



BBC response to the Government's consultation on decriminalising TV licence evasion

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EXECUTIVE SUMMARY

1. This is the BBC's response to the Government's consultation on decriminalising non-payment of the licence fee. Recent events mean that the focus of the Government, the BBC, stakeholders, and the public has rightly been elsewhere. We are submitting this response in line with the Government's consultation deadline. We believe the Government needs to conduct a second more detailed consultation before any decision can be made.
2. The BBC is a national asset and has a critical role to play for the UK. It is at the heart of the public service broadcasting system – something that is now more vital than ever.
3. The BBC is the UK's number one media provider reaching 9 out of 10 UK adults every week. It reaches 426 million people globally taking independent, trusted news and British culture around the world. It is at the heart of the creative economy.
4. The universal licence fee – costing each household just over 40 pence a day – is the core of the BBC's funding. Over 25 million households hold television licences. The vast majority of people pay with only around 0.6% of households prosecuted for evasion. The UK has high compliance rates with one of the lowest licence fee evasion rates in Europe.
5. The licence fee continues to be the public's preferred way to fund the BBC. In December 2019 more of the public chose the licence fee as the best way to fund the BBC than either advertising or subscription.
6. However the important principle of universality, and that of fairness, only holds up if everyone pays for the range of services that everyone enjoys and relies upon. The funding system has to be underpinned with an effective deterrent that is fair for those who pay as well as for those who don't.
7. We understand why people have reservations about the criminal system and can see attractions with the civil system. No one wants to see people sent to prison for failure to hold a TV licence, nor a system that is unfair. However as part of the BBC's response we set out clearly that there are a number of myths about the current system and that some of the potential attractions of a civil system are not borne out by the evidence.
8. The BBC's position is that the current licence fee system remains fair, effective and good value for money.

9. We recognise that the current system of collection by TV Licensing could be improved – and the BBC is happy to work with Government on proposals – such as more effective access to data and extending the simple payment plan scheme to help more people, particularly the most vulnerable and those on lower incomes.
10. And whilst we can of course understand why some people are attracted to a civil system, we agree with the Government’s own list of significant difficulties as set out in its consultation. This includes higher evasion and higher penalties.
11. It is likely that a civil system would hit the poorest hardest as there is no discretion built into the system. Unlike in the magistrates’ courts, where the court decides on the level of the fine, there is no discretion to vary the size of the fixed penalty. It is just that, fixed. The only discretion is to establish how the penalty should be paid.
12. This will have a significant impact on those on lowest incomes and the most vulnerable in society where the threat of bailiffs at the door or impact on credit ratings have serious consequences. We cannot see how these issues could be mitigated and deliver an effective sanction at the same time.
13. Independent behavioural research commissioned by the BBC suggests that under any civil system evasion would increase to around 10%. And the transition and running costs of any new system would be significantly higher. Taking evasion, transition and enforcement costs together, we estimate a new civil system would initially cost the BBC around £300 million.
14. The costs to the BBC would therefore amount to more than £1 billion over the remainder of the Charter period from 2022 to 2027. This would inevitably require significant cuts to BBC programmes and services. It would also reduce substantially the BBC’s investment in the UK’s creative economy across the whole UK, including the nations and English regions.
15. This, of course, would be on top of the cuts over the past decade. Between 2010/11 and 2018/19, the amount the BBC could spend on UK public services was 24% less than if the licence fee had risen with inflation¹.
16. Changing the system would also be a significant undertaking for Government. It would require primary and secondary legislation. It would require changes to the courts procedures. These changes would take several years to implement because of establishing new contracts to run the system and upgrading or implementing new IT systems to serve 25 million households. A new system would also cost the Government more.

¹ <http://downloads.bbc.co.uk/aboutthebbc/reports/consultation/age/decision-document-lp.pdf>, page 28

17. Therefore the BBC continues to agree with the extremely detailed independent review that David Perry QC undertook for the Government in 2015. His conclusions were clear. There should be “*no fundamental change in the sanctions regime*”, the current system was “*fair and proportionate*” and civil based systems were “*not viable*”² alternatives.
18. The Government consultation does not address the fundamental question of how a new system would be fairer and more effective for everyone, nor does it provide detailed models for us to assess. On that basis the BBC thinks the Government should conduct a second consultation to explore the issues in more detail before reaching any decision.
19. In any event we believe that a decision should only be taken as part of the April 2022 licence fee funding settlement. These issues need to be considered at the same time as thinking about what the BBC delivers for Britain across the UK and the world.
20. The Perry review’s conclusion was that a move to a decriminalised method of enforcement would only become practicable should there be a change in the funding model itself, or to the way the licence fee was collected. This remains true today.
21. The BBC is happy to debate the future of the licence fee at the right time in the Charter cycle. The licence fee model remains in place for this Charter period that runs until December 2027.
22. Any changes that erode the licence fee model at this time would undermine the BBC’s ability to deliver the best programmes and services to our audiences, as well as reducing investment in the creative economy, where the BBC’s role is particularly crucial to the UK’s nations and regions.
23. The BBC seriously questions whether changing the system of enforcement just a few years into an 11 year Charter period makes sense. It would take several years to implement and the cumulative cost to the BBC would be more than £1 billion. From the evidence we have set out it would deliver worse outcomes for the licence fee payer, the taxpayer and the most vulnerable in society. The Government has provided no compelling evidence to the contrary.

² Perry Review of TV licence enforcement, pages 70 and 75

SECTION 1: THE ROLE OF THE BBC

24. The BBC plays a central role in British society, culture and the economy. It has never been so vital. It is a national asset.
25. The BBC is the most popular way to access impartial news and information. A recent Ofcom review highlighted the importance people place on the BBC as a universally-available and accessible source of accurate and trusted news³. The Coronavirus pandemic has seen a surge in traffic to the BBC's website as people seek out reliable and trusted information about the emerging global public health crisis, with 84 million unique UK browsers visiting in the week of 16 March 2020. More than 15 million people tuned in live to BBC One to watch the Prime Minister's Coronavirus statement on Monday 23 March.
26. BBC local radio's response to the recent floods has shown the value of high-quality real time information at a local level. More than 100,000 people have contacted BBC local radio's Make A Difference helpline over Coronavirus.
27. And our creative output continues to provide content which educates and entertains on a scale unmatched by other UK providers.
28. The creative industries are a key part of the UK economy – it is the fastest growing sector thanks to the successful TV and Film industry that has built up over decades. The UK model is a combination of brilliant British talent together with the benefits of sustained investment by the BBC, and the other Public Service Broadcasters, across the UK. Between 2011 and 2018, creative industries employment grew by more than by 30%, compared to UK average growth of around 10%⁴.
29. For every £1 from the licence fee the BBC invests we deliver £2 of value in the creative economy. As a result we have been able to invest across the whole of the UK – more than half of our network programming spend is outside London and 52% of our staff are outside London⁵. We are also the largest investor in small production companies with more than one third of commissions awarded to independent production companies with a turnover of less than £10m⁶.
30. The BBC's formula for the UK's creative success lies in being paid for and owned by the British public. The universality of the licence fee guarantees the BBC's commitment to creativity and risk-taking and to delivering for the whole UK.

³ Ofcom review of BBC news and current affairs, October 2019

⁴ <https://www.thecreativeindustries.co.uk/uk-creative-overview/facts-and-figures/employment-figures>

⁵ BBC annual report and accounts

⁶ <https://www.bbc.co.uk/mediacentre/latestnews/2019/commissioning-supply-report>

31. Over 25 million households have a TV licence. This generated £3.69 billion in income last year – around 95% of which is spent on BBC programmes and services. The BBC is ensuring it delivers value for money for the licence fee payer. The BBC is efficient and will deliver over £800 million of savings in the first part of the Charter period.
32. The Government has argued that changes in the media landscape mean there are many new players in the market so that the public’s attitude towards having a criminal offence for non-payment may have changed. We do not believe this is the case.
33. The BBC’s mission to inform, educate and entertain also remains the same, but for some audiences it is now delivered in new ways.
34. The BBC iPlayer blazed the trail for streaming services in this country and has been a huge success with over 4 billion programme requests last year - the highest ever. BBC News has been at the forefront of providing trusted information online. Our new audio offer BBC Sounds provides the British music industry and podcasters with a great platform for their voices to be heard, reaching over 3 million people with a unique listening experience with live stations, music mixes and the BBC’s podcasts.
35. The Perry Review was only 5 years ago, and the current Charter period started just 3 years ago. Subscription TV has been a part of the UK media ecology for some 30 years, and the public are well used to those payment models existing alongside the licence fee. New entrants to the market do not lessen the need for a fair and efficient enforcement mechanism for the TV licence.
36. The licence fee is the means of funding the BBC with the single most support, and support has grown significantly since this tracking began in 2004⁷.
37. A nationally representative survey the BBC commissioned from Populus⁸ shows there is no overwhelming desire for change amongst the public. Populus asked a two-part question to explore what UK adults think of decriminalisation of the licence fee. This showed that when they *first* consider the issue, UK adults are split:
- 41% feel that a criminal sanction for TV licence evasion should end as it is unfair and out of proportion with not paying for a TV licence; while
 - 40% feel that it should remain as a deterrent because it is unfair to those households who pay for a TV licence if there are others who evade doing so; and
 - 18% agree with neither or have no preference either way.

