DECLARATION

3rd April 2020

We welcome this consultation by the BBC on its complaints framework and procedures. Based on our own experience of the BBC’s complaints procedures, we believe that they are currently not functioning effectively. We therefore believe that they require fundamental revision.

We view it as impractical and improper for the BBC to police itself in relation to important areas of its operations. Indeed, it is our view that given the inherent conflicts of interest and systemic lack of transparency in the current framework, the current process will never be able to fully garner the public’s confidence. The attempts made by the BBC to prevent Ofcom from looking into the Naga Munchetty case (BBC Breakfast, BBC 1, 17 July 2019) strike us as a telling indictment of the conflicting and contradictory objectives that are at play within the BBC in considering complaints.

It is a disappointment that the BBC has not taken this opportunity to widen its review; rather the review focuses on a limited range of small adjustments in response to the issues concerning its handling of the BBC Breakfast programme issue.

Despite the proposed limited amendments, the complaints process will remain a protracted one. Only after going through the full process can a viewer or listener complain to Ofcom, and it seems that the BBC’s processes seem intended to ensure that only the most committed and aggrieved complainant would make it this far.

It is our view that an optimum framework will only be achieved by dismantling the current arrangements and handing over responsibility to Ofcom.

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Experience of BBC Complaints Process

In August 2019, we referred some specific concerns to the BBC’s Executive Complaints Unit (“ECU”).

In originally reviewing how to formulate the ECU complaint, and in reviewing how to proceed on receipt of the ECU Response – a response which we consider to be flawed and to have reached incorrect conclusions on key points – we have repeatedly come up against the complexity of the BBC regulatory framework, coupled with an absence of relevant precedents.

In any event, our experience of the BBC’s complaint handling process exposes clear deficiencies in the BBC’s investigation process, indicating that the BBC is incapable of policing itself in relation to regulatory complaints. We consider that there are clear implications for the effectiveness of the BBC in being able to mark its own homework in respect to other complaints (general, editorial, or otherwise).

Concerns arising from the ECU Response

In reviewing the ECU Response we noticed certain features of the ECU’s investigation that give cause to question its robustness and objectivity – in which may explain these flaws in the ECU’s conclusions. In turn these failings have prompted us to query the BBC’s ability to exercise appropriate regulatory oversight of its own operations.

In particular:

- **Reliance on BBC representations**: Although the ECU Response stated that its findings were subjected to “review from staff in the Legal, Regulation and Economics teams”, we were able to discern limited evidence of objective scrutiny being applied to the justifications offered by the BBC Executive in support of their actions. Instead, the ECU Response almost entirely offered the BBC’s internal representations as constituting the ECU’s own findings.

- **Decision maker not a competition or subject matter expert**: The decision maker responsible for the ECU Response was the Director of Editorial Policy and Standards, despite our complaint not constituting an editorial or standards matter. Whilst we gather that this may be in line with BBC complaints handling procedures, it leads us to believe that appropriate independent competition and subject matter expertise was not applied to the ECU’s consideration of our complaint.

- **Involvement of BBC Regulation team**: The ECU’s investigation was described as having been carried out by the BBC Regulation department. We are concerned as to the potential for this team to be a conflicted party. In particular, we query whether certain of the functions of the BBC Regulation team means that it is incentivised to ascribe a clean bill of health to the BBC’s operations in the face of scrutiny. In addition, we also query whether another of this team’s functions is to support the BBC’s public lobbying efforts to be subject to less regulation.
either objective forms part of its duties, it would indicate that the BBC Regulation team is not suitably independent to provide a fair and objective investigation of our complaint (or indeed any such complaint).

• **No communication with**: Despite offering to do so, at no point during the ECU’s investigation was invited to provide additional factual representations or to comment on the internal submissions made by the BBC which subsequently formed the ECU’s own findings. Had we been invited to do so, we would have been able to point out the factual errors and clear failings of understanding concerning the wider commercial marketplace that the BBC operates exposed by the BBC’s internal submissions.

• **Contemporaneous ECU decision reversed by BBC Executive**: According to contemporaneous press reports, at the time that he was acting as the decision maker on our Complaint, the Director of Editorial Policy and Standards was also responsible for investigating comments on BBC Television by the presenter Naga Munchetty. The findings of this investigation were subsequently publicly overturned by BBC’s Director General and the ECU’s role was made the subject of public criticism. This public repudiation of ECU decision-making gives rise to concerns as to validity of its response to the complaint, and also as to the independence of ECU decision making from BBC management.

• **Lack of transparency as to the BBC’s procedures**: The evidence of our complaint is that these procedures failed to protect the BBC from making acquisitions which were harmful and unjustified. This indicates that the procedures may not be fit for purpose.

• **Lack of transparency concerning change of procedure resulting from our complaint**: Whilst not disclosing the content of the BBC’s procedures, the ECU Response nevertheless revealed that our complaint and the subsequent ECU investigation had prompted these procedures to be revised. This is on the basis that. This raises important questions as to how the BBC goes about assessing and approving – and further highlights an absence of BBC transparency.

In summary, the ECU Response did not bear the hallmarks of an objective, robust and transparent adjudication. Instead it read as a defence argument, prepared somewhat in haste, and relayed by an investigation team with neither the expertise nor the incentive to challenge the account of events presented to it by the BBC Executive. In the absence of independent, qualified verification, the requirements for normal regulatory adjudication cannot be met.

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**Specific Responses to Consultation Questions**

*Question: Do you agree that the ECU should publish a note of the action only in circumstances where a specific action has been taken and it is appropriate to do so?*
It is not entirely clear why this change will give greater clarity to complainants. However, any efforts made to reassure the general public when specific action has been taken in response to a complaint are to be welcome.

**Question:** Do you agree that the timeframe for complaints about BBC iPlayer and BBC Sounds should be extended [up to 1 year and 30 working days] to reflect the longer availability of programmes on both platforms? If you do not agree with this proposal, what are your reasons for this view?

Yes – we agree with this proposal.

**Question:** Do you agree that the ECU should be able to consider complaints at all stages of the process, including both Stage 1a and 1b?

Yes – we agree with this proposal, on the assumption that the BBC is capable of effective triage such that appropriate complaints can be escalated at an early stage if they have merit or raise significant issues.

**Question:** Do you agree that representations should only be invited on findings for first-party complaints? If you do not agree, please explain your view?

A first-party complaint, by its nature, would normally be something related to fairness or privacy. Given the inherent conflicts of interest, the BBC are unlikely to find that they have treated someone unfairly or invaded their privacy. The BBC should therefore pass all first-party fairness or privacy complaints of any merit directly over to Ofcom to adjudicate.

We are also concerned that the BBC intend to remove the line {“The finding will include information about how to contact Ofcom if you wish to take your concerns further.”}, given they will no longer engage in debate with complainants. The BBC must make it clear to complainants (at all stages of the process) that they may appeal to Ofcom at the end of it.

**Question:** Do you agree with the proposal to publish one consolidated fortnightly report which includes all reasoned findings as opposed to only summaries of findings?

Yes – we agree with this proposal, on the basis that the report is not hidden away but given a public profile, similar to the Ofcom Bulletin, and can be subscribed to by the general public.