

# **TV Licence Enforcement Review**

## **Response to Consultation**

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This is the submission from:

**TV Licence Resistance**

**TV Licensing Blog**

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This is the official response from a number of groups and individuals within the broad Legally Licence Free community. There are many UK citizens who lawfully live their lives without a TV Licence, and unfortunately, our experiences at the hands of the BBC/TV Licensing are not good. Although this response is not from the entire Legally Licence Free community, we know from informal discussions that the issues are broadly the same for all of us.

Various official complaints have been made to TV Licensing, the most recent in December 2014. Amongst other things, this cited 18 scenarios (covering hundreds of cases) where citizens' rights in interview are adversely affected by BBC/TVL policy, procedures and/or custom & practice. This is included as an appendix in this response. Unfortunately, there has not yet been a reply from TV Licensing.

Moving on to the Review itself, this is our response, and it should be read in conjunction with the List of Grievances, which forms the substantial part of our response. Our broad observation is that we are an important stakeholder group in this process, and in the enforcement policy of the BBC. However, the BBC generally seems to regard us as a nuisance, or worse.

Finally, given the difficulties that we have found in dealing with the BBC, and their apparent willingness to operate TV Licensing without any form of democratic accountability or independent scrutiny, we would want to see the BBC's role in any future solution subject to intense and proper supervision, so that the public can be reassured that what is being done in their name is fair, just and appropriate. In short, the BBC have proven themselves unworthy of the public's trust in this matter.

## Our response

### *General Comments*

The most obvious observation about the Review is that its terms of reference are far too narrow. Even if the present "investigation/detection" process were perfect, it would still be necessary to determine how it would relate to new decriminalised enforcement processes, and whether it remained fit for purpose in that context. It is, however, far from perfect, and bolting-on a decriminalised enforcement process to it would be a disaster.

More generally, there is deep frustration within the Legally Licence Free community that (a) such clumsy processes are imposed upon us by the BBC, (b) this is done in pursuit of funding for what is largely an entertainment service, and (c) TV Licensing seem to have little, if any, meaningful supervision, accountability or legal justification for their operations. This makes dealing with their many misdeeds extremely difficult for affected individuals and for legally licence free people as a group. Responses to complaints and Freedom of Information requests are arbitrary, often unduly defensive and self-serving, and bear no relation to the public good.

For those reasons, our preferred solution is to migrate the BBC (possibly over a period of time) to a subscription basis, supported by a very simple and well-proven subscriber management process, and thereby abolish the TV Licence (without introducing a replacement imposition).

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

No. There is no question that the prosecution of TV Licence evasion is one of a number of processes within the UK Justice System that criminalises the poor and those with poor organisational skills by forcing them through a legal process within which they are at a significant disadvantage. This is not acceptable generally, and certainly not in defence of mere entertainment.

From our perspective, TVL is a menace and an unwarranted and unwanted intrusion into our lives. It is sad that the UK establishment permits the TVL operation to continue with its manifest flaws, and it is alarming that even basic questions are not asked. Hopefully this tolerance is coming to an end.

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

Please see the extensive List of Grievances.

*Question 3 – To what degree do you think the current system delivers against the key criteria for this Review (as set out in the terms of reference at Annex A)?*

As already stated, we consider the remit of the Review to be far too narrow: it is impossible to consider, for example, whether a civil debt based process might be more effective, without a

discussion of how the “debt” arises and is evidenced. It is disappointing that the Government and other major stakeholders have not recognised this inherent shortcoming in the process.

Unfortunately, most Legally Licence Free people will reject the Review and its conclusions unless these issues are properly considered, or the new solution coincidentally resolves them.

The major issue with the present system is that it is disproportionate, both as an overall process, in much of its detailed implementation, and in terms of presumptions and misinterpretations made by the BBC. The process as devised between the BBC and the Courts also leads to poor, misleading and incomplete information being provided to the public, with suspects/defendants therefore being denied certain important rights, or being deterred from exercising them. This is not acceptable and part of establishing proportionality requires the setting out of clear standards and principles by which citizens and their rights are respected, at every stage of the process.

A very fundamental issue of (lack of) accountability exists, whereby Ministers at the DCMS have asserted that issues with enforcement are a matter solely for the BBC and BBC Trust, as a consequence of editorial independence. This is nonsense, and is not acceptable. In short, we must not have policing operations that are not ultimately accountable through some form of democratic representation, ideally supervised by an independent regulator of some sort.

There is an argument that the present system is unworkable, or would be significantly more expensive to operate, if citizens' rights were broadly supported by TVL and the Courts. However, we consider this to be a moot point, supportive only of the case for abolition (of the present system).

*Question 4 – We would welcome evidence that supports these views.*

See the List of Grievances, and correspondence with TVL.

*Question 5 - We would welcome views and evidence on the impact of retaining the current enforcement sanctions for the BBC, the licence fee payer and the taxpayer.*

The underlying effect of the present regime is this: there is a hard core of seasoned Evaders who are largely immune from prosecution because the “investigation” process is incapable of engaging with them; there is a general churn of often casual or unintentional Evaders who are apprehended by TV Licensing, but many of these cases are marginal (in the sense that the evidence is poor, the defendant was denied their rights in interview, and/or there is no public interest in prosecution); and there is a growing group of Legally Licence Free people who are subject to harassment by TV Licensing. This is all against the background in which TV Licensing and the BBC seem to have little rational grip on the key issues (both legal and technical).

The present system is dysfunctional, and retaining it will simply lead to more of the same, until such time as the system breaks, either because the number of Legally Licence Free people grows beyond the tolerance of the BBC's budget or the Public's sense of fair play; or because legal issues arising from the BBC's approach result in definitive legal action.

It is important to note that people are Legally Licence Free for a variety of reasons ranging from basic economics to deeply held and entirely legitimate political beliefs about public sector funding, accountability and responsibility to society. Any proposed solution needs to respect this reasoning.

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

Dealing with two of the detailed points from the Consultation document, first:

- The BBC/TVL already endeavours to reclaim monies owed when a licence is renewed, even though the legislative support for this is dubious. TVL ought to have to demonstrate that the monies are actually owed before claiming them. If this is not possible, then back-dating of the licence goes against recognised principles of debt.
- Requiring a "SORN" type declaration. The BBC/TVL already has an informal declaration system. All the evidence suggests that it is largely pointless, mainly because the BBC/TVL has an official policy of disbelief in regards to citizens making this "declaration". This is obviously unacceptable – if the declaration is of value to them it should be accepted in good faith, and if not, there should be no declaration. The fundamental point remains that a satisfactory conviction requires evidence obtained from within an Evader's home. No amount of additional bureaucracy will change that. It is hoped that the Review process will reject proposals such as this which lack clear justification and thinking, especially if additional offences might be required to support them.

The simplest response to this question is that the present system is "too far gone" to be redeemable. Reforming all of the detailed issues with it may well make it inoperable, anyway. The problem is, and will always be, that the evidence that the BBC requires is inside people's homes. Those homes are subject to legal and practical protections, and, in the extreme, the "evidence" is both readily concealable and contestable as to its significance in terms of the offence. In short, the present system is a mess.

The BBC themselves have compounded these issues, by perpetuating the myth of electronic detection. The reality is that detection is not in routine use, has never been used in Court, and is technically incapable of spanning the entire range of reception technologies. This means that the question of investigation is neither a simple nor straightforward problem, and the Review's major Stakeholders are doing the public a major disservice by implying that it is.

