

RESPONSE

BY THE INTERNATIONAL BROADCASTING TRUST

**TO OFCOM'S RULES ON DUE IMPARTIALITY, DUE
ACCURACY,**

ELECTIONS AND REFERENDUMS

January 2017

Executive Summary

1. IBT's primary interest is in Purpose 1 of the BBC in the Charter, to provide duly accurate and impartial *news and information*, which includes *factual programmes* and Purpose 5 *to provide impartial, accurate and fair news for audiences around the world*.¹
2. We limit our response to this consultation to the proposal to regulate the BBC for impartiality and accuracy according to Section 5 of the Broadcasting Code.
3. IBT has a number of concerns about this consultation which arise as a result of the process by which Ofcom is having to consult on numerous changes required to the regulation and governance model of the BBC. We understand that Ofcom is planning to devise an Operating Framework² which will set out the regime for measuring the BBC's delivery of its purposes and mission. This Framework has not yet been prepared and without knowing whether it will include measures related to impartiality and accuracy additional to the proposals in this consultation, it is difficult to assess the current proposal.
4. The proposal under consultation to limit regulation of the BBC for impartiality and accuracy to broadcast news and impartiality in broadcast programmes on matters of political or industrial controversy and to current public policy represents a significant reduction in the regulation of the BBC. The BBC is currently externally regulated across all content for impartiality and accuracy.
5. While we understand that Section Two of the Broadcasting Code (Harm and Offence), which is being consulted on by Ofcom separately, also provides redress in the case of factual content which is considered harmful because it is *materially misleading*, this provision does not regulate for impartiality in such content and therefore the current proposal still constitutes significantly less external regulation than exists currently whereby all BBC content is regulated for impartiality and accuracy.
6. Broadcasting and online content play a vital role in engaging us with the wider world because they are the main source of information for people in the UK about what is happening in the world. The BBC is the most trusted provider of such content in the world. IBT considers that all BBC such content should continue to be externally regulated for impartiality and accuracy, as it has been since 2006, in order to maintain trust in the BBC and its services.
7. Any reduction in the regulation of BBC content for impartiality and accuracy could run counter to the ambition of the Government in the new BBC Charter and Agreement *for the BBC to be held to account more robustly for its content standards*.³

¹ BBC Charter, Clause 6, November 2016

² BBC Agreement, Clause 5 (2), November 2016

³ *Ofcom's preparations for regulating the BBC*, Para 2.2

8. IBT would like to know whether Ofcom plans to implement further measures to assess the BBC for the impartiality and accuracy of its output, in addition to the rules in Section 5 of the Broadcasting Code. Such regulation needs to include online content, the World Service and content in genres other than news, such as documentaries, current affairs, children's, and sport which we consider crucial in delivering the BBC's Mission and Public Purposes.
9. IBT believes that **all** BBC content should be regulated for being duly accurate and impartial in order to maintain trust in the BBC across all genres. We understand under the new regulatory model that this responsibility will fall on the BBC board in the first instance and while we do not oppose this model per se, there are no details available as yet on how the board will handle complaints, therefore it is difficult to know how effective it will be. Therefore we support the BBC Trust's suggestion⁴ that Ofcom must be able to consider complaints about editorial standards which result from breaches of the BBC's Editorial Guidelines across the entirety of the BBC's output in the UK and abroad.
10. IBT expects Ofcom to propose rigorous methods within the Operating Framework to ensure that all BBC content is assessed for accuracy and impartiality as it has been in the past, otherwise this will represent a significant loss of accountability towards audiences.

Introduction

11. IBT's primary interest is in the provision of accurate and impartial information about the wider world for audiences in the UK and around the world. IBT represents the concern of its members, organisations within the UK who want to see the UK population fully engaged with events, cultures and the lives of people in the wider world.
12. As IBT research shows, the BBC plays a hugely important role in our lives because its services are viewed by more people than any other UK broadcaster and therefore it has significant impact on our lives, providing international content which is accurate and impartial.
13. IBT's argument is that, as UK citizens, we are all at the same time citizens of the world. We have needs, rights and interests in being accurately informed and educated about both our own society and that wider international society of which we are a part. This is especially so now that it is readily apparent that events and processes in the wider world have both direct and indirect effects on how we live our lives.
14. Recent events, including the refugee crisis, the European Referendum and the American Elections are examples of international events which have and will continue to have an impact on our lives. They are examples which show how important it is that we are aware of international political, social and economic drivers at play in order to fully understand what our role and responsibility should be as a nation. Our lives have the potential to be profoundly influenced by

⁴ BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F, November 2015, para 52.

events and processes at the international level, and not just the local, regional or national levels. Therefore it is crucial that we are informed and educated accurately about the world so that we are able to participate as citizens in democratic debate about our own and our country's role in the world and we are engaged at an imaginative and emotional level with the issues facing citizens elsewhere in the world.

