



TV Licence Enforcement Review

SUBMISSION FROM THE BBC IN RESPONSE TO CONSULTATION

April 2015

I TV Licence Fee and the Public Interest

- 1.1 The BBC welcomes the opportunity to respond to the consultation document published on 12 February 2015 as part of the TV Licence Enforcement Review (“Perry Review”) in the UK. This is a joint response from the BBC Trust and the BBC Executive. This section provides a summary of the BBC’s position with subsequent sections setting out the supporting analysis and evidence.
- 1.2 Almost all of the UK uses the BBC each week (97% of UK adults)¹ and these audiences spend a considerable amount of time with BBC services (around 18 hours per week, on average). As Ofcom’s recent Public Service Broadcasting (PSB) review highlights, the BBC remains the cornerstone of the UK PSB system, providing the majority of UK PSB investment and output, and stimulating the wider market through competition.²
- 1.3 The licence fee remains the best source of funding for the BBC and its public service remit. It promotes universality through free-to-air provision and, by sharing the cost of BBC services across a broad range of households, ensures affordability.
- 1.4 The public interest lies in maximising licence fee income to invest in PSB and the delivery of the BBC’s Charter-defined remit. It is also in the public interest to ensure that licence fee enforcement is fair and proportionate to the vast majority of households who pay as well as to the small minority who evade.
- 1.5 The BBC’s objective for licence fee enforcement is therefore to achieve compliance in order to maximise licence fee income and to minimise the number of ‘free riders’ who evade but still can gain access to the BBC’s services. In fulfilling this objective, we also aim to meet the requirement set out in the BBC Charter that the arrangements for “the collection of the licence fee are efficient, appropriate and proportionate”³. Our assessment of the current system and the options for change has been based on the Perry Review’s criteria of value for money, fairness and proportionality.
- 1.6 The BBC believes that failure to hold a TV licence when one is needed should remain a criminal offence. Our view is that a criminal framework provides the flexibility needed to create an effective and proportionate deterrent, while helping to ensure value for money for licence fee payers.

2 The options compared: value for money

- 2.1 In terms of value for money, the current criminal enforcement system has served the licence fee payer well. It has proved to be successful in keeping evasion and collection costs down to low levels at c.5% and 2.7% respectively. To secure

¹ Overall BBC weekly reach and time spent and BBC Online weekly reach: GfK for the BBC, Cross-Media Insight Survey, 6,000 UK adults per quarter.

² <http://stakeholders.ofcom.org.uk/binaries/consultations/psb-review-3/summary/PSBR-3.pdf>

³ BBC Charter, Article 24(2)(m).

compliance a strong deterrent is necessary given that the BBC cannot prevent non-payers gaining access to its TV services, and the evidence necessary to prove an offence is hard to secure and must be collected directly from households.

- 2.2 The current criminal system also has to work to strict tests: the suspected offence will not be prosecuted by TV Licensing⁴ unless certain criteria are met, including whether there is a ‘reasonable prospect of conviction’, and the offence must then be proved in the courts ‘beyond reasonable doubt’. This draws fewer people ‘into the net’ than would be likely under a civil system working off a weaker evidential test of ‘balance of probability’.
- 2.3 We have assessed the likely impact of alternative licence fee enforcement models using research⁵ undertaken by Harris Interactive. Licence fee payers were asked about reasons for paying the licence fee. Thirty one per cent said they pay because “it’s the law” or “because it’s illegal not to”, and 23% “because they have to”. The current legal framework would seem to be instrumental, therefore, in delivering low levels of evasion.

Evasion

- 2.4 Harris used the research to model likely evasion rates under a civil enforcement option. The research found that the delay and evasion rates would worsen significantly in a civil framework. Under the current criminal model, c.5%⁶ of the UK population evade and 8.5% delay paying the licence fee. If the enforcement model changed to a civil model, the research suggests that evasion and delaying figures would increase to c.9% and c.11% respectively⁷. See table below.

Pay, delay and evade rates under the current and civil enforcement regimes

		Current	Civil	Impact on Revenue of Civil ⁸
PAY	Pay the TV Licence on time	86.5%	79.8%	
DELAY	Not pay the TV Licence on time, but after reminder notices	8.5%	11.3%	
EVADE	Not pay the TV Licence at all	5.0%	8.9%	-c.£150m

Source: Behavioural research on licence enforcement. Harris Interactive March 2015

⁴ “TV Licensing” is a trademark used by companies contracted by the BBC to administer the collection of television licence fees and enforcement of the television licensing system.

⁵ Behavioural research on licence enforcement. Harris Interactive March 2015.

⁶ Last published evasion rate as at the end of 2013/14 was c.5.4%. The evasion rate for 2014/2015 is not yet available but evasion was measured at c.5% at the time the Harris research was conducted.

⁷ Behavioural research on licence enforcement. Harris Interactive March 2015.

⁸ BBC calculation

- 2.5 An increase in evasion of this order would have a serious financial impact on the provision of BBC services and public service broadcasting: every one percentage point increase in evasion means a reduction of around £40m in the licence fee income collected which, at the predicted level of increase in evasion, would translate to around £150m per annum of lost income. This would lead to significant cuts in BBC content and services, to the detriment of licence fee payers and the UK's creative sector.
- 2.6 The level of deterrence likely to result from the civil options depends primarily on the size of the financial penalty imposed. Based on the Harris research⁹, the level of penalty would likely have to increase to around £500 to provide a comparable incentive for people to comply with the law. By contrast, the bundle of deterrents under the current criminal system would appear to be effective in keeping evasion at a low level.
- 2.7 These results tally with Harris's findings that the public identify criminal deterrents as more effective than civil in ensuring they pay the licence fee. In particular, as set out in the table below, whilst a penalty of the order of £1,000 emerges as the single most effective deterrent in principle, this is significantly out of kilter with the current average fine level of £169¹⁰, leaving the criminal deterrents as the most effective factors. Civil consequences, including the fact of being the subject of a county court judgment, receiving visits from debt collection agencies or bailiffs, and getting a bad credit rating, emerge as much less effective as deterrents.

Public perception of the most effective deterrent for them personally

Effectiveness of various consequences	UK
Having to pay a large fine - around £1,000	53%
Imprisonment (for non-payment of fines)	49%
Having a criminal record (at the relevant magistrates' court)	40%
Prosecution in a magistrates' court or a fiscal fine is issued by the Procurator Fiscal if appropriate	39%
Having a County court judgment (CCJ) or Sheriff court decree (SCD) against you which requires payment of the debt and any costs	34%
Summons to appear in a magistrates' court or having a case brought to the Procurator Fiscal	31%
A visit from debt collectors or bailiffs	29%
A bad credit rating resulting from a CCJ or SCD against you	21%
Having to pay a small fine – around £170/£75	-11%

Question: *How effective are each of the consequences below in ensuring that you yourself buy a TV licence? The results above are calculated on a net basis by taking the top two box scores ('extremely or very effective') and subtracting the bottom two box scores ('not at all or not very effective').*

Source: Behavioural research on licence enforcement. Harris Interactive March 2015

- 2.8 Turning to the criminal alternatives set out in the Review, the current system in

⁹ Behavioural research on licence enforcement. Harris Interactive March 2015

¹⁰ England & Wales 12 months to October 2014. Source: Capita

Scotland is a relevant illustration of an out-of-court settlement scheme. In March 2014 evasion in Scotland was materially higher than in England and Wales at 7.3%¹¹, a difference which we believe is due in part to a difference in enforcement systems.

Collection costs

- 2.9 The BBC has also looked at the likely impact on collection costs of introducing a civil model. Currently, costs awarded by the courts and subsequently recovered by TV Licensing partially offset the BBC collection costs required to manage evasion. Under a civil model, we estimate that collection costs would increase due to the higher evasion rates and, with no recovery of costs through the courts, costs to the BBC would be around £45m¹² per annum higher.
- 2.10 Therefore, we estimate that a move to a civil model would likely result in a financial impact on licence fee payers of around £200m per annum: lost income at c.£150m and increased collection costs at c.£45m. This would virtually double the current cost of evasion, and outweigh any financial savings to the magistrates' courts from a move to a civil system. We estimate that the costs to the courts of enforcement, under the current system, are largely or wholly borne by those who evade through the payment of financial penalties.