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

This Government has already implemented another legal reform of another problematic enforcement issue: Private Parking Companies. The legislative approach there is intrinsically dysfunctional, and it has raised obvious practical and legal questions from the outset. The mess created is still rumbling on in the Courts and through widespread public discontent. We would not want to see such inexpert tinkering with the TV Licence. The system needs complete review, repair

and reform. Basic legal, practical and cultural issues need to be respected by any new solution, and the Review process needs to be protected from undue self-interested interference by the BBC, commercial broadcasters or politicians.

*Question 8 – To what degree do you think this option delivers against the key criteria for this Review (as set out in the terms of reference at Annex A)?*

Neither tinkering, nor retention of a fundamentally criminal-prosecution-based approach is a satisfactory response to the issues.

*Question 9/10*

See the responses above.

*Question 11 – What are the advantages and disadvantages of [out of court settlements]?*

The fundamental issue with decriminalisation is how the offences are investigated. Where detection is largely automatic (like certain motoring offences), there is little value to the defendant or society in having a lengthy trial, or an option thereof.

However, TV Licence Evasion is not such an offence. The approach used mainly by TVL is self-confession, following a random door-to-door “visit” without prior suspicion. It seems likely (and anecdotal evidence confirms this) that many people who have given TVL such confessions did not do so willingly, did not have knowledge of the consequences, did not understand their rights, including the right not to confess, and did not give informed consent. We are aware of the Cadder and related precedents, and suspect that the TVL interview process is in breach of the Law.

To compound these issues, the “178” form used by TVL is unfit for purpose in terms of its capability to clearly differentiate lawful and unlawful behaviour, and in (lack of) resistance to employee fraud. Therefore, although confessions are not often contested (in isolation from other shortcomings in TVL's cases), there remain fundamental issues with the factual accuracy and legal compliance of the confession process. (Indeed, we suspect that this is one of the reasons for gender disparity amongst defendants: women are more likely to feel coerced into confession than men when faced with a burly TVL staff member in their home).

The policy decision not to capture an audio recording is highly questionable (indeed, it makes no sense in the context of the requirements of PACE). TVL clearly recognise the shortcomings of their interview process, because they have prosecuted a number of their own staff for fraud arising from such abuses. However, they appear not to have taken any steps to improve matters. Indeed, there appears to be a well-established link here between complacency and lack of accountability.

We believe that the Review also needs to consider the issues that arise from an official demand for an immediate Interview under Caution in citizens’ homes, and whether that scenario fundamentally

undermines the principles of PACE, as well as offering too many opportunities for abuse, manipulation and fraud by TV Licensing employees of varying degrees of rogue-ness.

Furthermore, there is the question of differences in the burden of proof between criminal and civil proceedings. We would not want to see a situation where already dubious evidence is accepted into the enforcement process "on the balance of probabilities". (Not that "beyond reasonable doubt" has any real meaning for the vast majority of TVL defendants at present).

For these reasons, we are sceptical about an Out-of-Court settlement approach, wary that it may simply compound the iniquities of the present system.

#### *Question 12/13/14/15*

We do not consider this option to have any merit relative to the present system.

#### *Question 16 - What are the advantages and disadvantages of [a fixed penalty]?*

A fixed penalty solution has some attractions, in that it begins to properly address the status of Licence Fee evasion as a minor misdemeanour. Obviously, the level of the penalty needs to be set such that those on very low incomes are not unfairly impoverished, beyond a modest punishment effect commensurate with the level of the offence. The disadvantages are as above, that it should not be used as a bolt-on to an already dysfunctional "investigation" process.

#### *Question 17 – To what degree do you think this option delivers against the key criteria?*

This option begins to ask the "real" questions, which are about who evaders are, whether poverty or social disadvantage are part of their evasion offence, whether the "investigation" process is fair and legally-compliant, and how should such people be punished, given that they are (in the main) already in poverty and/or socially disadvantaged.

#### *Question 18/19/20*

We do not favour this option.

#### *Question 21 – What are the advantages and disadvantages of [civil enforcement]?*

Against the evidence of the Private Parking fiasco, it would be easy to rule out a civil enforcement option. However, done correctly, there could be some merit here, especially if the reform takes account of the issues with obtaining evidence of evasion, and imposes upon the BBC an independent appeals body (which could also help address the issue of non-accountability).

The disadvantage is that many evaders are likely to already have judgements for civil debt against them. More broadly, the review commentary fails to address how the civil infraction is evidenced. As above, we would not want to see a new solution for enforcement bolted-on to the existing dysfunctional "investigation" process. But, ***IF*** it were possible to use this reform to improve the "investigation" process, and to create a supervisory body that could maintain compliance in the long-term, then there could be some merit. However, the confidence level of many Legally Licence Free people in this "optimistic" view is not high, it has to be said.

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

With the provisos above, there could be some merit in this solution, which could simplify the process, introduce formal standards, improve accountability and reform the present dysfunctional "investigation" process. It also removes the current opportunities for threat and misinformation (gleefully exploited by BBC/TVL) over "court appearance" and "criminal offence".

*Question 23/24/25*

Our view is heavily dependent on the details of implementation, so a detailed response on the merits is not feasible at this stage. We would be happy to consult with the Review on details, merits and desired outcomes, though Subscription remains our long-term goal.

*Question 26 – What are the advantages and disadvantages of the civil debt option?*

Superficially, this option appears to have the merits of removing Evasion from the criminal courts, and implementing a recognised process for enforcement (i.e. the one used by Utility companies).

The difficulty arises in establishing the amount and nature of the debt, i.e. when does payment for a licence fall due (in the absence of evidence of use), and how would evidence of the debt be established. Any form of automatic assumption about the length of time for which a household was unlicensed would be intrinsically unfair because (a) TV might not have been watched during some or all of the unlicensed period, and (b) the responsibility for the licence may have changed (possibly informally) during the unlicensed period.

Again, we would ask the Review to reject any proposals which introduced new problem areas, such as the above.

*Question 27/28/29/30*

We do not favour this solution.



*Question 31 - Are there any options for a change in TV licence enforcement regime that we haven't considered?*

Yes.

### 31.1 Subscription

We favour the Subscription option. The Licence Fee would be directly replaced with a subscription mechanism. The subscription fee would initially be a single-tier, in the region of the existing Licence Fee, but the BBC could be empowered to make such changes as it felt were in its/the public's best interests in the future. BBC services would become encrypted using technology of the BBC's choice. The costs of transition would be borne by the BBC, and its subscribers. Commercial platforms such as Sky and Virgin Media would be obliged to recover the subscription fee from their subscribers taking BBC services. This could be discounted in the long-term, by mutual agreement, requiring oversight by OFCOM to ensure fair play.

The advantages of this solution are an end to the Licence Fee and all of the issues associated with its enforcement. The small disadvantage would be that BBC TV services would be denied to those who did not pay for them (though the converse argument is that some citizens are presently forced to contribute to the BBC when they would otherwise choose not to). The suggestion that this is for their own good is somewhat patronising.