15. It is IBT's view that such international content should be provided not only by news and current affairs which necessarily tend to focus on stories of disaster and conflict; it should also be provided through popular content which is engaging and entertaining, attracting significant audiences while informing them about people's lives in a rounded way. All such content has been regulated since 2006 by the BBC Trust for accuracy and impartiality.

Consultation Questions

16. IBT does not have any response to Questions 1 – 4 of this consultation relating to UK broadcast election coverage because they fall outside our expertise. We concentrate our response on the proposal to regulate BBC content for accuracy and impartiality according to the rules set out in Section 5 of the Broadcasting Code.

Question 5: Do you have any comments on Ofcom's proposed amendments set out in Annex 5 for the purpose of regulating BBC broadcasting services and BBC ODPS in the area of due impartiality and due accuracy?

17. IBT believes that existing regulation of the BBC for impartiality and accuracy should be maintained in order to ensure that the BBC adheres to the standards set out in the Charter and Agreement.
18. IBT has a number of concerns about this consultation which largely arise as a result of the process by which Ofcom is having to consult on the numerous changes required to the regulation and governance model of the BBC in order to move responsibility for the regulation of the BBC from the BBC Trust to Ofcom.
19. We understand that Ofcom is required under the new Charter to devise an Operating Framework⁵ which will set out the methodology and process whereby BBC delivery of its mission will be assessed, explaining clearly the roles and responsibilities and the relationship between the BBC and Ofcom. This Framework has not yet been prepared and without it, it is difficult to assess the current proposal.
20. The proposal being consulted on is for BBC regulation for impartiality and accuracy to be the same as that for other UK broadcasters under Section 319 of the Communications Act. However, IBT believes that public accountability regulation of the BBC should be different from the regulation of other PSBs, because the public has different expectations of the BBC because they pay for it through the licence fee.

⁵ BBC Agreement, Clause 5 (2), November 2016

21. Currently the BBC Trust externally regulates **all** BBC content for impartiality and accuracy. IBT would consider any reduction in such regulation of BBC output as potentially detrimental to trust in the BBC. As it stands this proposal represents a significant reduction in the external regulation of impartiality and accuracy of BBC output.
22. The standards set out in Section 319 of the Communications Act are far more limited than existing Editorial Guidelines of the BBC which the BBC Trust has used to regulate the BBC. The Communications Act solely demands accuracy and impartiality in broadcast news; and for impartiality in broadcast programmes on matters of political or industrial controversy and matters relating to current public policy. Currently all BBC content (including online and social media content) is required to be duly accurate and impartial by the BBC Trust.⁶
23. While we understand that Section Two of the Broadcasting Code (Harm and Offence), which is being consulted on by Ofcom separately, also provides redress in the case of factual content which is considered harmful because it is *materially misleading*, this current proposal still constitutes significantly less external regulation than exists currently.
24. If these proposals are instituted without additional measures to assess and measure BBC impartiality and accuracy, this could run contrary with the Government's intention *for the BBC to be held to account more robustly for its content standards*.⁷

Why it is essential all international content is impartial and accurate

25. IBT holds that it is crucial that all BBC content across **all** genres and on **all** platforms is regulated for impartiality and accuracy. How much external regulation is required will depend on how effective the new BBC unitary board is in handling complaints. With reference to international content, which is where IBT's expertise lies, if we are to have a population which is well informed, engaged and aware of events happening beyond our shores, we need information to be accurate and impartial. This regulation should not just apply to news. There are BBC programmes and outputs too numerous to list which inform our understanding of the world around us – from current affairs, documentaries, children's output to even drama and sport. It is not just news which we watch to find out about the wider world.
26. This rationale was clear in the BBC Report on impartiality published in 2006:

Too often impartiality is regarded as a shibboleth for News and Current Affairs. It does of course apply there. It extends to other factual areas: Science, Religion, Arts, History, Documentaries and Natural History. But it

⁶ BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F, November 2015

⁷ Ofcom's preparations for regulating the BBC Para 2.2

*also applies in Drama, Children's Programmes, Comedy, Light Entertainment, Sport, Live Events, Education and Music.*⁸

27. The BBC has established itself as the UK's and the world's most trustworthy source of information. IBT considers accuracy and impartiality to be basic rights of licence fee payers. It is clear that trust in the BBC in the past has been severely undermined when accuracy and impartiality regulations have not been followed and that audience trust is not merely based on news output.