3 The options compared: fairness and proportionality

- 3.1 TV Licensing takes extensive steps to help the public in paying for their TV licences, reduce barriers wherever possible and support those who may for financial reasons find it hard to remain licensed. Whilst the deterrent is strong under the current system, the BBC's policy of prosecution is therefore one of last resort.
- 3.2 Furthermore, the courts have an obligation to take into account the seriousness of the offence and the individual's financial means when setting the level of any fine for non-payment of the licence fee. Whilst the maximum fine is £1000, the average fine level is £169¹³, with over a third of people paying less than £100.¹⁴ This degree of discretion is unlikely to be available under the fixed penalty (criminal or civil) proposals within which it is likely fines would have to be dispensed without reference to the individual's ability to pay. Under the current system, imprisonment for non-payment of fines is also a last resort. Magistrates can only order this for wilful or culpable failure to pay fines and where the court has considered or tried all other methods of enforcement¹⁵. We understand the cases of imprisonment are likely, in many instances, to be related to other fines not just TV Licensing offences.

¹¹ Source: Internal BBC analysis

¹² Ibid

¹³ England & Wales 12 months ended October 2014. Source: Capita

¹⁴ Ibid

¹⁵ Section 82(4) (b) Magistrates' Courts Act 1980: a magistrates' court can only issue a warrant of commitment where it is satisfied that the default in payment of the fine imposed is due to the offender's wilful refusal or culpable neglect, and it has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful.

- 3.3 TV Licensing under the current system provides the opportunity for the majority of first time offenders to avoid prosecution, through its assessment of whether a prosecution is in the public interest. Without the necessity to introduce any change to the prosecution structure (say, along the lines of the Procurators Fiscal in Scotland), it is our judgment that the public interest assessment combined with the prospect of the new Single Justice Procedure (SJP) will constitute a de facto out-of-court settlement system. In particular, the SJP will provide for cases in England and Wales to be considered on the papers by a single justice, analogous to the role of the Procurators Fiscal in Scotland, which combined with the public interest test will ensure that court time is focused on cases where it is most required. It is our view that this model delivers the benefits of the Review's alternative criminal options while mitigating the risks inherent in them, namely compromising the deterrent factor and so increasing evasion, and avoids the incremental costs of adding a new infrastructure in England and Wales to manage out-of-court settlements.
- 3.4 Civil models raise a number of important fairness and proportionality issues. A key concern is that by increasing licence fee evasion and collection costs, civil models could lead to a sense of unfairness amongst the vast majority of the population who pay the licence fee - particularly if the resulting reduction in revenue to the BBC necessitated cuts to content and services.
- 3.5 The BBC believes that a civil enforcement model would be less targeted than the current criminal system where penalties are only sought and applied where necessary as a last resort. In particular, as the evidential threshold for establishing that a household or business is evading would be lower under civil enforcement ('on the balance of probability') it would be possible to establish, for certain addresses, that an offence is likely to be taking place, without the necessity of carrying out a visit to collect evidence. For example, those who have let their licence expire and are delaying a renewal could reasonably be assessed as still requiring a licence. Consequently, the move to a civil model could result in much larger numbers of households and businesses being penalised for licence fee evasion.
- 3.6 In contrast to the current system where prosecutions against the majority of first time offenders are dropped if a licence is bought prior to the hearing, all offenders would need to be treated in the same way under these alternative options. Also, if the out-of-court settlement is to be an appropriate deterrent, then the penalty would have to be set at such a level as to impose a larger financial burden on evaders than the current fine structure (see para 2.6).

4 The BBC's proposals to the Review

- 4.1 The BBC's assessment is that the current system with targeted reforms represents the best option for delivering the review's objectives and maintaining funding for public service broadcasting. We would like to propose a number of changes for consideration by the Review.

Proposed reforms to the current model – Fairness and proportionality

- 4.2 As set out in para 3.4, TV Licensing’s current application of the public interest test when considering prosecution already amounts to a de facto out of court settlement system. To increase the perceived fairness and proportionality of the current regime, the application of this public interest test could be formalised and made more transparent. For example, TV licensing could publish a code which would set out the steps it will take before prosecuting, and the considerations it will apply in deciding whether it is in the public interest to bring a prosecution.
- 4.3 Unlike the situation currently where visiting officers are not authorised to advise the alleged offender on what the next steps would be, this code could be made available on the doorstep to make it clear how further action could be avoided (e.g. by becoming licensed if they are a first time offender), rather than by letter following the visit as currently happens.
- 4.4 We recognise that, in some circumstances, a first time offender may wish to make a commitment to buy a licence and thereby avoid a court appearance but that the payment schemes that TV Licensing is able to offer are not suitable for them. The requirements of the instalment schemes as set out in the Regulations¹⁶ mean that the first year’s licence must be paid for within a maximum of 6 months, creating a barrier to payment for some. Evasion can also occur where people with licences have failed to pay for them and had their licences cancelled. The BBC would like to see increased flexibility in the instalment schemes, to allow TV Licensing to adapt payment plans to suit the individual and help them to stay licensed.

Proposed reforms to the current model – Value for money

- 4.5 Currently if a household is unlicensed TV Licensing may have no record as to whether the household is occupied or the names of the occupiers. Correspondence to households where individuals are unnamed has a poorer response rate. If the BBC were to have access to improved sources of data, such as electoral roll or council tax databases, TV Licensing would be better able to determine which households are potentially licensable and who is the responsible person. This would improve the efficiency and effectiveness of licence fee collection, releasing greater resource for investment in BBC programmes and services for licence fee payers.
- 4.6 The BBC believes that these reforms would improve the fairness of the current system without weakening significantly its deterrent effect.

¹⁶ The Communications Act 2003 Section 365(1) provides that payments must be set out in Communications (Television Licensing) Regulations 2004. Thus, the regulations for instalment schemes must specify the precise amount of every instalment, with no discretion for TV Licensing to vary the operation of the scheme.

TV Licence Enforcement Review

DETAILED ANALYSIS AND EVIDENCE

5 TV licence enforcement and the public interest

- 5.1 The BBC believes that the licence fee is, and remains, the best way to fund the BBC, working as it does both in principle and in practice.
- 5.2 As a matter of principle, it is levied near-universally to fund universally available services for UK¹⁷ audiences. Furthermore it:
- promotes universal access to public service broadcasting by enabling free-to-air provision of the BBC's services, the costs of which are shared across a wide range of households thus ensuring the licence fee is affordable;
 - provides risk capital for the British creative sector by allowing the BBC to take creative risks – on content, talent and technology – which may not always be possible for commercial providers, to the benefit of the whole creative sector. The licence fee accounts for around 40% of the total investment in UK original TV content each year;
 - extends choice for audiences by enabling the BBC to provide high quality UK content across a wide range of genres, ranging, for example, from trusted news coverage to landmark national events and globally successful drama output; and
 - promotes independence and accountability by providing the BBC with funding for public service content, which is independent of both Government and the commercial sector, and which licence fee payers know is collected (for the most part) for the BBC.
- 5.3 In practice, rates of licence fee evasion and collection costs are low by historic and international standards, at around 5%¹⁸ and 2.7%¹⁹ respectively, and public support for the licence fee is strong, with some 53% of people identifying it as the best way to fund the BBC – up from 31% in 2004 and more than double the ratings for subscription (17%) and advertising (26%)²⁰. Indeed the licence fee is the top choice for funding the BBC across all ages, and all socio-economic groups, regardless of whether people are in free-to-view²¹ or pay TV²² households.²³
- 5.4 Therefore, whilst there are emerging challenges for the licence fee, for example increasing on-demand consumption of TV programmes, these can and should be dealt with by modernising the licence fee for the internet age.
- 5.5 Furthermore, as the licence fee remains the best way to fund the BBC, the

¹⁷ There are some differences in the enforcement regimes in the Devolved Administrations, and the Crown Dependencies of Jersey, Guernsey and the Isle of Man, and where this is relevant to the argument, such as in Scotland, then these differences are explained. As broadcasting is not a devolved activity, all jurisdictions are covered by the provisions of the Communications Act 2003.