⁷ Sources: 2004: ICM, 1,037 UK adults 18+; 2019: Ipsos MORI, 1,032 UK adults 18+

⁸ Populus, 1,003 UK adults 18+, 5-10 March 2020 <https://www.populus.co.uk/>

38. However, when they go on to consider the potential impact on evasion, many change their minds:

- 27% say they favour ending the criminal sanction in principle even if it means an increase in evasion;
- 23% say they favour ending the criminal sanction in principle but not if it means an increase in evasion;
- 25% are not in favour of ending the criminal sanction;
- 25% have no strong view or don't know.

39. This shows the complexity of the issue for people, and indicates that only around a quarter of adults are in favour of decriminalisation even if evasion increases, while around half (48%) either do not favour ending the criminal sanction or only do so if evasion does not increase. And a further 25% have no strong view or don't know.

40. We have also conducted independent behavioural research by Harris Interactive, as we did in 2015. Harris's research shows that over this period the public's attitudes to licence fee enforcement and their understanding of the consequences of evasion has not changed significantly. For example, in both 2015 and 2020 69% of the public said they pay because it is the law.

41. The Populus survey is consistent with the Harris research which found that when people are asked what is the most likely system to make other people pay – 56% said the current criminal system compared with 25% for a civil penalty model and 18% for a civil debt model.

42. The BBC is based on the principle of universality. We provide something for everyone - national moments that unite the nation and British content that you wouldn't find anywhere else catering to the widest possible tastes. In return everyone contributes to the costs. But that principle, and that of fairness, only holds up if everyone pays their way.

SECTION 2 – THE FRAMEWORK FOR THE BBC’S RESPONSE

The BBC’s criteria

43. The Government has set out a number of factors to inform their consultation. Overall the Government will want to be satisfied, and demonstrate, that any new system is better than the current one. The Government also make clear in their consultation that a move to civil rather than criminal offences could only be justified provided the new arrangements were “effective, dissuasive and proportionate”. We will show in this response that a change could not be justified on any of these grounds, and that the current system more effectively meets them.
44. The Government should also take into account the criteria that David Perry QC considered in his detailed review: value for money, fairness, proportionality and ease of enforcement, a regime which is easily understandable, and practical considerations for any transition.
45. The BBC’s response to the current consultation uses some overarching criteria to summarise these various different factors and to look at the potential impacts of different models for TV licence enforcement: fairness, financial impact and feasibility.
46. We will therefore provide an assessment of the current system, as well as the reform options the Government has set out against these criteria.
- **Fairness for all licence fee payers, and effectiveness in deterring evasion** including whether an alternative, non-criminal enforcement scheme would be fairer, dissuasive and more proportionate and the potential impact on licence fee payers, particularly the most vulnerable and those with protected characteristics.
 - **Financial impact – particularly value for money for the licence fee payer and the taxpayer.** The overall costs of any system both in terms of evasion and operational changes that would need to be made, both for the BBC and for Government. And the impact on the creative economy if the BBC’s budget were significantly reduced.
 - **Feasibility:** proportionality and ease of enforcement and an analysis of implications on the TV Licensing operating model including the implementation and running costs and practicability of any changes. And whether any new system is easy for everyone to understand.

Evidence used by the BBC

47. The BBC’s response is limited at this stage because of the lack of detail on the proposed alternative options. The shorter than usual timescale for this consultation (8 weeks compared to the standard 12 weeks) has also reduced the amount of

analysis we could undertake. Nonetheless, to the extent that we are able, the BBC has gathered evidence and analysis to underpin this submission, and support the conclusions that we have reached. In particular,

- **Behavioural research conducted by an independent research agency Harris Interactive⁹:** looking at the impact that the broad options proposed by Government would have on evasion using quantitative analysis. We have tested these options with a representative sample of the public – including over 75s, and those who self-identify as people who pay the TV licence promptly, delay payment, or evade paying. This work has given us an indication of how people would react to the different options and what this could mean for levels of evasion and therefore the impact on the BBC’s revenues.
- **Attitudes to criminal offence conducted by Populus:** We commissioned independent representative polling about people’s attitudes to the criminal offence, as set out in Section 1.
- **Systems analysis and costings:** Any change to the current criminal system would require fundamental changes to the way TV Licensing operates – to its IT systems, enforcement activity, external contracts, staffing levels and skills. TV Licensing estimated the costs of making these changes, including implementation, transition and running costs.

48. The Harris research asked people to rate how effective they thought a range of sanctions were. Some of the key features of the current system ranked highest: the risk of a large fine and prosecution in the magistrates’ court were seen as the most effective. Some of the features more readily associated with a civil system, a small penalty or the use of a debt collection agency were seen as some of the least effective measures.

49. The Harris research also shows that the current system is well understood and people believe it to be effective. 57% are aware that evasion can lead to a fine of up to £1,000 for example.

Examples of the effectiveness of various sanctions

Feature	Effectiveness*
Features associated with the current criminal system	
Larger fine – up to £1,000	66%
Prosecution in a magistrates’ court	62%
Criminal conviction	60%
Small risk of imprisonment	52%

⁹ Harris Interactive, March 2020. Fieldwork conducted between 17 February and 1 March 2020 among 2,848 respondents, supplemented by face-to-face hall test interviews to recruit Delayers, Evaders and Over 75s in Scotland and England (London included).

Features typically associated with civil systems	
CCJ which impacts credit rating	54%
Debt passed to debt collection agency	50%
Pay arrears of TV licence owed	43%
Smaller fine/penalty	21%

*Effectiveness measured as the percentage of people saying 'very' or 'somewhat' effective minus the percentage of people saying 'very' or 'somewhat' ineffective.

50. This is backed up by Harris's behavioural research that shows that more people would evade under civil models, with increasing evasion to around 10% from the current 6.6%.

51. When people are asked what is the most likely system to make other people pay – 56% said the current criminal system compared with 25% for a civil penalty model and 18% for a civil debt model.

52. And our system analysis and costings shows that running a civil system would cost significantly more and involve very high implementation and transition costs.

53. In total we estimate the operation of a civil penalty system would initially cost the BBC around £290 million and a civil debt system around £285 million. These estimated costs include:

- An increase in the evasion rate to around 10%, with each percentage point increase in evasion costing the BBC around £44 million;
- Implementation and transition costs of £80m – including IT system change; and
- Annual enforcement costs based on restructuring the way TV Licensing would work across 25 million households.

Initial financial impact

	Evasion %	Evasion increase - 6.6% baseline (%pts)	Decline in licence fee income (£m)	Transition costs (£m)	Annual enforcement costs (£m)	Initial impact (£m)
Civil penalty	10.1	3.5	154	80	54	288
Civil debt	9.8	3.2	141	80	64	285

54. The other issue to be taken in to account is whether making such significant changes to the law around the TV licence would be clearly “dissuasive” and provide an effective deterrent. Could there be a subtle signalling or “nudge effect” towards non-compliance? Over time that could lead to a higher risk of evasion than we have been able to quantify. Could it therefore erode the licence fee model system?

55. There would be costs to the Exchequer too, and we note that the Government’s consultation outlines there would be no cost savings from their proposals. There needs to be an assessment of the potential implementation and operational costs to the courts system as well as lost revenue from fine income – across the UK and in each different legal jurisdiction. The Government may also want to estimate the implementation costs and time required to deliver any proposed changes so there is a full picture of the impact of any change. For the BBC we estimate at least two years to implement and transition to any new system alongside maintaining the current system.

