

The Centre for Citizenship

The centre for republican democracy

Evidence to the TV Licence Enforcement Review Consultation
April 2015

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“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 19 of the Universal Declaration of Human Rights.

Introduction

In this submission the Centre for for Citizenship argues against the imposition of criminal or civil penalties for the watching of television without state permission. We do so for a number of reasons, principally ones of free speech and fair treatment of citizens.

It is notable and regrettable that the consultation paper makes no mention of the civil rights aspects of the licence system. An uninformed reader would not be made aware by reading the paper that the licence is required by law for watching any television broadcast, not merely the products of the BBC.

The consultation paper suggests that watching television without a licence is a form of theft. The individual, it is implied, watches BBC broadcasts but evades the payment due. The paper states in particular that "one consideration in relation to the rate of evasion is the fairness to those who pay the licence fee in funding services which evaders are also able to watch".

It may be true that there is much unlicensed viewing of BBC broadcasts. But it should also be acknowledged that many citizens do not want to take advantage of the services of the Corporation, hard as that may be for its many and sometimes influential admirers to believe. To deny those citizens access to other television services that they do want, without prior payment to and permission from the BBC, is to extort such payments and to deny freedom of speech. It is rather as if Morrisons were able to stop citizens shopping at Sainsbury's, Tesco, or Waitrose stores unless they paid a fee to Morrisons for permission to do so.

If fairness is to be a consideration in this review, it should consider the fairness of making those who do not watch the BBC pay for its services anyway, on pain of being barred from watching any television.

Free Speech

The requirement for a licence to watch television arose through negligence and without thought for the implications. That is an unfortunate outcome of this country's lack of a well-defined constitution guaranteeing free speech.

It seems unlikely that the licence system would have been legislated for if there had been non-state broadcasters when it was introduced. Because there were no such broadcasters at that time the charge was a charge for the Corporation's services. For that reason it was a legitimate charge that did not conflict with the right of free speech. When non-state broadcasts began the licence charge ceased to be legitimate in so far as it prohibited citizens from watching the broadcasts of others without permission from the state.

To those with the pragmatic point of view often attributed to the British it may have seemed reasonable to have left the licence system in place for convenience when the Corporation ceased to be the only TV broadcaster. But it is important that fundamental principles are upheld if the rights of the citizen are to be respected and respect for state

institutions maintained.

To punish a citizen for watching television without a licence is to punish for the exercise of a basic human right, that of free speech. The BBC is entitled to charge for its own broadcasts. But it cannot legitimately deny citizens the right to watch TV broadcasts by others, whether they are provided free of charge or for a fee.

For clarity we should explain that “free speech” is shorthand for freedom of expression. There is free speech only when there is freedom to hear as well as to speak. If everyone can say what they believe but all are locked alone in separate rooms they may speak but there is no freedom of speech. And free speech is also denied when a citizen is compelled to contribute financially to the propagation of partisan beliefs that she does not share.

It is unimaginable that citizens should require a licence before they might legally read a newspaper or book, or listen to what another individual has to say to them. Although totalitarian societies restrict free speech none go that far.

State control of access to all television broadcasts has no more democratic legitimacy than state control of access to print or word of mouth. The state may legitimately charge for what the Stationery Office publishes. It may not legitimately charge for or obstruct access to what Fleet Street publishes.

It is also important in a democracy that the exchange of information should not be unnecessarily impeded. TV broadcasters play a vital part in providing information and debate on political issues. The licence impedes access to this by requiring that permission be bought before citizens may receive information and witness debates broadcast by non-corporation sources, even though those sources require no payment.

A citizen is entitled to resist state-imposed restrictions on free speech. No one should be penalised for doing so.

Injury to Civil Liberties

The licensing system can be enforced only by injuring the civil liberties of citizens. Experience of the system in practice indicates that it requires that the Corporation's enforcers monitor every home and movements between homes, and visit, threaten and harass citizens. This behaviour can have value for the Corporation only if the state continues to impose financial penalties on and imprison some citizens who do not pay

Examples of the harassment methods appear in the appendix to this submission.

It has taken the form of threatening billboards. It includes letters threatening an “investigation” into the citizens behaviour. And others that inform the citizen of her rights when she appears in court even though the enforcers have no evidence on which to base court proceedings and no intention of starting them.

The consultation paper states that “Failure to be covered by a TV licence where one is

required will result in enforcement activity being carried out by TV Licensing". That is misleading. "Enforcement activity" is carried out when there is no licence for a residence, whether or not a licence is required. The basis the Corporation's enforcers use for such activity is the lack of a licence regardless of whether a TV is in use and a licence required by law.

It may be that enforcement activity will stop if the citizen makes a statement or provides evidence to persuade the enforcers that a TV is not in use. But, of course, in a free society a citizen should feel no obligation to do so, and is well-advised not to make such a concession to overbearing state authority..

