



HOUSE OF LORDS

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Witnesses: Tessa Jowell MP

Mr Jon Zeff

Mr Andrew Barron and Mr Andrew Harrison

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Members present

Lord Clement-Jones (Chairman)
Lord Bragg
Baroness Deech
Baroness Fookes
Lord Gordon of Strathblane
The Lord Bishop of Liverpool
Lord Macdonald of Tradeston
The Earl of Onslow
Lord St John of Bletso
Lord Skelmersdale

Examination of Witness

Tessa Jowell MP, Former Secretary of State for Culture, Media and Sport.

Q53 The Chairman: You probably know quite a lot of people around the table. There is little need to introduce yourself to us all, Tessa, but you might want to say something by way of introduction. You have seen the terms of reference of the inquiry, the essence of which has two limbs: has the BBC Trust been given the right job and how well is it doing it? I appreciate that there are historical aspects of this. I do not know how much preparation you have done, but we have a few prompts. Some of the evidence that we took last week from Gavyn Davies was pretty useful. We had Cristopher Bland as well, whose evidence was slightly more historical than that. If we need to prompt you with a bit of background, we will certainly do so. Is there anything that you would like to say in response by way of an opener?

Tessa Jowell: Thank you very much indeed, Lord Chairman, for inviting me to come and give evidence to your Committee. Sadly, this is an area of policy with which I have not had anything directly to do since 2006-07. I have retained a close interest in it, but I certainly have not followed it in the detail with which your Committee will have done. It is important to see the structural changes in the context of the events during which they were first

conceived, of how, given their autonomy, they have developed over time, and of how the environment has altered in a way which may confirm or require some modification of the original structure. That is how I would see this, as one has to view so much of policy over five years and beyond. Having said that, I am very happy to answer the questions posed in your terms of reference if that would be helpful, perhaps starting with the question as to whether the concept of the Trust was right. It is important to remember the circumstances of the time. There had been major tension between the Government and the BBC, challenged as to its independence, which led to the Hutton review and all the events that flowed from that. It is not possible to understand the judgments that I made at the time as Secretary of State without understanding the context in which they were made. Certainly, my overriding objective was to create a structure which buttressed the BBC's independence, put it beyond the reach of Government and defined it more precisely as a public entity, or the public's entity, rather than as somehow adjacent to Government. It was from that consideration that the conception of the BBC Trust arose. You will remember that a number of governance proposals were on the table at the time.

Q54 The Chairman: Could we come on to that in a minute? That is a very good answer to my first question which I never asked. The question that I would have asked you was what was perceived to be the problem. Did you perceive it as a problem specifically with the BBC governors or was it in the context of Hutton report?

Tessa Jowell: The fallout from the Hutton inquiry revealed insufficient independence and clarity about the governors' role in relation to the executive. What was confirmed then, and it has perhaps been a persistent issue for the BBC, was that it had been overly inward-looking rather than facing out, foursquare, in its accountability to its licence fee payers. My proposition was to safeguard its independence—I remember arguing very strongly for that in every forum of Government. That is something that you have to address consistently in

circumstances where there is quite a lot of political frenzy, because the independence of the BBC is as important now as it was then. It will still be as important in 10 years, whatever circumstances intervene. I thought that the BBC would be stronger if the accountability to the public were more specifically defined and instituted in the governance structure.

Q55 Lord Gordon of Strathblane: The late Andrew McIntosh told our predecessor Committee that the Government of the day had taken the best bits of Lord Burns' proposal and the best bits of the BBC's. You have referred to the context in which all these decisions were taken. If the context were different, and let us say that it has all died down now, would your judgment have been different?

Tessa Jowell: That is a very interesting and challenging question which, in the years since, I have given quite a lot of thought to. Lord Burns' proposals were not in every element mutually exclusive with the BBC Trust. They anticipated, more specifically, the potential for an entity to become a commissioner of public service broadcasting, addressing perhaps a market failure in the future. I always felt that the Trust was the right structure at the time, but you could still maintain the structure of the Trust as it has now evolved while broadening its locus beyond its specific relationship with the BBC. Under Terry Burns' proposals, you could see circumstances where the Trust would evolve organically from where it was in 2006 to the next Charter review.