Key points from the Perry review

56. David Perry QC was appointed by the Government in October 2014 to undertake an independent review of the enforcement regime for television licences. He reported in July 2015 and found the current regime to be *“fair and proportionate”* and that there should be *“no fundamental change in the sanctions regime”*¹⁰.

57. He argued that *“in the overall public interest, the current system of criminal enforcement should be maintained at least while the method of licence fee collection remains in its present form.”*¹¹

58. He also found that *“any significant change to the current system of enforcement, including a move to decriminalisation, carries the risk of an increase in evasion and would involve significant cost to the tax payer and those who pay the licence fee.”*¹²

59. The BBC agrees with the Perry review that concluded that many of the concerns in relation to the criminal offence and its perceived unfairness or disproportionality are not backed up by the evidence and therefore *“provide no compelling basis for change.”*¹³

60. The Government agreed to consider the Perry review’s recommendations as part of the Charter Review process. The Government subsequently confirmed in its White Paper in July 2016 that it did not intend to make any changes to the enforcement regime, in line with the Perry review’s recommendations, and stated that the criminal sanction *“is necessary because of the characteristics of the licence fee framework.”*¹⁴

61. The Perry review also made a number of other important conclusions, and found that the system did not unfairly target women or other vulnerable groups. A high

¹⁰ Perry Review, page 6

¹¹ Perry Review, page 3

¹² Perry Review, page 3

¹³ Perry Review, page 6

¹⁴ DCMS, A BBC for the future - a broadcaster of distinction, May 2016, page 99

proportion of cases prosecuted – 70% - were women, but he found that there was “no evidence of any discriminatory enforcement practices on the part of TV Licensing”¹⁵ and “no basis to conclude that TV Licensing intentionally targets women, or that its practices are directly or indirectly discriminatory.”¹⁶

62. The Perry review also made a number of recommendations – including suggesting making changes to the letters TV Licensing issue, introducing a new simple payment plan to help the poorest or those struggling to pay, updating TV Licensing’s prosecution policy, and to look again at the gender disparity of prosecutions. The BBC has implemented these recommendations in full.
63. The Perry review also recommended that the Government should consider making subscriber data from satellite and cable customers available to the BBC to allow for more efficient collection. The BBC believes this is still something that the Government should consider for the reasons given at paragraphs 194 and 195 below.
64. Finally the Perry review highlighted some of the complexity in how different parts of the UK and the Crown Dependencies apply the criminal sanction. While broadcasting matters are ‘reserved’ so that the criminal framework applies across the UK, there are substantive differences in how the law works across different jurisdictions, and the implications of decriminalisation are different in each. The biggest difference is in Scotland where the Procurator Fiscal operates using an out of court monetary disposal, but there are also differences in Northern Ireland and the Crown Dependencies.
65. The BBC continues to believe that the detailed analysis and evidence gathering the Perry review undertook, remains both accurate and relevant today. The BBC’s work, including the independent work conducted by Harris continues to support the Perry review’s conclusion.
66. The Perry review remains the most comprehensive and contemporary independent source on this important issue. The BBC believes its conclusion remains the right one.

¹⁵ Perry Review, page 7

¹⁶ Perry Review, page 31

SECTION 3 - THE CURRENT ENFORCEMENT SYSTEM WITH A CRIMINAL SANCTION THROUGH THE MAGISTRATES' COURTS

67. The BBC believes that the current enforcement system remains the fairest, most proportionate method of enforcement, and offers good value for money. We set out why it continues to be the most effective system although there are some further implementation improvements that could be made.

68. We understand why people have reservations about the criminal system and can see attractions with the civil system. No one wants to see people sent to prison for failure to TV licence, nor a system that is unfair. However as part of the BBC's response we set out clearly that there are a number of myths about the current system and that some of the potential attractions of a civil system are not borne out by the evidence.

The current law

69. Section 363 of the Communications Act 2003 makes it an offence to install or use a "television receiver" without a TV licence in order to watch or record live television (broadcast by any provider) or to watch on demand BBC content via BBC iPlayer. Anyone found to be watching or recording without a licence commits an offence and can be prosecuted (though in practice TV Licensing try to persuade people to buy a licence rather than prosecuting them).

70. The offence is summary only, so it is tried only in the magistrates' court. The offence is in the same category as many other criminal offences including failing to notify the DVLA of a change of vehicle ownership, driving with defective car lights and travelling on a railway with no intent to pay. On conviction, an offender can be sentenced to a fine not exceeding level 3 on the standard scale, currently £1,000. In addition, TV Licensing can recover the costs of prosecution and the offender is liable to pay the victim surcharge.

71. There are a number of myths that are critical to consider:

- Overall, in the context of around 21 million paying households, only very few people are prosecuted - 130,000 people were prosecuted in 2018 – around 0.6% - with about 121,000 convictions.
- The BBC is not sending lots of people to prison – it is the courts that make the decision. It is only a very last resort when people deliberately disobey court orders – usually to pay a large number of fines including the TV licence. In 2018 only 5 people in England and Wales went to prison. People could still go to prison under a civil system – hundreds of people have been sent to prison for council tax evasion in the last decade.

- The courts are not clogged up with TV licence cases – they are mainly handled through the efficient single justice procedure and even before that was introduced cases only took-up just 0.3% of court time. As John Bache, National Chair of the Magistrate’s Association said recently, “*removing TV licence cases from the courts would make a minimal difference. It is less than 1% of the time spent. So really it would be an insignificant difference. We would hardly notice it.*”¹⁷
- A person does not receive a centrally held criminal record for failure to pay a TV licence. Under a civil system people’s credit ratings could be affected for six years, meaning that people with low incomes would be less able to get credit and could end up in real financial difficulty.
- The current system is fairest for those on low incomes. It is a myth that the civil system is more proportionate. When a magistrate considers someone’s case their individual circumstances are taken in to account before the penalty is set. This means the average fine is £176 and a third of people are fined under £100. In contrast under a civil system, where the penalty would be fixed and would need to be much higher to be effective, there would be no discretion.

72. Put simply the current system is fairest for licence fee payers and both for those who are either struggling to pay and for those who find themselves being prosecuted for evasion.

73. The current system works efficiently and effectively serving over 25 million households at present. The number of complaints has fallen over the past five years by around one third. Complaints are only 0.05% of the number of licences in force – around 12,000 out of 25 million households. The National Audit Office found that TV Licensing “has performed well in increasing revenue, reducing collection costs and maintaining its reputation overall.”¹⁸

74. We now consider this option in more detail against the overall criteria.

Fairness

75. At the heart of the current licence fee system is the concept of universality. The BBC is a universal service – one to which everyone contributes and everyone receives something in return. Any system based on a universal contribution must have a sufficient deterrent and sanction to ensure that principle holds up and the system is fair to those who do pay, as well as those who don’t.

76. The research by Harris shows that a criminal sanction remains the most effective deterrent – and that a move to either of the civil systems outlined at a high-level by

¹⁷ BBC News Channel interview, 5 February 2020

¹⁸ National Audit Office, BBC TV licence collection, February 2017, page 7

the Government would see a significant increase in evasion. That would mean less revenue for the BBC, less money for the creative economy and would undermine the principle of universality.

77. The Harris research also shows that the current system is well understood - 69% know that it is the law to pay and 67% know it is a criminal offence. This shows as people know the consequences of non-payment that therefore helps act as a deterrent.
78. People believe it to be effective. By far the most well known consequence of the current system is that evasion could mean a fine of up to £1,000, while a majority of people rate the most effective consequences as being a large fine (66%) and prosecution in the magistrates' courts (62%).
79. The more people who pay, the more the cost of the services the BBC provides can be fairly shared. This means that the current system provides the best value for money and is therefore fairest for those who pay the licence fee.
80. When people are asked what is the most likely system to make other people pay – 56% said the current criminal system compared with 25% for a civil penalty model and 18% for a civil debt model.
81. The BBC agrees with the Perry review that the current system is also "*fair and proportionate*" for those who don't pay.
82. Fundamentally the system is about encouraging compliance rather than enforcing and penalising non-compliance. The vast majority of households, around 94%, comply with the requirement to hold a TV licence when one is needed, and for these households contact with TV Licensing is minimal, very light-touch and automated.
83. The current system has a number of features that ensure those who can't or won't pay are treated fairly, and a series of interventions is in place to protect the most vulnerable.
84. Key features include:
 - For TV Licensing, prosecution is always a last resort. First time offenders avoid prosecution if they purchase a TV licence even after they have been caught viewing without one;
 - The criminal system requires a high bar of evidential proof – beyond reasonable doubt. This high burden of proof means TV Licensing employs officers to gather evidence about potential licence evasion. If someone has been deliberately evading then officers must find first-hand evidence to a criminal standard to show that someone is watching television and that they are not licensed;

- TV Licensing operates to a published prosecution policy¹⁹ mirroring that of the Director of Public Prosecutions that sets out, alongside the evidential test, a public interest test with factors for and against prosecution that need to be taken in to account. Factors weighing against prosecution include: vulnerability – in terms of financial hardship or other health issues; and whether the person intends to buy a licence following interview.

