of the intention to provide consistency with the Procedures for broadcasting standards, which was described as a "reasonable"[197] and "familiar and proportionate"[198]

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[196] Procedures for investigating breaches of content standards on BBC broadcasting services and BBC on-demand programme services.
[197] Trans Advocacy & Complaints Collective response, p.13
[198] Corvelo, D. response, p.19

starting point, a contention that "makes sense"[199] and a "strong foundation".[200] However, they gave detailed comments on the proposed complaints process, as well as more general thoughts on the BBC first system, the proposals regarding Ofcom's interpretation of "first posted" and the concept of thematic complaints. One respondent strongly disagreed with the intention to maintain consistency with the Procedures for broadcasting standards.[201]

Proposed complaints process

5.24 Four respondents commented on the proposed complaints process. The TACC suggested Ofcom should make complaints easier to use and more effective. It emphasised people should understand how to complain, what happens next and how serious or repeated problems can lead to wider action. [202] In particular, it requested complainants should: ordinarily receive a non-confidential summary of the BBC's substantive response; be able to correct material misunderstandings and submit relevant evidence; be invited to comment where Ofcom's Preliminary View[203] introduces new reasoning (CAMERA.org also echoed this point, arguing for "greater procedural equality between the BBC and complainants."[204]); and be provided with reasonable adjustments and reasons for decisions not to investigate. It added that Ofcom should send decisions and concise reasons directly to complainants and publish structured complaint and enforcement data while protecting personal identities. The TACC suggested that on-disclosure rules should expressly permit confidential assistance from lawyers, advocacy organisations, researchers, support workers and representatives.[205] It also gave comments on the potential for a complainant's identity to be shared with the BBC and argued that, in some cases, "confidentiality should be the default unless disclosure is necessary for fair determination and the complainant has been informed".[206]

5.25 An individual explained their view that a complaint and any Preliminary View should identify the online item, material version, relevant component, location and approximate time of encounter, with a URL alone potentially being "insufficient".[207] They also said the Procedures should make provision for a complaint to be expedited "where continuing prominence creates a serious and readily preventable risk while respecting the BBC's opportunity to make representations". They gave detailed comments on the proposed handling timeframes, the reasoning required for granting extensions and the nature of published outcomes.[208]

5.26 News-watch also gave detailed comments, arguing that Ofcom 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.

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[199] CAMERA.org response, p.16
[200] Elliott, E. response, p.2
[201] News-watch response, p.1, p.6
[202] Trans Advocacy & Complaints Collective response, p.2
[203] The proposed Procedures stated at paragraph 11.1 that, for a complaint where Ofcom has launched an investigation, we would prepare our Preliminary View on the substance of the complaint, having taken account of the BBC's written representations, where provided. This Preliminary View would only be provisional and may be subject to change in the light of subsequent representations/material provided by the BBC.
[204] CAMERA.org response, p.16
[205] Trans Advocacy & Complaints Collective response, p.14
[206] Trans Advocacy & Complaints Collective response, p.14
[207] Corvelo, D. response, p.19
[208] Corvelo, D. response, p.19

It argued that 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.[209] The potential for extension of time limits was also raised by the TACC.[210]

"First posted"

5.27 Two individuals and four organisations responded on this issue.[211] Most gave specific suggestions for the types of material changes the BBC should be required to preserve evidence about for the purposes of administering complaints. One organisation said the preservation of the evidential record by the BBC "should be mandatory", particularly given the continually changing nature of online material in comparison with broadcast content.[212] However, an individual clarified that "this should not become a duty to preserve every technical edit" and that the original posting date "should remain the default."[213] Another individual argued the phrase "where appropriate" in paragraph 8.3 of the proposed Procedures[214] was "too weak for material amendments."[215] Another organisation suggested further guidance should be produced by Ofcom making clear that a material change in prominence can arise:

> "from the full range of deliberate editorial decisions through which BBC online material is made newly or significantly more visible, accessible or contextually prominent, rather than only through changes to the underlying article itself."

5.28 This organisation made clear this should also apply to material originally posted before the commencement of the proposed Code, particularly in relation to material which contains information about identifiable individuals.[216]

5.29 The TACC also provided comments, suggesting that any assessment of whether a change post-publication is material should focus on the effect of the BBC's action rather than the technical size of the change, particularly in relation to whether the BBC has exposed an existing item to a fresh or substantially enlarged audience. It also argued that a material assessment "should be qualitative", in that small changes (for example, concerning a person's identity) could potentially have a more significant impact on the meaning of an item than a much longer factual update. Finally, it argued Ofcom should provide guidance on the factors determining materiality.[217]

"BBC First" process

5.30 Some respondents provided comments in reference to paragraph 5.4 of the proposed Procedures, regarding the exceptional circumstances in which Ofcom may intervene at an earlier stage to handle and resolve a complaint which has not been resolved by the BBC. One respondent suggested that such circumstances should include acute psychological

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[209] News-watch response, p.6
[210] Trans Advocacy & Complaints Collective response, p.14
[211] Trans Advocacy & Complaints Collective, No Bars Ltd T/A DRIFT, CAMERA.org, Elliot, E, Corvelo, D.
[212] CAMERA.org response, pp.15-16
[213] Corvelo, D. response, p.19
[214] Paragraph 8.3 of the proposed Procedures read "The BBC is expected to inform Ofcom whether any material changes have been made to the BBC online material after it was first posted, specify what those changes are, and provide a record of the changes, where appropriate."
[215] Elliot, E. response, p.2
[216] No Bars Ltd T/A DRIFT response, pp.9-11
[217] Trans Advocacy & Complaints Collective response, p.15

harm to a vulnerable adult, ongoing coordinated harassment, trauma and bereavement.[218] Another argued that such circumstances should include "genuine barriers to access or communication, delayed discovery of a material change [or] incapacity and a reasonable inability to complete the BBC process." However, this respondent was clear that such circumstances should not become a routine way to bypass BBC First.[219]

5.31 The TACC suggested that the routing process for a complaint should be clearer. It argued that, where BBC First applies, a complaint submitted to Ofcom "should be transferable to the BBC with consent" and that mixed fairness and content-standards complaints should be separated and routed "without resubmission or loss of the original submission date."[220]

Thematic complaints

5.32 Four respondents commented that Ofcom should accept thematic complaints (as well as complaints about individual online items or editorially linked series of online items).[221] CAMERA.org referred to the potential for "an evidenced pattern across multiple items of BBC output, even where an individual item considered in isolation might appear insufficiently serious to warrant investigation." It argued this was particularly important for complaints about due accuracy and due impartiality.[222] Another respondent also suggested Ofcom should allow complaints about a related series or pattern, even where the BBC did not formally label the items as a series.[223]

5.33 News-watch's response similarly regarded what it termed "a cumulative pattern".[224] It contended that the proposed Code and Procedures "supplie[d] no route by which a properly evidenced pattern across separately commissioned but thematically related output can be adjudicated".[225] It also argued that the problem was potentially more acute in the online environment, as "online journalism intensifies cumulative editorial power". It suggested that "a clip extracted from an impartial programme can create a distinct editorial effect" and "prominence and repetition are cumulative phenomena; the Code must provide a cumulative unit of assessment."[226] It went on to argue that the Code and Procedures should establish "a gateway for repeated or systemic complaints", with the complainant being able to identify the relevant issue, period, services or accounts, corpus or sample, selection method and alleged form of imbalance. It also suggested Ofcom should assess whether a complaint submission raises a potentially substantive cumulative question and, if so, investigate "the corpus as submitted", as well as obtaining relevant BBC-held data about commissioning, linking, prominence, reach and distribution.[227] This position was echoed by the TACC, which argued that the proposed Procedures should accommodate cumulative and systemic issues by allowing defined groups of related items, aggregation of complaints

[218] Elliot, E. response, p.6
[219] Corvelo, D. response, p.19
[220] Trans Advocacy & Complaints Collective response, p.14
[221] News-watch, p.6, Trans Advocacy & Complaints Collective, p.14, CAMERA.org, p.16 and Elliott, E. response, p.6.
[222] CAMERA.org response, p.15
[223] Elliot, E. response, p.2
[224] News-watch response, p.6
[225] News-watch response, p.1
[226] News-watch response, p.4
[227] News-watch response, p.6

concerning the same practice, pattern evidence from representative organisations, thematic or own-initiative investigations, and examination of relevant editorial systems.[228]

5.34 News-watch also argued that the BBC First process should not oblige a complainant alleging a cumulative pattern "to submit and exhaust a separate complaint for every item". It contended that 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".[229]

Our decision

5.35 Ofcom acknowledges the comments received on the proposed complaints process, particularly regarding its transparency and clarity. However, we explained in our Consultation the intention to maintain consistency with the existing Procedures for broadcasting standards and the majority of respondents were supportive of this. We are confident, based on our existing experience, that the proposed Procedures will provide sufficient transparency and clarity on our complaints process for BBC online material. They will however be reviewed from time to time to take into account any learnings from our implementation of the new regime for BBC online material. Notwithstanding this, we have made two amendments to the BBC OMC Content Standards Procedures since our Consultation, to more accurately reflect the timeframes and information set out in the BBC's own Complaints Framework.[230]

5.36 In relation to News-watch's suggestion that Ofcom should publish complaints data concerning BBC online material, we can confirm that this will be published annually, as currently, in Ofcom's Annual Report on the BBC. In response to its contention that that research-based complaints should qualify for an extension, we note that the BBC's own Complaints Framework contains time limits for making complaints and highlights that it will only consider complaints outside of these time limits in certain circumstances, including if "it is practicable and cost-effective to investigate it and adjudicate upon it fairly".[231] For the same reason, we do not consider that it would be practicable to routinely extend timeframes for complaints which are research-based. However, the proposed Procedures include reference to the fact that Ofcom will consider all relevant factors (including the complainant's explanation for the delay in submitting the complaint) in deciding whether or not Ofcom should investigate the complaint if it is submitted outside of the stated timeframes. We consider this sufficient.

