

*Championing
excellence and diversity
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



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RESPONSE BY THE VOICE OF THE LISTENER & VIEWER (VLV)

TO THE DEPARTMENT FOR CULTURE, MEDIA AND SPORT

TV LICENCE ENFORCEMENT REVIEW

1 May 2015

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INFORMATION ABOUT THE VLV

1. Voice of the Listener & Viewer Limited (VLV) represents the citizen and consumer interests in broadcasting and speaks for listeners and viewers on the full range of broadcasting issues. It uses its independent expertise to champion quality and diversity in public service broadcasting, to respond to consultations, to produce policy briefings and to conduct research. VLV has no political, commercial or sectarian affiliations and is concerned with the issues, structures, institutions and regulations that underpin the British broadcasting system. VLV supports the principles of public service in broadcasting. It is a charitable company limited by guarantee (registered in England No 4407712 - Charity No 1152136).

EXECUTIVE SUMMARY

2. We welcome David Perry's review because we understand that TV licence enforcement is a complex issue, which requires careful examination of all the implications before any change is introduced.
3. VLV wants a licence fee enforcement system that maximizes licence fee income whilst being proportionate to the offence of non-payment of the licence fee.
4. We do not want people who find it difficult to pay their licence fee to be more severely penalised than they are already under the existing enforcement regime.
5. We are concerned that non-payment of licence fees reduces the BBC's income, which is not fair to those that pay for a licence, so we welcome any recommendations that emerge from the Review, which might discourage avoidance.
6. Although perhaps not within this review's remit, we want to take this opportunity to highlight the need for catch-up viewing to require a licence.
7. We would recommend that any change in the current enforcement system needs to be thought through carefully. We believe it should include a cost benefit analysis of the options, including their impact on licence fee evasion and income for Public Service Broadcasting (PSB).
8. We would welcome the possibility of more out of court settlements being introduced because we believe this would lead to less court time being devoted to licence fee enforcement and therefore be beneficial to taxpayers.
9. We believe that if non-payment of the licence fee becomes a civil offence, there is a possibility this could be at least as injurious to some offenders as the current system because it might impact adversely on their ability to obtain credit in the future as well as exposing them to action by bailiffs. We would welcome the publication of any evidence which demonstrates whether this might be the case.

10. We believe that regardless of the system which is adopted, defendants must purchase a TV licence as part of the punishment if they wish to continue to own and use a television.

Question 1 Do you think failure to hold a TV Licence when one is needed should remain a criminal offence?

We have laid out more detailed analysis of this question below in the answers to Questions 2 - 34, but in summary, having examined the six proposed options, we believe that the most appropriate means of enforcing the licence fee should be through it remaining a criminal offence.

However, having said that, we do not want people who find it difficult to pay their TV licence fee to be more severely penalised than they are already under the existing enforcement regime. We would oppose the proposal in the Legal-Aid, Sentencing and Punishment of Offenders Act 2012 to increase the maximum fine level for TV licence evasion to £4000.

We believe that the current system needs to be reformed to ensure greater efficiency in the use of the courts by employing more out of court settlements.

We would like to see catch up viewing of BBC content covered by the TV Licence Enforcement provisions. Unlike subscription services or, for example, the utilities (who can install pre-payment meters), the BBC cannot stop people who do not pay from using its services. We would welcome any introduction of technology, as suggested in the consultation paper, which would preclude the need for the current criminal deterrent. If there were a way to prevent people who have not paid the licence fee from consuming content broadcast by the BBC, whether this be via online platforms or their television aerial, this would be our preferred option although we recognise that the technology required to institute such a system does not yet exist.

We believe that individuals should be obliged to purchase a licence as part of their punishment if they choose to own and continue to use a television, but we do not support the suggestion that the BBC could impose charges for periods when evaders were unlicensed because we believe this could lead to substantial costs for offenders which could be beyond their means.

We welcome the proposals in the Criminal Justice and Courts Bill to introduce a single justice procedure to improve the efficiency of dealing with uncontested cases.

Question 2 What are the advantages and disadvantages of the current system?

Advantages

Whilst TV licence fee evasion cases make up around 13% of magistrate court criminal cases, we note they account for a significantly smaller proportion of court time (0.3% in the most recent data available¹).

We believe that the current system works effectively in ensuring that 95% of those who should pay the TV licence fee do so, ensuring that adequate funds are available for the BBC to carry out its public purposes.

TV licence fee collection costs are low, currently 2.7% of income, down by more than a half since 1991 when the BBC took over responsibility for collection from the Home Office. We believe this represents value for money for TV Licence Fee payers and taxpayers.²

¹ Figure provided by the Department for Constitutional Affairs in 2005

² DCMS TV Licence Enforcement Review Consultation paper, 12 February 2015

We note that in 2013 152,649 people were fined for watching or recording live TV without a TV licence. We also note that on average 39 licence fee offenders a year are sentenced to prison. We consider this a relatively low number.³ We note that imprisonment may only be imposed by a magistrate where there is a *willful refusal to pay or culpable neglect and where all other enforcement methods have been tried or at least considered*.⁴

We welcome the fact that this is not a recordable offence so those found guilty do not receive a centrally recorded criminal record but a record is maintained at the court.