85. This means that not only does TV Licensing need to be clear ‘beyond reasonable doubt’ that an offence has been committed but also that it is in the public interest to prosecute. The fact that TV Licensing offences had a 94% conviction rate last year compared with 86% for all summary non-motoring offences demonstrates the effectiveness of this ‘double lock’.
86. Around 40% of cases are then dropped because people decide to pay their TV licence to stop court proceedings.
87. Overall, in the context of around 25 million licensed households, only 130,000 people were prosecuted in 2018 – around 0.5% - with about 121,000 convictions.
88. Then, once a prosecution has been bought magistrates have significant discretion over the fines they levy on those who are convicted. They can - and indeed are required by Sentencing Guidelines - to take into account individual circumstances, including income and assets, in setting fines. Whilst the maximum fine is £1000, the average fine was around £176 in 2018. And over a third of fines were less than £100. That variation in levels of fine is important in maintaining a viable deterrent but also levying fines which are fair, proportionate and affordable.
89. As John Bache, National Chair of the Magistrate’s Association said recently “*what you usually do, although the fine in theory is payable immediately, what you actually do is ask them what they can afford and settle on a payment which must be made to the court, perhaps £5 or £10 a week or deducted from benefits if they are on that. So we go out of our way to ensure the defendant can pay but on the other hand, the state gets the money it is due.*”²⁰

Impacts on specific groups

90. The Government’s consultation expresses particular concern about impact on certain vulnerable groups – they identify those aged over 75, women and those with low incomes – as people they are concerned may be disproportionately affected by the criminal system.

¹⁹ <https://www.tvlicensing.co.uk/about/foi-policies-AB17>

²⁰ BBC News Channel interview, 5 February 2020

91. As we will set out later in our response the BBC thinks there is clear evidence to suggest that a move to a civil system would result in more people being sanctioned because of the lower burden of proof in a civil system – which is based on the balance of probabilities rather than beyond reasonable doubt. And we believe the likely higher levels of financial penalty and the impact of the associated enforcement action would have a greater detrimental impact on the most vulnerable. For example more bailiffs going round to enforce debt, and County Court Judgements which impact people’s credit ratings for six years, could in practice be more draconian than the current criminal system, with all its mitigations and safeguards.
92. The Government’s own consultation also recognises there is a long list of downsides to a move to a civil system for evaders who may be “*required overall to pay more*,”²¹ that the penalty might need to be set “*significantly higher*” than the current fine; and that the “*safeguards which allow the courts to mitigate the impact...on the most vulnerable...may not be available under a civil enforcement system*.”²² Enforcement action in a civil system might also “*cause additional anxiety*.”²³
93. TV Licensing has specific elements within its prosecution policy to protect vulnerable groups as outlined in paragraphs 84 and 106. And magistrates have discretion in setting the levels of fine up to a maximum level. These protections would be difficult to replicate in a civil system, where penalties or debts tend to be for fixed amounts, as the Government’s own consultation recognises.
94. With regard to those aged over 75 the BBC has postponed the implementation of the new policy until 1 August 2020 due to Coronavirus. We will be keeping the situation under review.
95. The BBC has designed implementation with the specific needs of the over 75s in mind. People will be given plenty of time to claim their free TV licence if they are on Pension Credit. We are also encouraging people to find out whether they are eligible for Pension Credit from the Department for Work and Pensions. There will also be a 75+ plan so people can choose how they want to pay ranging from weekly to annual schemes with no upfront costs. We will do everything we can to support the over 75s during the transition to the new system.
96. TV Licensing have been specially trained to help older members of the public. It is extremely unlikely that anyone in this group will face enforcement action, not least because between 1992 and 1999, the period before the free concession was

²¹ Government consultation, page 15

²² Government consultation, page 15

²³ Government consultation, page 15

introduced in 2000, no one of that age was prosecuted²⁴. The Harris research also shows that over 75s are the most likely age group to be law abiding and consequently the least likely to face any enforcement action. And in any event TV Licensing's prosecution policy as set out at para 84 means the public interest test must be met which means that people's vulnerability and individual circumstances have to be taken in to account. The civil system would not offer such protections as it is based on debt enforcement or a flat rate penalty.

97. A common criticism levelled at the current system is that it unfairly targets women. It is true that more women are prosecuted than men. However the Perry review found that there was *"no basis to conclude that TV Licensing intentionally targets women, or that its practices are directly or indirectly discriminatory."*²⁵

98. Since the Perry review TV Licensing has undertaken and published further research to understand better this gender disparity²⁶. This found strong evidence demonstrating that the majority of factors are circumstances outside TV Licensing control such as the make-up of households (there are more female only than male only households). Nevertheless TV Licensing has taken proactive steps to tackle this issue, including:

- Not charging for individual rooms within women's shelters;
- Making more explicit the factors taken into account when applying the public interest test in consideration of a prosecution, safeguarding those who are most vulnerable;
- launching a helpline for debt charities allowing staff to speak to TV Licensing to assist the organisation's clients in becoming licensed.

99. The BBC also worked on a pilot project, under the auspices of Sussex Police, for TV Licensing officers to hand out information leaflets, with contact details of local female focused support organisations, to those mentioning financial problems. The pilot has been successful and the Ministry of Justice Female Offenders Team, which leads the strategic response to non-police prosecutions of women, is keen to roll out the Sussex scheme more widely, working with Police and Crime Commissioners across the country. We are discussing with the Ministry of Justice how best to progress this initiative.

100. Beyond the approach to prosecution, the system also has a number of in built safeguards for those on low incomes. The Perry review notes that the evidence taken by the review did not support any suggestion that the enforcement regime has an

²⁴ PQ answered on 1 July 2019 "The Ministry of Justice has reviewed prosecution data between 1992 and 1999 for TV licence fee evasion, prior to the introduction of the concession, and established that there were no prosecutions of defendants over the age of 75 during this period."

²⁵ Perry Review, page 31

²⁶ TV Licensing, Gender disparity report, December 2017

unfair impact on those on low incomes²⁷. However, as the Government's consultation recognises, such safeguards might be lost under a new system²⁸.

101. TV Licensing knows some people struggle to pay and offers a range of payment methods including weekly instalments. It encourages people to get in contact, so they can be helped to stay licensed.
102. In 2018/19 the vast majority (76%) paid via direct debit with a further 11% by credit or debit card. Of the remainder, 6.6% paid via payment cards which allow for small, regular and convenient instalments and around 3.2% via PayPoint which provides a physical instore option for those that want this, or can't get online²⁹.
103. Following recommendations in the Perry review, the BBC conducted a trial of the Simple Payment Plan (SPP) to support those who find it most difficult to pay. Regulations have been laid that will make this permanently available from 1 April 2020.
104. The SPP spreads the licence fee in instalments evenly over the life of the licence and allows any missed payments to be spread over all the remaining instalments in the plan (instead of asking for missed payments to be paid all in one go at the next instalment). In the trial 72% of the applicants for the scheme were women.
105. TV Licensing also recently introduced new measures that give people more time to meet any missed payments before enforcement action is taken, and last year worked with more than 350 charities and organisations across the UK to provide payment advice. We have set up a helpline for organisations directly so TV Licensing can assist them with queries.
106. In terms of TV Licensing staff and the court system it is worth emphasising the in-built operational safeguards for vulnerable customers – some of which may be lost under a civil system:
 - All TV Licensing officers receive vulnerable persons training so understand how to recognise and manage vulnerable customers;
 - They are obliged to have regard to the relevant Police and Criminal Evidence Act Codes of Practice, which provide individuals with safeguards, and they do not interview anyone who appears not to understand the questions put to them or the consequences of the answers given;

²⁷ Perry Review, page 38

²⁸ Government consultation, page 15

²⁹ <https://www.tvlicensing.co.uk/about/our-performance-AB6>

- Officers ask at the door if there are any personal circumstances the interviewee would like TV Licensing to be aware of and record any information they provide;
- The officer hands over the Prosecution Code³⁰ at the conclusion of the interview and if personal circumstances are mentioned they refer the interviewee to the section of the Code which requests the provision of evidence;
- This assessment is continuous through the life of the case right up to court. If a matter is set for hearing the court presenter is able to assess any information received, and is able to discuss any identified condition with any carer present and with the court;
- Finally the court is the ultimate arbitrator and may feedback directly to the court presenter if there is strong feeling someone is particularly vulnerable and may also reflect any mitigating circumstances in sentencing, which can take in to account the defendant's financial situation.

