

**A submission to the Sustainable News consultation  
from Ofcom's Advisory Committee for Scotland**

1. Do you agree that securing plural sources of impartial news for the Nations, locally and in the regions should be a key priority?

ACS considers that this is of key importance for Scotland. In broadcasting, plural sources of impartial news are vital to ensure viewer choice. This is much more than interpreting shared pictures. Rather, the delivery of quality content should be based on distinctive, impartial news agendas. In Scotland, national television news provision currently meets a minimal condition – namely, that there are two competing channels. We do not regard any worsening of this choice to be in the public interest. Viewers have made it abundantly clear in Ofcom's surveys (and in other tests of public opinion) that they expect to have a choice in television news provision.

2. Do you agree that sustainable, impartial news in the Nations, locally and in the regions is likely to require some top-up public funding?

ACS considers that top-up funding will be required to sustain plurality in news in Scotland. But it wishes to issue significant caveats as how this might be addressed.

The current debate is fundamentally about what kind of provision there will be beyond that of the BBC. Although, currently, there is a great deal of debate about the BBC's future scope and scale, there has been no credible argument that the corporation should cease to be a key provider of nations and regions news.

In Scotland, the principal source of alternative provision to the BBC is STV. However, ACS notes that STV's future trading position is a topic of much debate, with questions regularly being raised regarding its viability as a company. So far as news is concerned, STV has made it publicly clear that it would require a significant subsidy to maintain its present service. STV's new commitment to broadcasting more Scottish content has occasioned a mixed response from the public. ACS notes that there is evidently widespread disquiet about its current practice of denying viewers access to some of the most popular output on the Channel 3 (ITV1) network. The outcome of STV's negotiations with ITV remains to be seen.

The Sustainable News consultation document makes reference to the 'benchmarks of quality of impartial and accurate news that the government wishes to see replicated sustainably'. The evidence suggests that STV still provides a news service that is appreciated and valued by its viewers. However, its sustainable provision - as noted -

would require a subsidy.

ACS believes, in principle, that making funding available to support an alternative news service to that of BBC Scotland is essential. However, this needs to pass some rigorous tests and must not be seen as simply a move to bail out a commercial broadcaster. There is a danger that further support for STV might simply convert itself into dividends for shareholders rather than benefits for the public. While STV is presently in pole position to bid for such funds, the possibility of other market entrants is certainly not to be excluded. Whichever provider in the end offers this essential alternative news service, the issue of governance is absolutely paramount and a robust system of funding allocation, designed to be transparent in the public interest, needs to be installed. Thus far, no serious thought seems to have been given to how this might operate.

A pilot IFNC project has been mooted for Scotland with STV a prime (although certainly not necessarily the sole) candidate to take a leading role in driving it. If public money were to be involved, it would be a reasonable expectation that at least a medium term contract would be needed in order to make the enterprise worthwhile. Sustainability is key. So too is the public interest and therefore a public interest test needs to be applied to any consortium or consortia that might come forward to bid for funding.

As this new funding stream would be an unprecedented shoring up of market failure in Scottish commercial broadcasting, there is an overwhelming public interest in ensuring strict accountability. ACS would expect the mooted pilot disbursement of funds for the UK's IFNCs to be undertaken by an independent body with a credible composition and deep knowledge of the nations and regions. We would also expect clear propositions for public debate as to how this new funding mechanism might relate to Ofcom as the regulator for the sector.

### 3. Do you agree that the Television Licence Fee should be used to support impartial news in the Nations, locally and in the regions in addition to BBC services?

This is a particularly contentious question that occasioned extensive debate within ACS. We generally agree that some surplus funds originally allocated to the digital switchover could properly be used in order to support news services in Scotland. However, this support is qualified, as ACS is very aware that several potential calls are being made on DSO funds. We do not necessarily think that this would be the only source of funding to address commercial market failure.

ACS is also acutely aware that a completely new use of the television licence fee is being proposed. To date the BBC has enjoyed monopoly access to these funds. Any new use of

licence fee money needs to be very carefully managed to ensure that the corporation continues to receive sufficient support to maintain its role as the cornerstone of broadcasting in the UK.

In the course of ACS's deliberations, it has been noted that in principle the licence fee could have been applied to other providers of public service broadcasting. Moreover, the BBC cannot expect unconditional support, as there are pertinent questions to be posed – for instance, about the quality of the corporation's programme provision across the board and also public perceptions of its system of rewards to celebrity talent and to senior managers.

