

## APPLICATION OF THE PUBLIC SECTOR EQUALITY DUTY BY THE BBC

### CONSIDERATION OF EQUALITY ISSUES IN RELATION TO GENDER DISPARITY IN PROSECUTIONS FOR TV LICENCE FEE EVASION

#### A. General

1. A TV licence is paid for by households that consume live television content or BBC iPlayer. Payments are collected by TV Licensing (“TVL”) on behalf of the BBC in an efficient, appropriate and proportionate way. The vast majority of households are licensed, with around 25 million licences currently issued. Non-payment is a criminal offence, punishable with a fine, although prosecution is very much a last resort. TVL has in place a number of measures aimed at supporting people to pay. Prosecutions have fallen substantially in recent years, from around 128,000 in 2017/18 to 44,000 in 2021/22, a decrease of 66%.
2. Only a small proportion of households have regular contact with TVL, and fewer still encounter the enforcement process. TVL offers different ways to pay - 76% pay by direct debit which is frictionless, the remainder through other payment schemes. Evasion (i.e. using licensable services without being covered by a TV licence) is relatively low. A very small proportion of these sites end up being prosecuted for evasion – around 0.18% of all sites and less than 2% of all evaders.
3. Around three-quarters of those convicted are women. This disparity is the subject of the Gender Disparity Review (“GDR”) to which this assessment relates.
4. Decisions based on the review are for the BBC’s Board. The Board has the responsibility to ensure the BBC delivers its mission and public purposes for everyone, and also to secure that arrangements for collecting the licence fee are efficient, appropriate and proportionate.

#### B. The Public Sector Equality Duty and the BBC

5. The Public Sector Equality Duty (“PSED”) applies to the BBC when it is making decisions about TV licences, because it is considered a public authority for that purpose. The duty is contained in section 149 of the Equality Act 2010;<sup>1</sup> subsection (1) requires that—

*“A public authority must, in the exercise of its functions, have due regard to the need to—*

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant*

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<sup>1</sup> As a matter of law, the duty applies only in England, Wales and Scotland, but as a matter of policy we have looked at potential equality impacts in Northern Ireland in the same way.

*protected characteristic and persons who do not share it;<sup>2</sup> and  
(c) foster good relations between persons who share a relevant protected  
characteristic and persons who do not share it.”*

6. The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation; and in relation to (a), marriage and civil partnership too. For this review, the primary focus has been on gender disparity, but where appropriate we have looked more broadly to seek improvements for everyone.

### **C. The purpose of this EIA**

7. The BBC has given careful consideration to equality issues throughout this review, including in the process of identifying ways to reduce gender disparity in prosecutions. This draft Equality Impact Assessment (“**EIA**”) sets out information that will enable the Board to take a properly informed decision on the equality issues relevant to its decision. It is a summary of how equality issues have fed into the BBC’s thinking, and gives an assessment of the likely impact of the identified actions on groups with different protected characteristics.
8. The law requires the Board, as decision-maker, to apply the PSED itself, based on this EIA. As part of its decision-making the Board will need to confirm that the EIA covers all the relevant equality issues and that it agrees with the overall assessment.

### **D. Evidence base**

9. The BBC ran a process of engagement with stakeholders, members of the public with experience of TVL’s enforcement process, Capita Business Services Ltd<sup>3</sup> and Capita staff (“**Visiting Officers**”) who conduct visits to unlicensed addresses to verify whether or not a TV licence is required there. The BBC has ensured that this process of stakeholder and customer engagement reflects people from a broad demographic including those with protected characteristics and / or their representatives.
10. The BBC has also considered the broader criminal justice system (with a focus on women’s experience), money and debt-related issues, women’s experience in the home and in society, and analysed the impact of protected characteristics on women’s lives, finances and experiences in the criminal justice system. Stakeholders were particularly helpful in providing the review with relevant information.

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<sup>2</sup> Section 149(3) and (4) give more detail on what is meant by giving due regard to the need to advance equality of opportunity. In summary, the BBC must identify particular adverse effects a measure may have on needs of particular protected groups and consider what steps it could take to remove or mitigate these.

<sup>3</sup> Capita carry out most of the day-to-day administration of the TV licence system, including enforcement, under a contract with the BBC.

11. Many of the actions proposed will first be trialled on a limited cross-section of the population before they are implemented as permanent processes. As such, at this stage, the GDR is the evidence base for assessing the *predicted* equality impact of those actions. We will continue to monitor the impact on both gender and all protected characteristics throughout the trial and implementation stages.

## **E. Research findings regarding protected characteristics**

12. As part of the research stage of this review, we have sought to identify where a protected characteristic may be relevant to their experience of the TVL prosecutions process and take this into account in the formulation of our proposed actions. We have also taken into account “intersectionality”, i.e. the ways in which the interconnected nature of social categorisations (e.g. race and gender) contribute to further discrimination or disadvantage, meaning people with more than one protected characteristic face greater challenges.

