BBC Response to Public Account Committee’s Ninetieth Report of Session 2017-19

This document notes the Public Accounts Committee’s (PAC) findings in the BBC and Personal Service Companies report (Ninetieth Report of Session 2017-19)\(^1\).

These responses are given in the context that, under its Charter, ‘the BBC must be independent in all matters concerning the fulfilment of its Mission and the promotion of the Public Purposes, particularly as regards editorial and creative decisions, the times and manner in which its output and services are supplied, and in the management of its affairs’; and should ‘duly consider the expectations of Parliament (including those of the Public Accounts Committee) which have been formally communicated to the BBC’.

Recommendation 1: The BBC should write to us by June 2019 with clear plans for making the arrangements in this area simpler, clearer and more consistent.

In 2018 the BBC undertook a review of on-air roles with the assistance of PwC\(^2\). Since that review the BBC has been using an on-air fee comparison tool, Tableau, for the engagement of presenter and contributor roles. The Tableau software enables the collation of all the underlying data we have recorded across 1,850 engagements over two years to ensure that pay is appropriate in respect of the specific roles to which it relates. In addition, the tool enables the position of any one individual within a programme category to be considered for fairness and value for money. The Commercial Rights and Business Affairs team is able to view remuneration and make comparisons across the market. Tableau is also used at the BBC On-Air Talent Approvals Group to stress-test deal-makers’ submissions around value for money and fair pay within a particular cohort of presenter.

Following the PwC on-air review, the BBC also re-considered its processes and governance around on-air engagements – restating the approvals pathways so that all engagements by division will be managed in the same way. The BBC introduced certain approval points that, if met, require an engagement to be reviewed centrally at the On-Air Talent Approvals Group. This was reviewed in the NAO’s May 2019 report into managing the BBC’s pay-bill\(^3\).

The BBC has also carried out an employment status review of roles in Network News, the Nations, English Regions and Sport programming. Where the assessment of these roles has resulted in a Staff outcome, individuals in these roles have been mapped to the relevant Career Path Framework and individually consulted with before being moved over to the correct contract.

To increase consistency, the BBC is also introducing a Central Assessment Team which will be responsible for the consistent assessment of Employment Status for these individuals. All requests will be assessed using the appropriate frameworks such as the CEST or the latest HMRC guidance and records will be kept for each decision made. This team will work closely with other specialist

---

1. Published 5 April 2019
2. [https://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/on_air_talent_review.pdf](https://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/on_air_talent_review.pdf)
teams within the BBC to ensure knowledge of the business is kept current and relevant and will respond to changes in legislation or emerging case law to ensure the frameworks are updated.

Recommendation 2: The BBC should write to us by June 2019 to set out how it intends to ensure that it will exercise proper governance over key operational changes in the future.

The BBC and its Board are fully aware of their responsibilities, set out under the Charter and Agreement. These include a general duty to ensure rigorous stewardship of public money. As the Committee notes this Board, since 2017, has engaged extensively with the issue of PSCs. The Board will continue to fulfil its duties to the highest standard and will continue to set out how it will do this annually, in the Annual Plan.

As in the past, all major programmes and projects that form the BBC’s Critical Projects Portfolio will continue to be monitored on a monthly basis by the Board and, quarterly, by the Audit and Risk Committee (ARC). The ARC, supported by scrutiny from the Executive Committee, will also look annually at the composition of the portfolio and recommend any changes to the Board. Specific discussions and items on particular projects and risk areas will continue to be discussed at the Board, ARC and Executive Committee as appropriate and challenge will be provided as necessary by non-executive directors.

In addition, to increase consistency and governance, an Operational Steering Group has been created to exercise governance over key changes. This group will be responsible and accountable for oversight, direction and approval of all frameworks/policy changes. The group will be made up of the Group MD (Bob Shennan), the Chief Finance Officer (Glyn Isherwood) and the Chief HR Officer (Valerie Hughes-D’Aeth).

Recommendation 3: The BBC should write to us by June 2019 setting out how it will gain assurance that its efforts to improve its communication with affected individuals have been successful.

In the same letter, the BBC should also outline how it is monitoring the numbers of people assessed with a particular tax status.