5.37 In relation to comments about "first posted", Ofcom has carefully considered the specific suggestions for types of material changes which the BBC should be required to preserve evidence about. However, in our view the wording in our proposed Procedures is

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[228] Trans Advocacy & Complaints Collective response, p.14

[229] News-watch response, p.6

[230] In this regard we have changed the wording at Paragraph 7.6 of the BBC OMC Content Standards Procedures to make clear that at Stage 1b of its complaints process "the BBC aims to reply within 20 working days of receipt of the complaint, though it also makes clear that some complaints take longer than others to investigate". This reflects the current wording on p.15 of the BBC's Complaints Framework and is an amendment from the previous statement that "the BBC will investigate the complaint and aims to reply at Stage 1b within 20 working days, or 35 working days in the case of more complex complaints." We have also removed the statement that "the BBC will inform complainants at the outset which timeframe applies", as this is not set down in the BBC's Complaints Framework.

[231] BBC Complaints Framework, p.13

sufficiently comprehensive on this point and already contains sufficient guidance for the BBC in this area.

5.38 In relation to the suggestion the BBC should retain a full publication and amendment history for the purposes of handling complaints, in our view the proposed Procedures included reference to this issue, pursuant to Article 47 of the Charter under which Ofcom may require the BBC and any other person to provide information for the purposes of the carrying out by Ofcom of our functions. The proposed Procedures therefore included paragraph 8.3, as follows:

> *"8.3 Ofcom may ask the BBC to provide a copy of the relevant BBC online material (for example, a record of archived content) within five working days. The BBC is expected to inform Ofcom whether any material changes have been made to the BBC online material after it was first posted, specify what those changes are, and provide a record of the changes, where appropriate."*

5.39 We have decided this wording is sufficient to address the issue.

5.40 Regarding comments on "BBC First", as above, our intention has been to maintain consistency with the existing Procedures for broadcasting content. For that reason, we have decided that our proposed wording regarding the examples of exceptional circumstances in which Ofcom may intervene at an earlier stage to handle and resolve a complaint which has not been resolved by the BBC is sufficient.

5.41 Finally, in relation to thematic complaints, we have carefully considered News-watch's and the TACC's contention that the Code and procedures should establish a mechanism for considering these. However, as set out fully in News-watch's response to the Consultation, a similar contention has already been the subject of two judicial review challenges by News-watch to regulation in this area.[232] Both concerned enforcement jurisdiction: the first in relation to the BBC and whether it was obliged to conduct systemic content monitoring of its programming; the second in relation to Ofcom and whether it was obliged to consider thematic broadcasting complaints regarding due impartiality. Neither was successful.

5.42 We have decided it would not be appropriate to consider thematic complaints under the Code. Our proposed approach of not assessing due impartiality in BBC online material more broadly than at the level of a "series of editorially linked online items" is consistent with the requirements imposed on Ofcom under the updated Framework Agreement, whereby Ofcom must set standards as appear to us best calculated to secure the due impartiality standards objectives contained in section 319(2)(c), including the special impartiality requirements in section 320 of the Act. Our approach promotes clarity, certainty and workability, and also provides achievability at a practical level of a person given editorial responsibility for an online item or a series of editorially linked online items.

5.43 We also believe this approach strikes the appropriate balance whereby: a complainant cannot use a global measure to rely on patterns or cumulative effects to demonstrate an absence of due impartiality across BBC online material overall; but where the BBC equally cannot use a global measure to rely on patterns or cumulative effects to demonstrate the presence of due impartiality across online material overall.

[232] See: R (on the application of Keighley) v BBC [2019] EWHC 331 (Admin) (14 November 2019); and R (on the application of Keighley) v Office Of Communications [2025] EWHC 416 (Admin) (27 February 2025).

5.44 This approach is also in line with our approach of maintaining consistency with the Broadcasting Code where we have not identified any reasons that would require us to take a different approach in relation to BBC online material. We note the reasons suggested by News-watch for why the online environment may make reform more urgent. However, we disagree that the examples it provided are principally different from the broadcast environment in this regard. In Ofcom's view, they are all examples of editorial choices for the BBC, which it is free to take providing its online material remains duly impartial either within an individual online item or within a series of editorially linked online items taken as a whole.

5.45 Therefore, we do not consider that we are required to accept complaints which refer to BBC online material more broadly than at the level of a "series of editorially linked online items".

5.46 We will therefore proceed with the proposed wording of our Procedures for investigation breaches of content standards. These are reproduced in Annex A4.

Procedures for the consideration and adjudication of Fairness and/or Privacy complaints: BBC UK Public Online Material

Overview

5.47 The proposed BBC OMC Fairness and/or Privacy Procedures set out in our Consultation outlined the Procedures for Ofcom's consideration and adjudication of Fairness and/or Privacy complaints in relation to BBC online material. These proposed procedures concerned the BBC's compliance with Ofcom's "Fairness Code", as set under section 107(1) of the Broadcasting Act 1996 ("the 1996 Act"), the BBC Charter, the Framework Agreement (as amended by the updates to the Framework Agreement).

5.48 The BBC OMC Fairness and/or Privacy Procedures set out, amongst other things: the process which Ofcom would follow to investigate Fairness and/or Privacy complaints; an explanation of who may submit a complaint (i.e. 'the person affected'); an explanation of how complaints would be assessed and entertained by Ofcom; the time limits for submitting a complaint; and the responsibilities of complainants and the BBC during Ofcom's adjudicatory process.

Proposed approach

Consistency with Broadcasting Code Fairness and/or Privacy Procedures

5.49 We explained in our Consultation that our approach to the drafting of the new BBC OMC Fairness and/or Privacy Procedures was largely to reflect and adapt the existing Fairness and/or Privacy complaints procedures for the handling of complaints in relation to broadcast programmes (the "BBC Broadcasting Code Fairness and/or Privacy Procedures").[233] In particular, we proposed that, consistent with Clause 56(5) of the updated Framework Agreement, the BBC OMC Fairness and/or Privacy Complaints Procedures would not require the complainant to follow the "BBC First" process.

[233] Procedures for the consideration and adjudication of Fairness and Privacy complaints on BBC broadcasting services and BBC on demand programme services.

5.50 We proposed to have regard to the duties and statutory criteria which concern Broadcast Fairness and/or Privacy complaints, so far as they are relevant to the consideration and adjudication on Fairness and/or Privacy complaints relating to BBC online material. As such, we proposed that:

a) our procedures would recognise Ofcom's established duty under section 3(2)(f) of the Act to (among other things) secure the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public (and all other persons) from both unfair treatment in programmes included in such services and unwarranted infringements of privacy resulting from activities carried on for the purposes of such services;
b) our procedures would recognise that, when performing its duty, Ofcom must have regard to the need to do so in the manner that best guarantees an appropriate level of freedom of expression: section 3(4)(g) of the Act;
c) Ofcom would make an Entertainment Decision for all relevant complaints: Sections 111 to 130 of the 1996 Act which provide for certain statutory criteria which must be satisfied before Ofcom is entitled to proceed to consider Fairness and/or Privacy complaints (see Annex 1 of proposed procedures); and
d) Ofcom would determine whether a complainant is 'the person affected' before proceeding with the consideration of a complaint.

5.51 We recognised in our Consultation that 'the person affected' may seek to complain about content broadcast on BBC linear channels or uploaded on an ODPS and, at the same time, complain about the same or similar content posted in the context of BBC online material. We therefore explained our intention that our procedures be as consistent as possible, to achieve our aim of procedures which are accessible, transparent and straightforward for both the BBC and complainants.

Consistency with the updated Framework Agreement and the BBC OMC Content Standards Procedures

5.52 As noted above at paragraph 5.12, the updated Framework Agreement sets some procedural requirements on Ofcom that we had regard to in preparing the proposed procedures, although these requirements do not specifically apply to Fairness and/or Privacy complaints. In particular, the updated Framework Agreement requires that:

a) Ofcom must not accept a complaint referred to them, or intervene in a complaint, about BBC online material unless the BBC online material was posted after the Commencement Date. The Commencement Date is defined as the date on which Ofcom publishes the first procedure (or procedures) which makes provision for the handling and resolution of complaints about BBC online material; and
b) in determining a complaint made about BBC online material posted after the Commencement Date, Ofcom may take into account material posted before that date, if we consider it appropriate to do so.

5.53 Clause 57(6)/(7) also provides that, in the absence of exceptional circumstances, Ofcom must not accept a complaint, or intervene in a complaint, about BBC online material unless it was "initially made to the BBC within 30 working days of the date when the BBC online material was first posted". As the "BBC First" process does not apply to fairness and/or privacy complaints, we have proposed to include a provision that Ofcom may refuse to entertain a BBC Online Material Fairness and/or Privacy complaint if it appears not to have been made within a reasonable time after the BBC online material was first posted. Accordingly, complainants should submit their complaint to Ofcom within **30 working days**

of the date when the BBC online material was first posted. Please see paragraphs 5.14 to 5.17 above which refers to how Ofcom will interpret when BBC online material was "first posted".

5.54 Our proposed BBC OMC Fairness and/or Privacy Procedures were therefore drafted in accordance with these requirements.