Arguably, the UK media environment is so diverse that the BBC offers little or nothing that is not replicated elsewhere. The alternatives may not be free, but neither is the BBC –as a comparator, a household could have access to both NowTV and Netflix for a similar cost to the Licence Fee. This would provide a truly diverse service, rich in domestic and international excellence, vastly outperforming the BBC's present offering. Government/OFCOM would need to decide on the future positioning of the BBC if a move to subscription was made. There are two extremes - the BBC could ultimately have complete freedom to do as it wished, within broad PSB licence conditions; or the BBC's remit would be little changed from now, and it would have commercial advantages and disadvantages imposed upon it that it would be required to manage.

The push-back in terms of cost has already been heard. We reject the BBC's commentary on these issues. It is not acceptable for a large, wealthy public organisation to use public resources to orchestrate its own defence and lobbying in the context of a legitimate public debate. In short, the BBC has no legitimate view on this and no part in the discussion.

We reject the cost argument for four reasons: 1) encrypted material and pay material is already delivered by Freeview, and the BBC could readily use the same cost-effective approach, 2) encryption is a necessity and a necessary cost for any distributor of valuable content (the present BBC open door is therefore unsustainable), 3) Greg Dyke has admitted that the BBC themselves historically manipulated the Freeview specification to make encryption less viable, and the BBC should not be allowed to benefit from this kind of corruption, and 4) hardware cost is not a significant factor for commercial providers (their set-top-boxes start at £10).

A transitional period might be required. Free licences could be provided with a BBC subscription, which were still legally required to watch BBC services. That would give the BBC and its subscribers time to make any necessary adjustments before the Licence Fee was abolished.

From the perspective of Legally Licence Free people, this is by far the most preferred option. We have effectively opted-out of BBC services already, and are dismayed at the BBC's relentless attempts to inveigle us into its enforcement regime.

### 31.2 Council tax (or other) Precept

Various commentators have mentioned a precept (on another bill or tax) as an alternative solution to the Licence Fee. Superficially, this could have merit, especially if the base tax (say Council Tax) had an element of progressiveness that the BBC Precept could tap in to. Such progressiveness might take the cost of the BBC for wealthier households up to £200-300, and it would be interesting to see what might then happen in terms of public perceptions of value for money.

Most commentators have referenced the "German" system. There's little clear logic to this. The "French" system is arguably better, being a simpler secondary tax (to their local tax system), as well as having an opt-out for people without TVs. The German system also has well-publicised issues (regarding the liability of businesses for the new tax).

Opt-out is a necessary consideration for the Review process. There are various options with varying degrees of merit, from an opt-out for all non-BBC programming, to there being no opt-out, even for people with no means of reception whatsoever. We feel that the present opt-out position (around reception of live broadcasts) is adequate, although it may be too complex to enforce once the myth of electronic detection is dispelled. Any move to broaden it, say, to all Internet users, is a step too far in view of the tiny proportion of Internet content provided by the BBC. A change to "all BBC output, including BBC catch-up", is possibly a useful stepping-stone to BBC subscription.

Ultimately, there needs to be some distinction between broadcasts and recorded materials (like DVDs) which we feel have no place in a licensed regime. Netflix and Amazon Prime have been very successful in the UK, and we would not want them to be commercially disadvantaged by being placed into the licensing regime for no apparent reason or benefit.

Overall, we reject this approach, other than in the situation where it is a strictly time-limited stepping-stone to full BBC Subscription.

# Appendix A: List of Grievances with TV Licensing

**This document constitutes a complete analysis of the UK Licence Fee Enforcement operation. It has been compiled from a combination of information in the public domain, video evidence and accounts from people who have been affected by the issues, and information obtained from the BBC/BBC Trust through Freedom of Information and otherwise.**

The issues can be summarised as follows:-

- Communication with the public that is abusive, misleading and disrespectful.
- A Doorstepping operation that is of questionable legality and dubious effectiveness in the apprehension of committed Licence Fee evaders.
- An interview methodology that fails to meet basic standards of evidence and process.
- An unduly close relationship with the Courts.
- A Search Warrant mechanism that is cloaked in secrecy and appears to be an abuse of process in its entirety.
- Filtering of cases that is not in the public interest and promotes discrimination.
- Too many opportunities for fraud by rogue employees in an environment with a woefully poor level of supervision, “mixed messages” and confused objectives.
- A prosecution process in which all of the authorities are aware of the flaws in the processes, but proceed anyway – failing to meet the basic requirements of justice.

The remainder of this document examines these issues in more detail, broken down by process areas.

## A. Conceptual Flaws

### Description of TVL approach

TVL seek to go door-to-door, working their way through a filtered list of unlicensed residential addresses to quiz the occupants about whether they are evading the Licence Fee.

Electronic/automated detection of TV reception is not in routine use. TVL refuse to give any details though they have confirmed that detection evidence has never been used in a prosecution.

### Flaws

The conceptual flaws are:

1. In respect of legally licence free (LLF) households, TVL expect (them) to prove a negative. TVL also demand to make repeated visits because proving non-reception at a point in time is not sufficient "guarantee" to them that the situation will remain unchanged.
2. Whilst TVL goes to great lengths to use a variety of euphemisms around their desire to "check" Audio-visual (AV) equipment in people's homes, it is clearly, in legal terms a Search. We do not want to participate in any activity that challenges the implicit assertion that we are living our lives within the requirements of the Law without good reason. We neither wish to be required to prove our innocence, nor to indulge the associated home search process.
3. TVL do not publish detailed advice about lawful and unlawful AV equipment configurations. This makes it difficult for individuals to assert that a given AV configuration is lawful, if it is queried by TVL visiting staff. It also presents the problem of TVL staff making false or exaggerated claims about the need for a licence, and the "need" for equipment to be checked.
4. TVL do not publish detailed information about the process to which they wish to subject people. This in itself raises issues with regards to Article 8, HRA [Source: Liberty]
5. The letters/visiting regime is outside of legislation. Therefore neither legally licence-free people or Evaders are required to participate. This reflects legal principles on privacy. However, TVL refuse to state clearly the consequences, if any, of refusal. (Again, raising HRA issues).
6. The BBC's entire position seems to be based on two contentious misinterpretations of the Law. The first is that the requirement in the Legislation to detect and prosecute evasion equates to a requirement to ensure that every UK address is correctly licensed. The second is that having built up their remit in this way, they then claim legal authority based on the notion of extrapolation of powers. (i.e. if Parliament intended them to police every UK address, then there is an authority to do so even though it is not explicitly stated). This is nonsense, especially in the context of activities which are within the remit of the Human Rights Act.
7. As well as a lack of detailed information about AV configurations, there is also a lack of consistency about the offence. TVL's website states that a licence is required to "watch or record TV broadcasts as they are being broadcast", however, in many accounts of TVL visits and court cases, this rapidly degrades to incorporate notions of capability, in line with the Rudd precedent. It is unfair to citizens and unhelpful to all concerned to tolerate this level of inconsistency/inaccuracy in headline information, especially when it is compounded by a lack of published detail.

8. TVL consistently refuse to give any advice to citizens regarding their rights. Their communications are a mess of legalese (some of which is missing significant caveats), information about TVL's non-statutory wishes, and misinformation. This places citizens in a difficult position in that they have to seek further guidance, usually from the Internet, some of which is misleading or incomplete. It is not in the public interest for BBC/TVL to communicate in such a partisan way with the public, and again it raises HRA issues. It is inconceivable that a vast, wealthy communications organisation lacks the capability to communicate fairly and clearly with citizens. Therefore we presume malicious intent.