107. Overall, therefore, a combination of the criminal burden of proof and public interest test, the actions and obligations the BBC places on TV Licensing's officers, the operation of the magistrates' courts, and the discretion over the nature of sanctions in the magistrates' courts all lead to a system which is proportionate and fair to those people who evade and are prosecuted.

Financial impact

108. The Perry review found the licence fee collection system to be efficient³¹.

109. The deterrent effect and focus on compliance rather than enforcement means the system has maintained a universal funding model. Compliance is high and collection costs are low.

110. At present evasion is around 6.6% and total collection costs last year were £103 million³². Only 2.6% of licence fee revenue is spent on administration or enforcement of the licence fee. This has significantly reduced since the Home Office were responsible for enforcement when the figure was around 6%³³. TV Licensing contracts Capita³⁴ to run the system. Capita is on track to deliver £220 million of savings by 2020, which further demonstrates the cost effectiveness of the current system.

³⁰ <https://www.tvlicensing.co.uk/visit>

³¹ Perry Review, page 34

³² BBC annual report and accounts, 2019

³³ Perry Review, page 26

³⁴ Collection of the licence fee is overseen by the BBC's Licence Fee Unit operating under the name "TV Licensing". TV Licensing also includes some third party contractors including Capita who operate on behalf, and under the supervision, of the BBC

111. The current evasion rate is around 6.6% compared with EU average of over 10% and others where the rate is higher – for example in Ireland where evasion stands at 14%.³⁵

Country	Estimated evasion	Comments
UK overall	6.6%	Criminal system with fines decided by magistrates' courts. Evasion stood at around 13% in 1991 when the Home Office was responsible for collection
Ireland	14.1%	Criminal system but with collection contracted to the Irish postal service
Italy	7.2%	A recent reform to the Italian system was to collect the licence fee automatically via electricity bills. Before that, evasion was roughly double the current level
Scotland	11% ³⁶	Criminal system with most cases settled out of court with a fine of around £75
EU average	10.8%	Mixture of licence fees and household/personal levies; underpinned by civil or criminal systems

112. The current system takes up a small proportion of court time, with very few actual hearings – there were only around 3,000 open hearings in 2018/19. As the Perry review said in 2015 *“it appears that the cases account for only a minute fraction of court time (0.3% on the figures available).”*³⁷ Since then the new Single Justice Procedure means that the processing of these offences is even more efficient. The Government estimates each case takes an average of two minutes to complete and that the majority of cases are listed and completed on the same day³⁸.

113. As John Bache, National Chair of the Magistrate’s Association said recently, *“removing TV licence cases from the courts would make a minimal difference. It is less than 1% of the time spent. So really it would be an insignificant difference. We would hardly notice it.”*³⁹

114. And any fines from the current system go to the Government, not the BBC. It is only TV Licensing’s costs that are recovered through the current system. The

³⁵ European Broadcasting Union data

³⁶ Measuring evasion for any area smaller than the UK relies on assumptions so should be treated with caution as the evasion model uses a range of inputs to calculate evasion and some key inputs (such as the rate of television penetration) are not available below a UK level

³⁷ Perry review, page 10

³⁸ Government consultation, page 22

³⁹ BBC News Channel interview, 5 February 2020

Government's own consultation says no court costs will be saved by their proposals and the BBC believes it would be helpful for Government to set out the full costs to the taxpayer of any new system.

Feasibility

115. The current system still requires investment and resource to operate successfully. In 2018/19 licence fee collection costs were £103 million. There are over 25 million licensable households in the UK. Collecting licence fees from paying households and undertaking compliance and enforcement action for those that do not pay is a significant operation.
116. TV Licensing has significant experience in running and operating the current regime contracting primarily with Capita and has made significant changes to the system over the years. The number of complaints has fallen over the past five years by around one third. Complaints are only 0.05% of the number of licences in force – around 12,000 out of 25 million households. A review by the National Audit Office in 2017 found that *“the operational performance of TV Licensing has improved in most areas through using more efficient, cost-effective customer services.”*⁴⁰

Conclusion

117. The current system works. It is fair, proportionate and provides value for money. It provides an effective deterrent to support a universal licence fee model that is fair to those people who pay as well as those who don't.

⁴⁰ National Audit Office, BBC TV licence collection, February 2017, page 8

SECTION 4 - CIVIL OPTIONS

118. The Government’s consultation outlines, at a very high-level, two alternative civil systems. It is very difficult to assess their impact properly given the lack of detail in the consultation paper. Nevertheless, on the basis of our understanding of the alternatives, it is not clear to us what benefits they are thought to offer and whether the impacts have been fully considered.
119. Indeed, as we set out below, the Perry review considered in detail a move to alternative civil enforcement regimes, and on the basis of the evidence the review concluded that both a civil penalty and civil debt based system were “*not viable mechanism[s] for the efficient and fair disposal of TV licence evasion cases.*”⁴¹
120. The Government consultation and the Perry review rightly identify the problems in civil systems that would lead to worse outcomes for everyone. The Government has not presented any new evidence to suggest that would not be the case.
121. As the Government’s own consultation recognises there is a long list of downsides to a move to a civil system: for evaders they may be “*required overall to pay more;*”⁴² that the penalty might need to be set “*significantly higher*” than the current fine; that the “*safeguards which allow the courts to mitigate the impact... on the most vulnerable... may not be available under a civil enforcement system;*”⁴³ that enforcement action in a civil system might “*cause additional anxiety;*”⁴⁴ that there would be “*significant set up and operational costs*”⁴⁵ for the BBC; that “*ongoing costs on enforcement could be higher;*”⁴⁶ and the collection of civil debts could be “*both expensive and difficult to achieve*”.⁴⁷
122. Independent behavioural research commissioned by the BBC suggests that under any civil system evasion will increase to around 10%, while the operational costs of any new system are significantly higher. In total we estimate a civil system would initially cost the BBC around £300 million.
123. The costs to the BBC would therefore amount to more than £1 billion over the remainder of the Charter period from 2022 to 2027. This would inevitably require significant cuts to BBC programmes and services. It would also reduce substantially the BBC’s investment in the UK’s creative economy just at the time it is most needed across the UK.

⁴¹ Perry Review, pages 70 and 75

⁴² Government consultation, page 15

⁴³ Government consultation, page 15

⁴⁴ Government consultation, page 15

⁴⁵ Government consultation, page 14

⁴⁶ Government consultation, page 14

⁴⁷ Government consultation, page 14

124. Any move away from the current criminal model would require primary and secondary legislation. The extent of the change required would depend on the precise system chosen. Some potential systems would require extensive change and possibly involve the introduction of novel concepts in law.
125. Furthermore, as we set out in this section any change to the current system would require significant operational and logistical changes for the BBC, TV Licensing, and the court system, and potentially involve creating a new independent adjudicator for any civil penalty scheme.
126. These changes would be significant and take several years. And any new system would need to work across the different legal jurisdictions of the UK, and in the Crown Dependencies.
127. For the BBC, at a high-level, the changes would be likely to involve:
- TV Licensing’s purpose changing from being an organisation that supports and encourages payment to one that is more enforcement driven which could have serious implications for the BBC’s relationship with the public;
 - An increase in collection and enforcement staff numbers as well as programme management costs;
 - Complex integration of new technology and an increase in on-going technology support costs;
 - The possibility of significant and material contractual changes with TV Licensing’s suppliers;
 - A complete revision of all customer communication materials;
 - Decommissioning existing interfaces supporting the criminal enforcement scheme and creating new interfaces to support civil enforcement; and
 - An element of dual running costs during any transition as the criminal process would phase out and a new de-criminalised process would phase in.
128. The Government will also want to consider the impact on the general taxpayer, which was estimated by Perry at around £28 million net as a result of lost court fines and charges⁴⁸. The current system is not a moneymaking exercise for the BBC. Fines and justice revenues accrue to the Government, and in effect, provide a revenue stream for the Ministry of Justice to run the courts. The improvements to the justice procedures of late mean that TV Licensing cases take up a very small proportion of court time. As the Government recognises, there would be no cashable savings from taking TV licences out of the magistrates’ courts. The Government needs to set out the costs and implications for the civil courts of any changes to the system.