Complaints

28. While IBT understands that under the new Charter the BBC will follow the 'broadcaster first' system of regulation whereby all complaints are first handled by the BBC, we believe that there should be an adequate level of regulatory oversight of impartiality and accuracy by an external body to ensure that the BBC is effectively held to account.
29. If appeals within the BBC are unsuccessful and they are forwarded onto Ofcom IBT is concerned that Ofcom's regulatory process will be less rigorous than that of the BBC Trust. It is stated in the Agreement⁹ that complaints to the BBC will be judged according to BBC editorial guidelines (paragraph 2 of Schedule 3) whereas Ofcom will judge them according to Section 319 of the Communications Act (paragraph 3 of Schedule 3). As stated above, Section 319 of the Communications Act is far less detailed than the BBC's Editorial Guidelines and does not require accuracy and impartiality across all content. This is likely to lead to less rigorous regulation of the BBC which IBT considers would be detrimental to licence fee payers.

Guidelines accompanying Section Five

30. We acknowledge that, as suggested in the consultation document, the guidance for broadcasters on Section Five and the existing precedents of rulings are useful in providing extra detail on the accuracy and impartiality rules for broadcasters.
31. However, examination of the guidance notes, has led to concern on our part with reference to international news content. There is one clause which IBT considers should be revised to make its intention clearer, namely:

Rules relating to special impartiality requirements: news and other programmes

General

The 'special impartiality' rules (Rules 5.4 to 5.13 inclusive) apply to national and international matters, although the impartiality due to a non-national matter may be less. To give an example, broadcasters are expected to apply impartiality rules to a subject such as the American Presidential Elections. For those Ofcom licensees who are not broadcasting to the United Kingdom,

⁸ *From Seesaw To Wagon Wheel, Safeguarding impartiality in the 21st century* BBC Trust 2007, Pg 47

⁹ BBC Agreement, Clause 56 (2), November 2016

*the impartiality requirements still apply but the amount due may be less depending on the subject matter and the original country of reception.*¹⁰

32. In light of the requirements in Purpose 1 of the Charter (2016) that the BBC should provide duly accurate and impartial *news and information*, which includes *factual programmes* and Purpose 5 *to provide impartial, accurate and fair news for audiences around the world*, we are very concerned by this clause. Does it mean that UK licensed broadcasters transmitting outside the UK do not need cover non-UK matters in a duly impartial manner? If so, one must assume this would include content broadcast on the World Service. Or alternatively, does it mean that UK broadcasters transmitting within the UK only need to cover some non-national content in a duly impartial way?
33. It is surely equally as important that UK audiences should be able to trust news coverage of international events as much as they can domestic events. Or, alternatively that content broadcast by UK licensed broadcasters should be accurate and impartial wherever it is broadcast.
34. This guidance could lead to biased and unreliable international news content and IBT suggests that it should be revised so that all UK licensed broadcasters maintain the same level of impartiality for national and non-national matters regardless of where they are broadcasting.¹¹

Comparison between the Ofcom proposals and current BBC Regulation

35. In November 2015 the BBC Trust made a submission to the DCMS in response to the Government's BBC Charter Review. Schedule F of its submission included detailed research which demonstrated the difference between Ofcom's regulation of UK broadcasters and that of the BBC Trust.¹²
36. It is clear from this research that as a result both of its more detailed Editorial Guidelines and the fact that its rules apply to all content, the BBC Trust has regulated to a higher, more rigorous standard than Ofcom has the other UK broadcasters in accordance with Section 319 and 320 of the Communications Act (2003).
37. The Trust highlighted key areas which will not be covered if the BBC is regulated according to the Broadcasting Code but which have been regulated by the BBC Trust since 2006. These include editorial standards (such as accuracy in all non news content); the World Service; appeals about fair trading, television licensing and any other appeal (described in the complaints procedure as general appeals).
38. Additionally the BBC Trust has conducted a number of reviews of impartiality since 2006 which have provided valuable insight into whether the BBC has

¹⁰ Guidelines for Section 5 of Broadcasting Code, para 1.22, Ofcom

¹¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0018/24534/section5.pdf Ofcom Guidance Notes Section 5 Broadcasting Code.