9. TVL field staff are subject to a rigorous performance management scheme. This targets 36 calls per day [Source: TVL Annual Report]. This pressure to "perform" is problematic in itself, and the very definition of "performance" in this context may be hostile to the principles of justice (in that both shortcuts and false reporting are encouraged).

10. In the context of performance incentives, and otherwise, the TVL regime is a classic conflict of interest, in which the BBC is both the beneficiary and the operator of the enforcement activity. It is complicated further by the complex relationship between the BBC, Capita and the Courts. In particular, Capita has a financial interest in maintaining levels of prosecutions, both in terms of contract performance, and because it appropriates costs orders to itself (raising, perhaps, £12500 in a single two-hour TVL Court session).

11. Representations have been made about the many issues with the Licence Fee enforcement regime. These have been largely unsuccessful. It seems that the BBC Trust lacks the necessary foresight or authority to examine the issues properly. Ministers at the DCMS have denied any role for Government, claiming, bizarrely that this is an issue covered by BBC Editorial Independence.

Ministerial repudiation of accountability would seem to be quite a serious development, with potentially constitutional consequences. In short, we should not have policing of citizens of the UK by any force that is not authorised by, and accountable to Parliament. This Ministerial coyness emanates equally from the two major parties, and we can only hope that something other than self-serving deference to the BBC is in play, though the evidence is not good on this point.

It's sad that in the context of the gross failure of governance regarding the Savile scandals that Ministers and BBC Executives seem to lack any awareness of the possibilities for public harm inherent with a nationwide enforcement operation that lacks any credible control or accountability. A number of TVL field staff have been prosecuted for crimes committed in connection with their employment. These range from fraud and false accounting (which involve false allegations of TV Licence evasion) to more serious and violent crimes.

12. The lack of use of electronic detection is a serious and fundamental issue. The Law seems to be based on the assumption that it will always or almost always be used. The poorly-designed, substitute manual process that BBC/TVL has unilaterally implemented is at the heart of the many issues with Licence Fee enforcement.

## **The Law**

1. There is no statutory requirement for TVL to make physical checks of unlicensed premises. The Law seems to presume the use of Electronic Detection, but this is not in routine use. If it does exist,

it will be ineffective against one or more reception technologies (there is no one approach that could span them all with satisfactory effectiveness). There seems to be no recognition at the BBC that removing a non-invasive process that targets only evaders and replacing it with an invasive inspection of all unlicensed premises raises issues of Law.

2. Common Law and HRA principles provide for a right to privacy in one's home. It is not clear what TVL's claimed exemption from this is. A number of defences have been cited by BBC/TVL over a period of years including: consent, an agreement with the Home Office from 1991, and a "principle" of extrapolation of powers based on logical need. These would all appear to be bluster. The BBC should not be using blustery responses to the public on matters of public policy. The BBC has also cited that certain matters of detail on this issue cannot be released to the public, because they are "subject to legal privilege" and "might be used in the BBC's defence" in a notional legal action. Again, these are not valid reasons to restrict basic information on matters of public policy.

3. *Withdrawal of the Implied Right of Access* (WOIRA). TVL is now in receipt of a large number of these instructions, made under Common Law. In the past it has willingly accepted them in good faith. However, as their number has grown (to more than 10,000 in 2014) it has become increasingly hostile. It has imposed (without a clear legal justification) a 2-year limit on the duration of WOIRA orders, and has in certain circumstances used them (inappropriately) as partial justification for Search Warrants. Again, lack of clarity, inconsistency and unilateral impositions by TVL appear to be the order of the day. Whilst WOIRA remains a possibility (which it legally does) there will always be a number of households where TVL is banned, and again this leads to distortions and unfairness in the distribution of "visits".

A refinement of WOIRA, based on setting it into a HRA context, has been accepted by TVL, however it is not clear (a) why it would not presume an HRA context for all instructions and communications with the public, as required for a Public Authority, and (b) whether this acceptance would continue to be honoured in good faith, should the numbers rise as with basic WOIRA.

## B. Letters

### Description of TVL Approach

TVL send vast numbers of letters (c. 90 million in a typical year). Of these, a significant proportion follow the pattern of being sent monthly to unlicensed addresses. That includes both named and anonymous recipients (i.e. addressed to "The Legal Occupier").

Those letters and their distribution methodology are designed to threaten, harass and deceive. TVL themselves state that the letters are written with escalating strength. This implies a theatrical exploitation of language to create an effect beyond the emotionless imparting of information which ought to be the sole stylistic approach of "official" communications.

### Flaws

1. The letters rarely address the issue of the extent to which TVL demands are simply the whims of the BBC (they are not statutory requirements). It's undoubtedly the case that TVL is exploiting the public's misperception of them as an official agency to demand compliance despite any meaningful informed consent or legal requirement. It should be a basic principle of good governance that these process/policy requests are clearly distinguished from legal requirements. (There is a precedent for this in the Vehicle Odometer reading request on the DVLA's V5 form).
2. Some of the letters compound the issues in (1) by setting deadlines for compliance. The effect of a deadline is to increase the public perception of legal authority behind a demand. There is no requirement to respond at all, let alone within a deadline.
3. In the case of the 10 Day deadline letter, it seems likely that the time window is insufficient for a response by the citizen to reach TVL in time for the follow-up "action" or follow-up letter to be cancelled. In previous correspondence the BBC has suggested that this can take 6-8 weeks. The most credible explanation is that the entire gambit is fake, which is not an acceptable approach for a public authority.
4. The BBC Trust states that the letters are overseen by the Advertising Standards Authority (as direct mail), however the ASA state that they do not cover them, and the letters are not direct mail advertising. Analysis of TVL direct mail reveals a large number of potential breaches of the ASA Codes. This needs to be resolved. There is no reason why the BBC should not subject their official communications to the same standards and regulatory processes as most other organisations (including Government agencies), however the letters would need to change to achieve compliance.
5. The role of the letters is to inveigle the citizen into the TVL enforcement process, which follows from BBC/TVL's lack of statutory authority. As well as the individual threats and demands requiring clarification in regards of legal standing, the overall process also requires this. If the Law protects citizens and enables them to ignore TVL without prejudice, then this should be made clear (and made to happen).

6. Some citizens receive these letters every month. This seems wildly excessive and it is difficult to see that level of frequency and repetition as anything other than a campaign of harassment. TVL excuse this by claiming the need to contact new residents at an address previously occupied by someone legally licence free as quickly as possible. However, TVL also claims that the number of LLF households is very small, and the public awareness of licensing requirements very high. These facts are inconsistent with its claims regarding monthly letters.

The other interpretation is that because TVL is unable to "catch" evaders with any degree of efficiency it simply floods the country with as many letters as it feels it can justify. This seems more plausible, but it also places the burden of TVL inefficiency onto innocent citizens.

In either case, given that the vast majority of the population fully understand the need for a licence, the whole approach is questionable and fulfils the criteria for a long-term campaign of harassment.

7. TVL state that the letters can cease if citizens accede to its non-statutory demand that they "get in touch". Aside from this euphemistic approach to communications, many people continue to receive letters after having contacted TVL on multiple occasions. This was observed as an issue by the BBC Trust in its March 2009 Review, and yet the problem remains. "Getting in touch" simply means being told that a TVL sales person may call at the address to "check" the "claim" that no licence is required. It's clear that TVL is inventing terms for its process steps that have no basis in law, and again, it presents them to citizens without setting them into that context. It's difficult to see this aspect of TVL's process as anything other than a coercive gambit to achieve citizens' compliance with Search where none is legally required. TVL should not be using one unacceptable aspect of its own processes as a punishment to promote compliance with another.