⁴⁸ Perry Review, page 86

129. Therefore the Government may wish to satisfy itself that the full costs - both transitional and steady state - to the public, the BBC and the courts are justified by the potential outcomes from any new system.

130. We now look at each of the Government's proposed alternative civil options against the key criteria.

Civil Penalty Model

131. Like the Perry review, the BBC believes there are significant questions about whether a civil penalty model is appropriate for TV licence evasion.

132. The Government highlights the prospect of using Penalty Charge Notices (PCNs), currently operating for some parking violations, breaking some traffic rules, and not paying for use of toll roads. The way that these penalties typically work is that a local authority enforcement officer seeing a violation (either in person or by virtue of a road traffic enforcement camera) issues a penalty charge notice to the registered keeper of the vehicle, who is assumed to be liable unless he can show that someone else was responsible for the vehicle at the time of the violation⁴⁹. The amount of the charge varies but, except for London, they are typically less than £100 with a 50% discount for payment within 14 days, bringing the matter to an end.

133. If the motorist wishes to challenge the notice, they may make representations to the local authority issuing the ticket. The authority may accept those representations and cancel the ticket or decline to do so. If it declines to cancel the ticket, the motorist then has 28 days to choose to pay or to make a formal appeal to a parking adjudicator. Parking adjudicators were specially created for the purpose by the legislation that decriminalised parking offences.⁵⁰ If the motorist loses the appeal, or simply ignores the penalty charge notice, and does not pay within 28 days, they will be issued with a notice of the full amount of the charge. If that is not paid the local authority may apply to the County Court for enforcement as if the penalty charge were a civil debt.

134. These kind of civil penalty systems, therefore, have been carefully designed over 25 years for such offences and have a clear evidential test and trigger point for a penalty, such as a photograph of a number plate. In addition all vehicles must, by law, have a registered named keeper and address. The level of the penalty itself is designed to provide a deterrent against breaking the rules – but be affordable to those who do break them. The penalties are typically graded to incentivise compliance with the penalty reduced if paid within a certain number of days (and sometimes increased if not paid within a defined period).

⁴⁹ Camera enforcement can also be automatically carried out by computer generated penalty charge notices.

⁵⁰ Traffic Management Act 2004, s81

135. Whilst the level of payment of civil parking penalties is such that their issue is often criticised as a money-making exercise by local authorities⁵¹, there is no certainty that such a position could be replicated were TV licences to be enforced by civil penalty notice. National statistics on the number of penalty charge notices issued are not easy to obtain, but in London alone in the financial year 2018-19 local authorities issued over 3.8m in respect of parking and a further 2.1m in respect of bus lane and moving traffic violations.⁵² Less than 1% of the notices are formally appealed, with a success rate of just over 0.5%.⁵³ Up-to-date data is not available on the number of informal representations that were accepted by local authorities before moving to the formal appeals stage, though the RAC estimated in 2012 that about 6% are written off at this stage.⁵⁴
136. It is, however, reasonably easy to detect parking and other road traffic violations and then issue a penalty charge notice. First, the fact of the violation, including time and date, is normally obvious: a car will be photographed by an enforcement camera or physically observed by an enforcement officer. That physical evidence will provide the vehicle registration number. Secondly, there is a national database of registered keepers of vehicles. It is a simple matter for the local authority to interrogate the database and issue a penalty charge notice to the registered keeper, who is deemed to be responsible for the violation unless they can prove that someone else was responsible for the vehicle at the time.
137. Contrast that with the situation in respect of TV licences, where the only evidence of viewing broadcast TV is a personal visit to a household to establish whether licensable content is viewed without a licence and then only the interviewee could be penalised with no certainty about who is responsible beyond the observation. There is no national register of names and addresses or of televisions or other devices that can be used to watch television programmes; and nor realistically could there be.
138. All this means that it is very difficult to do a straight read-across from the parking and road traffic model. There would be far less certainty of detection and sanction. That means in turn that it would be highly likely that the level of compliance would be lower – perhaps much lower – than with traffic tickets and with the current criminal system of enforcement.

⁵¹ See, for example, <https://www.telegraph.co.uk/news/2019/11/16/councils-made-almost-half-billion-parking-fines-rac-finds/>.

⁵² <https://www.londoncouncils.gov.uk/services/parking-services/parking-and-traffic/parking-information-professionals/information>

⁵³ Ibid

⁵⁴ https://www.racfoundation.org/assets/rac_foundation/content/downloadables/facts_on_parking.pdf

139. Indeed the Perry review found that a civil penalty system was “*not a viable mechanism for the efficient and fair disposal of TV licence evasion cases.*”⁵⁵

140. In summary, we do not see how such a model can be directly transferred into the legal and operational framework for the TV Licence.

141. We also have some specific concerns against the key criteria.

Fairness

142. The Perry review looked in detail at the civil penalty model and found that any civil penalty system would need to be set at a high financial amount or there would be a large loss of BBC revenue as there would be a lower deterrent than provided by the criminal system. Based on the Harris research, even with a civil penalty of £1,000 – around 6 times greater than the average fine under the current system - evasion would rise by 1.5% points.

143. There is a real question of fairness, in our view, as to whether a fixed penalty of this magnitude is a proportionate response to the offence or whether it could even be collected, so we also think this would have significant costs.

144. It is likely that a civil penalty system would hit the poorest hardest as there is no discretion built into the system. Unlike in the magistrates’ courts, where the court decides on the level of the fine, there is no discretion to vary the size of the fixed penalty. It is just that, fixed. The only discretion is to establish how the penalty should be paid. The Government’s own consultation identifies this lack of discretion and potentially higher financial penalty as a downside of any move away from the current system. The evidence clearly supports these concerns.

145. The Government would also need to decide how the system would handle people who made a false statement or presented false evidence. Under some civil routes, this is a criminal offence. It is therefore possible that an element of criminality would remain in this system just as there is under the current system through the offence in the Communications Act.

146. There is no evidence that such a system would meet any of the Government’s concerns around low-income groups, over 75s and women.

Financial impact

147. We estimate a civil penalty model would initially cost the BBC around £290 million and then annual costs of over £200 million. This takes into account an

⁵⁵ Perry Review, page 70

increase to evasion, implementation and transition costs of a new system, and ongoing extra operational costs from running it.

148. In terms of evasion, the independent Harris research commissioned by the BBC looked at the likely impact on people's behaviour as a result of changing to a civil penalty system. In short, many more people would be likely to evade payment and more people would also delay making payments as the consequences of doing so would be seen to be less of a deterrent.
149. Specifically, if a civil penalty were set at £80 – which is in the region of the penalty system applied for parking and other motoring violations – the Harris research estimates evasion would rise to 10.1%, a 3.5% point increase. A further 2.5% would choose to delay their payments that would impact on BBC cashflow and our ability to pay suppliers on time. As each percentage point increase in evasion costs the BBC around £44 million, such an impact would amount to £154 million in lost licence fee revenue each year.
150. Over time we suspect there is an even higher risk of evasion than we have been able to quantify due to the signalling and nudge effect of the consultation and any future steps. Only 21% in the Harris research thought a small penalty would be an effective consequence so it seems likely that would influence behaviour over time.
151. There would also be very significant implementation and transition costs. These would include: new contractual arrangements; new or upgraded IT systems; correspondence and public materials; and a change in the way TV Licensing officers work and penalties issued. An appropriate adjudication system would need to be created, and the impact of extra cases on the County Court assessed.
152. We estimate transition and implementation costs of around £80 million.
153. There would also be a significant increase in ongoing operational costs – money that would need to be spent on licence fee collection rather than programmes and services. We estimate that ongoing operational costs would increase by around £54 million each year.
154. Taken together, the increased costs and falls in licence fee revenue would amount to more than £1 billion over the remainder of the Charter period from 2022 to 2027, which would inevitably require significant cuts to services and damage the creative economy across the UK.