Whilst the maximum fine for licence fee non-payment is £1,000, magistrates are required by law to take account of an individual's financial circumstances and the average fine in 2013/14 was £169.83⁵.

Disadvantages

The potential of being imprisoned as a sanction appears disproportionate if one compares this with sanctions for not paying utility bills, for example. It is clearly highly undesirable, from every point of view, that non-payers may eventually end up in prison.

It is clear that the current sanctions for non-payment of the licence fee fine are considered disproportionate by parliamentarians. However, we believe this may in part at least be an issue of 'perception' related to the fact that this is a 'criminal offence' rather than a 'civil offence' which sounds less serious. In fact we believe that the current system may be less injurious than a civil offence system would be, although we would welcome evidence to support the argument that a civil system will have a more injurious impact on an individual's credit rating.

The defendant in a case, if found guilty and fined, does not have to purchase a TV licence. We question whether this should be the case. We believe that purchasing a TV licence should be obligatory when a person is found guilty and fined if they choose to continue to own and use a television.

Question 3 To what degree do you think the current system delivers against the key criteria for this Review?

We believe the current system delivers value for money for licence fee payers.

We believe that the current system is fair because court fines are based on income.

We believe that the current system is effective in deterring evasion.

We are not convinced that there is support for the current system as being proportional but, as we have stated above, we believe this may be due to perceptions rather than reality. A very small number of people are imprisoned as a result of non-payment of the licence fee. As stated above we are concerned that if non-payment of the licence fee fine becomes a civil crime, this could perhaps be at least as injurious as the current system.

We believe the current system is easy to understand with a single licence fee price for everyone and that this clarity is very important.

³ DCMS TV Licence Enforcement Review Consultation paper, 12 February 2015

⁴ DCMS TV Licence Enforcement Review Consultation paper, 12 February 2015

⁵ England & Wales only, figure to 2013/14

Reform the current system

Question 6 We would welcome suggestions on whether and how the current enforcement system could be improved.

We welcome suggestions of changes which could be made to the current enforcement system to make it fairer and more efficient, namely:

- Exploration of how to achieve greater efficiency in the process of enforcement.
- Exploration of the reason why there are significantly more women than men who receive fines for non-payment of the Licence Fee.
- The requirement that evaders must buy a TV licence as part of the current penalty for the offence if they choose to continue to use a television.
- More use wherever possible of out of court settlements.

We do not support the suggestion that the BBC could impose charges for periods when the evader was unlicensed because we believe this could lead to substantial costs for the offender if they have been without a TV licence for a long time and the payment of backdated charges may be beyond their means.

Question 7 What are the advantages and disadvantages of this option?

The advantage of retaining the current system but making changes to improve it is that there will be less disruption in terms of the existing collection system which will result in fewer costs to licence fee payers.

Question 8 To what degree do you think this option delivers against the key criteria for this Review?

Changes as suggested to make the enforcement of the licence fee more efficient would result in better value for money for TV licence fee payers.

It would be desirable to understand why there is a high proportion of women among those who are fined for not having a licence Fee, in order to ensure that the system is fair.

Out of Court Settlement

Question 11 What are the advantages and disadvantages of this option?

Overall we believe the advantages of Out of Court Settlements outweigh the disadvantages.

Advantages

We believe there are advantages to this option as can be seen in the DVLA system for motoring offences and the Scottish system in relation to TV licence evasion offences.

We believe it would be preferable if licence fee evasion cases were disposed of via an out of court fine, avoiding the necessity of a court hearing. This would mean significantly fewer cases would be dealt with via the courts which would reduce costs both for offenders and the courts. It would also reduce the inconvenience for individuals caused by loss of income or travel costs attending court.

If it were possible, we would in principle support a similar system to the Scottish system being adopted across the UK to enforce payment of the licence fee.

Disadvantages

We understand that an Out of Court Settlement Scheme (OCS) might mean that offenders cannot pay their fine by instalments. It is our view that, if this were the case, it would be a disadvantage of this system because it might make the payment of fines less sustainable for those who are less well off. We would want this system to allow for offenders to pay their fine and licence fee by instalments if necessary.

We note that under an OCS Scheme there would be no obligation for the individual to purchase a TV licence as part of the punishment. We believe that all individuals should be legally obliged to purchase a TV licence if they choose to own and use a television.

Question 12 To what degree do you think this option delivers against the key criteria for this Review?

We believe that an OCS Scheme would lead to better value for money for the taxpayer because less court time will be taken up with uncontested cases.

Fixed monetary penalty

Question 16 What are the advantages and disadvantages of this option?

This approach has some of the advantages of the Out of Court Scheme, although not its flexibility.