¹⁸ TV Licensing Annual Review 2013/14 <http://www.tvlicensingannualreview2013.co.uk/>

¹⁹ Ibid

²⁰ BBC, 'Why the licence fee is the best way to fund the BBC', July 2014

<http://www.bbc.co.uk/blogs/aboutthebbc/entries/9637e45d-c96c-36c6-9e3f-af141e81cab4>

²¹ Freeview or Freesat

²² Such as Sky or Virgin

²³ BBC, 'Why the licence fee is the best way to fund the BBC', July 2014

<http://www.bbc.co.uk/blogs/aboutthebbc/entries/9637e45d-c96c-36c6-9e3f-af141e81cab4>

maintenance of a successful TV licensing enforcement framework is also vital, both for licence fee payers and the creative economy. The BBC believes that the current enforcement framework and options for reform should, therefore, be tested robustly before any changes are made.

- 5.6 Our assessment of the options is focused on the criteria set out in the Review's terms of reference, particularly value for money, fairness and proportionality, since these are fundamental to determining whether any changes in enforcement would serve the public interest. In particular, we use these criteria to identify and assess the key advantages and disadvantages of each method of enforcement.
- 5.7 Key public interest considerations in relation to value for money include the extent to which any reform might:
- cause rates of evasion to rise thus drawing funding away from its intended purpose for the production and distribution of public service content in the UK for licence fee payers;
 - reduce or increase the overall cost to the UK of operating the TV licence enforcement framework; and
 - ensure the costs of enforcement continue to be borne by those who evade (rather than by the court system or those who pay), thus creating suitable incentives for members of the public to meet their obligation and pay.
- 5.8 Value for money is crucial to the public interest because it impacts very directly on the BBC's ability to meet its public service remit from its agreed funding envelope - the public service remit and associated funding being factors which are determined explicitly by Government for the benefit of UK licence fee payers and the creative economy.
- 5.9 The BBC is a body corporate constituted by Royal Charter. The BBC exists to serve the following six public interest outcomes, or 'Public Purposes':
1. Sustaining citizenship and civil society
 2. Promoting education and learning
 3. Stimulating creativity and cultural excellence
 4. Representing the UK, its nations, regions and communities
 5. Bringing the UK to the world and the world to the UK
 6. In promoting its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services and, in addition, taking a leading role in the switchover to digital television.
- 5.10 Pursuant to the Charter, the Agreement between the BBC and the Secretary of State for Culture, Media and Sport then sets out the BBC's public obligations in more detail including the arrangements for the BBC's funding.
- 5.11 The Charter and Agreement are the means by which the Government define and affirm the contribution which the BBC must make to the public interest in the UK. These instruments also establish a funding mechanism which the Government and Parliament consider appropriate to do this. Reductions in the level of income

available to the BBC for public service content and services, for example due to increased licence fee evasion or collection costs, could therefore significantly jeopardise the BBC's ability to deliver its remit.

- 5.12 It is important for the public interest that TV licence enforcement is fair to the vast majority of those who pay the licence fee, as well as to the small minority who evade. The Government and the BBC have a responsibility to ensure that those who do comply with the law and pay the licence fee do not subsidise those who 'free ride' by evading. A further imperative is to minimise the proportion of licence fee payers' money that is spent on enforcement and not on content and services.
- 5.13 Proportionality considerations include the public interest in funding public service broadcasting, and the extent to which the regime is assessed to be appropriate given the particular challenges of licence fee collection. These include the BBC's inability to withhold services from unlicensed households (see section 6), and the evidence base necessary to prove an offence has taken place short of an admission of guilt.
- 5.14 Taking fairness and value for money together, the BBC's objective is to ensure an enforcement framework which achieves compliance with the law to maximise licence fee income to support public service broadcasting, whilst being appropriate and fair, and cost-effective. These priorities are set out in the BBC Charter,²⁴ under which the BBC Trust has a duty to ensure that arrangements for the collection of the licence fee are efficient, appropriate and proportionate.

6 Retain the current system: (do nothing, option 1)

- 6.1 The BBC is required to issue TV licences and collect the licence fee under the terms of the Communications Act 2003. "TV Licensing" is a trademark used by companies contracted by the BBC to administer the collection of television licence fees and enforcement of the television licensing system.²⁵
- 6.2 The BBC believes that failure to hold a TV licence when one is needed should remain a criminal offence. The BBC's objective is to achieve a high level of compliance while acting in a fair and proportionate way. Our view is that a criminal framework provides the flexibility needed to create an effective and proportionate deterrent, while helping to ensure value for money for licence fee payers.

²⁴ Article 24(2)(m).

²⁵ The majority of the administration of TV Licensing is contracted to Capita Business Services Ltd. Over-the counter services are provided by PayPoint plc in the UK, and by the Post Office in the Isle of Man and Channel Islands. Marketing and printing services are contracted to Proximity London Ltd. Media services are contracted to Mediaedge:CIA International Limited.

Fairness and proportionality

TV Licensing: how it facilitates compliance with the law

- 6.3 TV Licensing takes extensive steps to help the public in paying for their TV licences, reducing barriers wherever possible and supporting those who may for financial reasons find it hard to remain licensed. For example:
- There is a wide range of means by which people can pay for their TV licences. Not everyone can or chooses to pay the full fee immediately and the Communications (Television Licensing) Regulations 2004 provide licence fee instalment schemes to spread payments quarterly, monthly or fortnightly. Over 70% of households who need to buy a licence choose to pay by direct debit²⁶. Others pay in full over the phone or online with a debit or credit card or by posting a cheque. Cash payments can also be made in instalments at a PayPoint outlet. The payment schemes are publicised through TV Licensing communications direct to customers, on the TV Licensing website and through money advice organisations²⁷.
 - TV Licensing's extensive social inclusion programme targets hard-to-reach and low income communities, helping to raise awareness of when a licence is needed, the many ways to pay, and the consequences of watching TV while being unlicensed. TV Licensing does this by engaging with national and local organisations which provide trusted advice and support to people in these communities. A large part of this involves partnering with advice organisations and debt management charities. In 2013/14 it worked with nearly 70 national and 360 local groups of all kinds: housing associations; money advice organisations; and minority group organisations²⁸.
- 6.4 In addition, TV Licensing gives members of the public significant opportunity to comply voluntarily with the law, only moving to enforcement where these efforts have been unsuccessful.
- 6.5 TV Licensing sends out a number of letters to unlicensed addresses reminding occupants of the importance of being properly licensed and giving information on the many ways they can pay. All communications are regularly reviewed to ensure that they are appropriate for diverse audiences - that they are simple and clear to understand for all levels of reader, and sensitive in tone. TV Licensing communications sets out when a licence is needed, what actions need to be taken, and the consequences of not taking action. TV Licensing offers a phone translation service which allows customers to set up or pay for a TV licence over the phone in more than 180 languages. TV Licensing leaflets are available in 20 languages, and information on the TV Licensing website is available in 17 languages.

²⁶ As a percentage of all payers (excluding free licences for Over 75s). Source: TV Licensing Annual Review 2013/14 <http://www.tvlicensingannualreview2013.co.uk/>

²⁷ More information can be found at <http://www.tvlicensing.co.uk/community-relations>

²⁸ Source: TV Licensing Annual Review 2013/14 <http://www.tvlicensingannualreview2013.co.uk/>

- 6.6 If, after repeated attempts to contact by letter, the household remains unlicensed, or has not contacted TV Licensing to say they do not need a licence, the address will be selected for a visit from a visiting officer.
- 6.7 Visiting officers operate to a strict code of conduct, have no right of entry, and can only enter a household with the consent of an occupier. The only exception to this is when TV Licensing obtains a search warrant²⁹ where there is evidence of evasion and the householder refuses entry.
- 6.8 There is a robust process for ensuring that those who do not need a TV Licence can declare this. Whilst around 95% of households do watch live TV on a TV or other device, equally some do not watch any TV at all or only ever watch on demand or catch-up TV, in which case they do not need a TV licence. These households - and businesses - can let TV Licensing know by completing a voluntary 'no licence needed' declaration. Once received TV Licensing will register this on its database and, subject to checks on a sample of addresses, will stop communications for a period of two years (three years for businesses) and then resume to request reconfirmation of the declaration as circumstances may have changed (e.g. the occupants may have moved house or begun watching or recording live television).

