

Statement of Operational Separation

Introduction

In accordance with [Ofcom's trading and separation rules](#), this document updates the previous Statement of Operational Separation published in July 2022, and sets out the arrangements the BBC implemented to comply with Ofcom's operational separation requirements A.1 to A.5 inclusive ("Ofcom's operational separation requirements") during the 2022/2023 financial year.

Effectiveness of the BBC's measures, controls and processes during 2022/2023 financial year

The BBC's measures, controls and processes were implemented and operated effectively throughout 2022/23, ensuring compliance with Ofcom's operational separation requirements. There were no reported areas of non-compliance during this period.

Examples of ensuring and improving effective implementation and operation by the BBC during 2022/23 included:¹

- Continuous review of mandatory Fair Trading training compliance rates, including senior level engagement to ensure completion, sponsored messages and other reminders and reports sent via BBC Academy, and reporting to the Fair Trading Committee;
- Continuing to provide ad hoc advice to the BBC Group on issues around operational separation throughout the year, including:
 - Advising on sharing of audience data with BBC Studios, including ensuring that equivalent data would be made available under similar circumstances to other producers and/or distributors;
 - Advising on sharing of information/data and access to services (and ensuring such services are documented and charged for under SLAs) in relation to the development of a digital product by BBC Studios;
 - Drafting of an Information Sharing Guidance Note, pre-approval of each agenda and minutes, and attendance at all meetings of the Children's & Education Group (attended by staff from BBC PS and BBC Studios);
 - Providing ad hoc sessions on information sharing to various parts of the BBC Group, including Commercial Rights and Business Affairs (CRBA), and UKTV.

Ensuring Operational Separation

Ofcom's trading and separation rules put in place a number of operational separation requirements in order to ensure that the commercial subsidiaries do not, as a result of their relationship with the UK Public Services, trading activities or non-service activities distort the market or gain an unfair competitive advantage. These requirements are set out below:

¹ These actions were undertaken by various parts of the BBC, primarily the Regulation team in BBC Policy and the Competition and Regulatory Legal team.

Ofcom's Operational Separation requirements

A.1 The BBC must not directly undertake any Commercial Activities. All Commercial Activities must be undertaken through Commercial Subsidiaries at arm's length from the Public Service and on commercial terms.

A.2 The BBC must have in place appropriate measures, controls and processes to ensure that its Commercial Subsidiaries and Joint Ventures do not have access to information about the Public Service's strategy, priorities and activities that is not available to third parties, other than:

- a) information that is necessary to ensure that the Commercial Activities fit with the BBC's Mission and Public Purposes;*
- b) information that is necessary for the fulfilment of any contract; or*
- c) information, that if shared, does not carry any risk that Commercial Subsidiaries or Joint Ventures could, as a result of having access to that information, distort the market or gain an unfair competitive advantage.*

A.3 The BBC must have in place appropriate measures, controls and processes to ensure that information falling within Requirements A.2(a) and A.2(b) is only used for the specific purpose for which it was obtained.

A.4 The Commercial Subsidiaries must be run by boards and executive committees of directors which are distinct and separate from the BBC Board and its executive committees. These boards and executive committees must also consist of an appropriate number of directors who are not members of the BBC Board and/or its executive committees.

A.5 The BBC must have in place appropriate measures, controls and processes to ensure that where a director serves on the board and/or executive committee of both the Public Service and a Commercial Subsidiary or Joint Venture, any potential conflicts of interest are identified, recorded and addressed.

In order to ensure that the BBC is compliant with Ofcom's requirements in this area, the BBC has adopted a risk-based approach, identifying areas where there is a risk of non-compliance, and imposing controls to mitigate any such risks.

We set out below the areas of risk and the controls that we have put in place. This document should be read in conjunction with the annual Fair Trading Report, published in the BBC's Annual Report and Accounts.

Specific staff members in overall BBC Group functions (including Policy, Legal and Secretariat) are responsible for identifying these areas of risk, through their knowledge and experience of the BBC's governance arrangements and the day-to-day functioning of the BBC. Other employees may also raise issues with these divisions that are then identified as areas of risk where a control may be appropriate. The areas of risk relate primarily to three types of activity which carry different levels of risk:

Activity	Required separation
Commissioning activity	The most sensitive area of risk – the BBC must ensure there is no inappropriate relationship between commissioning teams and either BBC Studios or in-house production teams. Employees involved in production, either in-house or BBC Studios, should not have preferential access to information regarding commissioning strategy and decisions, which could give them an advantage over external production companies.
Other UK Public Services activity	Some separation required – the commercial subsidiaries should not have access to information which gives them an unfair competitive advantage or distorts the market, for example certain information about the strategy and/or business plans of the UK Public Services which could give them an advantage in the market. This could include information about competitors, such as information on pricing from independent producers or studios facilities businesses.
Other BBC Group activity	Some separation required – the UK Public Services, commercial subsidiaries and other Group functions are all accountable to the BBC Board. It is appropriate for some information relating to all entities to be shared between parties.