The BBC has learned lessons from its previous experience in communicating changes in employment status assessment and freelancer engagement. We welcome the committee’s acknowledgement that the BBC does more to communicate with the freelance community we engage with following the introduction of the off-payroll legislation for the public sector and changes in responsibility for assessing an individual’s employment status in April 2017.

The BBC now centrally communicates a consistent message ensuring that those affected, as well as line managers and other stakeholders such as agents, have the correct and consistent information. Our objective is to ensure all affected individuals understand what any changes mean for them, the support that is available to them and what action they need to take, if any.

We have undertaken a targeted approach using email, online and face-to-face sessions to allow messages to be conveyed clearly with those affected able to ask questions and provide feedback.
By centralising our communications, the BBC is able to ascertain the percentage of those who opened the email therefore make a judgement as to how widely the communication has been received. These tools allow the BBC to identify how much further communication is required in the circumstances that those affected have not opened the email. We will, for example, be able to target further communication to line managers or to those who work with individuals who are impacted by the changes.

Further steps taken to improve communication include; adding personal as well as business email addresses to distribution lists, posting letters for those who have not provided email addresses, working with Deloitte to hold a series of webinars, meetings undertaken with working groups as well as the unions and line managers on changes, organised drop-in sessions for those affected and the BBC has also established a helpline.

With regard to the monitoring of tax status assessments, the process for the Central Assessment Team to test and record individual tax and employment statuses is being piloted at the moment, with a view to introduction across the BBC from July. This will be a contracting requirement for the engagement of roles. All roles will be assessed against the relevant framework and the outcome recorded, leading to engagement on the appropriate contract type.

As the NAO’s report into the BBC’s engagement with personal service companies⁴ identified, in some areas the use of clear existing guidance means there is no ambiguity over employment status for tax purposes. In these instances, the central compliance team is notified of the engagement and the employment status is recorded that way. Where this is not the case, i.e. existing guidance does not clearly define employment status, roles will be submitted to the central compliance team for assessment. The central compliance team will consistently apply HMRC guidance and the CEST tool where necessary.

**Recommendation 4:**
The BBC should write to us as soon as it has reached a settlement with HMRC, providing details of this settlement, or, if such a settlement has not proved possible, details of its plans for resolving individual’s cases. This should also include an update on the status of the mediation process.

The BBC should write to us, by June 2019, outlining how it plans to assess the potential loss of employment benefits to individuals, and the progress made so far in the number of people assessed.

As previously explained to the Committee, the BBC is in discussions with HMRC with a view to reaching a global settlement that would cover all affected presenters. Settlement discussions have continued with HMRC during April and May and another meeting has been scheduled for June 2019. Given the complexities involved in this matter, and although progress is being made, the discussions are necessarily taking time. We will provide a further update once the process has come

to a conclusion. In the meantime, the BBC has published the broad principles it intends to apply to the settlement process (see enclosed the BBC’s press statement of 25 March 2019).

While settlement discussions are continuing, it has been decided to put on hold the mediation process, which would consider individuals on a case-by-case basis, rather than run overlapping processes. In the event that the settlement discussions with HMRC are not successful, the BBC will revisit the position in respect of the mediation process.

As the 2014/15 tax year was due to fall out of time for HMRC to be able to start investigations in individual cases, in March 2019, HMRC issued determinations to some presenters in respect of that tax year. The BBC informed the affected presenters of HMRC’s action and explained why determinations were being issued and the process for appealing or settling these determinations (a copy of the FAQ document made available to presenters to explain the position and the presenters’ options is enclosed for reference). The BBC also confirmed that if an affected presenter chose to settle with HMRC in respect of a 2014/15 determination, it would consider whether it was appropriate for the BBC to contribute towards the amount due (on the basis of the principles that have been discussed with HMRC for the global settlement). A helpline was also set up to answer individual queries.

Issues around employment benefits will be considered in the light of the outcome of the discussions with HMRC. As with the underlying tax issues, the benefits question raises complex issues, both of principle (including the extent of any legal liability for loss of statutory benefits), and detail (given the varied circumstances of presenter engagements).