Proportionality in relation to prosecutions and penalties

- 6.9 In the consultation document it was acknowledged that individuals are given ample opportunities to avoid a prosecution being taken forward.³⁰ In considering a prosecution, the evidence collected must be of sufficient quality to achieve the threshold needed to bring a prosecution, namely there must be a "reasonable prospect of conviction", under the Code for Crown Prosecutors³¹. TV Licensing will only take this step when households or businesses do not respond to other forms of communication. The resources required and the quality of evidence needed mean that this step is not taken lightly.
- 6.10 If a visiting officer visits a household and finds evidence that TV is being viewed at an unlicensed address then a prosecution statement is taken to document evidence of a suspected offence. Once this evidence has been collected, TV Licensing applies a range of tests before pursuing a prosecution. Cases are only brought if the evidence is of sufficient quality to pass the evidential test of the Code for Crown Prosecutors.
- 6.11 Once the evidential test is met, TV Licensing applies the public interest test from

²⁹ A magistrate (in England and Wales), a sheriff (in Scotland) or lay magistrate (in Northern Ireland) may grant a search warrant if he or she is satisfied by information on oath that there are reasonable grounds for believing (i) that a TV licensing offence has been or is being committed; (ii) that evidence of the offence is likely to be found on the specified premises (or vehicle); and (iii) that there is no one able to grant access to the premises, vehicle or evidence with whom it is practicable to communicate, or that entry will not be granted unless a warrant is produced, or that the purpose of the search may be frustrated or seriously prejudiced unless it is carried out by a person who secures entry immediately upon arrival.

³⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403561/15_02_12_Consultation_document_-_TV_Licence_Enforcement_Review__2_.pdf

³¹ https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf

the Code, i.e. whether it is in the public interest to prosecute in a particular case. The public interest is assessed by weighing factors for and against prosecution, taking into account the circumstances of each particular case. The overriding public interest is to ensure people comply with the law and buy a TV licence. In the vast majority of cases, if first time offenders buy a TV licence prior to the hearing, they will not be prosecuted.

- 6.12 This application of the public interest test can be viewed as offering a de facto out of court settlement process. It ensures compliance and diverts many cases away from the courts. Its disadvantage is that it could encourage evasion, since some individuals may consider it worthwhile delaying buying a licence. To address this risk, while TV Licensing does ensure that all first time offenders are made aware they can buy a licence and not be prosecuted, unless other factors in a particular case weigh in favour of prosecution, it does not actively promote the factors it considers when applying the public interest test. This is addressed in more detail in section 6 looking at wider reforms.
- 6.13 For cases that are prosecuted and result in a guilty verdict, the regulations governing the magistrates' court ensure that individuals are treated fairly and that penalties imposed are proportionate.
- 6.14 Magistrates are required under the Magistrates Courts' Sentencing Guidelines³² to take account of the seriousness of the offence (in the case of TV licensing offences, whether the defendant has been evading for more or less than six months), and an individual's financial circumstances, including income and employment status, when setting the fine, and the time by which it needs to be paid. As a result, whilst the maximum fine for licence fee non-payment is currently £1,000, the actual average fine levied in 2013/14 was £169³³, over a third of people paying less than £100³⁴.
- 6.15 No one can be imprisoned for licence fee evasion. The magistrates' court has powers to send people to prison if they do not pay the fines imposed by them. The law³⁵ places strict obligations on the magistrates before they can imprison for non-payment of fines. The magistrates can only order imprisonment when there has been wilful or culpable failure to pay any fines and where the court has considered or tried all other methods of enforcement. Importantly, we understand that in addition to TV licence related fines, there are very likely to be a number of fines outstanding related to other offences.
- 6.16 People are therefore only sent to prison where they have deliberately and persistently refused to comply with the court's order and so happens very rarely. The latest data from Government shows that, in the nine month period Jan-Sept

³² Sentencing Guidelines Council Definitive Guideline – Magistrates' Court Sentencing Guidelines, page 106

³³ England & Wales 12 months to October 2014. Source: Capita

³⁴ Ibid

³⁵ Section 82(4)(b) Magistrates' Courts Act 1980: a magistrates' court can only issue a warrant of commitment where it is satisfied that the default in payment of the fine imposed is due to the offender's wilful refusal or culpable neglect, and it has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful.

2014, 34 people received an average sentence of 18 days³⁶ (with actual time served likely to be less than this). As a comparison, in 2012, 107 individuals were imprisoned for failure to pay council tax (a civil infraction)³⁷.

- 6.17 Licence fee evasion does not appear to be more prevalent in less well-off households; an analysis carried out by TV Licensing found that the socio-economic split of unlicensed addresses reflects that of the total population³⁸. The Government has confirmed that “no information is available in respect of [the] socio-economic status of those prosecuted or convicted or imprisoned for non-payment of a fine in respect of television licence evasion”³⁹.

Value for money

- 6.18 The existing criminal system delivers good value for money for both licence fee payers and taxpayers (i.e. those who fund the court system), as well as ensuring that the financial burden sits appropriately with those convicted of the offence. The financial liability for evasion is thereby positioned appropriately and efficiently on those who evade.

Low levels of evasion and collection costs

- 6.19 Licence fee evasion in the UK has fallen markedly over the last 25 years and has remained low for the past five years at around 5%. (See graph below). This level represents a reduction of more than 50% from the 12% figure when the BBC took over responsibility for collection of the TV licence from Government in 1991, an improvement which we believe reflects the BBC’s considerable work since 1991 to improve regular payment and compliance with the law within the existing criminal system.
- 6.20 At around 5% the UK’s evasion rate is also one of the lowest evasion rates in Europe, lower than for a range of countries which are otherwise largely comparable to the UK with respect to their public service broadcasting infrastructure and well-developed legal systems.
- 6.21 Collection costs are also low at £102m or 2.7%⁴⁰ of licence fee revenue in 2013/14. This compares favourably, for example, with Sky’s costs for subscriber management.⁴¹

³⁶ Parliamentary question asked by Lord Bassam of Brighton on 06 February 2015, answered by Lord Faulks on 18 February 2015

³⁷ Parliamentary question answered on 3 April 2014 by Jeremy Wright, Parliamentary Under-Secretary, Ministry of Justice

³⁸ Analysis by TV Licensing modelling social grade based on 2011 census data (available at postcode sector level)

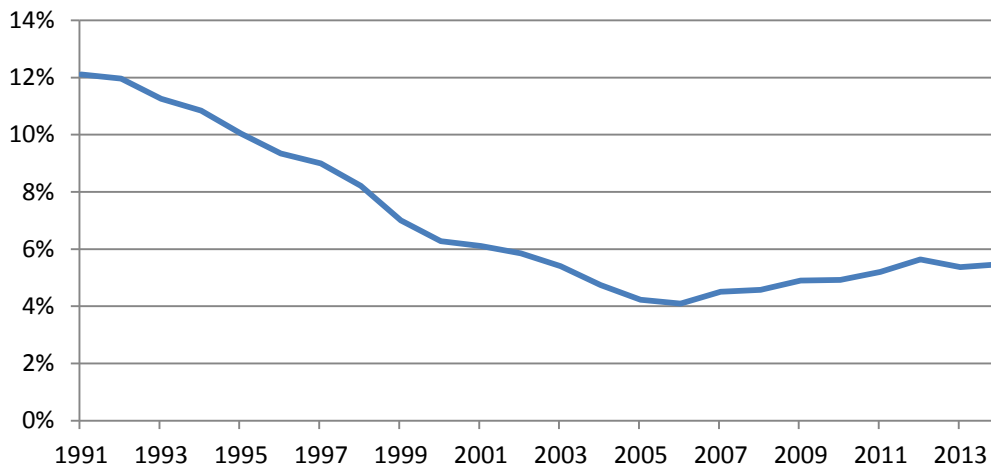
³⁹ Parliamentary question answered on 3 April 2014 by Jeremy Wright, Parliamentary Under-Secretary, Ministry of Justice.