Areas of Risk

Information sharing

There is a risk that information from the UK Public Services, which is not appropriate to be shared with the commercial subsidiaries, may be accessed by or shared with employees of the commercial subsidiaries, providing the commercial subsidiaries with an unfair competitive advantage.

In order to manage this risk, the BBC has put in place and published an [Information Sharing Protocol](#). It sets out:

- a) principles to guide decisions around sharing information;
- b) specific types of information that can be shared between the UK Public Services, trading activities and non-service activities, and the commercial subsidiaries;
- c) specific types of information that cannot be shared; and
- d) what should happen in the event that it is determined that information cannot be shared.

This protocol was established following the publication of Ofcom's updated trading and separation requirements, and was approved by the BBC Board in March 2019. The protocol is owned by the BBC Company Secretary and Assistant General Counsel, and changes require approval by the BBC Board before being implemented.

Commissioning is a key area of risk. The BBC must ensure that in-house production (e.g. News and Current Affairs), BBC Studios (including BBC Global News and UKTV) and other production companies in which BBC Studios holds an interest do not gain preferential treatment in relation to commissioning decisions made by the UK Public Services. The information sharing protocol contains further specific provisions defining the types of information that may not be shared in relation to commissioning. Our [commissioning framework](#) provides further detail on how we ensure operational separation regarding commissioning, and how commissioning is conducted on fair, reasonable and non-discriminatory terms.

The BBC Secretariat monitors information sharing around each meeting of any of the decision-making bodies set out in the protocol (e.g. BBC Board etc.), or any other business relating to these. All information exchanged for the purposes of these meetings is controlled by the BBC Secretariat to ensure appropriate distribution. There have been no instances of mis-sharing of information since the protocol was implemented (or under the tenure of the BBC Board).

In addition, the Policy and Legal teams, together with commissioners (where it concerns programme data/information), provide advice to different areas of the BBC Group on a regular basis to make sure the BBC does not share inappropriate information with the commercial subsidiaries, in particular BBC Studios. Where information may be shared, safeguards (e.g. non-disclosure agreements, technical walls, only sharing with a specific limited set of people) are often put in place to ensure no onward distribution and that the information is only used for a specific purpose. Additionally, tailored sessions have been run for teams within both the BBC and BBC Studios (including UKTV), focused on providing staff with an overview of the BBC's regulatory and legal obligations in relation to information sharing.

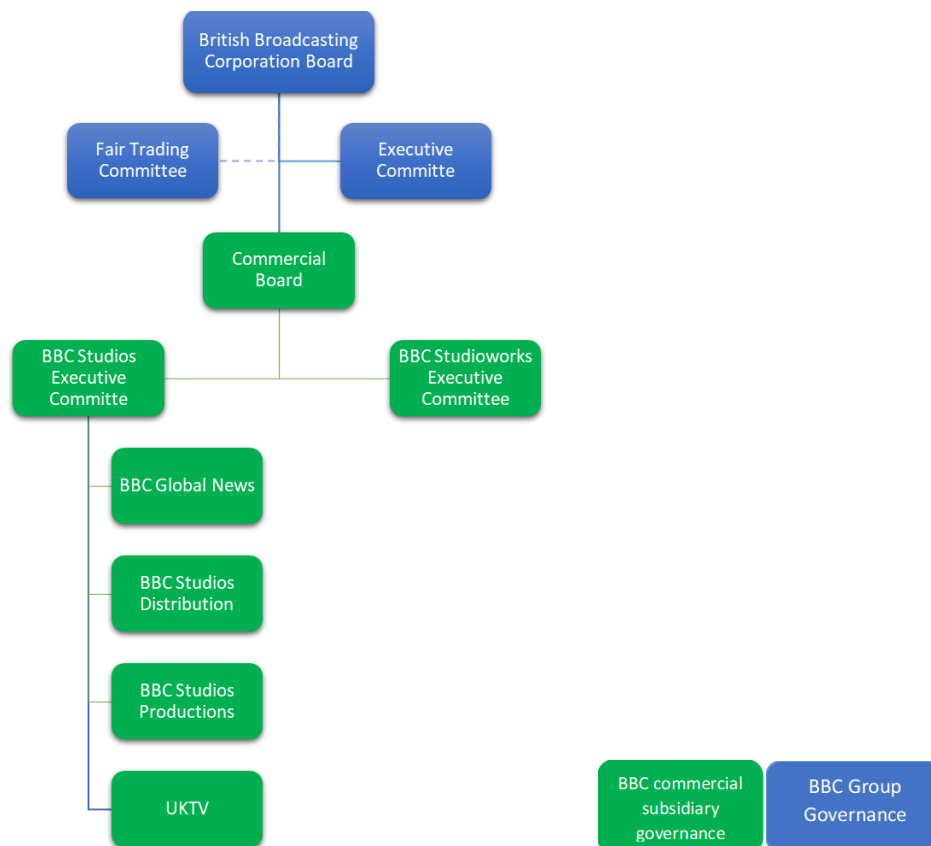
There is also ongoing monitoring by BBC Internal Audit, including a biannual Trading and Separation Risk Report to the Fair Trading Committee. This report covers all areas of compliance with Ofcom's trading and separation rules, including review and noting of any issues regarding the Information Sharing Protocol or information sharing more generally.