8. Vulnerable people, including those with learning difficulties and mental illness have reported experiencing severe distress as a consequence of this coercion, and the stress of deciding how to handle TVL aggression and incompetence. The lack of clear information about what will happen in the case of legally licence-free households exacerbates this. In the case of paranoid feelings, the spectre of TVL's false identity, fake threats and coercion looms large. Some people in these groups report buying licences that they do not need simply to stop the harassment.

9. In isolation from all of the general issues, above, the wording of some parts of most of the letters is offensive and objectionable in and of itself. It is not acceptable to use phrases like: "We want to ensure you have the information you need before a hearing is scheduled at your local court", or "Official warning: we have opened an investigation". The truth is that both these statements are false and meaningless. There is no trial pending, and no investigation, new or otherwise. It is simply inappropriate to use word games to coerce or threaten innocent people, or to rely on people's credulity to achieve the aims of official communication. The law also requires organisations to make reasonable adjustments to accommodate the needs of disabled people. These letters are known to cause severe distress to some vulnerable people, especially those with learning difficulties and mental illness, as well as people with poor English. We can only conclude that the BBC values a notional, marginal increase in Licence Fee revenue above the needs of those people and above the broad requirement for transparency and respect in official communications. If the organisation were properly accountable, it is hoped that this notion would not be allowed to persist.



**The Law**

Both the Protection from Harassment Act and the Malicious Communications Act are potentially relevant to TVL letters. However, they both have exemptions that TVL claim apply to their activities.

Some citizens have successfully used "Cease and Desist" instructions against TVL to stop the letters, without otherwise agreeing to any of their demands. There are insufficient numbers to know whether this has negative consequences.

Generally, legally licence free people are in a dilemma with regards to the extent to which they should accede to TVL's non-statutory "demands". The principled approach is arguably to reject the entire process, mindful that this sends a particular message to TVL about the unacceptability of their actions.

## C. Doorstepping

### Description of TVL Approach

No electronic or automated detection technology is in routine use. TVL therefore go door-to-door between unlicensed addresses to ask/demand an explanation as to why there is no licence, with no prior suspicion, save for some rudimentary address-based demographics. An Interview under Caution takes place, if the TVL staff member deems it appropriate. (There is substantial evidence to suggest that this key decision-point is approached with a great deal of casualness and lack of consistency). The process, as written, introduces the interview when someone admits that they have a TV, but no Licence, but this is not an offence.

### Flaws

1. Where someone is legally licence free, this process immediately provokes the situation where their innocence is being challenged by an uninvited "official" on their doorstep. This in itself is objectionable, especially since there is no evidence of evasion.
2. Legally licence free people are generally asked to undergo an immediate search (in the legal sense) of their premises, with the aim of examining any AV equipment found. As with other aspects of TVL process, there is rarely any suggestion that this is voluntary and not a legal requirement. Furthermore, the citizen has rights under HRA Article 8, and PACE that are not explained, nor is there any meaningful attempt to comply with the requirements of PACE in regards to Search by Consent.
3. It is not clear what the consequences for non-compliance with a TVL demand for search are, since TVL do not publish a guide to their processes. (Again, a probable infringement of HRA Article 8). In practice, the TVL staff member leaves, and a further visit takes place at some point in the future. However, there have been a number of instances where this kind of disagreement has led to false allegations of evasion being made by TVL employees, that in some cases are sustained to Summons and beyond.
4. With regards to people who admit evasion, or where the TVL staff member sees evasion evidence first-hand, the situation is equally unsatisfactory. The sole form of evidence in most cases is the multi-part paper form: TVL178. This form is unfit for purpose: the questions no longer distinguish legal and illegal behaviours, it is corruptible through the addition of information after signature, the interview process itself is corruptible without leaving any evidence on the form, it is not an accurate or independent record of interview (as required by PACE), and in extreme cases it can be completed without the knowledge or consent of the accused, giving rise to subterfuges to obtain or forge a signature. Some TVL178s are also submitted for prosecution without a signature or without clear evidence of an offence within them, both of which would appear to be an abuse of process.
5. In many cases, the citizen does not have the language skills or knowledge of the law to successfully withstand pressure and deceit by TVL staff to complete the TVL178 form. TVL were warned about language/translator issues by CAB in the 2008 Licence Fee review that was undertaken by the BBC Trust. It is disappointing that there is still a problem.

6. The fundamental issue is that TVL staff receive commission in respect of doorstepping activities. There is a clear conflict of interest between these financial incentives and the fair process of justice.

7. In addition to "visits" being made by Capita staff, TVL/BBC also employ G4S to hand deliver calling cards to unlicensed addresses. It would appear that no legitimate purpose is served by this, because G4S staff never attempt to make contact with householders. The purpose seems to be to create the impression of an "active investigation" by TVL. More generally, the use of Calling Cards by TVL themselves seems questionable. What purpose is served in alerting a resident to the fact that a TVL "visit" has been missed? The most plausible explanation seems to be that TVL has "invested" in the visit and seeks to get some, small benefit from it in terms of harassment.

8. TVL Field staff do not appear to receive technical training to support them in their work of examining and testing AV equipment. The reason seems to be that the BBC expects them only to use equipment as an end-user would. However, such technology continues to become more and more complex, and there is also greater diversity of equipment in use. In the situation where a TVL staff member is required (by his/her employer) to prove that a particular AV configuration is never used for broadcast reception, it seems implausible that a level of expertise would not be useful.

9. TVL have consistently refused to offer or make appointments for their "visits". This refusal makes it clear that a key objective is to catch evaders by surprise, however this impacts innocent citizens, also. A Freedom of Information request sought information about whether this policy was maintained for disabled people (who may need assistance in properly dealing with the TVL request, which would have to be organised). The response was that it still applied.

19 scenarios (based on hundreds of actual cases) of abuse of the interview process have been submitted to TVL in an official complaint, and a response is awaited.

## **The Law**

These activities span various legal considerations both within PACE and in the HRA, Articles 6 & 8.

We contend that the overall doorstepping process is a breach of Article 8, since it is an interference with privacy for which there is no legal requirement. The interview process has various flaws under PACE, as well as in many cases being the basis of a fundamentally unfair trial under Article 6.

The BBC's own legal position is unclear and muddled. In some correspondence, they cite consent as being the main exemption to Article 8 considerations. However, their operational approach is some distance from the fully informed consent that would be required if consent was pivotal. (Unfortunately, we lack the legal resources to obtain a definitive opinion on this point).

The first stages of their "investigation" obviously take place before the citizen is ever presented with the opportunity to make any election with regards to consent (though there is no logical reason why the question should not feature in every TVL letter and also in its online "declaration").

Even on the doorstep, there is no mandated form of words, issued by BBC or TVL Management that is to be used to gain consent, and there is no supervisory process by which the gaining of consent is validated or collated for compliance assessment.

It's clear that the BBC's allegiance to UK Human Rights is tenuous at best.

## D. Search Warrants

### Description of TVL Approach

The most notable thing about TVL Search Warrants is that they are very, very rare. Members of the legally licence free community have tried several times to obtain the overall number, but the BBC and HMCTS have been less than helpful in respect of something that ought to be a matter of public record. A rough estimate of the number of TVL Search Warrants is around 150 per year in England, and none in Scotland. There is insufficient information regarding Wales and Northern Ireland.