Bias and Compelled Speech

The BBC adds insult to the injury of the licence fee for citizens who does not share its beliefs. The Corporation demonstrates political biases. The one that most concerns the Centre is its bias towards monarchy. There is almost certainly no institution that has done more to delay the day of our freedom from that evil. However, other citizens and organisations find other biases equally objectionable.

It is worthy of note that the Director General of the Corporation, Anthony Hall, is a legislator-for-life and uses a feudal title of supposed superior class status. An organisation headed by such a person is not one that those who love democracy could be expected to support.

When the Corporation forces citizens to give it financial support against their will it makes them a party to the propagation of beliefs they do not share. This is hurtful to citizens affected, is a denial of the right to equal treatment by the state regardless of beliefs, and denies citizens their right of free speech. Compelled speech is not free speech.

It is normal and legitimate to refuse to give money to those who work against ones beliefs. It should be expected therefore that republicans and others affected would resist payment of the licence charge. It could be argued, indeed, that it is their democratic duty to do so. To be punished for not buying permission to watch TV is to be punished for standing up for ones democratic beliefs

Equity

The licence is inequitable in a number of ways.

It should be clear that the money paid for a TV licence is not a payment for the Corporation's products. It is a payment required of all who watch TV regardless of the source of the broadcast. There could be no objection to the BBC charging for its services. But the BBC demands payment from those who do not wish to take advantage of those services. That makes the "fee" a tax.

This tax is not imposed equitably. All with an income above a prescribed amount must pay income tax regardless of their use of public services. But the TV tax is collected only

from those who watch TV. So, only one set of citizens who do not want the BBC's products are taxed. That is, those who watch other TV. Those who watch no TV at the time of broadcast are not taxed.

To be sure, payment of the tax is easily avoided. But that is another cause of inequity. Those who do pay against their will are likely to be less resourceful citizens or those who feel less confident in resisting oppressive state authority. Reports as to the economic and social circumstances of the non-payers who are prosecuted for watching TV without state permission tend to support this view.

In addition to its political biases the Corporation has defensible ones. As a broadcaster it must decide what interests and topics to give more attention and time to. That is a quite reasonable exercise of judgement by any general broadcaster. An example of this is the many hours given to broadcasting sport that a large number, but not all, viewers may want to watch. Those who do not much like sport have to subsidise the pleasures of those who do but may not find their own entertainment subsidised to a similar extent.

If there was no licence but instead a charge for those wanted the Corporation's broadcasts, those who enjoyed such broadcasts might well choose to spend a relatively large amount of time and money watching the BBC. Those who preferred to spend their time watching American drama might turn instead to Channel 4, Channel 5, Sky or Netflix. That would be fair. All would be spending their money where it bought them what they wanted.

But it is not fair that one citizen should be obliged to go without the entertainment she wants so that others can have what they want. Payment of the licence fee by one who does not find what they want on the BBC might require that that person forgo a number of DVDs, cinema visits, books or a Netflix subscription so that others might watch snooker tournaments and the state lottery draw at the partial expense of the citizen first mentioned.

There is no good reason for one citizen's TV watching to be subsidised when another's book reading is not. It is no more acceptable for a citizen to be required to contribute to the cost of another citizen watching soccer on TV than it would be to require that the first citizen buy the other a drink after the match.

The BBC is not providing an essential service such as health care, the protection of children or defence that would justify a compulsory contribution even when the individual does not benefit directly. The Corporation is a general broadcaster and its broadcasts include to a large extent such non-essentials as snooker tournaments, the state lottery draw and "soaps". This does not warrant the use of the coercive powers of the state in a free society.

Reputation

When citizens are penalised for watching TV without state permission from the state the good name of this country and of its democratic values are undercut. The notion that a citizen requires permission from the state before watching TV smacks of East Germany in

the 1950s or Iran today, where the police search for and remove citizens' satellite dishes. The patrolling of the streets and rapping on front doors by investigators searching for criminals who watch TV without permission is alien to the principles of democracy and human freedom.

Conclusion

None of the options set out in the consultation document is consistent with the principles of a free and fair democratic society. There should be no penalty for the exercise of a democratic right.

The BBC should make its living honestly by charging those who want to take advantage of what it offers. It should stop extorting money, and should stop harassing and harrying those who prefer to spend their money and free time elsewhere. Citizens should be as free to watch TV without a licence as they are to read books. No one should be fined, imprisoned or otherwise penalised for watching television without permission from the state.

The Corporation claims to be loved by the British people. Its admirers often claim the same. But it is afraid to test this claim by charging only those who watch its broadcasts. We know Netflix and Sky are "loved" because many are willing to pay for them from their own pockets and without taking from those who do not want to watch.