What respondents said

5.55 One respondent supported Ofcom's approach to align with established fairness procedures but requested that Ofcom "should interpret "sufficiently direct interest" as broadly as the legislation permits".[234] The respondent stated that Ofcom "should allow complaints concerning multiple linked items, accept supporting submissions from representative organisations and identify systemic content-standards issues raised by fairness complaints".[235]

5.56 Two respondents sought clarification on the commencement date for complaints under the Code, citing that that they perceived the Consultation to suggest "the effective date was 2 July 2026 even though the Code remained under consultation". [236]

5.57 CAMERA.org said that it supported Ofcom's aim for consistency and procedural alignment with established approaches but also said that the approach to procedures "must account for the mutable nature of online publication. Ofcom should preserve and consider the version of the material complained of as it appeared at the relevant time, together with any subsequent material amendments. A subsequent amendment or correction should not extinguish a fairness complaint concerning material that had already been published and consumed by an audience". [237]

Our decision

5.58 We note the responses which made suggestions regarding who can make a complaint to Ofcom as 'the affected person' and how broadly Ofcom should interpret the legislation to allow the definition of a person with "a sufficiently direct interest". However, in Ofcom's view these are issues which can only be determined on a case-by-case basis depending on the circumstances.

5.59 In relation to the comment on the appropriate commencement date for these procedures, as stated above, this is defined as the date on which Ofcom publishes the first procedure (or procedures) which makes provision for the handling and resolution of complaints about BBC online material. The date of publication and the effective Commencement Date is 19 November 2026.

5.60 On the point that Ofcom must account for the mutable nature of online publication whilst aligning our approach with established procedures for the Fairness Code, we are of the view that the wording in our proposed Procedures on "First posted" is sufficiently comprehensive on material changes in relation to the complaints timeframe and already contains sufficient guidance for the BBC in this area.

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[234] Trans Advocacy & Complaints Collective response, p.13
[235] Trans Advocacy & Complaints Collective response, p.16
[236] Elliott, E. response, p.7; Corvelo, D. response, p.21
[237] CAMERA.org response, p.16

5.61 On this basis, and having taken into account the above responses, we have decided to maintain our position and proceed with our wording for the procedures for Fairness and/or Privacy complaints.

5.62 Our final Procedures for the consideration and adjudication of Fairness and/or Privacy complaints are reproduced in Annex A4.

Procedures for the consideration of sanctions for BBC breaches of content standards: BBC broadcasting services; BBC on-demand programme services; BBC online material

Overview

5.63 We explained in our Consultation that Ofcom's powers to sanction the BBC are set out in the Charter and the Framework Agreement (as amended by the updates to the Framework Agreement). If Ofcom is satisfied that the BBC has failed to comply with a requirement, we may direct the BBC, or accept undertakings from the BBC, to take such steps as we consider will:

- remedy the failure to comply; and
- ensure that the BBC complies with its requirements properly in the future.

5.64 We may also impose a fine of up to £250,000. Ofcom must not exercise these powers unless it has given the BBC a reasonable opportunity of making representations.[238]

5.65 Under the updated Framework Agreement (Clause 57(4)(b)(ii)) the procedures must give clear guidance explaining the remedies and sanctions that Ofcom has the power to apply in relation to content standards complaints. We therefore set out in our Consultation our view that it would be appropriate to also give clear guidance explaining the remedies and sanctions Ofcom has the power to apply in relation to fairness and/or privacy complaints.

Proposed approach

5.66 Our proposed approach was to amend the procedures which already exist for the consideration of sanctions for breaches of content standards on BBC broadcasting services and BBC on-demand programme services (the "BBC Broadcasting Code Sanctions Procedures").[239] Our proposed amendments provided that the determination of a sanction against the BBC – following a breach of content standards, or the Fairness Code – in relation to BBC online material would be considered in line with our existing sanctions procedures.

5.67 Under the current BBC Broadcasting Code Sanctions Procedures, Ofcom adopted an approach consistent with that applied to other broadcasters and on-demand service providers. Under these existing procedures, Ofcom may impose sanctions where it considers that the BBC has seriously, deliberately, repeatedly or recklessly breached the Broadcasting Code.

5.68 We explained in our Consultation that our proposed amendments would apply the same framework where there has been a serious, deliberate, repeated or reckless breach of the Code. This meant that Ofcom would follow the same sanctions-consideration procedures for breaches of the Code as it currently does for breaches by the BBC of the Broadcasting Code. This was intended to maintain continuity and support regulatory certainty for both the BBC and users/audiences.

[238] Article 49 of the Charter.

[239] Procedures for the consideration of sanctions for breaches of content standards on BBC broadcasting services and BBC on-demand programme services

5.69 We also proposed to update the list of examples of sanctions that Ofcom may impose (paragraph 3.2 of the proposed amended Sanctions Procedures) by adding a provision that Ofcom may direct the BBC to remove (or amend) and not include an item in its online material on any future occasion. This addition was also reflected in our proposed amendments to paragraph 3.5 of the Sanctions Procedures, which provided an equivalent to the existing provision that Ofcom may direct the BBC not to repeat a programme: "If Ofcom is satisfied that the posting by the BBC of an item of BBC online material involved a breach of the BBC Online Material Code, it may direct the BBC to remove and not include that item in its online material on any future occasion."

5.70 Proposed amendments were made to the type of sanctions which may be imposed against the BBC, to include references to BBC online material, here indicated in bold:

- issue a direction to restrict access to a programme on BBC ODPS **and/or BBC online material**;
- issue a direction to provide additional information to users prior to the selection of a specified programme on BBC ODPS **and/or specified BBC online material**;
- issue a direction to include a correction or a statement of Ofcom's findings, in such words and manner as specified by Ofcom, **or a link to Ofcom's breach decision (or a summary of it) (or all three)**.

5.71 We considered that these limited and targeted adaptations would ensure functional equivalence in how sanctions may be applied across online, on-demand and broadcasting contexts.

5.72 We also considered that the option of directing the BBC to include a link to Ofcom's breach decision (or a summary of it) would be particularly appropriate in the online environment, where users' attention can be effectively drawn to Ofcom's enforcement decision without the need to include a full summary within the content itself.

What respondents said

5.73 Several respondents noted their support for a common approach to sanctions between the Code and the Broadcasting Code.[240] The TACC added that, in cases where a fairness or privacy remedy could affect a person's interests, "that person should be invited to comment on its proposed wording, location and prominence, while Ofcom retains final control".[241] It further suggested that Ofcom should publish its reasoning on "whether a breach was referred for sanction, how repeated or related conduct was assessed and why the sanction was proportionate". They also supported the proposed range of sanctions available to Ofcom following a breach of the proposed Code but pointed out that "Ofcom should be able to require a clear correction or notice on the item, correction of associated presentation and social posts, and reasonable steps to reach the audience exposed to the original material." This view was shared by another respondent who suggested that, where feasible, a correction "should include the article, homepage or section front, BBC social posts, search metadata, captions, thumbnails and a corrective notification to recipients of a materially misleading push alert." [242]

5.74 Several respondents outlined their agreement with the proposal for the sanctions available to Ofcom to go beyond removal alone. One organisation added that the same flexible

[240] Trans Advocacy & Complaints Collective, Elliott. E, No Bars Ltd T/A DRIFT, Corvelo, D, CAMERA.org
[241] Trans Advocacy & Complaints Collective response, p.17
[242] Elliott, E. response, p.7

approach should be considered in the context of "temporal fairness", which it explained by saying there could "be cases in which the continued existence of the original journalism is not itself the problem. The unfairness may instead arise because important subsequent developments are absent, because historic material has been presented in a new context, or because a later editorial intervention has given it renewed prominence."[243] Rather than removal, this organisation suggested that potential sanctions could include, for example, "providing additional information about significant subsequent developments", "linking historic material to a later relevant report" and "restricting access or prominence where a more limited intervention is sufficient to remedy the identified unfairness." This, it said, would ensure that the "historical record is accompanied by sufficient contemporary context to prevent it from presenting a materially incomplete or unfair picture".

5.75 Several respondents indicated that proportionality should form part of Ofcom's sanctions approach. One said that "Ofcom should choose the least intrusive measure that is likely to be effective" and, in doing so, consider all contextual factors.[244] The TACC welcomed our proposals on how sanctions would apply to repeated breaches of the proposed Code, noting that in such cases, "Ofcom should be able to consider similar conduct across different items, services, accounts and editorial teams, including conduct arising from a common editorial practice or continuing after the BBC has been alerted through complaints".[245]

5.76 The prominence of any corrective action imposed by a sanction was raised by two respondents, one noting that "where inaccurate or otherwise non-compliant material has been prominently published and widely disseminated, a correction which is substantially less prominent than the original material may provide an inadequate remedy".[246]

Our decision

5.77 We have decided to proceed with our proposed approach to amend the existing procedures that apply to breaches of content standards on BBC broadcasting and on-demand programme services to its online services that fall within the scope of the Code. This will maintain continuity and support regulatory certainty for both the BBC and users/audiences.

5.78 We have decided to proceed with our proposals for the type of sanctions that may be imposed in relation to BBC online material. This is because Ofcom considers them to provide a suitable range of fair, targeted and proportionate measures relevant to the online environment that can be applied where necessary.

5.79 Some respondents suggested additional measures that would, if proceeded with, have gone beyond the scope of our sanctions proposals. For example, to require specific kinds of prominence for corrections or clarifications; for corrections to appear across online items, or for alerts to be distributed to users who had seen the original items of online material that a sanction would relate to. After careful consideration, we have decided to proceed with our proposals for the types of sanctions that may be imposed in relation to BBC online material. This is because the additional measures suggested would potentially step into areas of editorial decision making that are the sole responsibility of the BBC, and in some

[243] No Bars Ltd T/A DRIFT response, p.14
[244] Corvelo, D. response, pp.21-22
[245] Trans Advocacy & Complaints Collective response, p.17
[246] CAMERA.org response, p.16

cases would not be practically or technically achievable, given the fragmented context of the online environment and the conditions in which users discover and engage with BBC online material. Adding these measures would not be consistent with our approach of only making limited and targeted adaptations to ensure functional equivalence in how sanctions may be applied across online, on-demand and broadcasting contexts.