These rare Search Warrants are clearly reserved, then, for cases that are somehow remarkable. Though with such a basic offence, it's difficult to imagine what that remarkableness might be. There is some evidence to suggest that TVL targets those who are particularly defiant in regards to TVL operations. This is a potential breach of Article 14 of the Human Rights Act.

### Flaws

1. For the few Search Warrants that are carried out, there does seem to be widespread abuse of process. TVL falls at the very first hurdle in this respect, since its practical criteria for Warrant application are not consistent with the requirements of the legislation for "reasonable grounds". Instead, it has various criteria all of which can be (and are) readily satisfied by behaviour that does not require a TV Licence. As a consequence, whilst the number of Warrants is small, the proportion of Warrants that fail to identify evidence of evasion is high. This is not acceptable, as warrants are not to be used for "fishing expeditions". It is also inconsistent with the notion of a reliable means of TV detection. Even if electronic detection were ineffective or too costly in respect of routine use, it would make sense to use it both prior to applying for a Warrant, and immediately before Warrant execution, but this does not appear to be happening. We can only speculate that its effectiveness is so low as to make it irrelevant for all practical applications.

2. One of the warrant criteria cited by TVL is non-communication. Whilst this appears to be consistent with S.366 3(a) of the Communication Act, there is clearly an issue here since no one is required to communicate with TVL. We assume, therefore, that TVL's interpretation of the Law is incorrect (and the Law actually relates to a specific non-communication during specific operations designed to target specific "reasonable grounds" for believing an offence is/has taken place, rather than general or strategic non-communication prior to the establishment of any reasonable/rational grounds for suspicion).

Despite this interpretation of the Law, and a further twisting of Withdrawal of the Implied Right of Access (WOIRA) into a complete ban on communication (which it isn't), there are well over 10,000 WOIRA instructions in place. This is a good demonstration of feelings about TVL's approach.

3. Overall, the entire Search Warrant process seems to be out of date and inconsistent with the features of modern AV equipment. In particular, TV can be viewed on computer equipment, but this equipment is outside the scope of TVL Warrants, being covered by Section 49 of RIPA.

4. Video evidence suggests that there is abuse of process within the Search Warrant execution. Where the search and examination provides no evidence of evasion, TVL should leave the premises.

Instead they are shown to then begin questioning using their "TVL178" form. It is not acceptable to question someone about an offence that TVL themselves have just demonstrated is not taking place. Moreover, a Search Warrant (failed or otherwise) is not an acceptable method of compelling, coercing or even facilitating Interview under Caution.

5. There is a further offence under S.366 (8) whereby a TVL search is "obstructed" by a person. Although the number of Warrants is small, the proportion in which an allegation of Obstruction is made seems to be very high in recent years. It seems likely that TVL have the political need to get a "result" when they apply for a Warrant, and are choosing to charge the Obstruction offence in the absence of any evidence of Evasion, often on the flimsiest evidence. In the overall context of Justice, it seems unfair to charge Obstruction when it is BBC Policy not to use the full range of powers under the Warrant (i.e. force is never used).

6. There is a major flaw of interpretation (or possibly of drafting) within S.366 of the Communications Act. The Act specifies search and examination of any "TV Receiver" found. However, TV Receiver is defined by the 2004 S.I. as being a device installed and used for the purpose of receiving TV broadcast programme services. Therefore a person legally without a TV licence might have a TV Set, but that device is not a TV Receiver, having not been installed and used for reception. That device is therefore outside the scope of any Warrant under this Section. It's not clear what legislators intended here, but the BBC's failure to pick up this issue and deal with it properly puts householders in the invidious position of having to choose between letting TVL breach the terms of the Search Warrant, or possibly receiving an Obstruction charge.

7. Following on from (6) above, the initial criteria for Search Warrants are drafted (by the BBC) in terms of "TV Sets", not "TV Receivers", so Magistrates are being deceived when a Search Warrant application is made in the context of an observation about a TV Set because possession of a TV Set is not necessarily an offence. A Search Warrant is being requested in the absence of reasonable suspicion that the sought after TV Receiver even exists.

8. Even after Warrant execution, the anomalies in TVL/HMCTS processes continue. People in receipt of Warrants have found it extremely difficult to get straightforward answers and information about the reasons for the Warrant, even though the Warrant Deposition ought to be an official document, readily available to an authorised recipient.

9. The various issues with Warrants suggest to us that the Warrant Deposition process is not being properly observed, and that clumsiness in respect of the storage and release of official information may be being done to impede scrutiny. In particular, there seems to be little or no observation of the requirement that "a Judge must be told anything to the knowledge of the party applying which might weigh against the making of the order", in the context of the *ex parte* Deposition proceedings.

10. TVL staff executing Search Warrants do not receive any technical training. This seems highly inappropriate since they are charged with (potentially) presenting technical evidence to a Court on the extent to which the AV configuration is/has been used for broadcast reception or is capable of it.

## **The Law**

The main provisions for Search Warrants and the offence of Obstruction are set out in S.366 of the Communications Act 2003.

## E. Prosecution Process

### **Description of TVL approach:**

Once a TVL178 form (or in some cases, a Section 9 Witness Statement) has been completed and submitted to TVL HQ, there is a process of filtering and in some cases, further correspondence. The aim is to gain licence sales and assess sales that were made at the time of interview. The end result is that only half of all documented evasion offences result in summons [Source: BBC Trust]. We suspect that this is another in-built bias in the system, in which people with the means to immediately buy a licence are "let off" the evasion offence, and those who do not have the means are prosecuted. Recent information suggests that TVL may be demanding full payment under these circumstances, compounding this issue.

In the Courts, the vast majority of defendants do not attend their hearings, and are found guilty by default. Conviction rates are around 99% (mainly due to non-attendance) and fines are small, but often defaulted. A very small number of defaulters are sent to prison each year.

Whilst Licence evasion has issues in common with other minor offences, in terms of whether justice is truly being served by a very mechanical process in which defendants' rights are reduced to a bare minimum, there are also some special features of TVL cases that are worth documenting.

### **Flaws:**

1. It is not clear what the parameters are for filtering of prosecution cases, or of offering alleged evaders a "last chance" to buy a licence. Ultimately, it seems likely that it is the BBC's interests that are in question here, not the public interest. Whilst evasion is estimated at 5%, or perhaps 1.3 million households, a prosecution rate of 200,000 per year is not going to impact on the overall long-term figure. In addition, it is probable that it is not in Capita's financial interests to achieve anything other than a "tick-over" rate of prosecution, again, at odds with the public interest.
2. For an innocent person, falsely accused, the offer to buy a Licence presents a dilemma. There are anecdotal accounts of cases where representations have been made to TVL regarding false allegations, and TVL have agreed to withdrawal on the condition that a licence is purchased – clearly an abusive approach.
3. Even acknowledged evaders have rights in the arrangement of their defences. Some of the technical flaws in the interview process documented above are probably beyond the knowledge and capabilities of a typical lay-person to present in Court with any degree of effectiveness. Since TVL prosecutions stand out from other minor offences in that physical evidence of evasion is rarely presented in Court (indeed, rarely exists), the defendant's case rests primarily on deficiencies with his/her confession on the TVL178 form that s/he will lack the capability to address. This seems unfair in the context of the very limited extent to which Legal Aid might apply to these cases.
4. In some cases, TVL employees have been put on the stand, and it's clear that their responses have been deceptive. Alternatively, falsified details in the prosecution evidence have been discovered in Court. However, we have not seen any prosecutions for Perjury or Perverting the Course of Justice

(outside of the cases brought by TVL themselves when financial fraud by employees has been discovered).