⁴⁰ TV Licensing Annual review 2013/14 <http://www.tvlicensingannualreview2013.co.uk/>

⁴¹ Sky Annual Report 2014 <https://corporate.sky.com/documents/annual-report-2014/consolidated-financial-statements.pdf>.

6.22 Licence fee collection costs as a proportion of licence fee revenue are also more than 50%⁴² lower than they were in 1991 when the BBC took over collection from the Government. This reflects for the most part continuing improvement in TV Licensing's processes and contracting arrangements, as well as the efforts to improve collection and enforcement processes to reduce evasion over time, cutting down the administrative burden of enforcement and prosecutions

UK TV licence fee evasion rate 1991-2014



Source: BBC Evasion Model

6.23 Low evasion and collection costs indicate that the current enforcement system provides good value for money for licence fee payers. In particular, low evasion helps ensure enforcement costs are minimised for taxpayers, and that the funds allocated to the BBC by Government for public service content and services are received as intended and used in this way to the benefit of licence fee payers and the creative sector. Low collection costs indicate a relatively small financial cost for ensuring compliance with the licence fee.

Courts costs and the allocation of the enforcement burden to evaders through fines

6.24 A crucial issue is the extent, and appropriateness, of any net costs to the magistrates' court system of handling TV Licensing cases. The BBC believes that these costs have been overstated in the consultation document.

6.25 Whilst licence fee evasion cases make up around 13%⁴³ of magistrates' court criminal cases, the vast majority of cases are heard uncontested and in bulk with offenders mostly electing not to attend⁴⁴. As a result the average court presentation

⁴² BBC Annual report. 1990/91 collection costs as a proportion of licence income 6.1%, 2013/14 2.7%.

⁴³ Source: Data on total magistrates' court cases in 2012 from Ministry of Justice Criminal Justice Statistics: <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-update-to-december-2012> and data on volume of TV licence evasion offences provided by Ministry of Justice for 2012.

⁴⁴ Source: Capita

time is very low, at only 56 seconds per case⁴⁵, and licence fee cases are therefore likely to account for a significantly smaller proportion of court time – and therefore cost – than their volume might suggest. For example, the 56 seconds figure suggests a court time cost of c.£0.5m⁴⁶ per annum, many times smaller than the £8-9m⁴⁷ implied by figures set out in the consultation annex, based on an assumption that TV Licensing cases account for the same proportion of court time and costs as they do the volume of cases.

- 6.26 In addition, whilst the courts also bear enforcement costs in relation to TV Licensing cases, as TV Licence evasion is a relatively low level offence attracting an average fine of c.£170, we do not believe that the estimate of £8-9m for TV Licensing court enforcement costs - implied by calculations set out in the annex⁴⁸ - is likely to be accurate. It assumes that enforcement for TV Licensing cases, the vast majority relating only to fines, is representative in terms of enforcement cost for magistrates' courts' caseload as a whole.
- 6.27 Furthermore, the BBC considers it may be likely that court time and enforcement costs are more than compensated for by the fines recovered by magistrates' courts in relation to TV Licence evasion offences. Whilst data on the quantity of fines recovered is not available from The Ministry of Justice, it is possible to construct an estimate based on parallel data on the proportion of costs awarded to TV Licensing which TV Licensing later then recovers.
- 6.28 Taking the financial year 2013/14, the courts awarded total costs of £13.1m⁴⁹ to TV Licensing in relation to the prosecution of TV Licensing offences, of which £9.5m was received, representing a recovery rate of 73% (in fact low, given the rates of recovery experienced in other years). As fines imposed were around £25m⁵⁰ then, assuming a similar recovery rate as for costs, magistrates' courts may have received in the order of £18m of fine income for TV Licensing offences, significantly in excess of the calculated costs to the courts on any of the estimates available.
- 6.29 As a result, we believe that net costs to the Exchequer of licence fee enforcement are likely to be modest at worst, indicating that much of the financial cost of enforcement is transferred successfully and efficiently to those convicted of TV Licensing evasion offences, and so providing an efficient incentive for compliance with the law. Costs incurred by TV Licensing, acting on behalf of the BBC, in bringing prosecutions are mitigated by the costs recovered by TV Licensing.

⁴⁵ Source: Ibid. The average amount of time it takes TV Licensing court presenters to handle a case is 3.13 minutes, of which just 0.94 minutes is court time.

⁴⁶ Calculated from the consultation annex assumptions of £1111 cost per court day and 150,000 TV Licensing prosecutions, and the BBC's assumption that a court can handle 319 TV Licensing cases in a day (5 hours sitting and an average case length of 56 seconds). Even if court time were three times as large, costs would still be no more than £1-2m per annum.

⁴⁷ Calculated by pro-rating the total estimate of court costs of £17m per annum given in the annex by the annex assumptions that court time costs £54.99 per case and court enforcement £58.71.

⁴⁸ Ibid

⁴⁹ Source: Capita for England & Wales

⁵⁰ Ibid

6.30 Importantly, The Criminal Justice and Courts Act 2015, which received Royal Assent on 12 February 2015, will further reduce the cost of handling TV Licensing cases. In particular it will streamline ‘high-volume, low-level regulatory cases’ to be determined by a single justice, on the papers, obviating the need to bring uncontested licence fee cases to full court and so further reducing the amount of court time dedicated to TV Licensing cases.

Summary of the advantages and disadvantages of the current system

6.31 The current criminal system has been successful in delivering low evasion and collection costs, ensuring value for money for both taxpayers and licence fee payers. Furthermore, our assessment is that net costs to the court system are modest at worst, as costs incurred are likely to be largely balanced by fines received by the courts. The financial liability for evasion is thereby positioned appropriately and efficiently on those who evade. In providing a strong deterrent the system is also fair to licence fee payers who expect those who watch TV to pay and not to ‘free-ride’.

6.32 The current criminal system also has to work to strict evidential tests of the suspected offence – i.e. ‘reasonable prospect of prosecution’. This draws fewer people “into the net” than would be likely under a civil system working off a weaker evidential test of balance of probability.

6.33 We believe that a strong deterrent is appropriate given the public interest in securing funding for public service broadcasting and necessary given the practical challenges involved. Moreover, the high barrier set means that prosecutions are only pursued as a last resort and where strict evidential and public interest tests are met; and the fact that magistrates are required to exercise discretion and proportionality in the application of penalties to those convicted.

7 Alternative civil enforcement options: civil monetary penalty (option 5) and civil debt (option 6)

7.1 Under a civil monetary penalty, option 5, the offence of evasion would be decriminalised and enforced as a civil infraction. If the individual failed to pay the penalty, the penalty would be treated as a debt and be recoverable through proceedings in the civil courts⁵¹.

7.2 Under option 6, evasion would no longer attract a penalty of any kind. Licence fees that would have been paid had the individual complied with the law and had a TV licence would be recoverable as a debt in the civil courts. This would necessitate a substantial change to the law which currently provides that the licence fee is only payable when a TV licence is issued.

⁵¹ To recover unpaid licence fee as a debt, the legislation regarding the requirement for a licence would need changing to make clear the period for which the licence fee is recoverable. Currently, the licence fee only falls due when a licence has been issued to an individual.

Value for money

- 7.3 A move to a civil enforcement model would, in our view, increase licence fee evasion and collection costs, likely significantly, reducing value for money for both licence fee payers and taxpayers.

Evasion

- 7.4 Evidence of the impact of the current and alternative enforcement models is available from research⁵² by Harris Interactive commissioned by the BBC on perceptions and behaviour in relation to the licence fee. Harris asked licence fee payers about their reasons for paying the licence fee. Whilst a small group, some 14%, said they purchased a licence in order “to watch TV”, many more cited the current legal framework, including 31% cent who said they pay because “it’s the law” or “because it’s illegal not to” and 23% who say they pay “because they have to”. The current legal framework is instrumental, therefore, in delivering low levels of evasion.
- 7.5 Taking these insights and a range of other survey data on behaviour, Harris then modelled likely evasion rates under a civil enforcement model. The research found that the delay and evade rates would worsen significantly in a civil framework. Under the current criminal model, at the time the research was carried out in autumn 2014, c.5%⁵³ of the UK population evaded and 8.5% delayed paying the licence fee. If the enforcement model changed to a civil model, the modelled research suggests that evasion and delaying figures would increase to around 9% and around 11% respectively⁵⁴. See table below.