Q56 Baroness Deech: It was cheering to hear you say that the idea was to put the BBC beyond the reach of Government in moving to a trust. Given that it was Government who stirred up the trouble in the first place, I do not understand how the Trust would be more beyond the reach of Government than the governors if something was broadcast which the Government objected to. What is the difference?

Tessa Jowell: Lord Hutton's conclusions might cast a slightly different light on what you have just said. The point is that the BBC is not an agent or creature of Government. The

history of the BBC has at times been littered with periods of fractiousness, tension and outright conflict with the Government of the day. I felt that where it was possible to reinforce the BBC's independence the new structure should do so, not that that means that you will not have press secretaries and so forth breathing in the ear of the editor of the "Today" programme and trying to get a different slant on particular interview or whatever it is. That will happen, but it is important for the BBC that there is a culture which is secure in its independence.

Q57 Baroness Deech: I still do not get how it is different?

Tessa Jowell: What is the "it"?

Baroness Deech: The independence from the Government of the Trust and that of the governors.

Tessa Jowell: The Hutton report concluded among other things that the governors were not sufficiently independent of the executive of the BBC, whereas the Trust is quite clearly and specifically accountable to the licence fee payer, not to the BBC.

Q58 The Lord Bishop of Liverpool: You may be aware that our predecessor Committee made certain recommendations about regulation and governance, and differentiating the one from the other and placing regulation with Ofcom. What were your particular objections to that recommendation?

Tessa Jowell: Lord Gordon's question rather touched on that. There were two issues that were viewed as being too sensitive at the time. The first was the issue of shared governance by Ofcom and the BBC Trust; the second was access by the NAO to the BBC. If I was Secretary of State now, I would support access by the NAO to the BBC and look again at the balance of regulatory responsibility as between the Trust and Ofcom. The big concern about the BBC at the time was the scale of market intervention that it represented, at a period when very high levels of investment was being made in new technologies,

programming and new broadcasters. Establishing a proper mechanism that was independent of the BBC, through Ofcom, for getting the right balance between the BBC's market power and its creative innovation was right. Were I looking at it again and being more the mistress of the detail of the balance of regulation between the two than I am at this very moment, I would probably separate out the regulatory functions, put them to Ofcom, and ensure that the Trust was more simply and specifically a body to oversee the performance of the BBC on behalf of the licence fee payer.

Q59 The Lord Bishop of Liverpool: Would that then strengthen the independence of the BBC Trust? If you were to take the regulation out and the Government complained, it would take the BBC out of that fudge.

Tessa Jowell: It would, yes.

Q60 Lord St John of Bletso: You have partly answered my question. In their evidence last week, the two former Chairmen of the BBC criticised the way in which the Trust had been set up. I was interested to hear you say that the role of the Trust had changed over the past five years. Do you have any regrets about the decisions that you took when the Trust was created?

Tessa Jowell: I do not, no; I really do not. The issue of regulatory responsibility has produced a different answer over time. I do not want to sound overly complacent about this, but I am confident—because I thought about it so carefully—that it was the right remedy given the circumstances of the BBC at the time. That is why you have a Charter review every six years, to take account of changing circumstances. I believe profoundly that for the BBC to be accountable to a trust or body which is responsible to its licence fee payers makes much more sense of the BBC's unique role as a broadcaster that is utterly reliant on a regular and reliable stream of public money.

Q61 Lord Macdonald of Tradeston: Do you not think that a fault in your structure was exposed recently when the Government were able to negotiate with the director-general, and the Trust appeared to be sidelined in matters of huge importance to the future of the BBC?

Tessa Jowell: I would have added to my previous answer that any structure is quite honestly as effective as the robustness, resilience and the judgment of the people who run it at any time. There is no perfect structure which will compensate for errors of judgment, overzealousness or anything else. I do not want to comment any more on the present Government's decision to accelerate the licence settlement, but there is nothing intrinsic to the structure of the Trust that would have prevented it saying, "We are independent of Government; the licence fee has been set until 2013; and we are going to live within that settlement". If it had said that, what would the Government have done?

Q62 Lord Bragg: There has been some criticism, which Gavyn expressed last week, that the post of the Chairman of the BBC has been devalued. There has been criticism also of the idea of there not being a governor of the BBC, which seemed to be a distinguished and widely known post in this country. Do you have any view on that?