5. Whilst the structure of TVL hearings is similar to other minor offences, the approach to volume is not. TVL cases are heard in special dedicated sessions. Typically, these are 2 hours in duration and 80-120 cases are heard in that period. As previously noted, the majority of defendants are prosecuted in their absence, and those hearings can take as little as 30 seconds to process. It's difficult to imagine justice being well-served in such a short period of time.

6. In the event of a Not Guilty plea, a second hearing is scheduled. Whilst this is the case with other minor offences, it does place an additional burden on defendants. The information provided by the Courts seems to be poor, and we often have to explain the process to defendants in order that they can get a true perspective on how to approach their cases.

7. There are also reports that TVL cases are scheduled at Courts many miles from where defendants live. Given that some defendants are reliant on public transport, it seems quite unfair to undermine someone's right to appear in their own defence in this way.

## **The Law**

It's not clear how the situation arose in which the majority of TVL defendants are prosecuted without physical evidence of evasion. In the context of the issues with the interview process, including financial incentives, it is likely that justice is not well served by this approach.

Due to the PACE issues with the TVL178 form, because the majority of interviewees report one or more issues with the way in which the interview process is described to them, or because there is no caution, it's likely that the majority of cases have flaws which, properly scrutinised, would lead to dismissal or conditional discharge.



## F. Anti-TV Licence Campaigning and Article 14

Article 14 of the Human Rights Act states: *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

In their statements to third parties such as the ICO, the BBC has stated that certain decisions have been in the context of their belief that there is a group of individuals, communicating and organising on the Internet who wish to see the demise of the Licence Fee. Whilst that view may be factually correct, it is not a valid consideration in the determination of matters of public policy. Criticism of the BBC and/or the Licence Fee is a legitimate activity, and it is not for the BBC to adopt defensive measures or organise its public functions to attempt to deter or disrupt such activity.

In using the existence of such a group in its reasoning in determining policy or actions it risks discriminating against both that group, and other legally licence free people. Given that the existence of the BBC and the Licence Fee is a matter of public policy, anyone holding an opinion about those issues has the protection of Article 14.

### In Detail

1. Exercising our Charter Rights under Article 8. A number of people have asked TVL for detailed information on their Policy regarding people who are legally licence-free. The only information released is a redacted version of a general procedures manual, which leaves many questions unanswered. In failing to communicate properly with people who wish to use their legally licence free status as a means to exemplify their opinions about the BBC and/or the Licence Fee, the BBC/TVL are in breach of Article 14. (Since they have no issue in communicating truthfully and completely with people who do have a licence).

Finally, in seeking to use Search Warrant criteria that are not conclusive evidence of Licence Fee evasion, but can be evidence of lawful behaviour by people within our group, there is a further breach of Articles 8 & 14, where warrants are specifically directed at people who have published anti-BBC or anti-Licence Fee information or rhetoric.

2. Exercising our Charter Rights under Article 6. TVL/BBC appears to have mounted a number of actions, including search warrants and prosecutions, against people who have published information about TVL in the public domain. The correct course of action would be, of course, to use civil remedies and the Data Protection Act (if applicable) to remove information from the public domain that is libellous or breaches another person's right to privacy. The matters in contention could then be determined by a Court, if necessary. In cases like TV Licensing vs Michael Shakespeare, the BBC/TVL has gone to Court with highly questionable evidence and ethics, seeking to prejudice the right to a fair trial for largely political reasons. Sadly, the Magistrates Court sided with TVL in the first instance, and the case had to be overturned on Appeal.

3. Exercising our Charter Rights under Article 10. Legally licence free people have a fundamental right to free expression, subject to the details of Article 10. The BBC has sought in many cases to undermine those rights by putting pressure on other information publishers (such as Youtube) to remove items that the BBC finds questionable. It is not for the BBC to attempt to censor citizens or information publishers in this way, nor is its narrow self-interest an acceptable reference point in the matter.

In seeking to suppress information connected with the legitimate expression of a “political or other opinion” the BBC is in breach of Articles 10 & 14.

## G. Conclusions and Decriminalisation in the Future

### **Present Approach**

As noted above, TVL hearings are special sessions, set aside from other types of offences. Cases are presented in a rapid-fire fashion usually in the absence of the defendant, and the degree of scrutiny by Magistrates varies greatly. It's not clear why the Courts accept a weakly-drawn, inconclusive confession on a corruptible medium as proof of an offence beyond reasonable doubt, nor how this came about.

### **Decriminalisation**

The Decriminalisation debate therefore presents a potential remedy to some of these issues. Alternatively, it may compound them, for example by requiring only proof on the balance of probabilities, or by setting in progress civil debt recovery without conclusive evidence.

The Courts at the moment are at least mindful of the requirement to set fine amounts commensurate with disposable income, and the need to give defendants on low incomes time to pay. Any fixed penalty regime which replaced these considerations with a higher fine required in a single payment would obviously impact defendants on low incomes, who are disproportionately represented already.

Young women are over-represented amongst TVL defendants, quite unlike any other offence. It's not entirely clear why this is, but it strongly suggests in-built biases in the BBC's procedures and policies. It confirms that there are practical, potentially socially divisive consequences of the many flaws in the TVL system. We can only question the BBC's attitudes and behaviours in this matter, which vary wildly from dispassionate complacency to outright derision. In particular, it seems like TVL favours urban over rural, and poor areas over wealthier ones. As with the question of the number of non-prosecutions, this again seems like the BBC's narrow self-interest rather than the BBC's conscientious interpretation of the public interest.

Whilst we have many questions about the consequences (intended and unintended) of decriminalisation, we probably see it cautiously and on balance as a step in the right direction. Our ultimate aim is the abolition of the Licence Fee and its enforcement regime (which we regard as abusive, corrupt and intrinsically dysfunctional). The truly sad thing for us is not the harm that is being done so much as the trivial purpose for which it is being done. It is very much the world of sequins asserting itself over the world of the food bank.

# Appendix B: Complaint to TV Licensing, Dec 2014

Operations Director  
TV Licensing  
Darlington  
DL98 1TL

Dear Sir/Madam,

## TV Licensing "Official Investigations"

I am writing in response to your various letters. These state that my address is now under "official investigation", and in one case gives a deadline of 10 days to become "correctly licensed". I object to the tone and content of these letters, and I object to a public authority using the postal service to make hollow, deceptive and indiscriminate threats to me and other innocent citizens.

- 1) Dealing with the "10 day" subterfuge first, I would make the following points:-
  - a) No statutory powers exist by which TV Licensing can compel citizens to respond or to provide information. In setting out a deadline gambit, I fear that most citizens will be deceived into thinking that you are acting with authority - an authority you do not have. I do not feel that such subterfuge is appropriate.
  - b) I understand from previous statements made by TV Licensing that there is a 6-8 week delay upon the modification or cessation of letters. Please can you assure me, therefore, that you have not established a process whereby the follow-up letter is sent irrespective of a "satisfactory" response by the citizen?
  - c) The "10-Day" letter instructs me that I have 10 days to become "correctly licensed". However, I am already correctly (un)licensed. I feel that TV Licensing ought to use a less clumsy, less confrontational approach to correctly address recipients of the letter who may not need a licence. I understand (again from information provided by BBC/TVL) that this group will form the majority of recipients of these letters.
- 2) Secondly, a number of your letters state that my premises are variously "under investigation", "official investigation", etc.