Governance and conflicts of interest

The BBC Board governs the BBC, which includes the UK Public Services, trading activities, non-service activities, other services (e.g. the World Service), Group functions (e.g. the BBC Legal department), and the commercial subsidiaries through the BBC Commercial Board.

Each commercial subsidiary has its own Executive Committee which are accountable to the Commercial Board. This structure is set out below, with further information on our [website](#).

Governance of BBC commercial subsidiaries



Previously the BBC Commercial Holdings Board, as of 1 April 2022 the Commercial Board's composition reflects Ofcom's requirement for commercial subsidiaries' boards to be distinct and separate from, and consist of an appropriate number of directors who are not members of, the BBC Board and/or its executive committees. The new Commercial Board features a majority of external non-executive directors, two of whom are also members of the BBC Board, as well as three executive directors, being the Chief Operating Officer of the BBC and the CEO and CFO of BBC Studios. The Commercial Board oversees the delivery of the BBC's commercial ambitions, reporting to the BBC Board on the delivery of the commercial subsidiaries' objectives in line with the BBC's overall commercial strategy.

The principal functions of the BBC Board are set out in the [Charter](#) and include securing the effective and efficient management of the BBC and its commercial subsidiaries. From September 2020, on the arrival of the new Director-General, the CEO of BBC Studios has no longer been a member of the BBC Board. There are still representatives from BBC Studios on the BBC's Executive Committee and as set out above, the Commercial Board. This may lead to opportunities for such employees to gain access to information relating to, or from, the UK Public Services, which would not be accessible to other private companies.

As a result, controls are in place to preserve appropriate separation of the commercial subsidiaries from the UK Public Services. The Board has a clearly defined and published Code of Practice which sets out guidance and requirements for all Directors on conflicts of interest. Conflicts of interest are managed centrally by the Company Secretariat, and are a standing item on the agenda of every governance committee, where each item on the agenda is assessed by the relevant personnel for potential conflicts. Should there be any conflicts, these are declared

and the conflicted employee is required to excuse themselves from the relevant item. Access to papers, or parts of papers, is also restricted, and conflicts are noted in the minutes.

IT systems

The BBC has a number of mechanisms in place to prevent inappropriate information sharing in relation to the use of IT systems, including technical separation, access policies, Terms of Use, and non-disclosure agreements.

Different levels of IT access across different systems are granted to employees depending upon their function and location within the BBC structure. This ensures that employees cannot access material which could risk breaching Ofcom's requirements. For example, restricted access for certain commissioning, production or distribution staff may apply to resources such as the Audiences Portal, Archive Products, and cloud storage like Dropbox and OneDrive. Given the particular concern around commissioning, when staff leave or move to other parts of the BBC, it is ensured that their level of access is checked and amended or terminated if necessary.

The Audiences Portal is an online resource for BBC employees and production companies working on BBC commissions that provides audience information (e.g. viewing figures, appreciation index scores) on BBC and other PSB programmes. Employees in BBC Studios Production and external producers can access information only regarding the programmes they produce for the BBC.