Pay, delay and evade rates under the current and civil enforcement regimes

		Current	Civil
PAY	Pay the TV Licence on time	86.5%	79.8%
DELAY	Not pay the TV Licence on time, but after reminder notices	8.5%	11.3%
EVADE	Not pay the TV Licence at all	5.0%	8.9%

Source: *Behavioural research on licence enforcement*. Harris Interactive March 2015

- 7.6 An increase in evasion of this order would have a serious financial impact on the provision of BBC services and public service broadcasting: every one percentage

⁵² *Behavioural research on licence enforcement*. Harris Interactive March 2015.

⁵³ From internal BBC analysis evasion rate at the end of 2013/14 was 5.5%. The evasion rate for 2014/2015 is not yet available but evasion was measured at c5% at the time the Harris research was conducted

⁵⁴ *Behavioural research on licence enforcement*. Harris Interactive March 2015.

point increase in evasion means a reduction of around £40m in the licence fee income collected which, at these predicted levels, would translate to around £150m in reduced income (plus increased collection costs – see below). This would lead to cuts in content and services for licence fee payers, including the significant possibility of whole service closures. Cuts in BBC provision would also harm the wider UK creative sector. We note Ofcom’s observation in its PSB review on the system-wide risks from reductions in the BBC’s licence fee income. The increase in the number of delayers is also not without cost; although they eventually pay they require additional communications in order to persuade them to do so. By contrast, most payers pay by direct debit.

- 7.7 Whilst actual behaviour cannot necessarily be predicted to follow directly and precisely from research-based modelled behaviour, a change in enforcement to a civil framework carries a material risk of significant revenue loss.
- 7.8 The research also found that the level of evasion under the civil model is highly sensitive to the amount of the penalty. This makes sense as the research found that the financial penalty is seen as the only significant deterrent in the civil model. Based on the modelling done in this research⁵⁵, the penalty would have to be as high as £500 to achieve an evasion rate of 5.4%, which is similar to that today. At £150, close to the current average fine level of c£170, evasion would rise to around 9%. At a penalty of £80 it would rise to around 14%.
- 7.9 These results tally with Harris’s findings that the public identify criminal deterrents as more effective than civil in ensuring they pay the licence fee. In particular, as set out in the chart below, whilst a penalty of the order of £1,000 emerges as the single most effective deterrent in principle, this is significantly out of kilter with the current average fine level of £169, leaving the criminal deterrents as the most effective factors. Civil consequences, including the fact of being the subject of a county court judgement, receiving visits from debt collection agencies or bailiffs, and getting a bad credit rating, emerge as much less effective as deterrents.

⁵⁵ Ibid

Public perception of the most effective deterrent for them personally

Effectiveness of various consequences ⁵⁶	UK
Having to pay a large fine - around £1,000	53%
Imprisonment (for non-payment of fines)	49%
Having a criminal record (at the relevant magistrates' court)	40%
Prosecution in a magistrates' court or a fiscal fine is issued by the Procurator Fiscal (PF)	39%
Having a county court judgment (CCJ) or Sheriff Court decree (SCD) against you which requires payment of the debt and any costs	34%
Summons to appear in a magistrates' court or having a case brought to the PF	31%
A visit from debt collectors or bailiffs	29%
A bad credit rating resulting from a CCJ or SCD against you	21%
Having to pay a small fine – around £170/£75	-11%

Source: Behavioural research on licence enforcement. Harris Interactive March 2015

Other research on the impact on evasion of different enforcement models

- 7.10 In light of this data we do not believe that the Review's assumption that there would be no change to evasion in a move to civil enforcement is either neutral or a necessary generalisation. The assumption appears to be based on a US academic article from 2004⁵⁷, which argues that penalty levels tend not to impact offending rates, except in atypical cases. The argument is based on a combination of theoretical and empirical analysis, much of the latter equivocal and relating to violent crimes not similar to licence fee evasion. The Harris research in contrast is based on recent data for the UK and focuses directly on TV Licensing.
- 7.11 Whilst we agree that many factors go into determining whether someone will comply with the law, we do not believe that the behavioural barriers highlighted by the article for compliance are sufficiently prevalent for TV Licensing as to make the type of penalty immaterial. Licence fee evasion is a long-standing offence and generally understood to be illegal. Indeed some 54%⁵⁸ of people indicate that they buy a TV Licence because it's the law, it's illegal not to, and because they have to, and 57% say they think it's very likely or fairly likely that those who evade will be caught⁵⁹. Regular contact from TV Licensing serves to reinforce the licence fee requirement and the clear pathway to prosecution and penalties for those who evade payment.

⁵⁶ Question: *How effective are each of the consequences below in ensuring that you yourself buy a TV licence? The results above are calculated on a net basis by taking the top two box scores ('extremely or very effective') and subtracting the bottom two box scores ('not at all or not very effective').*

⁵⁷ Robinson, Paul, "Does Criminal Law Deter? A Behavioral Science Investigation" (2004). Faculty Scholarship. Paper 31. http://scholarship.law.upenn.edu/faculty_scholarship/31. The article presents a detailed theoretical analysis of potential offenders' likely calculus in deciding whether or not to offend, together with a survey of empirical evidence from the period on the impact of different elements of this calculus on offending rates.

⁵⁸ *Behavioural research on licence enforcement*. Harris Interactive March 2015

⁵⁹ *Ibid*

7.12 Looking internationally, how other countries fund public service broadcasting and operate a framework for payment collection and enforcement varies widely and direct comparisons are not easy to make. Nevertheless there is some evidence from looking at the European experience which suggests that countries with a weak or unclear framework for collection and dealing with evasion and those with no penalty defined in statute tend to have the highest levels of evasion – well into double figures in many cases and many times the UK rate. It also highlights the importance of having well understood deterrents, a conclusion which fits closely with Harris’ finding that more people say they pay the licence fee because “it’s the law”⁶⁰ than for any other reason.

Collection costs and cost to the Exchequer

7.13 The BBC has looked at the likely financial costs of introducing a civil model in the light of an increase in evasion.

7.14 Under the current model some £193m of revenue is lost through evasion. (See table below). Costs awarded by the courts and subsequently recovered by TV Licensing partially offset the collection costs required to manage evasion. The total impact of evasion on the funds available for public purposes is therefore around £213m.

7.15 Under a civil model, based on the Harris research⁶¹, evasion is predicted to rise to 9%⁶² with the resulting impact of evasion increasing significantly by almost £200m to £409m. Of this £200m, some £150m is lost revenue (see para 7.6); we estimate that in addition a civil model would lead to about £45m in incremental costs – with collection costs far higher and no recovery of costs through the courts (See table).

⁶⁰ *Ibid*

⁶¹ *Ibid*

⁶² *Ibid*. Based on a fine of £150. Evasion could rise to 14.2% with a fine of £80. See para 7.8.

Current model and civil model
Lost revenue through evasion, enforcement collection costs and recoveries

	Current Model	Civil Model	Incremental cost of Civil Model
	Evasion: 5%	Evasion: 8.9%	
Lost revenue via evasion (£m)	193	345	152
Evasion collection costs (£m)	34	54	
Recovered through court costs (£m)	(14)	n/a	
Late renewal penalty collection costs (£m)	n/a	10	
Total impact of evasion	213	409	196
No of evaders (000s)	1,344	2,392	
Numbers prosecuted (000s)	153	n/a	
Number of penalty notices issued to evaders (000s)	n/a	617	
Number of penalty notices issued to late payers (000s)	n/a	858	
Penalty revenue recovered from evaders (£m)		(29)	
Penalty revenue recovered from late payers (£m)		(26)	

* Totals may not sum due to roundings

Source: Internal BBC analysis.

7.16 The Harris research⁶³ also identifies an increase in the rate of delayed payment. Under a civil model those who are unlicensed as a result of not renewing their licences on time would also be liable for a penalty. We anticipate that, under a civil model, in excess of 800,000 late renewers (those who have delayed renewing their licences for 5 weeks or more) could be liable for a penalty notice. The table above shows the impact of issuing penalty notices to late renewers.