These reservations noted, ACS does question the Sustainable News consultation's contention that the Television Licence Fee is not the BBC's licence fee. This is a far from innocent point and raises questions that need to be debated properly. There is a tendency in the present consultation to lead the witness to inevitable conclusions. Consequently, there is justified concern in ACS that the search for a quick fix might breach a funding principle that has built a leading global broadcaster, whatever the BBC's shortcomings. We note that changing the funding principle might open the way for future governments to raid the licence fee in ways that might damage our public broadcasting service.

4. Do you agree that any funding within a contained contestable element of the television licence fee not required for impartial news should potentially be available to fund other forms of essential public service content, or should such funding be limited to news?

ACS considers that the present crisis of provision in commercial television is overwhelmingly focused on news and this should be the prime and exclusive focus of funding. If the IFNC proposition goes ahead, there is a good case for a limited and focused test of any new funding mechanism proposed. It is better not to confuse the issue at present by opening up support for other public service content.

Depending on the outcomes, and the mechanisms chosen to fund additional public service content, future additional support might be used to aid other services such as Community Radio, which delivers benefits to communities not served in these respects by the BBC. The argument might also be made on a case-by-case basis for funding other content deemed essential but not being provided.

5. Are there alternative funding mechanisms that you believe would deliver the above objectives more effectively?

ACS considers that limited funding options are available in the current economic climate.

It is unlikely that any extra finance would be available from the public purse other than that currently proposed. However, we do not know what devolved governments might choose to do by way of supporting plurality in news and as long as the question of setting up a Scottish Digital Network remains unresolved, we must regard that issue as open. Beyond public funding, further deregulation and tax breaks for the commercial sector might be considered as an alternative.

6. Do you agree with the proposal to set a maximum percentage of Television Licence Fee revenue, which could be set aside as a contained contestable element?

There are widely held reservations in ACS about how this proposal would operate in practice. Any level of funding selected needs proper justification. Once the principle of a new funding stream is established, ‘uncontained contestability’ – rather than the limited version presently advocated - becomes an open possibility and ACS does not support this at all. As with other public funds, were a new funding mechanism to be provided there would be upward pressure from the recipients as well as wider calls from the BBC’s commercial competitors and critics to extend the contestable amount available. So we do think that ‘contained contestability’ needs to be approached with considerable care.

ACS considers that research is required to establish what kinds of funding alternative might be feasible and over what time frame these might become operative.

If, as has been proposed in the short term, the DSO element of the licence fee were to be set aside for IFNC purposes, this could be handled in a number of ways.

As, in effect, this is a claw-back of funds already allocated, we believe that there is an excellent case to make this a completely free standing funding mechanism and to badge it accordingly, so that it is not seen as a slice of the Television Licence Fee. Rather it should be identified as the IFNC fund and its limited purposes made clear to the public. This is in line with the idea of ‘contained contestability’. According to what we have already argued, the fund should be time-limited and should not establish a principle of contained contestability without the workings of the fund being revisited and tested both in terms of delivering identifiable public benefit and redressing demonstrable market failure. For the duration of this fund’s existence, strict safeguards need to be in place to prevent expedient change.

7. Do you agree that amending the BBC Agreement could provide the necessary protection to the BBC's future funding and independence?

In January 2006, the National Audit Office classified the Licence Fee as a tax. The House

of Lords Select Committee on the BBC Charter Review expressed concern about this in its Second Report, ch.2 (2006). The Select Committee considered that the BBC had in effect been reclassified as a Non-Departmental Public Body funded by a hypothecated tax. The taxation model, it argued, extended the BBC's purposes and was used to fund DSO, which the Select Committee noted, in effect had introduced top-slicing of the Licence Fee for the first time.

In light of this, ACS members generally consider that amending the BBC Agreement would not necessarily provide the necessary protection to the corporation, given the likelihood that any change might well result in further amendments with possible adverse consequences. In line with what has been argued above, if creating further funding options with the aim of ensuring that the BBC be subject to competition is publicly endorsed as desirable, the effects of any such move do need to be rigorously monitored.

8: Do you agree that the use of any contained contestable element within the Television Licence Fee should be restricted to the public purposes set out in the BBC Charter?

ACS considers that any use of licence fee money should be restricted to the public purposes set out in the BBC Charter and should be rigorously assessed to ensure that these aims are met.

**Ofcom Advisory Committee for Scotland**  
**10 September 2009**