## **Gender – factors in TV licence prosecutions impacting women**

13. The protected characteristic that has the greatest relevance to this review is gender. The GDR report provides an analysis of the reasons for the gender disparity in TVL prosecutions, which will not be repeated here. The main reasons are:

- Household composition in the UK skews towards women-led households
- Behaviours, such as the propensity of women to deal with household bills and to engage with Visiting Officers
- Financial hardship, which is more prevalent among women than men.

14. More generally we note also that many women enter the criminal justice system because of abuse, exploitation and vulnerability. In addition, the Lammy Review highlighted that “ethnic minority women were treated differently by the criminal justice system to white women”. Within the system they face additional inequalities due to race, immigration status and faith. We have considered the way that TVL engages with customers, and in particular the importance of the public interest test for women in this position which would help ensure that cases of this kind would not be prosecuted.

15. The actions that seek to improve TVL’s communications and case-management have these factors in mind.

## **F. Assessment of preferred options**

16. To comply with our PSED obligations, we have undertaken an assessment of what we consider to be the likely impact that these proposed actions will have on groups with protected characteristics. Below is a summary of the ten proposed actions,

and what we have assessed to be the key impact that they are likely to have on different groups with protected characteristics.

17. As the aim of this review is to alleviate a disadvantage experienced disproportionately by women (i.e. the likelihood of prosecution) we have sought options that benefit women in that respect, taking full account of what we have learned about the causes for the disparity, the experience of women and the effects of intersectionality. At the same time the PSED requires that we ensure that, in doing so, we do not inadvertently create unjustifiable disadvantages for men, and for men or women with other protected characteristics.
18. Our work has highlighted some general principles that should guide TVL to act in ways that, where possible, assist *all* people who have one or more protected characteristics:
  - we should recognise the impact of intersectionality and multiple protected characteristics on the life experiences of individuals
  - we should be careful to identify and respect diversity within groups of people with the same protected characteristic – such as people of different races or with different disabilities or other health issues – and respond accordingly
  - where appropriate, we should be sensitive to signs that identify protected characteristics or other vulnerabilities and respond accordingly.

### **Proposed actions and impact on protected characteristics**

19. TVL is implementing a 10 point action plan and will continue to work with other organisations and stakeholders as needed to make further improvements:

#### To support those in financial hardship TVL will:

1. *Offer the Simple Payment Plan to all unlicensed households. As this requires Government regulations, the BBC will work with the Government to explore how this can be enabled.*
2. *Provide direct referrals to organisations that provide independent financial support and advice (where agreed with those individuals). TVL will work in partnership with specialist organisations to provide this service, initially piloting with StepChange, an independent debt support charity.*
3. *Where such a referral has been made, pause enforcement actions for a period of time (initially trialling a period of 2 months) to give space for people to use the support.*
4. *Increase training for Visiting Officers to ensure they have a deeper understanding of debt and financial hardship. TVL will develop the training, working with expert organisations.*

## **Gender**

20. By supporting people in financial hardship, we expect to benefit all groups (with and without protected characteristics), but particularly women because women are more likely to experience financial hardship.<sup>4</sup>
21. Furthermore, evidence indicates that financial hardship of women can be compounded for individuals with other protected characteristics, most notably race, marital status (in the case of single mothers), disability and age (e.g. both pensioners and younger workers). As such, we consider that any actions that aim to directly support those in financial hardship will benefit women, people living with disabilities, those from ethnically and linguistically diverse backgrounds and single parents.

## **Disability**

22. Disability can be a factor leading to financial hardship. People with disabilities:
- may be unable to work
  - if they work, may be in lower-paid or part-time work
  - may have non-optional costs related to their disability, including costs of care, medication and equipment, and energy bills

## **Race/ethnicity**

23. Financial inequalities vary with race. For example research shows Black and Asian women tend to be poorer and are harder hit by changes to tax, benefits and public services. In addition:<sup>5</sup>
- Ethnic minority candidates had to send 60% more applications to enter the workforce to receive as many call backs as white people
  - One-third of women of colour say they've been unfairly passed over for or denied a promotion at work
  - Women make up only 6% of CEOs of FTSE 100 companies and 35% of civil service permanent secretaries – yet none of these are women of colour.

### To help people stay licensed and avoid prosecution TVL will:

5. *Give customers every opportunity to buy a licence before any prosecution case is started by testing different approaches for how visiting officers engage on the doorstep.*

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<sup>4</sup> For example, they are more likely to be in jobs paying the National Minimum wage (6.2% of female employees over 25 vs. 4.5% of males), take on the bulk of unpaid caring responsibilities (which in turn restricts opportunities to take on paid work), the presence of maternity discrimination, and the fact that women are overwhelmingly more likely to be the sole parent in single parent families, with Department of Education research finding that 40% of single parent families in 2019 reported difficult to meet childcare costs.