5.80 Our final Procedures for the consideration and adjudication of Fairness and/or Privacy complaints are reproduced in Annex A4.

A1. Statutory Framework

Ofcom's regulation of the BBC

A1.1 Ofcom's regulatory role over the BBC is derived from the Communications Act 2003 ("the Act")[247], which gives Ofcom such powers and duties as may be conferred on it by or under the Royal Charter for the continuance of the British Broadcasting Corporation (the "Charter")[248] and the Agreement between the Secretary of State for Culture, Media and Sport, and the BBC (the "Framework Agreement").[249, 250]

A1.2 Article 49 of the Charter provides that Ofcom must enforce compliance by the BBC in relation to certain "specified requirements" under the updated Framework Agreement. These include the regulatory obligations for the UK Public Services in Schedule 3 (other than those relating to the editorial guidelines and its plans and guidelines for UK Public Online Material – see paragraphs 2 and 3A(1) of Schedule 3).[251]

A1.3 Ofcom's general duties under section 3 of the Act also apply to the exercise of its functions in relation to the BBC.[252] These include its principal duty to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition.[253] In performing these duties, Ofcom must also have regard amongst other things, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.[254] Section 3 of the Act also requires Ofcom to have regard to the needs and interests of specific groups of persons when performing our duties, as appear to us to be relevant in the circumstances. In particular, these include: (i) the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection; and (ii) the desirability of preventing crime and disorder.[255]

A1.4 Under the Charter, Ofcom is also required to have regard, as appropriate, to the BBC's five public purposes.[256] We consider the following to be particularly relevant to this consultation:

- Public Purpose 1: To provide impartial news and information to help people understand and engage with the world around them;
- Public Purpose 2: To support learning for people of all ages; and
- Public Purpose 5: To reflect the United Kingdom, its culture and values to the world.

[247] Section 198 of the Act.
[248] The Charter.
[249] The Framework Agreement.
[250] The Framework Agreement was updated in December 2025 (the "updates to the Framework Agreement"). We refer to this as the "updated Framework Agreement".
[251] Clause 59(c) of the updated Framework Agreement.
[252] Article 45(1) of the Charter.
[253] Section 3(1) of the Act.
[254] Section 3(3) of the Act.
[255] Section 3(4) of the Act.
[256] Articles 6 and 45(2) of the Charter.

Ofcom Code for BBC online material

A1.5 Ofcom's new role in relation to BBC online material is set out in paragraph 3A(2) of Schedule 3 of the updated Framework Agreement. This requires Ofcom to set, and from time to time, review and revise, standards for the content of UK Public Online Material (referred to as "BBC Online Material"). These standards must secure the standards objectives set out in section 319(2)(a), (b) and (c) (including the special impartiality requirements in section 320) and (d) to (f) of the Act (referred to as the "applicable standards objectives"):

a) that persons under the age of eighteen are protected;
b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
d) that news included in television and radio services is reported with due accuracy;
e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes; and
f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.

A1.6 Those standards must be contained in one or more codes.[257]

A1.7 When setting standards for the content of BBC online material, Ofcom is required to have particular regard to each of the matters contained in section 319(4) of the Act with such adaptation as appear appropriate, to such extent as they appear to be relevant to secure the standards objectives listed above.[258] These are:

a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
f) the desirability of maintaining the independence of editorial control over programme content.

A1.8 Ofcom must also have particular regard to the special impartiality requirements contained in section 320 of the Act, also with such adaptations as appear appropriate, to such extent as they appear to be relevant to secure the standards objectives listed above.[259] These include the preservation of due impartiality in relation to matters of political or industrial

[257] Paragraph 3A(3), Schedule 3 to the updated Framework Agreement.
[258] Paragraph 3A(4)(a), Schedule 3 to the updated Framework Agreement.
[259] Paragraph 3A(4)(a), Schedule 3 to the updated Framework Agreement.

controversy and matters relating to current public policy. There is a similar requirement in relation to matters of major political or industrial controversy and major matters relating to current public policy.

A1.9 Lastly, Ofcom must have particular regard to the objective that the standards Ofcom sets in relation to BBC online material should be consistent with those set for broadcast television and radio services (i.e. the Broadcasting Code) to such extent as Ofcom considers appropriate.[260]

A1.10 In addition to observing the Code, the BBC must also observe Ofcom's Fairness Code to the extent that Ofcom determines that the standards in the Fairness Code are relevant to the provision of BBC online material. Accordingly, the proposed Code does not include equivalent sections to Sections Seven and Eight of the Broadcasting Code. However, we have set out how Sections Seven and Eight should apply to BBC online material. This is illustrated by Annex A3, which also highlights the modifications we would adopt and which we intend to be published as an Annex to the Broadcasting Code.

Public Law Duties

A1.11 The draft Code has been drafted in light of the Human Rights Act 1998 and the European Convention of Human Rights ("the Convention"). In particular, Ofcom has had due regard to the right to freedom of expression, as set out in Article 10 of the Convention, which encompasses the audience's right to receive creative material, information and ideas without interference but subject to restrictions which are prescribed by law, pursue a legitimate aim and are considered necessary in a democratic society. Ofcom has also recognised that particular protections are afforded in this legislation to political speech and on matters of public interest. Article 10, together with Article 8 regarding the right to a person's private and family life, home and correspondence, and Article 9, the right to freedom of thought, conscience and religion requires Ofcom to ensure that any restrictions arising from the Code are prescribed by law, in pursuance of a legitimate aim, are proportionate and are considered necessary in a democratic society. Ofcom will take careful account of these provisions in applying and enforcing the Code.

A1.12 Ofcom has also had due regard to the matters specified in section 149(1) of the Equality Act 2010 ("the public sector equality duty") and section 75 of the Northern Ireland Act 1998.

Complaints Procedures

A1.13 Ofcom is also required under the updated Framework Agreement to set and publish procedures for handling and resolving "relevant complaints" referred to us about the BBC where the complainant has already complained to the BBC.[261] "Relevant complaints" are complaints that the BBC has failed to comply with a specified requirement.[262] The specified requirements include any of the applicable regulatory obligations in Schedule 3 (see paragraph A1.2 above for further detail).[263] Clause 57(6) of the updated Framework Agreement contains details that Ofcom must make provision for in the complaints procedures. These requirements are reflected in the procedures for investigating breaches

[260] Paragraph 3A(4)(b), Schedule 3 to the updated Framework Agreement.
[261] Clause 57, updated Framework Agreement.
[262] Clause 56(9), updated Framework Agreement.
[263] Clause 59, updated Framework Agreement.

of content standards in BBC online material (the "BBC OMC Content Standards Procedures").

A1.14 Amongst other things, the procedures must also give clear guidance on the remedies and sanctions that Ofcom has the power to apply.[264]

[264] Clause 57(4)(b)(ii), updated Framework Agreement.

A2. BBC Online Material Code

A2.1 See Annex 2 linked here.

A3. Application of the Fairness Code

Fairness

This section is to ensure that the BBC avoids unjust or unfair treatment of individuals or organisations in its online material.

A3.1 This section and the following section on privacy are different from other sections of the Broadcasting Code. They apply to how ~~broadcasters~~ the BBC treats the individuals or organisations directly affected by ~~programmes~~ its online material, rather than to what the general ~~public sees and/or hears as viewers and listeners~~ audience encounters.

A3.2 As well as containing a principle and a rule this section contains "practices to be followed" by ~~broadcasters~~ the BBC when dealing with individuals or organisations participating in or otherwise directly affected by ~~programmes~~ its online material as ~~broadcast~~ published. Following these practices will not necessarily avoid a breach of ~~this section of the Code~~ the Fairness Code (applied through Section Seven (Fairness) of the Broadcasting Code) (Rule 7.1). However, failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the ~~programme~~ online material. Importantly, ~~the Code~~ this section does not and cannot seek to set out all the "practices to be followed" in order to avoid unfair treatment.

A3.3 The following provisions in the next section on privacy are also relevant to this section:

- the explanation of public interest that appears in the meaning of "warranted" under Rule 8.1 in Section Eight (Privacy); and
- the meaning of "surreptitious obtaining of material" that appears under "practices to be followed" 8.13 in Section Eight (Privacy).

Legislation[265]

A3.4 Relevant legislation includes, in particular, sections 3(2)(f) and 326 of the Communications Act 2003 and sections 107(1) and 130 of the Broadcasting Act 1996 (as amended), Article 8 of the European Convention on Transfrontier Television (for ECTT Services only), Article 28 of the Audiovisual Media Services Directive and Article 10 of the European Convention on Human Rights, and the BBC Charter and Agreement.

Principle

A3.5 To ensure that ~~broadcasters~~ the BBC avoids unjust or unfair treatment of individuals or organisations in ~~programmes~~ BBC UK Public Online Material ("online material").

[265] Relevant legislation remains as it appears in Section Seven of the Broadcasting Code as is already makes reference to the BBC Charter and Agreement. However, we note that the European Convention on Transfrontier Television and the Audiovisual Media Service Directive are not relevant to online material.

Rule

7.1 ~~Broadcasters~~ The BBC must avoid unjust or unfair treatment of individuals or organisations in ~~programmes~~ its online material.

Practices to be followed (7.2 to 7.15)

Dealing fairly with contributors and obtaining informed consent

Practice 7.2: ~~Broadcasters and programme makers~~ The BBC should normally be fair in ~~their~~ its dealings with potential contributors to ~~programmes~~ online material unless, exceptionally, it is justified to do otherwise.