It is my understanding that TV Licensing has only limited permissions under RIPA to conduct investigations. Perhaps you could therefore explain what your "official investigation" consists of so that I may verify that you are acting lawfully?

Please can you confirm whether your "investigation" is conditional on some notional, presumed future consent on my part? And, if so, please explain why this information is not provided anywhere within your letters or website.

More generally, I have severe misgivings about the overall approach taken by TV Licensing. Some of these issues have been raised in previous correspondence, so allow me to raise some new issues that have come to light since then.

- 3) A leaked BBC document lists a number of example justifications for obtaining a Search Warrant under Section 366 of the Communications Act.

**1.5 Examples of evidence that may be used**

- *Set seen but not in use. No admission, entry refused.*
- *Occupier admits set but no admission of use. Entry refused.*
- *Set denied, programme heard.*
- *Admission of broken set on premises. Inspection refused.*
- *Inspection is allowed after delay. No set is seen, but circumstantial evidence.*

Unfortunately, these examples fall some way short of the requirements of the Act, which specifies: “*reasonable grounds for believing ... that an offence under section 363 has been or is being committed*”. There seems to be no consideration given as to whether these examples could have a legitimate innocent cause, or that on the basis of TV Licensing’s own statistics, an innocent cause is statistically more likely.

Please can you therefore assure me that:

- a) Items 1, 2, 4 and 5 are not being used to obtain Search Warrants,
- b) Item 3 is only used to obtain a Search Warrant where the programme heard is from a live broadcast accurately and forensically matched to its first broadcast slot, taking account of Catch-up premiers, etc.
- c) The document concerned is merely BBC policy, and no agreement has been made with HMCTS on the adoption of this inadequate standard of evidence.

I do not understand why evidence arising from electronic detection is not on this list.

- 4) A BBC Trust document, entitled: *Procedure no. 3: Television Licensing complaints and appeals procedures*, makes reference to the Advertising Standards Authority as an appropriate escalation path for complaints regarding TV Licensing direct mail. Unfortunately, when approached with complaints, I understand that the ASA has declined to investigate.

I am concerned that the statement by the BBC Trust may be a source of false assurance that TV Licensing direct mail complies with the Law and the general requirement to be Legal, Decent, Honest and Truthful when it is far from achieving this standard, in my opinion.

Please could you therefore:-

- a) State definitively whether the ASA is the regulator for TV Licensing direct mail.
- b) Tell me whether as a matter of policy, TV Licensing aims to produce direct mail that is Legal, Decent, Honest and Truthful.
- c) Consider agreeing with the ASA that they will arbitrate upon your direct mail items, whether by way of a voluntary agreement, or otherwise.
- d) Address issues arising from TV Licensing direct mail (whether through adjudication or the adoption of industry best practice) which appears to breach the following sections of The UK Code of Non-broadcast Advertising, Sales

Promotion and Direct Marketing: 1.1, 1.2, 1.3, 1.4, 1.5, 1.9, 2.1, 3.1, 3.2, 3.3, 3.5, 3.6, 4.2, 10.4 and 10.4.1.

- 5) I am concerned about the many reports of irregularities regarding citizens' "confessions" to Licence Evasion offences captured by TV Licensing operatives in citizens' homes using the TVL178 form ("the form").

When a citizen's confession to an offence is obtained with the possibility of prosecution, it is vital that its status as a confession is clear and undisputed. TV Licensing procedures and common practices appear to depart from this standard and the standards required by PACE in a variety of ways.

There are various scenarios reflected in multiple, consistent accounts from victims.

- a) Failure to inform the citizen that they are being interviewed under Caution with a view to prosecution, and mis-describing the interview process and the form, so that informed consent and PACE rights are subverted from the outset.
- b) Exaggeration, obfuscation and manipulation of responses such that innocent responses are made incriminating.
- c) Use of arbitrary and inconsistent definitions of what constitutes an offence.
- d) Submission into the Court process of forms that do not contain evidence of an offence (with the knowledge that the majority of cases go uncontested).
- e) Tampering with forms during and after interview.
- f) Gathering evidence using the form even though it is incapable of rigour with regards to direct, specific and exclusive evidence of the evasion offence.
- g) Designing the form to be fundamentally skewed towards guilt.
- h) Designing the form and the interview process such that there is no verbatim record, in spite of the PACE requirement.
- i) Failure to caution.
- j) Preventing citizens from reading the form before signature.
- k) Deception over the nature of, and requirement for the signature. (e.g. "Sign here to say I called", "You are legally required to sign".)
- l) Failure to leave the "customer" copy of the 178 form with the interviewee.
- m) Use of coercive language and arguments. Use of intimidating body language.
- n) Failure to treat people with poor English skills fairly, and failure to provide translation resources where mandated in the interests of justice.
- o) Failure to properly address Right to Silence and Right to Counsel.
- p) Failure to adequately supervise this legally-critical process in the context of financial incentives for TV Licensing operatives.
- q) Failure to consider the interests of justice, including failure to assess the extreme difficulty within the overall legal process of a citizen overturning a "confession" obtained by subterfuge or oppression, or of proving the falsification of details.
- r) In extreme cases: falsification of entire 178 forms, or substantial parts thereof.
- s) In extreme cases: falsification of signatures.

I should caution you that in preparation of a response to many of the observations above you may wish to take legal advice to avoid incriminating BBC/TV Licensing with regards to the serious offence of Attempting to Pervert the Course of Justice.

The role of confession is to capture the citizen's willing and informed admission of an offence once they have dismissed (willingly and with informed consent) their Rights to Silence and Counsel. Any form of oppression, subterfuge, incompetence or negligence renders this process morally and legally unacceptable.

I suggest that the TVL178 form needs urgent replacement. Given that various technologies for securing information on paper forms has existed for many years, and that BBC/TV Licensing has been aware of these irregularities for some time, it seems likely that BBC/TV Licensing continues with these outdated forms and operational practices as a matter of deliberate policy, despite their manifest flaws.

- 6) I am aware of a small number of cases, where having executed a Search Warrant that uncovered no evidence of Licence Fee Evasion, TV Licensing have then embarked upon an Obstruction prosecution that would appear to have no legal substance.

Please can you assure me:-

- a) That an abuse of process is not being conducted using Obstruction charges for inappropriate reasons - perhaps performance statistics or political sensitivity?
- b) That Obstruction charges are not brought speculatively, nor as a "punishment".
- c) That TV Licensing operatives executing a Search Warrant will not pressurise the householder to provide their name if the householder prefers not to give it, nor will they or the Police search for correspondence to obtain a name, nor will TV Licensing operatives ask the Police to compel the name (since such compulsion would be unlawful in the absence of an arrestable offence).

Please accept these issues as a formal complaint within your official complaints process. Please note that I shall be raising a variety of issues and your response(s) with the Perry Review into the future of the Licence Fee. This letter will be sent to a number of interested parties, and your response may be shared and/or published.