Advantages

We believe this system might mean less court time is taken up and that there would be incentives for offenders to pay more quickly if there is the option of a reduced penalty on early payment or no penalty at all if a TV licence is promptly purchased.

Offenders could still be pursued through the court system as a last resort in the case of non-payment of a penalty notice.

The deterrent of imprisonment still exists and we believe would remain credible under this system.

Disadvantages

We understand that if a system of fixed monetary penalties were adopted this would remove the option of Magistrates setting fines at a figure that offenders can afford. We believe this is a useful option available under the current system.

We also understand that pursuing a defendant for non-payment through the court system could be costly for both the BBC and therefore for licence fee payers.

Question 17 To what degree do you think this option delivers against the key criteria for this Review?

We believe that this system would provide better value for money for the taxpayer because it should result in less court time being used to address uncontested cases.

We believe the fixed monetary penalty would be more proportional than the current system because it would allow people to benefit from a reduction in the fine if they pay quickly or a removal of the fine, potentially, if they purchase a TV licence.

The only disadvantage in a fixed monetary penalty with potential reductions in the penalty for early payment is that it might be less easy to understand because it will include more variables.

We believe that if the offence remains criminal and therefore there is the possibility of imprisonment, this would act as an effective deterrent to potential offenders.

Civil monetary penalty

Question 21 What are the advantages and disadvantages of this option?

Advantages

If a civil monetary penalty system were adopted we believe it is likely to mean fewer people are imprisoned for non-payment of the licence fee fine, although, as stated above, the numbers who are currently imprisoned for this offence are small.

Disadvantages

While many may assume that a civil monetary penalty is a preferable option because it appears, in the first instance, to be less harsh than a criminal sanction, we are concerned there is a possibility that it could be at least as injurious as a punishment, especially for those on low incomes and single parent families who are highlighted in the consultation document as being particularly vulnerable.⁶ We would welcome the opportunity to examine any evidence which demonstrates the potentially negative impact a civil monetary penalty might have on those who are less able to pay.

We understand that if non-payment of a civil monetary penalty led to civil court action, this would include options such as the employment of bailiffs, the seizure of property and offenders' credit ratings being affected.

We understand another potential disadvantage is that under such a system TV licensing would be liable for all the costs of enforcement until they were recovered from the defendant. It appears that there is an inherent risk of not receiving revenue, should enforcement fail.

From the consultation document it appears that the burden on the court system would not be much reduced.

While, on first sight, this might be considered a more proportionate approach to punishing offenders of licence fee evasion, we are concerned by arguments that it could be more punitive than the current system which leaves an offender with neither a centrally recorded criminal offence nor a reduced ability to borrow money.

Question 22 To what degree do you think this option delivers against the key criteria for this Review?

We understand that this system would not provide better value for money for taxpayers or the licence fee payer unless 65% of individuals pay the claim at first stage. If they do not, the administration fees involved in the BBC pursuing a defendant through the civil courts appear to be far higher than the current system. There is a point at which the cost of the process outweighs the benefit.

⁶ DCMS TV Licence Enforcement Review Consultation paper, 12 February 2015. Page 7.

We note that recent audience research carried out by Harris Interactive for the BBC indicates that: a civil model⁷ could increase evasion from 5% to around 9% - an increase which would reduce licence fee revenue by approximately £150m per annum. This would represent a significant loss of value for licence fee payers.

It appears that there is an increased risk for the BBC and licence fee payers and a decreased risk for the licence fee evader.

The burden on the court system would not be much reduced which will result in no direct benefit to taxpayers.

Civil debt

Question 26 What are the advantages and disadvantages of this option?

We believe that there could be disadvantages to a civil debt system which are similar to those we have outlined above if a civil penalty system were adopted.

Question 27 To what degree do you think this option delivers against the key criteria for this Review?

We reiterate our response to Question 22.

Fairness Considerations

Question 32 Do you think the current system provides a deterrent for non-payment of the Licence Fee?

We believe the current system provides a deterrent for non-payment of the licence fee. Having read the evidence available during this Review, we believe at this time that non-payment of the licence fee should remain a criminal offence.

Question 33 Do you think the alternative options presented in this document present more, less or a similar level of deterrent?

We believe that the option of pursuing offenders through the civil courts may act as less of a deterrent because a civil offence may be perceived as less serious than a criminal one.

Question 34 Under a civil system of enforcement, a civil debt may impact upon an individual's credit rating, which is not the case under a criminal system. We would welcome views and evidence on whether this is more or less appropriate than the penalties under the current system of enforcement.

As stated above, we are concerned by arguments that the impact of a civil debt on an offender may be at least as injurious as that of a criminal offence because it will affect their access to credit. We understand that this in turn may mean they are less able to pay the fine which has been imposed or less able to buy a TV licence.

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^{7 7} The civil model tested was based on our best interpretation of the civil option included in the Deregulation Bill clauses. It maps closely to option five in the consultation paper