7.17 A civil model would therefore be less efficient than the current criminal model. Even if the BBC was allowed to keep fine income to set against costs, we know that collection of civil penalties can be both difficult to achieve and expensive. The BBC understands that DVLA has had to write off around one third of all unpaid fines for non-renewal of vehicle tax (a civil offence) as they are viewed too hard to collect. Of the two thirds the DVLA pursues, less than half is paid⁶⁴. The likely increase in evasion and delay in buying a licence under a civil model will therefore increase the costs of enforcement and mean that significantly more people would be issued with a penalty.

Fairness and proportionality

7.18 Civil models raise a number of important fairness and proportionality issues. A key concern is that by increasing evasion and the collection and enforcement costs associated with those who evade, a civil model could lead to a sense of unfairness amongst licence fee payers. As set out above, this could be reflected in cuts to BBC content and services for licence fee payers.

⁶³ Ibid

⁶⁴ DVLA Annual Report and Accounts 2010/11

Proportionality in relation to the application and level of penalties

- 7.19 The BBC believes that a civil enforcement model would be less targeted than the current criminal system where penalties are only sought and applied where necessary as a last resort. In particular, as the evidential threshold for establishing that a household or business is evading would be lower under civil enforcement (“on the balance of probabilities”) it would be possible to establish, for certain addresses, that an offence is likely to be taking place, without the necessity of carrying out a visit to collect evidence. For example, those who have let their licence expire and are delaying a renewal could reasonably be assessed as still requiring a licence. (See above on collection costs of evasion).
- 7.20 Whilst TV Licensing might in theory retain discretion in law to assess whether it is in the public interest to apply penalties or seek recovery of the debt in all these and similar cases, the research set out above suggests that TV Licensing would need to take action in most cases to create a credible deterrent. This would be necessary both to uphold the law and safeguard licence fee revenues for public service broadcasting, as well to act fairly for the majority of people who continue to pay the licence fee.
- 7.21 Consequently, the move to a civil model could result in much larger numbers of households and businesses being penalised for licence fee evasion.
- 7.22 In addition, as set out in para 7.8, it is likely that the level of penalty would need to be significantly higher than the actual fine amounts imposed under the current criminal model (c.£170), around £500 to create a credible level of deterrent. Furthermore, to implement the civil models efficiently for licence fee payers it is likely the penalty level will be fixed across all cases. This is in contrast to the current system where, by virtue of the magistrates’ court process, fines can be set at a level that takes account of individual circumstances, including defendants’ ability to pay and the period of time unlicensed. Losing the ability to efficiently means-test penalties may well reduce the proportionality of the licence fee enforcement system under a civil model.

Wider fairness and proportionality concerns

- 7.23 To carry out its duties cost effectively for licence fee payers, TV Licensing would need powers to seek a range of enforcement mechanisms which, whilst civil in nature, might be no more palatable than those applying under the criminal model. Relevant civil actions would include use of debt collection agencies, followed by registration of a county court judgment, with the attendant implications for individuals’ credit ratings and, where needed, enforcement of judgements using instruments such as bailiffs. Given the larger number of households likely to receive penalties under a civil model, these powers might also need to be used more widely than the parallel powers operating under the current criminal model.

7.24 Finally, the BBC would be concerned about the potential conflict of interest inherent in a system whereby the BBC was collecting evidence, determining whether or not a penalty should be applied and pursuing civil action, including if necessary through county courts. Such a potential conflict could be resolved by an independent appeals process, or, if provided for by legislation, an independent tribunal, but this would have a cost implication. By contrast the current system has a well-defined and natural separation of roles: TV Licensing presents the evidence to the courts which then determine the outcome.

Summary of the advantages and disadvantages of civil enforcement models

- 7.25 The research suggests that decriminalising the offence to evade the licence fee runs a serious risk of increasing evasion and collection costs, with the consequent significant loss of revenue for public service broadcasting. The effective bundle of criminal deterrents would be lost and the sole effective deterrent would be the fine, which would need to increase significantly to keep evasion down to current levels.
- 7.26 From a proportionality perspective, a civil infraction may, on the face of it, seem more appropriate for the offence than a criminal sanction. This, however, gives only a partial view of the real picture. The practical operation of the current system is designed deliberately to keep first time offenders out of court, and then once in court affords magistrates considerable freedom of action to tailor the fine and costs according to circumstance, a feature unlikely to be available under a civil regime.

8 Alternative criminal enforcement systems: out of court settlement (option 3) and fixed monetary penalty (option 4)

Out of court settlement and fixed monetary penalty– Value for money

- 8.1 Under option 3 the criminal offence would be retained, with an option for disposal by way of an out of court settlement. Under such a scheme - akin to the way the DVLA operates and the current licence fee enforcement system in Scotland - the prosecuting authority may in certain circumstances offer individuals an opportunity to settle the matter without going to court. If the individual chooses not to accept the offer, the case will then proceed through the court system as now. Under option 4 the criminal offence would also be retained, with an option for disposal by way of a fixed monetary penalty. Such a penalty would not be a fine or criminal conviction, but a civil penalty to enforce the criminal offence. Prosecution through the magistrates' court would enforce non-acceptance or non-payment.
- 8.2 Taking the current system in Scotland as a relevant illustration of an out of court settlement scheme, in March 2014 evasion in England was 5.2% whereas in Scotland it was 7.3%⁶⁵. Whilst evasion across the UK has been declining over a long period,

⁶⁵ Source: Internal BBC analysis

since 2007/08 it has nudged up a little particularly in Scotland; in E&W it has increased by one percentage point and in Scotland by two percentage points as shown in the table below.

TV licence fee evasion 2007/08 - 2013/14		
	Change in evasion rate (% pt.)	% change in evasion rate
England	1%	21%
Wales	1%	29%
Scotland	2%	33%
N Ireland	-1%	-13%

Source: Internal BBC analysis

- 8.3 The differences in the rates of change in evasion between the jurisdictions cannot be explained by the rate of enforcement activity carried out by TV Licensing in the different nations.
- 8.4 Under option 4, the fixed monetary penalty, the likely impact on evasion is more problematic than the out-of-court settlement, especially if it allows for a reduced or waived penalty in the event of a licence being purchased, thereby offering a lesser deterrent.
- 8.5 Under both these options, the level of the out-of-court settlement or fixed penalty would need to be significantly higher than the licence fee (currently £145.50) in order to act as a deterrent. It has to be questioned whether these options would be able to balance the differing objectives of suitable deterrence with proportionality. Without a suitable deterrent, there is a significant likelihood of increased evasion and resulting loss of licence fee income.
- 8.6 Similarly, under both these options, the defendant has the opportunity to decline either the proposed out-of-court settlement fine or the fixed penalty notice and proceed to a hearing at the magistrates' court. While out-of-court settlements are widely accepted within Scotland as the fine rates tend to be low, it is not clear that these options would necessarily reduce the burden on the courts. A fine or penalty set at a level sufficient to create a deterrent is likely to increase the probability that a case is pursued through the magistrates' court – whether by the defendant seeking a lower penalty which takes financial circumstances into account or by TV Licensing for non-payment of the fine or penalty. A lower fine or penalty is likely to reduce the probability of a case ending with magistrates but will likely increase evasion.
- 8.7 The Scottish system may be regarded as more efficient than a hearing at a magistrates' court as the fine is decided on the papers by a single Procurator Fiscal. In practice, however, few people actually attend court elsewhere in the UK, and, as we have seen, cases are dealt with quickly consuming limited court time. Moreover, the introduction of the Single Justice Procedure in England & Wales will achieve a

similar level of efficiency – the outcome of a case will be decided also on the papers by a single justice.

Out-of-court settlement and fixed monetary penalty – Fairness and proportionality

- 8.8 In contrast to the current system where prosecutions against first time offenders are dropped if a licence is bought prior to hearing, all offenders would be treated the same under these options.