Practice 7.3: Where a person is invited to make a contribution to ~~a programme~~ online material (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:

- be told the nature and purpose of the ~~programme~~ online material, what the ~~programme~~ online material is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first ~~broadcast~~ published;
- be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the ~~programme~~ online material as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;
- be told the nature of their contractual rights and obligations and those of the ~~programme maker and broadcaster~~ BBC in relation to their contribution;
- be given clear information, if offered an opportunity to preview the ~~programme~~ online material, about whether they will be able to effect any changes to it; and
- be informed about potential risks arising from their contribution to the ~~programme~~ online material which may affect their welfare (insofar as these can be reasonably anticipated at the time) and any steps the ~~broadcaster and/or programme maker~~ BBC intends to take to mitigate these.[~~266~~]

Taking these measures is likely to result in the consent that is given being 'informed consent' (referred to in this section and the rest of the Code as "consent").

It may be fair to withhold all or some of this information where it is justified in the public interest or under other provisions of this section of the Code.

Practice 7.4: If a contributor is under sixteen, consent should normally be obtained from a parent or guardian, or other person of eighteen or over in loco parentis. In particular,

~~266 This final measure applies to programmes that began production on or after Monday 5 April 2021.~~

persons under sixteen should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.

Practice 7.5: In the case of persons over sixteen who are not in a position to give consent, a person of eighteen or over with primary responsibility for their care should normally give it on their behalf. In particular, persons not in a position to give consent should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.

Practice 7.6: When ~~a programme~~ online material is edited, contributions should be represented fairly.

Practice 7.7: Guarantees given to contributors, for example relating to the content of ~~a programme~~ online material, confidentiality or anonymity, should normally be honoured.

Practice 7.8: ~~Broadcasters~~ The BBC should ensure that the re-use of ~~material~~ content, i.e. use of ~~material~~ content originally obtained for one purpose and then used ~~in a programme~~ by the BBC for another purpose, or used in a later or different ~~programme~~ publication of online material, does not create unfairness. This applies both to material obtained from others and the ~~broadcaster's~~ BBC's own material.

Opportunity to contribute and proper consideration of facts

Practice 7.9: Before ~~broadcasting a~~ publishing factual ~~programme~~ online material, including ~~programmes~~ online material examining past events, ~~broadcasters~~ the BBC should take reasonable care to satisfy itself that:

- material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and
- anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

Practice 7.10: ~~Programmes~~ Online material ~~– such as dramas and factually-based dramas~~ including, in particular, dramatisations and factually-based dramatisations – should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation.

Practice 7.11: If ~~a programme~~ online material alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Practice 7.12: Where a person approached to contribute to ~~a programme~~ online material chooses to make no comment or refuses to ~~appear in a broadcast~~ contribute, the ~~broadcast~~ online material should make clear that the individual concerned has chosen not to ~~appear~~ contribute and should give their explanation if it would be unfair not to do so.

Practice 7.13: Where it is appropriate to represent the views of a person or organisation that is not participating in ~~the programme~~ or contributing to the online material, this must be done in a fair manner.

Use of Deception~~, set-ups and 'wind-up' calls~~

Practice 7.14: ~~Broadcasters or programme makers~~ The BBC should not normally obtain or seek information, ~~audio, pictures~~ material or an agreement to contribute through

misrepresentation or deception. (Deception includes surreptitious ~~filming or recording~~ obtaining of material) However:

- it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means;
- where there is no adequate public interest justification, ~~for example some unsolicited wind-up calls for entertainment set-ups,~~ consent should be obtained from the individual and/or organisation concerned before the material is ~~broadcast~~ published online;
- if the individual and/or organisation is/are not identifiable in the ~~programme~~ online material then consent for ~~broadcast~~ publishing will not be required;
- material involving celebrities and those in the public eye can be used without consent for ~~broadcast~~ inclusion in online material, but it should not be used without a public interest justification if it is likely to result in unjustified public ridicule or personal distress. (Normally, therefore, such contributions should be pre-recorded).

Welfare of contributors

Practice 7.15 ~~Broadcasts should take~~ Due care should be taken over the welfare of a contributor who might be at risk of significant harm as a result of ~~taking part in a programme~~ featuring in online material, except where the subject matter is trivial or their participation minor.

A contributor might be regarded as being at risk of significant harm as a result of taking part ~~in a programme~~ or contributing to online material for reasons including (but not limited to) the following:

- they are considered a vulnerable person;
- they are not used to being in the public eye;
- the ~~programme~~ online material involves being filmed or recorded in an artificial or constructed environment;
- the ~~programme~~ online material is likely to attract a high level of press, media and social media interest;
- key editorial elements of the ~~programme~~ online material include potential confrontation, conflict, emotionally challenging situations; or
- the ~~programme~~ online material requires them to discuss, reveal or engage with sensitive, life changing or private aspects of their lives.[~~267~~]

~~Broadcasters~~ The BBC should conduct a risk assessment to identify any risk of significant harm to the contributor, unless it is justified in the public interest not to do so.

The level of care due to the contributor will be proportionate to the level of risk associated with their participation in ~~the programme~~ or contribution to the online material.

[~~267~~] ~~This Practice to be followed applies to programmes that began production on or after Monday 5 April 2021.~~

~~(See "practices to be followed" 7.3, 8.21 and 8.22)~~

Meaning of ~~a~~ "vulnerable ~~person~~ people"

~~For the meaning of "vulnerable" see Practices 8.21 and 8.22 in respect of "vulnerable people".~~ This varies, but may include those with learning difficulties, those with mental health problems, the bereaved, people with brain damage or forms of dementia, people who have been traumatised or who are sick or terminally ill.

Privacy

This section is to ensure that the BBC avoids any unwarranted infringement of privacy in its online material and in connection with obtaining material included in its online material.

A3.6 This section and the preceding section on fairness are different from other sections of the Broadcasting Code. They apply to how ~~broadcasters~~ the BBC treats the individuals or organisations directly affected by ~~programmes~~ its online material rather than to what the ~~general public sees and/or hears as viewers and listeners~~ audience encounters.

A3.7 As well as containing a principle and a rule this section contains "practices to be followed" by ~~broadcasters~~ the BBC when dealing with individuals or organisations participating or otherwise directly affected by ~~programmes~~ online material, or in the ~~making of programmes~~ production of online material. Following these practices will not necessarily avoid a breach of the Fairness Code (applied through Section Eight (Privacy) of the Broadcasting Code) (Rule 8.1). However, failure to follow these practises will only constitute a breach where it results in an unwarranted infringement of privacy. Importantly, ~~the Code~~ this section does not and cannot seek to set out all the "practices to be followed" in order to avoid an unwarranted infringement of privacy.

A3.8 The Charter and Framework Agreement requires Ofcom to consider complaints about unwarranted infringement of privacy in ~~a programmes~~ online material or in connection with the obtaining of material included in ~~a programme~~ such online material. This may call for some difficult on-the-spot judgements about whether privacy is unwarrantably infringed by ~~filming or recording~~ reporting, especially when reporting on emergency situations ("practices to be followed" 8.5 to 8.8 and 8.16 to 8.19). We recognise there may be a strong public interest in reporting on an emergency situation as it occurs and we understand there may be pressures on ~~broadcasters at~~ those reporting from the scene of a disaster or emergency that may make it difficult to judge at the time whether filming ~~or~~, recording or obtaining other material is an unwarrantable infringement of privacy. These are factors Ofcom will take into account when adjudicating on complaints.

A3.9 Where consent is referred to in Section Eight of this Annex it refers to informed consent.

A3.10 Please see "practice to be followed" 7.3 in Section Seven (Fairness) of this Annex.

Legislation[268]

A3.11 Relevant legislation includes, in particular, section 3(2)(f) and 326 of the Communications Act 2003 and sections 107(1) and 130 of the Broadcasting Act 1996 (as amended), and Articles 8 and 10 of the European Convention on Human Rights, and the BBC Charter and Agreement.

Principle

To ensure that ~~broadcasters~~ the BBC avoids any unwarranted infringement of privacy in ~~programmes~~ its UK Public Online Material ("online material"), and in connection with obtaining material ~~in programmes~~ included in its online material.

Rule

8.1 Any infringement of privacy in ~~programmes~~ the BBC's online material, or in connection with obtaining material included in ~~programmes~~ its online material, must be warranted.

Meaning of "warranted"

In this section "warranted" has a particular meaning. It means that where ~~broadcasters~~ the BBC wishes to justify an infringement of privacy as warranted, ~~they~~ it should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the ~~broadcaster~~ BBC should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Practices to be followed (8.2 to 8.22)

Private lives, public places and legitimate expectation of privacy

Meaning of "legitimate expectation of privacy"

Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy. People under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest.

Practice 8.2: Information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.

[268] Relevant legislation remains as it appears in Section Eight of the Broadcasting Code as it already makes reference to the BBC Charter and Agreement. However, we note that section 326 of the Communications Act 2003 is not relevant to online material.

Practice 8.3: When people are caught up in events which are covered by the news they still have a right to privacy in both the making and the ~~broadcast of a programme~~ publication of online material, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later ~~programmes~~ publications that revisit those events.

Practice 8.4: ~~Broadcasters~~ The BBC should ensure that ~~words, images or actions filmed or recorded~~ information and/or material obtained in a public place, ~~are~~ is not so private that prior consent is required before ~~broadcast~~ publication from the individual or organisation concerned, unless ~~broadcasting~~ publication without their consent is warranted.

Consent

Practice 8.5: Any infringement of privacy in the making of ~~a programme~~ online material should be with the person's and/or organisation's consent or be otherwise warranted.

Practice 8.6: If the ~~broadcast~~ publication of ~~a programme~~ the online material would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is ~~broadcast~~ published, unless the infringement of privacy is warranted. ~~(Callers to phone-in shows are deemed to have given consent to the broadcast of their contribution.)~~

Practice 8.7: If an individual or organisation's privacy is being infringed, and they ask that the filming, recording, ~~or live broadcast~~ live streaming, interviewing or obtaining of other material be stopped, the ~~broadcaster~~ BBC should do so, unless it is warranted to continue.

Practice 8.8: When filming ~~or recording~~, recording or obtaining other material in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to ~~film or record~~ obtain the material without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required.