The BBC should do the same. It should be allowed to take money only from those who wish to consume what it has to sell. The consultation paper notes that technological advances may make it possible to disconnect from TV services those who do not have a licence. However, such technology would also allow those who do not have a licence to be denied the Corporation's broadcasts while continuing to receive those broadcasts they do want. That would be fair, would require no denial of human rights, and would test the Corporation's beliefs as to the high regard in which it is held by the majority of citizens.

Comments on Policy Options

Option One

It is unacceptable for nothing to be done. The prosecution of citizens who watch TV without permission and the harassment of citizens who do not watch TV are violations of human rights.

Questions 1 - 5: Watching TV without state permission should not be a criminal offence. The main advantage of the current system is an advantage for the Corporation: it is able to raise funds from unwilling citizens. The disadvantages are set out at length elsewhere in this submission. The enforcement system should be abandoned for reasons of civil liberty and fairness.

The licence may be of poor, average or excellent value for money for those who want the Corporation's products, depending on the extent to which the Corporation satisfies their needs. The Netflix charge of £84 a year as against the Corporation's charge of £145 may give some idea of relative values for some citizens at least.

Certainly for those who do not want the Corporation's products but are obliged to pay its charge there is a negative value. It is clearly unfair to those who pay under duress. And also to those who are not required to pay but are subject to the harassment that the Corporation undertakes to extract money where it can.

The paper gives no evidence of the effectiveness of the fines imposed on those watching TV without permission. But as the number of homes without a licence seems not to have been significantly reduced in recent years, their effectiveness may be doubted. We assume that as the received wisdom is that the Corporation is revered by the majority of the population, a large majority of those who are licenced to watch TV would pay the charges for BBC broadcasts even in the absence of penalties for not doing so.

Considerations 2 (b) and (c) of Annexe A would be met by a system, such as that used by Netflix, that collected fees only from willing payers and did so electronically obviating the need for the Corporation's large-scale system of monitoring, harassment and prosecution.

Option Two

The suggestion that citizens should be obliged to notify the Corporation for the convenience of its enforcement agents if they do not require a TV licence should be unthinkable. Law-abiding citizens do not owe an account of themselves to the state. It is no more acceptable than would be a requirement to inform the police that one has no stolen goods at home.

The comparison with the duty to notify the DVLA that one has an untaxed vehicle is invalid. Only those who own a vehicle but have not taxed it are obliged to make a report explaining that. The suggestion in this paper is that all who choose not to watch TV broadcasts should be obliged to report this.

Increasing the data sources available to the TV Licencing is hardly more acceptable. The Corporation does more than enough spying on citizens already.

Citizens who do not have a TV licence should be left unmolested by the BBC and its enforcers unless there is evidence that they have broken the law. The current assumption that all those without a licence are fair game for the enforcers should cease to be made. It is oppressive. To ask this is to ask no more than we expect of the police. There would rightly be outrage is the police behaved as the Corporation's enforcers do.

In any case such a provision is likely to be ineffective as without evidence for a search warrant the Corporation would be unable to verify the accuracy of such notices.

Question 6 - 10: The criminal enforcement system for TV licences should be abandoned, not reformed. It is inimical to democratic rights. Reform will not change that. However, if the licence system is kept the Corporation should stop the harassment of citizens where it has no evidence that TV is being watched without state permission other than the absence of a licence.

Option Three

This option would do nothing to correct the violations of civil rights that the licence system imposes. We find it unacceptable.

TV Licensing is a business. We believe that its employees are paid bonuses for their success in raising funds for the Corporation. It is much to be doubted, therefore, that it can be trusted with responsibilities given to to the Procurator Fiscal in Scotland. The disgraceful ways in which it behaves currently makes it unfit to deal with out-of-court settlements.

Questions 11 - 15: Watching TV without state permission should not be a criminal offence. Out-of -court settlement would do nothing to correct this wrong.

Option Four

There is a clear danger with this option that the BBC and its enforcers would be tempted to issue penalty notices against those who do not have a licence although lacking in adequate evidence that one was required or a prosecution warranted. The possibility that the accused might pay the fixed penalty in order to avoid the trouble, expense and embarrassment of a court appearance would almost certainly tempt the enforcement agency to take a chance and issue the penalty notice. It could then decide formally not to proceed with a court hearing it had never intended to follow-through with in the event that the citizen decided to contest the penalty.

The fear that this might happen is supported by one trick used currently by the enforcers. In cases where they have no evidence that a TV licence is required they nonetheless write to the homeowner to inform her or him of their rights in court. This tactic is clearly intended to frighten the homeowner into getting a licence. Any changes recommended by

this review should not provide an opening for a similar tactic.