Feasibility

155. The BBC's analysis of how such a system might operate in the context of TV licence evasion shows that applying a civil penalty system would require a complete rewiring of the TV Licensing enforcement model. There is no doubt that a transition

of this size would take a long time – over two years - and involve significant costs as outlined above.

Conclusion

156. It is not at all clear to us how moving to a civil penalty system would work in a TV licence context; and we do not see how it would do anything other than make things less fair, more expensive and have a significant impact on BBC revenues. It would mean a worse BBC for everyone.

Civil debt model

157. The BBC believes the civil debt model is not a viable alternative and we have significant concerns about its effectiveness in practice. As with the civil penalty model the Perry review also concluded: “*it would not provide a viable mechanism for the efficient and fair disposal of TV licence evasion cases.*”⁵⁶

158. A civil debt system tends to be one where an individual has failed to meet their payments for a service or good and is ultimately taken to a County Court for pursuit of that debt.

159. Under the current TV licence system, there is no debt relationship between the licence payer and the BBC unless a licence has been purchased. The BBC can already sue for arrears⁵⁷ but this is not cost-effective: those who watch TV content that requires them to hold a licence without obtaining one commit an offence and are prosecuted for it. If the offence were removed and a civil debt model became the only method of enforcement, this would require a debt to be established or deemed in some way for the BBC to be able to sue for debt.

160. This would have to take two forms. It would remain the case that the group of people who had agreed to buy a licence but had then failed to make payment (either in whole or in part) might in principle be pursued for the unpaid amount.

161. More challenging would be the group who were watching television without a licence. There would be no basis of debt between them and the BBC. So, in order for the system to have any chance of working, there would need to be some form of debt created, in order that the viewer could be pursued for the licence fee. This would presumably mean creating some sort of implied contract or statutory obligation whereby anyone watching licensable content would be deemed to have entered into an agreement to pay the BBC the entire cost of the licence fee, which normally covers 12 months. That would be a novel concept in contract law and would require

⁵⁶ Perry Review, page 70

⁵⁷ Communications Act 2003, s.365(2).

careful working up and precise definition in primary legislation. If this were not feasible, we do not see how the system could be at all workable.

162. Establishing the ‘start point’ for that liability would be extremely challenging in practice. The BBC cannot just switch off TV – on Freeview/Freesat to do so would be technically difficult and very costly as we outlined previously to the Perry Review⁵⁸ – and we cannot use pre-payment meters. That means the UK population can access TV services freely and openly, whenever they like and the BBC has no way of controlling that, or knowing when any unlicensed TV watching began.

163. An alternative of assuming a period of licensable activity, which would probably be inevitable, risks unfairness by setting a fixed level of debt rather than an actual one. As the Perry review concluded, enabling the BBC to recover lost revenue by charging for the periods when the evader was unlicensed would be “*either unworkable or unfair*”⁵⁹.

164. Even if a system predicated on a deemed liability could be established, the levels of debt that would accrue from that would be quite small, and the enforcement costs to recover that debt would almost certainly outweigh any benefit. In order to work, the level of debt assumed would need to be greater than the normal cost of the licence, which stretches the assumed contract concept even further.

165. Therefore, we consider the civil debt proposal potentially fails to understand the nature of the current offence, the BBC’s relationship with the public, and the feasibility of pursuing debt in this way.

166. We also have some specific concerns against the key criteria.

Fairness

167. The Harris research suggests evasion would rise as people would think the failure to buy a licence less serious. In effect people could just wait to see if they were caught and the debt was pursued. The deterrent against evasion would be very limited and we have significant concerns this would give people a ‘licence to evade’.

168. This would be fundamentally unfair to licence fee payers – the vast majority, who pay to receive BBC services. They could end up disproportionately subsidising those people who did not pay, or who tried to game the system.

169. This means the BBC would have less to spend on programmes and services to all. And the BBC would likely spend more on enforcement and trying to recover or write

⁵⁸ BBC response to the Perry review, page 28

⁵⁹ Perry Review, page 42

off debts. This would increase the costs to the licence fee payer and provide worse value for money. Under this option everyone would get a worse BBC.

170. This option could be less fair to those that don't pay in several circumstances. Under a civil debt model there are various methods of enforcing a judgment through the County Courts. The most common is a warrant of execution against a debtor's goods or cash. This is where, unless the amount owed is paid, items owned by the debtor can be recovered and sold by a bailiff acting on behalf of the court.
171. Action taken by bailiffs is by its very nature intrusive, and under the current system TV Licensing does not use them to recover licence fee arrears. We note that the Government has consulted on the use of bailiffs twice in recent years as a result of concerns expressed about their approach and the impact on those concerned. The Government's consultation specifically highlights that action by bailiffs could cause increased anxiety, especially for the most vulnerable members of society.
172. This would fundamentally change the relationship the BBC would have with consumers – we are very concerned about this at a time when we are forging a closer, more personalised relationship with our audiences.
173. A civil debt option would involve County Court judgements (CCJs). These take six years to expire and more than 1 million are issued a year. Having a CCJ could impact on people's future credit ratings and ability to secure future credit or loans – or mean any credit they could get was much more expensive. Given that impact it is not surprising that 54% rated receiving a CCJ as an effective consequence - but this is still lower than some parts of the current system. When asked overall whether a civil debt model would make others pay only 18% thought it would, compared with 56% for the current model.
174. Chasing civil debt can also be a very lengthy process that incurs significant cost escalation along the way. The BBC estimates that taking a defendant through the full civil debt process, including administration, court and officer costs could raise a debt of £157.50 (the cost of the licence fee from April 1st 2020) to over £500. These costs are in theory recoverable from the debtor, though in practice they may be difficult to collect.
175. Ultimately a small number of civil debts can lead to prison for failing to comply with the court's order:⁶⁰ in 2018 there were 378 such committals to prison in England and Wales.
176. There is no evidence that such a system would meet the Government's concerns around low-income groups, over 75s and women. We are not clear therefore how this

⁶⁰ Debtors Act 1869, ss. 4 and 5, and the Administration of Justice Act 1970, Schedule 4.

option meets the Government's criteria around fairness, effectiveness and proportionality.

Financial impact

177. We estimate a civil debt model would initially cost the BBC around £285 million, and then annual costs of over £200 million. This takes into account an increase to evasion, costs of implementation and transition to a new system, and ongoing extra operational costs from running it.
178. In terms of evasion, the independent research commissioned by the BBC looked at the likely impact on people's behaviour as a result of changing to a civil debt system. In short, many more people would be likely to evade payment and more people would also delay making payments as the consequences of doing so would be seen to be less of a deterrent.
179. Specifically the Harris research estimates evasion would rise to 9.8%, a 3.2% point increase. As each percentage point increase in evasion costs the BBC around £44 million, such an impact would amount to £141 million in lost licence fee revenue each year. A further 1.8% would choose to delay their payments.
180. Over time we suspect there is an even higher risk of evasion than we have been able to quantify due to the signalling and nudge effect of the consultation and any future steps.
181. There would also be very significant implementation and transition costs, as outlined above in paragraph 53. We estimate transition and implementation costs of around £80 million.
182. There would also be a significant increase in ongoing operational costs – money that would need to be spent on licence fee collection rather than programmes and services. We estimate that ongoing operational costs would increase by around £64 million because it is a more bureaucratic and complex process to run.
183. Taken together, the increased costs and falls in licence fee revenue amount to more than £1 billion over the remainder of the Charter period from 2022 to 2027 which would inevitably require significant cuts to services and damage the creative economy across the UK.

Feasibility

184. The BBC has very significant concerns about whether this model is workable.

185. To pursue a civil debt requires a person to hold a contractual relationship or legal obligation to pay with another person or company. In the case of TV licences; this is difficult as set out in paragraphs 158 to 166 above.