Out-of-court settlement

- 8.9 If the out of court settlement is to be a sufficient deterrent then it could increase the financial burden on lower income households due to the level of penalty necessary and because there is only a very limited amount of time (28 days) to pay these by instalments.
- 8.10 To introduce an out of court settlement in the rest of the UK would also necessitate the introduction of the additional structure of a Scottish Prosecutor Fiscal type regime, together with a new fine structure. The DVLA is empowered to administer the out of court settlement procedure itself, and the BBC might be the obvious candidate as the authority for licence fee offences. However, the BBC would have reservations about assuming such a role as this requires the BBC to collect the evidence of an offence, determine the sufficiency of the evidence, and set the penalty (offer of an out of court settlement or prosecution). This is balanced only by the individual being able to accept or decline the out of court settlement or penalty and always having the right to have the court decide their case.

Fixed monetary penalty

- 8.11 The evidential test to issue a fixed penalty notice must meet the criminal standard of ‘beyond reasonable doubt’. The resources involved in obtaining such evidence will remain a high barrier and could be viewed as a disincentive to the BBC to pursue cases where the outcome could be a small penalty. As is the case for all of the options for reform, any lessening of the deterrent needs to be balanced by an equivalent reduction in the barriers to establishing licence fee evasion.
- 8.12 Also, more people may be given a fixed penalty notice than are currently prosecuted; whilst we would retain discretion as to how first time offenders were treated, how that discretion was exercised in practice would depend on how effective the system proved to be as a deterrent. As with the out-of-court settlement, being a fixed rate fine it would likely increase the financial burden on lower income households.
- 8.13 BBC collection costs are also likely to be higher under the alternatives. It is not clear that enforcement costs would be recoverable through the penalty process in any of the alternative models. An individual to whom a fixed penalty notice has been issued is much less likely to pay it if they know that not paying no longer

carries with it criminal sanctions, and there is a reasonable chance that the BBC will have insufficient evidence to meet the high criminal standard of proof at court.

Summary of the advantages and disadvantages of alternative criminal enforcement models

- 8.14 A de facto out of court settlement system, whereby the majority of first time offenders are able to avoid prosecution if they purchase a licence prior to hearing, is already in operation within the current framework. The introduction of the Single Justice Procedure will provide for cases in England and Wales to be considered on the papers by a single justice, analogous to the approach in Scotland by the Procurator Fiscal, but without its disadvantages. In Scotland, fewer people go to court but as many are fined (in proportion to the population) and, whilst the fine is lower, evasion is far higher.
- 8.15 For option 4, the fixed penalty notice would need to be sufficiently high to constitute a deterrent but there would be a reduction in the opportunity to operate discretion with the likely impact a more disproportionate penalty for first time offenders and those on limited incomes.
- 8.16 Without making any change to the prosecution structure (say, on the lines of the Procurator Fiscal in Scotland), it is our judgment that the public interest assessment combined with the prospect of the new Single Justice Procedure to minimise further court time and obviate the need for defendants to appear in court, will increasingly constitute a de facto out of court settlement system. Critically, the current system can deliver the benefits of an out of court settlement system without undermining the deterrent effect.

9 Reform of the current system (option 2)

- 9.1 As argued in section 3, the BBC's view is that the current arrangements for the collection of the licence fee are efficient, appropriate and proportionate.
- 9.2 However, we also acknowledge the criticisms that have been levelled against the current system and have welcomed this opportunity to consider how best to address these. We are keen to consider reforms which will improve proportionality and fairness whilst maintaining value for money in the public interest.
- 9.3 An important constraint in the context of any possible reforms to the current enforcement system is the particular challenges that attend enforcing payment for TV services. These challenges include the fact that:
- The BBC cannot stop people who do not pay the licence fee from using the BBC or other TV services⁶⁶. It is therefore more vulnerable to payment

⁶⁶ The TV licence covers watching or recording television programmes as they are broadcast, irrespective of broadcaster.

evasion than suppliers who can disconnect non-payers, or certain utilities which can install pre-payment meters. There are major practical and financial considerations to gating BBC TV services. Although pay TV users have set top boxes or other equipment with conditional access modules⁶⁷, pay TV equipment is only in just over 50%⁶⁸ of households. Around 11.5m⁶⁹ households have free-to-air TV alone, while a total of almost 20m⁷⁰ households have at least one 'free' TV set. This equipment would have to be fitted with conditional access modules or replaced, at an estimated cost of around £500m⁷¹.

- To prove use of a device to watch or record TV as it is broadcast, TV Licensing must present evidence on the conduct of households and business carried out behind closed doors. This is in contrast to the evidence required to establish criminal or civil offences, such as parking infractions or public order offences, which, if they are committed, take place in public allowing for easier assessment and detection. In addition, unlike vehicle offences which often invalidate vehicle insurance, thus providing a strong disincentive for members of the public to break the law, TV licensing offences carry no further consequences for the individual except that provided by TV Licensing.
- Although a licence is needed to view TV services as they are broadcast regardless of the type of device used, the nature of the expanding range of devices that can be used to view TV services as they are broadcast makes proof of the offence increasingly difficult.

Reforms to the current model – Fairness and proportionality

- 9.4 Notwithstanding these wider challenges to the existing enforcement regime, the BBC acknowledges that the current system could be improved to keep evasion low while improving fairness, transparency, and proportionality. The BBC would like to propose to the Perry Review a number of targeted reforms for consideration.
- 9.5 TV Licensing's current application of the public interest test when considering prosecution already amounts to a de facto out of court settlement system as described in Option 3, but without the necessity to create a separate Procurator Fiscal structure along the lines of that which operates in Scotland. It encourages compliance with the law whilst diverting cases out of the courts.
- 9.6 To increase the perceived fairness and proportionality of the current regime, the application of this public interest test could be formalised and made more transparent. For example, TV Licensing could publish a code which would set out

⁶⁷ This is equipment that (by a variety of technical means) ensures that only subscribers etc. can access pay TV services.

⁶⁸ <http://www.bbc.co.uk/blogs/aboutthebbc/entries/8d83c25d-f2ba-34c7-8e03-edbf806e83c0>

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

the steps it will take before prosecuting, and the considerations it will apply in deciding whether it is in the public interest to bring a prosecution.

- 9.7 Unlike the situation currently where visiting officers are not authorised to advise the alleged offender on what the next steps would be, as the public interest test is applied by TV Licensing centrally, this code could be made available on the doorstep to make it clear how further action could be avoided (e.g. by becoming licensed if they are a first time offender), rather than by letter following the visit as currently happens.
- 9.8 We recognise that, in some circumstances, a first time offender may wish to make a commitment to buy a licence and thereby avoid a court appearance but that the payment schemes that TV Licensing is able to offer are not suitable for them. The requirements of the instalment schemes as set out in the Regulations⁷² mean that the first year's licence must be paid for within a maximum of 6 months, creating a barrier to payment for some households. Evasion can also occur where people with licences have failed to pay for them and so had their licences cancelled. The BBC would like to see increased flexibility in the instalment schemes to allow TV Licensing to adapt payment plans to suit the individual and help them to stay licensed.

Reforms to the current model – Value for money

- 9.9 If this code is to make it clear that in most cases prosecution will not follow if a licence is purchased promptly after evidence is collected of evasion, the effect of this on evasion must be considered and addressed.
- 9.10 Currently if a household is unlicensed TV Licensing may have no record as to whether the household is occupied or the names of the occupiers. Correspondence to households with unnamed individuals has a poorer response rate.
- 9.11 If the BBC were to have access to improved sources of data, such as electoral roll or council tax databases, TV Licensing would be more confident of determining which households are potentially licensable and who is the responsible person. Access to sources of data linking names to addresses would enable TV Licensing

⁷² The Communications Act 2003 Section 365(1) provides that payments must be set out in Communications (Television Licensing) Regulations 2004. Thus, the regulations for instalment schemes must specify the precise amount of every instalment, with no discretion for TV Licensing to vary the operation of the scheme.

better to reach the responsible person in unlicensed households.

9.12 In summary, the BBC proposes for consideration:

- a) Codifying TV Licensing's public interest assessment to increase transparency and to make clear to defendants what they need to do to avoid a prosecution;
- b) Increasing accessibility of the instalment payment schemes to reduce barriers to payment; and
- c) Providing the means to reach the responsible person in unlicensed households more easily.

9.13 The BBC believes that these reforms would improve the fairness of the current system without weakening significantly its deterrent effect.