However, in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before ~~filming or recording and for broadcast~~ obtaining the material from those sensitive situations and before publishing the online material (unless not obtaining consent is warranted). If the individual will not be identifiable in the ~~programme~~ online material then separate consent for ~~broadcast~~ publication will not be required.

~~Gathering information, sound or images~~ Obtaining and ~~the~~ re-use of material

Practice 8.9: The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the ~~programme~~ online material.

Practice 8.10: ~~Broadcasters~~ The BBC should ensure that the re-use of ~~material~~ content, i.e. use of ~~material~~ content originally ~~filmed or recorded~~ obtained for one purpose and then used ~~in a programme~~ by the BBC for another purpose, or used in a later or different ~~programme~~ publication of online material, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the ~~broadcaster's~~ BBC's own material.

Practice 8.11: Doorstepping for factual ~~programmes~~ online items should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally ~~broadcasters~~ the BBC may, without prior warning interview, film or record people in the news when in public places.

(See "practice to be followed" 8.15)

Meaning of "doorstepping"

Doorstepping is the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for ~~broadcast~~ publication purposes, without any prior warning. It does not, however, include vox-pops (sampling the views of random members of the public).

Practice 8.12: ~~Broadcasters~~ The BBC can record telephone calls between the ~~broadcaster~~ BBC and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible ~~broadcast~~ inclusion in a publication of online material (if that is the case) unless it is warranted not to do one or more of these practices. If at a later stage it becomes clear that a call that has been recorded will be ~~broadcast~~ published online (but this was not explained to the other party at the time of the call) then the ~~broadcaster~~ BBC must obtain consent before ~~broadcast~~ publication from the other party, unless it is warranted not to do so.

(See "practices to be followed" 7.14 and 8.13 to 8.15)

Practice 8.13: Surreptitious ~~filming or recording~~ obtaining of material should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the ~~programme~~ online material.

(See "practices to be followed" 7.14, 8.12, 8.14 and 8.15)

Meaning of "surreptitious ~~filming or recording~~ obtaining of material"

Where material is obtained without the knowledge of the individual concerned. ~~Surreptitious filming or recording includes~~ For example, the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording or screenshotting telephone, video or text conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end.

Practice 8.14: Material gained by surreptitious ~~filming and recording~~ obtaining of material should only be ~~broadcast~~ published when it is warranted.

Practice 8.15: Surreptitious ~~filming or recording,~~ obtaining of material or doorstepping ~~or recorded wind-up calls to obtain material~~ for entertainment purposes may be warranted if it is intrinsic to the entertainment and does not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment. The resulting material should not be ~~broadcast~~ published without the consent of those involved. However, if the individual and/or organisation is not identifiable in the ~~programme~~ online material then consent for ~~broadcast~~ publication will not be required.

(See "practices to be followed" 7.14 and 8.11 to 8.14)

Suffering and distress

Practice 8.16: ~~Broadcasters~~ The BBC should not ~~take or broadcast footage or audio~~ obtain or publish material of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

Practice 8.17: People in a state of distress should not be put under pressure to ~~take part in a programme~~ contribute to online material or provide interviews, unless it is warranted.

Practice 8.18: ~~Broadcasters~~ The BBC should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.

Practice 8.19: ~~Broadcasters~~ The BBC should try to reduce the potential distress to victims and/or relatives when making or ~~broadcasting programmes~~ publishing online material intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual ~~programmes~~ online material.

In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in ~~a programme~~ the online material should be informed of the plans for the ~~programme~~ online material and its intended ~~broadcast~~ publication, even if the events or material to be ~~broadcast~~ published have been in the public domain in the past.

People under sixteen and vulnerable people

Practice 8.20: ~~Broadcasters~~ The BBC should pay particular attention to the privacy of people under sixteen. They do not lose their rights to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools.

Practice 8.21: Where ~~a programme~~ online material features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained where appropriate from:

- wherever possible, the individual concerned; and
- a parent, guardian or other person of eighteen or over in loco parentis (in the case of individuals under sixteen); or
- a person with primary responsibility for their care (in the case of a vulnerable person who is unable to provide consent)

unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

Practice 8.22: Persons under sixteen and vulnerable people should not be questioned about private matters without the consent of a parent, guardian or other person of eighteen or over in loco parentis (in the case of persons under sixteen), or a person with primary responsibility for their care (in the case of a vulnerable person), unless it is warranted to proceed without consent.

Meaning of "vulnerable people"

This varies, but may include those with learning difficulties, those with mental health problems, the bereaved, people with brain damage or forms of dementia, people who have been traumatised or who are sick or terminally ill.

A4. Procedures

- Annex A4A: Procedures for investigating breaches of content standards;
- Annex A4B: Procedures for the consideration of sanctions for BBC breaches of content standards
- Annex A4C: Procedures for the consideration and adjudication of Fairness and or Privacy complaints

A5. Impact assessments

Impact assessment

Assessing the impact of our decisions

A5.1 Ofcom recognises that the decisions we make can deliver significant value for citizens and consumers but can also impose significant costs on our stakeholders. Impact assessments provide a valuable way of assessing the options for regulation and showing why the chosen option(s) was preferred. They form part of best practice policy making.

A5.2 Section 7 of the Act requires us to carry out and publish an assessment of the impact of proposals which are likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom's activities. Impact assessments help us to understand effects of policy decisions we are proposing to take and to consider whether those decisions would best fulfil our applicable duties and objectives in the least intrusive way.

A5.3 Ofcom is committed to carrying out impact assessments in the large majority of our policy decisions and has discretion as to the substance and form of an impact assessment. Our impact assessment guidance sets out our general approach to how we assess and present the impact of our proposed decisions.[269]

A5.4 As set out at paragraph 3.6 of our impact assessment guidance, whether we need to carry out an impact assessment will depend on the nature of the proposal we are putting forward, in particular (i) whether Ofcom is required to act in a particular way; and (ii) whether an individual proposal implements a policy or process on which an impact assessment has already been carried out. An example of a scenario where, as a rule, an impact assessment will not be required is where we are required by legislation to intervene (although we may carry out an impact assessment where we have discretion over the precise manner in which we intervene). In instances where we do not carry out an impact assessment as part of a consultation process, we will explain why.

A5.5 Throughout our Consultation and in preparing the draft Code and associated procedures, we have considered the impacts of our proposed implementation of the statutory requirements. This includes:

a) likely benefits and protections for audiences, contributing to the effectiveness of our proposals overall in achieving our objectives; and
b) whether the impacts of our proposals on the BBC are proportionate.

What we said about cost and risk impacts on the BBC

A5.6 We set out in our Consultation our view that, while our regulatory remit regarding the BBC's online material is changing, the proposed Code and associated procedures would not impose a significant burden on the BBC. The proposed Code did not introduce new standards to which the BBC is not already complying in its online material. The BBC's Editorial Guidelines currently apply to its online content; they already take the Broadcasting Code into consideration, and in some places are more detailed and more restrictive. In addition, the proposed Code was underpinned by the same standards

[269] Ofcom, Impact assessment guidance, 2023.

objectives as the Broadcasting Code and, as outlined above, Ofcom's application of the former is required to be consistent with the latter as appropriate.

A5.7 The proposed Code was Ofcom's response to the requirements of the updated Framework Agreement 2025. As such, we said in our Consultation that we would consider that any potential impacts would be the result of bringing that updated Framework Agreement into regulation. We did provide analysis in our Consultation on some potential costs and risks to the BBC, such as any one-off costs in becoming familiar with the Code and its procedures; whether any changes to the BBC's Editorial Guidelines might be required; and the potential for increased workload arising from increased contact with Ofcom. We found overall that enforcing the proposed Code would be unlikely to substantially affect the BBC across any of these areas.

What respondents told us about the cost and risk impacts on the BBC

A5.8 One respondent suggested that Ofcom might have underestimated the impact on the BBC and Ofcom of enforcing the new regime, noting that issues such as data management, governance and staffing capacity for both parties could become more onerous than predicted. They also queried whether historic complaints volumes under the online arrangement could be used for reliable forecasts of complaints under the Code. They suggested that Ofcom should monitor cost-related aspects of implementation over the first two years of the new regime at a minimum. They also raised the possible indirect effects of defensive editorial decisions due to uncertain rules. They further advised that guidance, as well as effective triage, could mitigate any unintended or indirect effects of enforcing the Code, such as uncertain rules encouraging removal or defensive editorial decisions, or under-specified duties leaving users without effective remedy. [270]

A5.9 Another respondent questioned "whether Ofcom has the analytical capacity to investigate a substantial digital corpus". [271]

Our decision

A5.10 In relation to the respondents who raised concerns in relation to Ofcom's assessment of the cost impacts of the Code on the BBC and Ofcom, we would reiterate the points shared in the Costs and Risks section above. These were, principally: that enforcing the Code would be unlikely to substantially affect the BBC's workload in engaging with Ofcom on complaints, as it does not introduce new standards to which the BBC is not already complying in its online material; and that the BBC's Editorial Guidelines currently apply to its online content, already take the Broadcasting Code into consideration and in some places are more detailed and more restrictive.

A5.11 We will, however, engage regularly with the BBC on its experience of interacting with the Code and, where necessary, mutually address any issues that might arise. Finally on costs, from an Ofcom perspective, we have assessed the likely impact of delivering the Code on our own resources and have no significant concerns. We believe that the historic complaints about online material under the online arrangement are a reasonable basis to forecast future complaints. However, as noted in our Consultation, we acknowledge that the application of the new regime may result in additional engagement with Ofcom. Nevertheless, we consider it unlikely that the new regime will significantly increase our workload.