¹² *BBC Trust's Response to the DCMS Charter Review Consultation, Schedule F*, November 2015

fulfilled its impartiality commitment in coverage of subjects such as rural affairs, the environment, Africa, and the Arab Spring.¹³ IBT would like similar reviews to be conducted in future.

39. Other issues which have been regulated by the Trust but are not included in the Agreement (2016) or in the Communications Act 2003 are editorial integrity and independence from external interests, conflicts of interest, and external relationships and funding. The Trust has taken and upheld significant complaints from industry in this area.¹⁴
40. **Online Content:** In what is being called the ‘post-truth era’, where online content is unregulated, IBT considers the reliability of BBC content, both broadcast and online as crucial. In an age where information is increasingly filtered through social media, the BBC provides a recognised source of information which people can trust. Up until now the BBC Trust has regulated all BBC online content. The current proposals do not include any regulation of BBC online content. In order to retain its universal appeal the BBC needs to remain trustworthy. The main means by which it will maintain the trust of those who use it is for it to be well regulated across all its content, including online and social media content.
41. **The World Service:** Even though there is no statutory basis for Ofcom regulating the World Service, IBT would like Ofcom to have regulatory oversight of the World Service. This is necessary in order to ensure that standards and trust in the BBC are maintained in the UK and around the world. Under the new system of regulation as set out in the new Charter and Agreement Ofcom will only be responsible for assessing the World Service’s contribution to the fulfilment of the Mission and Public Purposes of the BBC in its periodic reviews.¹⁵ Currently the BBC Trust regulates the World Service for impartiality and accuracy according to the BBC Editorial Guidelines. We would not want to see any reduction in the level of regulation of the World Service.

Conclusion

42. In conclusion, IBT would like to know whether Ofcom plans to implement further measures to assess and monitor BBC impartiality and accuracy, in addition to the regulation in Section 2 and Section 5 of the Broadcasting Code.
43. Such assessment needs to include the impartiality and accuracy of online content, the World Service and content in genres other than news, such as documentaries, current affairs, children’s, and sport which we consider crucial in delivering the BBC’s Mission and Public Purposes.
44. IBT believes that **all** BBC content should be regulated for being duly accurate and impartial in order to maintain trust in the BBC across all genres. We support the BBC Trust’s suggestion¹⁶ that Ofcom must be able to consider complaints about

¹³ http://www.bbc.co.uk/bbctrust/our_work/editorial_standards/impartiality.html

¹⁴ *BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F*, November 2015

¹⁵ http://www.bbc.co.uk/bbctrust/our_work/editorial_standards/impartiality.html

¹⁶ *BBC Trust Response to the DCMS Charter Review Consultation, Technical Annex F*, November 2015, para 52

editorial standards which result from breaches of the BBC's Editorial Guidelines across the entirety of the BBC's output in the UK and abroad.

45. We understand that the Charter rules that this responsibility should fall on the BBC Board¹⁷, but we consider that Ofcom should be able to act as a backstop if the BBC fails to satisfy complainants. However, IBT considers that Ofcom should judge appeals on the basis of BBC Editorial Guidelines and not Section 319 of the Communications Act which is far less detailed and rigorous.
46. IBT expects Ofcom to propose rigorous methods within the Operating Framework to ensure that all BBC content is assessed for accuracy and impartiality as it has been in the past, otherwise this will represent a significant loss of accountability towards audiences.

INFORMATION ABOUT IBT

47. IBT is a coalition of the UK's international development agencies. The views in this submission reflect the concerns of IBT's member agencies regarding adequate common understanding of the world in which we live. We are supported by a large proportion of the UK public which is concerned with the effects of 'globalisation' and our role as global citizens.
48. IBT's position, reflected in all our policy work since 1997, is that coverage of the developing world should not just focus on images of suffering which is more often than not what is presented in news coverage. It is IBT's view that an international dimension should be an integral part of all programming.

¹⁷ BBC Charter, Clause 20 (3) (f) (g), November 2016