Questions 16 – 20: This option also puts the financial interests of the Corporation before the democratic rights of citizens. There are no advantages for citizens.

Option Five

A statutory requirement that every citizen or every household hold a licence to watch TV is the worst option and incompatible with either human rights or fairness.

It is not clear how a statutory requirement for a licence to be held would work. We do not think it can be intended that every citizen have a licence. If the proposal is that every household have a licence, it is not clear who in the household would have the statutory duty to obtain the licence and what evidence would be required that the requirement fell on a particular person.

This proposal would penalise an even larger section of citizens. Currently those who wish to watch no TV are excused from contributing to the costs of providing corporation broadcasts to those who do want its products. Only those who watch non-corporation TV are compelled to contribute to the production costs of the sports, soaps, quizzes etc. that they do not want.

The watching of TV without permission is hardly comparable with the wrongs that are dealt with through civil proceedings. There is no breach of contract. The citizen proceeded against would not have failed to pay for goods or services purchased. They would have simply not have paid for what they neither wanted nor purchased.

Most taxes may be avoided or reduced by modifying one's behaviour. But there would be no escape from the full impact of this regressive tax.

There is some public suspicion that local authorities may use parking restrictions merely to raise revenue rather than to manage traffic. If this proposal were to be implemented there would be no doubt that the legal system was being used simply as a money-raising machine for the benefit of the Corporation.

That would do further harm to the reputation of the Corporation and to public respect for the law. YouTube videos of bailiffs seizing the property of those who had watched TV without state permission would certainly undermine the image of the country as a model of democratic rights.

Questions 21 – 25: Our views are set out above. The key disadvantage of this option is that citizens would continue to be harassed by the Corporation's enforcers, penalised for exercising their civil rights, and forced to pay for what they do not want.

Option Six

Here we see a vivid demonstration of the contortions required to defend the indefensible.

The paper tells us that the licence fee is not a payment for services. But it suggests that it should be treated as if it were, making non-payment a civil debt. The paper refers to the need for “contractual arrangements” to be in place for liability for payment to be established. But a contract requires the uncoerced agreement of both parties. That would often not be the case with the TV licence. This would be a debt where the citizen did not want and had not bought the service from which the liability arose. Legal proceedings in such cases would certainly undermine respect for contract law.

We ask what standard of proof would be required in order for this “civil debt” to be enforced.

It is hardly credible that paragraph 6.2 could have been published by a government department in a democratic state. The paper suggests that the Corporation should be able to “assume” the length of time that a citizen has not had a licence and collect back-payments for the period assumed. The word “assume” indicates that no evidence would be required.

It seems that civil rights and legal safeguards count for nothing when it comes to the holy BBC that all are expected to pay tribute to. This suggestion is utterly shameful.

Questions 26 – 30: The disadvantages are as for option 5.

7. Other Options

Question 31: We can offer no other options for a licence enforcement regime. The licence should be abolished. If the BBC wishes to continue as a general broadcaster it should arrange to finance itself by charging those who wish to take advantage of its services. If it is to become a true public service broadcaster, it should be financed from general taxation.

Fairness Considerations

Questions 32 -34: Our answer to Question 32 is “Yes”. The licence enforcement system does coerce some of the unwilling into giving financial support to the Corporation. We believe that the alternatives suggested would also be coercive in effect and in some cases would be more so.

We believe that it would be wrong if a citizen's credit rating were to be adversely affected because, in protecting their civil liberty, they refused to pay off the Corporation. There is no necessary correlation between the refusal to pay for a TV licence and financial status.

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About Us

The Centre for Citizenship is a republican organisation that works to free Britain from hereditary, religious and class privilege in the governance of our country.

Appendix One: BBC Harassment

Examples of BBC enforcement communications where there is no evidence of law breaking.

1. Letters from TV Licensing.

“This is an official warning that we are carrying out an investigation of your address. We have asked you to contact us several times but you have not responded. It is a criminal offence to watch or record television programmes as they are being shown on TV unless you have a TV licence.”

“This is an official warning that the TV Licensing Enforcement Division will be proceeding with a full investigation of the above address. This is because there is still no record of a TV licence at this property.”

“An Enforcement Officer has been scheduled to visit to find out if TV is being watched or recorded illegally. The Officer may visit your property any day of the week, morning or evening.”

2. Other TV Licensing Communications

“Your address is unlicensed. I called to find out why.”

Heading on notice left by BBC agents when unable to interview citizens who have not asked for permission to watch TV.

“Our officers may ask to inspect your licence and television equipment at any time, but you do not have to let them into your home without a search warrant. We can end or change your licence at any time by writing to you.”

From the television licence form sent to every household in Britain

3. How the BBC encourages citizens to spy on those who may watch TV without state permission