[270] Corvelo, D. response, p.22
[271] News-watch response, p.7

A5.12 In relation to the respondent who raised the potential indirect effects, as noted earlier in this Statement, an extensive set of Guidance has been prepared to assist the BBC in delivering on the Code. This is expressly intended to mitigate any unintended or indirect effects of enforcement and give practical advice in cases where individual Rules might intersect with others.

What we said about rights assessment

A5.13 In our Consultation we set out how Ofcom, as a public authority, must act in accordance with its public law duties to act lawfully, rationally and fairly; and that it is unlawful for Ofcom to act in a way which is incompatible with the European Convention on Human Rights ("ECHR").[272] We explained that we had carried out a rights assessment of our proposals to address any relevant impacts on users, the BBC and other persons. Overall, we considered that the Principles and Rules proposed in the proposed Code, and our intended proposed approach to enforcement of the Fairness Code, would achieve a fair balance between securing adequate protections for audiences, the ECHR rights of audiences and the BBC, and other interested parties.

What we said about freedom of expression

A5.14 We noted in our Consultation that Ofcom had carefully considered the impact of the proposed Code on the BBC's and audiences' Article 10 rights. We considered that any interference would be limited, and that our proposals met the requirements of Article 10(2) of the ECHR as prescribed by law, in pursuit of a legitimate aim and necessary in a democratic society. The Act, the updated Framework Agreement and the proposed Code as set out are the applicable law for the purposes of Article 10(2), thus enabling the relevant pursuit of legitimate aims necessary in a democratic society for the prevention of disorder or crime, the interests of public safety, the protection of health or morals, and the protection of the rights of others. We said these aims would be achieved by securing standards of BBC online material required by law which protect audiences from harmful content, ensuring the availability of duly accurate and duly impartial news, and aiming to maintain fair and equal democratic discourse in BBC online material to the benefit of society generally by requiring that a range of viewpoints are received by viewers who may then participate in democratic processes on an informed basis.

A5.15 We had particular regard to the specific obligation in the updated Framework Agreement that, in preparing the Code, Ofcom "…must have regard, in particular, to: (a) each of the matters contained in sections 319(4) of the Communications Act 2003…", which includes having regard "in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to […] (f) the desirability of maintaining the independence of editorial control over programme content". We also had regard to the proposed Code and associated procedures having a role in retaining trust in the BBC, particularly in relation to due impartiality. Taking all of this into account, Ofcom provisionally concluded that any interference with freedom of expression from our proposed Code would be proportionate to the legitimate aim pursued, corresponding to a pressing social need and overall would be justified.

[272] Section 6 of the Human Rights Act 1998.

What we said about freedom of thought, conscience and religion

A5.16 In preparing the proposed Code, we had regard to the right to freedom of thought, conscience and religion and considered that any interference with this right would be limited, proportionate and that our proposals met the requirements of Article 9(2) of the ECHR as being prescribed by law, and necessary in a democratic society in the interests of public safety and for the protection of public order, health or morals. We considered the impact of certain draft rules on religious content under our equality impact assessment (see paragraph A5.35 below).

What we said about privacy

A5.17 In our Consultation we noted that Article 8 of the ECHR sets out the right to respect for an individual's private and family life. We outlined that we were not proposing any changes to the information we collect from complainants in relation to BBC online material and, as a result, our proposals did not require any further detailed assessment in relation to privacy.

A5.18 We outlined how the Fairness Code balanced Article 8 ECHR rights of under-eighteens and other individuals or organisations involved in or directly affected by BBC online material with the Article 10 rights of the BBC and audiences to receive and impart information without unnecessary interference. As the BBC's Editorial Guidelines, which account for the relevant principles, rules and practices to be observed under the Fairness Code, already applies to BBC online material, we considered that our duty under the updated Framework Agreement to apply the Fairness Code to BBC online material (so far as we determine the standards are relevant) did not require any further detailed assessment in relation to privacy.

What respondents told us about our rights assessment

A5.19 One organisation invited Ofcom to consider "the potentially indefinite duration, accessibility and changing contemporary impact of material concerning identifiable individuals" in its rights assessment. It suggested Ofcom consider taking a broader approach to "the assessment of the effects of regulating permanently accessible online material [which] should recognise rehabilitation, changed circumstances and the passage of time as potentially relevant factors within an appropriately balanced rights framework". The organisation cited ECHR Article 8 (respect for private and family life) and Article 10 (freedom of expression).[273]

A5.20 As set out at paragraph 4.114 above, another respondent said that the rules in Section Four should be read alongside Articles 9 and 10 of the ECHR as "they can protect audiences from improper exploitation and abusive treatment without insulating beliefs or institutions from criticism, satire, investigative journalism or policy debate".[274] They added that offence might "not by itself be proof of improper exploitation or abusive treatment". They also advised that, in cases where Section Four overlaps with Section Two (Harm and Offence) and Section Three (Crime, Disorder, Hatred and Abuse of the Code), multiple breaches should be reflected in Ofcom's approach to regulating under the Code.[275]

A5.21 The respondent also suggested our rights assessment should explicitly consider the impacts of the most intrusive sanctions available under our procedures on the right to freedom of

[273] No Bars Ltd T/A DRIFT response, p.14
[274] Corvelo, D. response, pp.12-13.
[275] Corvelo, D. response, pp.12-13.

expression, as set out in Article 10 of the ECHR, as well as their application under section 3(4)(g) of the Act, requiring Ofcom to have regard to the need to apply standards in the manner best guaranteeing an appropriate level of freedom of expression. [276]

Our decision

A5.22 We note the respondent who raised the permanent accessibility of online material and the passage of time as relevant factors to be considered within our rights framework. Although the window to complain to the BBC, and subsequently Ofcom, about specific online material is time-limited, in Ofcom's view the real-world experience of content for most audiences will be shaped by the continued availability of online material. As such, we have considered how such continued availability of online material may be relevant to the application of the Code in our Guidance. Our procedures for the consideration and adjudication of Fairness and/or Privacy complaints also provide for Ofcom to be able to intervene, in exceptional circumstances, to handle and resolve a complaint which was not initially made to the BBC within 30 working days of the date when the BBC online material was first posted, and Ofcom will consider Article 8 when considering whether to entertain a complaint.

A5.23 In response to the point made by the respondent that the Rules in Section Four should be read alongside Articles 9 and 10 of the ECHR, the Code has been drafted in light of these rights, which is explained in more detail in paragraph 4.119 (above). Specifically in relation to Article 9 of the ECHR, as noted below at paragraph A5.35, we have considered the potential discriminatory impact of the Rules 1.2, 2.1 and 2.2 on adherents of certain beliefs and/or religions. Additionally, we acknowledge that the rules in Section Four of the Code may have the potential of being discriminatory to adherents of certain beliefs and/or religions. However, we consider that any interference these rules have with rights under Article 9 of the ECHR are limited and proportionate. Furthermore, we consider that they meet the requirements of Article 9(2) of the ECHR as being prescribed by law and necessary to preserve public order, health or morals.

A5.24 In relation to the response that suggested we explicitly consider the impacts of our remedial powers on the right to freedom of expression, as explained in our Consultation, Ofcom will take careful account of Article 10 when applying and enforcing the Code. Our sanctions procedures also recognise that Ofcom must have regard to our duties under section 3(4)(g) under the Act.

What respondents told us about the effectiveness of the regime

A5.25 One respondent raised transparency issues as being relevant to Ofcom's impact assessment for the proposed Code, noting:

> "[the] principal regulatory risk is that Ofcom will add enforceable sanctions to a [complaints] 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." [277]

A5.26 The respondent also questioned "whether Parliament and the public will receive sufficient information to judge the regime's effectiveness". [278]

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[276] Corvelo, D. response, pp.23-24
[277] News-watch response, p.7
[278] News-watch response, p.7

A5.27 Another respondent advised that legal certainty would depend on the relationship between the proposed Code, associated guidance and procedures and the operation and potential impact of each should form part of our rights assessment.[279]

Our decision

A5.28 In response to the respondent who raised transparency concerns and the issue of whether Parliament and the public will receive sufficient information to judge the regime's effectiveness, we note, as explained at paragraph 7.36 above, that complaints data will be published annually, as currently, in Ofcom's Annual Report on the BBC.

A5.29 In relation to the point made by one respondent about legal certainty being dependent on the relationship between the Code, associated Guidance and procedures, each of the three assets have been designed to complement one another and have received careful consideration from a legal perspective.

Equality impact assessment

What we said

A5.30 Our Consultation set out the legal context regarding equality impact, outlining the requirements under Section 149 of the Equality Act 2010 ("the 2010 Act")[280] and Section 75 of the Northern Ireland Act 1998 ("the 1998 Act").[281] We described that we assess the impact of our proposals on persons sharing protected characteristics and whether they might discriminate against such persons or impact on equality of opportunity or good relations.

A5.31 We noted that our approach to equality considers potential impacts more broadly and not just in relation to groups of persons that share protected characteristics identified in equalities legislation.[282] We further noted that section 3(4) of the 2010 Act requires us to have regard to the needs and interests of specific groups of persons when performing our duties, as appear to us to be relevant in the circumstances, such as the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection; the needs of persons with disabilities, older persons and persons on low incomes; and the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas.

[279] Corvelo, D. response, pp.23-24

[280] This imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.

[281] This imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Section 75(2) of the 1998 Act also requires Ofcom to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. Ofcom's Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.

[282] Ofcom, Impact assessment guidance, 2023. See paragraph 7.

A5.32 In carrying out our equality impact assessment, we considered that we intended to examine the potential impact our policy would be likely to have on people, depending on their personal circumstances, and that such an approach can assists us in making sure we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.

A5.33 We identified the following positive impacts:

- The proposed Code would have a positive effect on our ability to protect users of BBC online material from harm by moving our remit over BBC online material from oversight of the BBC's adherence to its Editorial Guidelines to the enforcement of standards through the proposed Code and under the Fairness Code.
- The proposed Code would increase the incentive for the BBC to continue to maintain and live up to its standards and provide an additional route for redress for those negatively impacted by BBC online material.