186. The BBC agrees with the Perry review's conclusion that "*the implementation of a scheme of civil debt enforcement would not be feasible under the current system of licence fee collection.*"⁶¹

Conclusion

187. A civil debt system is not a viable alternative for the TV licence and would mean a worse BBC for everyone.

⁶¹ Perry Review, page 75

SECTION 5: REFORM OF THE CURRENT SYSTEM

188. The BBC remains of the view that the criminal offence provides an effective, proportionate deterrent that is fair to everyone who pays the licence fee and for those who don't.

189. The current system has also proven itself capable of improvement. The BBC has taken steps in the last few years to modernise the licence fee and the way it is collected, notably:

- Agreed with Government to close the iPlayer loophole; and
- Developed the simple payment plan – successfully trialled a new scheme for those least able to pay – now rolling out on a permanent basis from April 2020.

190. The BBC has also considered whether the current TV licence collection system could be further improved to address some of the Government's concerns. There are several options that could be developed:

- Whether the system could be better targeted towards unlicensed addresses;
- Whether the system could offer more payment options to make compliance easier for those on low incomes or those struggling to pay; and
- Whether collection could become more automated.

Better targeting

191. The Government could allow the BBC to access more information that would allow TV Licensing to be better equipped to tackle evasion.

192. Currently if a property is unlicensed TV Licensing may have no record as to whether the household is occupied or the names of the occupiers. Correspondence to addresses where individuals are unnamed has a poorer response rate than if named. If the BBC were to have access to improved sources of data, TV Licensing would be better able to determine which households were potentially licensable and who was the responsible person. This would improve the efficiency and effectiveness of licence fee collection.

193. The Perry review considered whether access to council tax data or the electoral roll could be helpful in identifying unoccupied premises and the identities of adult residents of occupied premises, but did not make any recommendations to this effect.

194. The vast majority of viewing remains live and via a traditional TV set. In 2015 the Perry review recommended that the Government should enable the BBC to have

access to pay-TV subscription information to provide a clear indication of TV usage and enable TV Licensing much better to identify unlicensed households watching TV. The Perry review considered this would be a proportionate response to the difficulty of identifying evasion and would have the additional advantage of making the enforcement process more targeted and much less onerous to compliant householders.

195. The BBC thinks the question of data access is worth looking at seriously to see if improvements could be made that help prevent evasion, whilst at the same time ensuring data protection principles are fully met.

Extending the simple payment plan

196. From April 2020 TV Licensing will be able to offer its simple payment plan (SPP) on a permanent basis following a successful trial. Under SPP customers pay the same amount of licence fee as everyone else, but:

- The costs are evenly spread over the course of the year; and
- If a customer misses a payment, the arrears can be spread across the remainder of the plan. (Currently, when a customer on a weekly or monthly payment plan misses a payment they have to make good the arrears when the next payment is due.)

197. Over the past two years TV Licensing has trialled the SPP. Over the course of the trial 170,000 customers who were likely to be in most financial need used the scheme. 72% who applied were women. The result of the trial was that the rate of first time offenders let off prosecution because they bought a licence or began an instalment scheme increased from 48% to 53%.

198. Customers were very satisfied with the scheme and the BBC also received positive feedback from a post-trial research exercise conducted with stakeholders such as national and regional money advice organisations. Quotes received included *“It was really transformative for the small number that did need it. It makes a really big difference to those that would benefit”*, *“SPP is a more flexible, softer approach for people, especially as a lot of our clients suffer from anxiety, panic attacks or mental health issues”*, and *“It was a good scheme, really beneficial to our clients and people in debt.”*⁶²

199. The SPP will enable around 400,000 households to use the scheme in the first year. It is targeted at the most vulnerable customers, including people who have sought debt advice from charities, those who have previously held a licence that was

⁶² Quotes are anonymised in line with standard research best practice

recently cancelled because of missed payments and people who have been questioned about TV licence fee evasion.

200. The BBC has also developed a new scheme for over 75s to help mitigate the impact on those moving from a free to a paid licence. This enables customers to choose a payment plan spread over a year with no upfront costs.
201. Extending SPP to further groups of people would have cost implications for the BBC. There would be a number of issues to consider including data access and how to define any further eligibility in a fair and proportionate way.
202. Once the SPP has been running for a period of time the BBC will evaluate its success in terms of helping the most vulnerable manage their payments and we could discuss with the Government whether the scheme should be extended to other vulnerable groups.

Automating collection

203. In some countries the TV licence, or equivalent, is linked directly to an existing common household bill. For example it is collected through electricity bills in Italy and the equivalent of council tax bills in France. Another option to consider as the UK progresses towards universal access could be broadband bills.
204. This would be a significant change for the UK and we are not, at this stage, advocating it. It does however raise an interesting question as to whether the current system could be made much simpler, more efficient and more automated. We are open to exploring this further.

SECTION 6 – FURTHER QUESTIONS

205. In considering the BBC's and other consultation responses, the Government will want to be satisfied, and demonstrate, that any new system is better than the current one.

206. There are some areas that merit further consideration:

- That the type of sanction will ensure compliance at the current levels;
- That the system will be fair to everyone – to those who pay and those who don't;
- That the way sanctions are considered and applied will not be worse for poorer or more vulnerable members of society;
- That any enforcement action will be appropriate and proportionate and not turn TV Licensing in to a different type of organisation which could damage the reputation of the BBC if it changed emphasis from compliance to enforcement;
- That the costs – in terms both of transition and running costs - will be proportionate;
- Financial stability of the BBC and the sustainability of investment in the creative economy; and
- Ensure that the costs do not fall on licence fee payers unfairly and disproportionately.

207. To address those questions we think the following information, data and analysis should be available as part of a second consultation process, before any decision was taken. These could include:

- Clear description of the civil models that the Government has in mind, set out in detail. It is only when the processes that any new system would involve become clear that the BBC and other interested parties will be able to make a proper assessment of their impact.
- The overall costs and benefits of the various possible systems.
- Information on the effectiveness of different enforcement models. What evidence does the Government have on the likely impact on enforcement of a change in the system for over 25 million households? What evidence does the Government have about the comparative effectiveness of different levels of penalty on behaviour and operationally?
- What are the comparative impacts on the justice system of the various potential models for change? If the cases were to move from the magistrates' courts to the County Court, how long would the transition take?
- How long would it take to cover the transitional costs of any change; and how would these be met?
- What are the impacts on the different legal systems that operate within the UK and in each of the Crown Dependencies?

CONCLUSION

208. The BBC's response sets out clearly why the current system should be maintained and is fair, proportionate and effective for licence fee payers.
209. There are ways in which the current system could be improved – and the BBC is happy to work with Government on those – such as greater use of data and extending the simple payment plan scheme.
210. The proposed alternatives do not appear to meet the Government's stated criteria. Any change would be costly, weaken the deterrent factor and deliver worse outcomes for the most vulnerable. We do not see that there is a clear case for change to the current system that would take several years to implement without significant improvements for the public.
211. The Populus nationally representative poll shows there is no overwhelming desire for change amongst the public. This is a complex issue that divides opinion with very similar percentages of the population saying criminal sanction for TV licence evasion should end as saying it should remain. But when the potential impact on evasion is explained only a quarter of the public say they would want to proceed with de-criminalisation, while around half (48%) either do not favour ending the criminal sanction or only do so if evasion does not increase.
212. The Harris research shows that a high level fine and prosecution by magistrates are the most effective deterrents. When people are asked what the most likely system to make other people pay – 56% say criminal compared to 25% for the civil penalty and 18% for a civil debt model.
213. The BBC's response sets out clearly that a civil system could be worse for the most vulnerable with less discretion for the courts, higher fines, more intrusive enforcement – including the use of bailiffs and potentially an impact on people's credit ratings which will last for six years. These changes could end up being much more draconian and unfair than the current system.
214. In addition in any civil system evasion will increase to around 10% and the costs of a new system will be significant. In total we estimate a civil system would initially cost around £300 million. This would mean the costs to the BBC would amount to more than £1 billion over the remainder of the Charter period.
215. The BBC's conclusions are consistent with the findings of the independent and thorough Perry review that remains the authoritative source on this issue.
216. Given those factors the Government should consider consulting again on a much more detailed basis before reaching any decision. In any event the BBC believes that

any decision should only be taken as part of the April 2022 licence fee settlement process given the very significant direct impact any change will have on the public, the BBC and the potential to erode the licence fee system as a whole.