Each BBC system has its own Terms of Use, which sets out the terms under which users agree to access the system, and restricting their use of any data or other (e.g. archive) material on the system. In addition, where we do not have the technology to restrict access, relevant staff are asked to sign non-disclosure agreements. This is the case for BBC Studios staff in its distribution division who may be able to see information on transactions agreed with the UK Public Services.

The Product Group is responsible for the BBC's core IT systems, and relevant teams seek input from the Policy and Legal teams as required, for example on potential safeguards for commercial subsidiaries' access to certain systems (e.g. the editorial compliance system). This input includes providing documentation, for example drafting access policies and/or terms of use (e.g. for archive products).

Co-location of people

The BBC operates in a range of buildings across the UK, and in the interests of cost efficiency, there are instances where employees of the commercial subsidiaries share office space with employees of the UK Public Services. Each commercial subsidiary has a property licence agreement with the BBC, which sets out which buildings, and parts of buildings, the subsidiary may occupy. The following table lists the sites the BBC licenses the commercial subsidiaries to occupy:

Commercial Subsidiary	Sites
BBC Studios	<ul style="list-style-type: none"> • New Broadcasting House, London – BBC Studios Production and BBC Global News • Park Western, London • Elstree, Borehamwood • Drama Village, Birmingham • Mailbox, Birmingham

Commercial Subsidiary	Sites
	<ul style="list-style-type: none"> • Units 18 and 19 Stirchley Trading Estate, Birmingham • BBC Media City UK, Bridge House, Salford • Broadcasting House, Bristol • Dunsfold Airfield, Cranleigh • Roath Lock, Cardiff • Pacific Quay, Glasgow • BBC Production Village, Dumbarton • Aberdeen Broadcasting House, Aberdeen • Blackstaff House, Belfast
BBC Studioworks	<ul style="list-style-type: none"> • Elstree, Borehamwood

We consider there is limited risk arising from BBC Studioworks operating at Elstree, as there is a limited presence of employees from the UK Public Services.

In relation to co-location, we consider the risk arising from BBC Global News being part of BBC Studios to be unchanged from previous years. Given the function of BBC Global News is to distribute news content and channels worldwide, we consider it appropriate for such employees to have a presence in London's New Broadcasting House where news content is produced and broadcast. The risk of inappropriate information being shared is primarily of concern in television commissioning, where production teams (whether in-house or part of BBC Studios) may work in close proximity to BBC commissioners.

Departments that include television commissioning activity, i.e. Content (which includes Drama, Comedy, Entertainment, Factual, and Children's programming), Sport, Current Affairs, and Nations and Regions, are responsible for communicating Ofcom's trading and separation requirements to their staff and enforcing required measures. We set out below specific measures at each building where there is co-location of relevant commissioners and production staff (either in-house, BBC Studios or external):²

Site	Co-located employees	Measures in place
Broadcasting House, London	<ul style="list-style-type: none"> ▪ Current Affairs in-house production staff ▪ Current Affairs commissioning editor ▪ Content commissioning staff ▪ BBC Studios production staff 	<ul style="list-style-type: none"> ▪ Commissioning editor located on separate floor with Factual commissioners ▪ Communication around independent production slate confined to controlled areas, and kept separate from in-house production slate ▪ Content commissioning and production located in separate parts of the building ▪ BBC Studios production staff are a self-contained team and do not regularly pitch for business from BBC Content Commissioning teams

² The BBC keeps a database of all of its sites across the BBC's property portfolio, including occupants on those sites. This database was used to check for co-locations against the 2020/21 version of this Operational Separation Statement in the process of updating it for 2021/22.

Site	Co-located employees	Measures in place
Bridge House, Salford	<ul style="list-style-type: none"> Children's in-house production staff Children's commissioner 	<ul style="list-style-type: none"> In-house production team based on first floor, separate from main Children's floor including commissioning on second floor Access to the commissioner is regularly assessed to ensure parity of access between in-house and independent producers
Quay House, Salford	<ul style="list-style-type: none"> Sport in-house production staff Sport commissioning staff 	<ul style="list-style-type: none"> Verbal and written protocols on who works in commissioning and production teams, and what information each can access No discussions allowed about contested programming with both commissioning and production staff present If in-house production bids for a tendered programme, bid team must relocate to different BBC building for duration of tender process
Pacific Quay, Glasgow	<ul style="list-style-type: none"> In-house multi-platform production staff Multi-platform commissioning staff BBC Studios production staff Independent production staff 	<ul style="list-style-type: none"> Formal commissioning process established following internal audit Commissioning and production (in-house, BBC Studios, and independent) located in separate parts of the building Computer systems frequently reviewed to ensure appropriate access Independent production staff granted equivalent building access as BBC Studios' production staff

During 2022/23 no changes were made to the allocations of the above teams or the layouts of the areas they occupy. The BBC promotes a person centred, business led approach to flexible working practices and policies which support and respect work life balance. The flexible working policy describes the range of flexible working options the BBC may be able to offer employees (regarding how long, where and when an employee works) whilst allowing the BBC the scope and flexibility to adapt the changing demands of a 24/7 service.