A5.34 We identified the following neutral impacts:

- Existing safeguards in our existing complaints procedures would be maintained for individuals who wish to complain to us about the BBC's online material under the new regulatory regime.
- After a careful assessment, we did not identify any adverse impacts on specific groups of persons within Northern Ireland that would be likely to be affected differently to the rest of the UK.

A5.35 We identified the following negative impacts.

- The application of Rules 1.2, 2.1 and 2.2 in the proposed Code could potentially be discriminatory to adherents of certain beliefs and/or religions, as a result of how the protections they offered against harms in equivalent rules in the Broadcasting Code (Rule 1.27, Rule 2.6 and 2.8) that place restrictions on demonstrations of exorcisms, occult practices and the paranormal (which purport to be real). However, we set out our view that any potentially adverse impact or interference with Article 9 of the ECHR (freedom of thought, conscience and religion) caused by the interpretation of such rules would meet the requirements of Article 9(2) as being prescribed by law, in pursuit of a legitimate aim and necessary in a democratic society.
- Compliance with the proposed Code would be likely to increase regulatory costs for the BBC (see above). However, we set out our view that any such costs would remain small and not be passed on disproportionately to financially vulnerable customers and/or those in lower socio-economic groups. This is because the BBC already complies with its own Editorial Guidelines, which are more detailed in places than the proposed Code, and which already account for the relevant standards objectives the proposed Code aimed to achieve. We also (as outlined above) did not anticipate the change in the regulatory role of Ofcom over BBC online material would be likely to substantially affect the BBC's workload.

What respondents told us

A5.36 One organisation questioned whether Ofcom's equality impact assessment for the proposed Code sufficiently addressed the potentially indefinite duration, accessibility and contemporaneous impact of online material concerning identifiable individuals.[283] It raised

[283] No Bars Ltd T/A DRIFT response, p.15

the rehabilitation of offenders as an example, noting that while the Equality Act 2010 does not consider having a criminal record to be a protected characteristic, Ofcom's broader approach, as noted in our Consultation at paragraph A5.29, could afford such an interpretation.

A5.37 Another respondent outlined that Ofcom should strengthen its equality impact assessment by addressing areas where they believed it falls short in relation to individuals who are "subjects of coverage, racialised story selection, disability, intersectionality, cumulative exposure or the barriers faced by traumatised complainants".[284] They also suggested that Ofcom require auditing under these criteria. They also encouraged Ofcom to consult directly with both the BBC and people most affected by the content of online items, such as "bereaved families, Black communities, autistic and disabled people, mental-health and suicide-prevention specialists, working journalists and freedom of expression organisations".[285]

A5.38 A respondent raised access and recourse to review as potential barriers. For example, they questioned "whether individuals and small organisations can use the process. They added that Ofcom "should address the resource asymmetry between a large publicly funded broadcaster and an external complainant who can observe only the public-facing material".[286]

A5.39 Another respondent also encouraged Ofcom to be mindful of how the practical application of the proposed rules to protect against certain harms could intersect with others; for example:

> "Protection of under-eighteens can interact with disability, privacy, digital exclusion and access to public-interest information. Age assurance or warning design may have different effects on people who lack conventional identity documents, use assistive technology or share devices."[287]

A5.40 They also said that Ofcom's reporting systems should be usable by disabled people and encourage language or communication support and advised that Ofcom should publish additional details on how it implements and monitors accessibility measures. Finally, they also noted that the Guidance for Sections Two and Four should be tested for equal application to different beliefs, religions and racial groups.

Our decisions

A5.41 We have carefully considered the responses we received on these issues and have decided to proceed with our proposed Code and associated procedures as drafted. As outlined in the Impacts Section of this equality impact assessment, the Code and associated procedures intend to achieve a fair balance between securing adequate protections for audiences, the human rights of audiences and the BBC and other interested parties. However, we have outlined below our conclusions in relation to some of the additional points raised by respondents.

Impact on individuals with criminal convictions

A5.42 In relation to the suggestion from a respondent that we should consider the impact of online material on identifiable individuals, including those with criminal convictions in

[284] Elliott, E. response, p.7
[285] Elliot, E. response, p.7
[286] News-watch response, p.7
[287] Corvelo, D. response, p.24

particular, Ofcom notes that while the status of an individual as having a criminal conviction is not (as noted by the respondent) currently recognised as a protected characteristic under the Equality Act, we may still consider the impact on that group. Were an individual to have reason to seek action through the Code for being subject to a potential breach by the BBC on the basis of that individual having a criminal record, then we would observe that the Code as laid out across its various sections should allow scope for their complaint to be considered.

Consultation with affected groups

A5.43 In relation to the respondent who suggested that, in preparing our Guidance, Ofcom should consult directly with people most affected by the content of online items, as well as with the BBC, we observe that the modified Framework Agreement does not require Ofcom to undertake such engagement. We highlight, however, that Ofcom engages regularly with groups across society as appropriate and conducts research to ensure that our standards objectives across our remit reflect current societal expectations.

Impact of age assurance

A5.44 In relation to the respondent who noted that age assurance may have different effects on people who lack conventional identity documents, use assistive technology or share devices, we note that age assurance is cited as a non-prescriptive term that covers a spectrum of measures. It is also not a requirement under the Code, but is rather an example provided of a measure that may be appropriate to protect under-eighteens. It is also relevant that, as part of Ofcom's online safety criteria for highly effective age assurance, we state that methods should be fair and not result in significantly biased or discriminatory outcomes for users.

Impact on those with disabilities or accessibility requirements

A5.45 In relation to respondents who raised the potential impact on those with disabilities or accessibility requirements, we currently make provision for people with disabilities and accessibility requirements to be able to submit complaints to us about content standards. We provide a number of routes for doing so (including a call centre for those who have difficulties submitting complaints in writing). These routes can already be used by people who want to complain to us about the BBC's online material under the existing oversight regime and this will continue under the new enforcement regime. Therefore, at Consultation we estimated the impact of our proposals on people with disabilities would be minimal.

Impact on individuals and small organisations

A5.46 One respondent raised concerns about the potential impact on individuals and small organisations in their ability to use the complaints process, as well as the potential asymmetry between a large publicly funded broadcaster and an external complainant who can observe only public-facing material. In relation to this, we note that, as explained in our procedures, all complaints are important to Ofcom as they help us to understand whether the BBC may be failing to comply with the Code. We will have published procedures which clearly set out how complainants may make complaints about BBC online material and how Ofcom will consider that complaint. In relation to the asymmetry specifically, complaints under the regime only relate to BBC online material which has been posted online. As set out in the procedures, Ofcom may ask the BBC to provide any background material or evidence we consider may be relevant to our assessment of the complaint.

Impact of the application of the Code to different groups

A5.47 Various respondents raised concerns regarding how the application of the Code and complaints procedures could impact different groups, including: those with disabilities; those from different socio-economic groups; those with accessibility requirements; those with different beliefs; those with different religions; different racial groups; identified individuals subject to coverage in online material including those with criminal convictions; traumatised complainants; bereaved families; those with mental health conditions; and small organisations. As we said at Consultation, we considered this project would positively affect our ability to eliminate discrimination, harassment or victimisation against any of these groups by moving our remit over BBC online material from *oversight* of the BBC's adherence to its Editorial Guidelines to the *enforcement* of standards, through the Code. These standards are expressed in rules protecting users from hate speech and abusive and derogatory material aimed at groups or communities, as well as from harmful or offensive material (including material which discriminates against people with protected characteristics).

A5.48 We also said that, while this move would not increase the standards to which the BBC already holds itself through its Editorial Guidelines, which cover the same concepts as the Code, it would provide increased incentive for the BBC to continue to maintain and live up to its standards. It would also provide an additional route for redress for those who may be negatively impacted by BBC online material.

Welsh language impact assessment

What we said

A5.49 In our Consultation we outlined the legal context to our Welsh language impact assessment and noted Ofcom's duty, as a public body, to recognise the status of the Welsh language as an officially recognised language in Wales. We also acknowledged our duty to consider how the proposed Code should be formulated to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects in this regard.

A5.50 We set out our considerations that our proposals would have no known adverse effects on opportunities for persons to use Welsh, and nor did we consider they would treat Welsh less favourably than English. We expected that for Welsh language speakers, our enhanced remit over BBC online material would be beneficial by independently holding the BBC to specific standards for its online material, including on behalf of Welsh users of its Welsh language online material, such as BBC Cymru Fyw.

A5.51 The proposed Code and associated procedures will be published in Welsh and English, affording equality of opportunity to Welsh language users to use and understand it.

A5.52 At present Welsh users can complain to Ofcom in Welsh about BBC online material (as they can to the BBC). We said this equal opportunity would remain under our enhanced remit, as would our approach of using Welsh when publishing investigation outcomes that are in and of themselves relevant to Wales.

What respondents told us

A5.53 We received one response[288] in relation to this section of our Consultation, in which the respondent said that our delivery and handling of the proposed Code should "commit to

[288] Corvelo, D. response, p.25

equivalent process, timeliness, accessibility and precedent, not only equal publication" of the Welsh language.

Our response

A5.54 We have considered this response and have decided to proceed with the proposed Code and associated procedures. However, as confirmed in our Consultation and reiterated above: the Code and associated procedures will all be published in Welsh; audience members who use Welsh will be able to complain to Ofcom in Welsh about BBC online material; and we will use Welsh when publishing investigation outcomes that are in and of themselves relevant to Wales. In our view, this will help ensure equivalent process and accessibility. We will also consider Welsh language complaints against the Code on the same basis as English language complaints. Ofcom's timelines for considering complaints under the procedures are the same for Welsh language complaints as they are for English language complaints.