<sup>5</sup> Fawcett Society and Runnymede Trust literature review report

6. *Increase support for those in the prosecution process who - before their case goes to court - are making payments towards a licence, so the prosecution can be withdrawn.*
7. *Improve the process for customers to provide evidence that may be relevant for TVL to determine whether a case should proceed to prosecution, for example whether there is evidence to suggest it would not be in the public interest to pursue. This will include more opportunities for people to provide evidence about their personal and financial circumstances.*
8. *Consider how support for repeat evaders could focus on allowing opportunities to pay for a licence to remove the risk of prosecution.*
9. *Trial new ways of prioritising and allocating visits to assess their impact.*
10. *Improve communications with customers to ensure greater clarity, including around the prosecution process so people can understand the steps they need to take to pay and reduce the risk of prosecution.*

### **Gender**

24. As noted above, we have sought options to alleviate a disadvantage experienced disproportionately by women (i.e. the likelihood of prosecution), taking account of what we have learned about the factors relevant to the disparity, the experience of women and the effects of intersectionality. Although these actions are not specific to women the GDR report explains why we expect women to benefit.

### **Age**

25. MOJ data shows that the majority of those convicted for TV Licence evasion are under 40. As such, any actions that assist TVL customers to (i) understand if they need to buy a licence; (ii) navigate the TVL prosecution process, including understanding the legal implications and any opportunities they may have to be diverted from the process into alternative dispute resolution; and (iii) understand the help, information and support that is available to them, will be of benefit to young people.

### **Disability**

26. First, as noted above, a person's ability to carry out daily activities can be limited by mental health issues or mental capacity.
27. Second, navigating the criminal justice system is complicated for everyone: e.g. needing to deal with different agencies at once, language isn't always clear or simple, and legal processes can be difficult to understand. But these factors are likely to be intensified where the accused has a cognitive impairment, a mental health condition and / or a neuro-diverse condition. This could lead to situations

such as not understanding the implications of making a guilty plea using the Single Justice Procedure online system.

28. For these reasons our actions seek to improve the support we offer to help them effectively participate in the process, including ways to make their personal circumstances known to TVL which would have to be considered as part of the public interest test.

### ***Race/ethnicity***

29. Similarly, our stakeholder research has shown that, while the criminal justice system can be complicated for everyone, this can be intensified by language difficulties, amongst other things, which may be experienced by non-native English speakers.
30. Improving the clarity of TVL communications will assist those who from ethnically and linguistically diverse communities to better understand the prosecution process and assist them to navigate the process alone or to obtain external assistance.

### **Overall conclusion against statutory equality objectives**

31. In deciding on actions, the Act requires the Board to have due regard to three objectives, and below we give an overall assessment of the actions as compared with those objectives.

#### **(a) The need to eliminate discrimination**

32. As noted above and in the GDR report, we have found no evidence of the targeting of women by TVL. Nor did we find a direct relationship between TVL's actions and the disproportionate prosecution of women. Therefore, while the BBC (in common with others) recognises the need to reduce or eliminate the gender disparity, we do not accept that this is the result of discrimination. The relevance of the GDR to this objective is that it has provided the BBC with re-assurance as to the absence of discrimination.
33. We have not, therefore, regarded our actions through the lens of eliminating pre-existing discrimination. Rather, we expect that the actions we propose will help to reduce that gender imbalance and make the system fairer and less burdensome on everyone, but particularly women.
34. However, it has been an equal priority to ensure that the actions do not have an unintended, disproportionately negative, impact on other groups with protected characteristics. We have not identified any such impacts. In particular, none of the proposed actions are specifically aimed at women, or aimed at women to the detriment of men.

**(b) The need advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it**

35. The “opportunity” here is the opportunity, as a woman, *not* to be subject to a system that inadvertently prosecutes women disproportionately.

36. The GDR and its outcomes are aimed at achieving this objective. As noted above, the purpose of this review has been to understand an identified gender imbalance in TVL prosecutions. For reasons given here and in the GDR report, we expect the actions we have devised will mean people are better supported to remain licensed and to avoid prosecution, especially where they are in financial hardship. While the impact on gender disparity is unclear, we expect it would reduce the number of both women and men being prosecuted.

**(c) The need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it**

37. We recognised a risk that, if measures are taken as a result of this review that seem to shift the focus of enforcement towards men, and/ or could be perceived as treating men and women differently, this could have a negative effect on perceptions of fairness as between men and women. In fact, none of the proposed actions are specifically aimed at women, or aimed at women to the detriment of men. As we have explained in the main report, there is no direct relationship between TVL’s actions and the gender disparity of prosecutions, which is why the changes are designed to help everyone. We are therefore satisfied that our actions are consistent with this objective.