Training and guidance

There is an ongoing risk that staff members across the BBC Group are not aware of the BBC's regulatory obligations, and may inadvertently breach Ofcom's requirements by, for example, inappropriately sharing information. In order to mitigate this risk, staff in relevant roles, undertake mandatory Fair Trading training developed by the Policy team and BBC Academy, the BBC's learning and development department. There are two courses:

1. Fair Trading Awareness – a 20-30 minute online module, managed via myDevelopment, the BBC’s learning management system. This training is mandatory for anyone making day-to-day decisions regarding commercial or trading activities, dealings with third parties (including commercial organisations) and/or assessing the BBC’s market impact; and
2. Fair Trading Advanced – an 80 minute online course consisting of six modules, and managed via myDevelopment. This training is mandatory for those directly involved in (e.g. negotiating, approving) commercial or trading activities, dealings with third parties (including commercial organisations) and/or assessing the BBC’s market impact.

The mandatory training courses include material covering:

- a) at a high level, the BBC’s regulatory obligations under the Charter and Agreement, Ofcom’s Operating Framework, and state aid and competition law;
- b) the differences between the UK Public Services, commercial activities and trading activities; and
- c) Ofcom’s trading and separation requirements, transfer pricing, and how the BBC ensures operational separation. The Advanced course includes a 10 minute module on operational separation.

BBC Public Service UK staff mandatory training requirements are aligned and automatically assigned to relevant roles within the BBC’s Career Path Framework, a process managed by BBC Academy. Assignments are updated every day, thereby capturing individuals who have started new roles or moved roles.

The Fair Trading training courses must be taken at least once every three years. Fair Trading training compliance is monitored by Policy, BBC Academy, and the Fair Trading Committee. Various communications around mandatory training are sent by Policy (Head of Regulation) and BBC Academy on a regular basis to team leaders, the Chief Operating Officers of the BBC’s divisions, and individuals. The Fair Trading Awareness course was taken by 2,159 workers in 2022/23 (compared with 1,801 in 2021/22) and the Fair Trading Advanced course was taken by 614 workers in 2022/23 (compared with 492 in 2021/22).

The Policy team also provides more bespoke face-to-face training sessions upon request. All Fair Trading advice provided by the Policy team across the BBC Group, including advice relating to operational separation, is retained and provided to Deloitte as part of the annual external Fair Trading assurance.

Employees in BBC Group functions which include Strategy, Legal, Policy, Finance and Commercial Rights and Business Affairs, will sometimes require access to information from both the commercial subsidiaries and the UK Public Services in order to efficiently conduct their work. Through guidance and training from the Policy and Competition and Regulatory Legal teams, the BBC ensures that these employees are aware of the sensitivity of such information, and the associated risks if such information were made available to the commercial subsidiaries.

All BBC staff are also required to complete Data Protection training, and are therefore mindful of the dangers of mishandling commercially sensitive information.

Version	Published
1.0	02/07/2019
2.0	02/09/2020
3.0	06/07/2021
4.0	12/07/2022
5.0	11/07/2023

Amendments from version 4.0

Under *Effectiveness of the BBC's measures, controls and processes during 2022/23 financial year*:

- Addition of examples of ensuring and improving effective implementation and operation by the BBC during 2022/23;
- Deletion of examples from previous version of the Operational Separation Statement.

Under *Areas of Risk*:

- Governance and conflicts of interest – updated as follows:
 - Under *Governance of BBC commercial subsidiaries*, an updated diagram showing the new Commercial Board, and reflecting that BBC Global News is owned by BBC Studios;
 - Additional paragraph providing some detail on the structure of the Commercial Board.
- Co-location of people – updated as follows:
 - Amended final paragraph deleting references to covid and outlining BBC's flexible working policy.
- Training and guidance - updated as follows:
 - Updated Fair Trading training completion rates for 2022/23.

Various minor changes to formatting and tidying up language.