Tessa Jowell: I do not agree. The 12 trustees of the BBC are people of distinction in different areas of expertise which are highly relevant to running the BBC. There was an establishment view about the significance of the chairman and the governors of the BBC, and I really believe that the world has changed. The BBC is better served now by people of distinction by virtue of their expertise and their ability to put that expertise at the disposal of the BBC.

Q63 Lord Bragg: Do you see big strides forward having been made in the way that the Trust governs the BBC as compared with the way that the governors did so? In other words, do you think that it is working?

Tessa Jowell: It could probably have been bolder, and defined its identity and its relationship with and accountability to the licence fee payer more imaginatively. My understanding is that every major decision is put out to public consultation, but I think that the Trust could be a more vociferous and opinionated champion of the institution.

Q64 Lord Bragg: Do you think that the disposition of power between the director-general and the Chairman of the Trust is still being worked out? It seems to me to be vague and up-for-grabs on the few occasions that matter. To put it crudely, the director-general gets his forces on his side and the Chairman of the Trust gets his forces on the other, and I do not know whether the connection is as strong and as easy as in an ideal world you would have it be. I think that that damages the BBC. Michael Lyons, for whom I have a lot of respect, has been beleaguered, not least by the feeling that he may not be carrying the executive with him. How does he carry the executive with him? What is the deal? I do not mean an under-the-counter deal but the open and transparent deal. Does that worry you at all?

Tessa Jowell: I think that the culture of the executive of the BBC needs to change.

Q65 Lord Bragg: In what way?

Tessa Jowell: The senior team, which receives £3 billion of public money every year, has to understand that you cannot have the levels of remuneration and benefit of the private sector and the security of the public sector. That intrinsic contradiction in the culture is part of the problem that you are describing. For the long-term sustainability of the BBC, there needs to be quite profound culture change. When I was negotiating the Charter and we had a debate on the Floor of the House, I found it shocking that there was such a level of hostility towards the BBC. That hostility is much more to this culture within the executive, I believe, than it is to the institution as a whole.

Q66 Lord Skelmersdale: Do you think that there is now a need for a non-executive chairman of the operational part of the BBC, dividing the executive, if you like, from the Trust?

Tessa Jowell: It is a very difficult question for me to answer five or six years out from my direct responsibility for this. Clarity over the role of the executive and the Trust is important. Weakness will develop if there is ambiguity. The accountability of the executive to the Trust needs to be strengthened. I am quite sure that your Committee will give consideration to that.

Q67 Lord Bragg: Do you not think that what has been created has led to an unhelpful stand-off at times between the BBC executive and the Trust, which are there to support each other in many ways? The executive is understandably saying, "Hold on. We are independent broadcasters. We want to be at arm's length from you as well as from the Government". Does this not put them in a rather invidious position?

Tessa Jowell: I do not agree with that, because you cannot be at arm's length from the body that is the proxy for your paymaster. This is part of the problem that I was trying to allude to. It is anathema to many in the BBC, I absolutely accept that, but the tension between the Trust and the executive is inevitable because of the real importance of the executive's accountability to the Trust on behalf of the licence fee payer. That was the intention behind the original model.

Q68 The Chairman: In that context, do you think that the Trust has sufficient teeth?

Tessa Jowell: Probably yes, if it is prepared to use them.

Q69 The Chairman: The question then arises of when they have been used effectively.

Tessa Jowell: I would like the Trust to have been noisier than it has been.

Q70 Lord Macdonald of Tradeston: In the past, the practice was that the Chairman of the Board of Governors might have been from one party and the deputy from another.

Now, with the Trust, we have a chairman who is obviously from a Conservative background. Would you look to see that the deputy might be from the other side of the political sphere?

Tessa Jowell: It is important that the BBC is beyond party politics and that the chairman is selected as somebody who can be trusted to operate and to lead beyond party politics. It can work. I cite as an example the Olympic Board. The Olympics have genuinely been run beyond party. I think that that is what the public want. I think that they are very uneasy if they feel that a great institution that still inspires so much public confidence is somehow negotiating issues on a party political basis. The overriding test for appointing people to the BBC, whatever party they may come from, is their understanding of, commitment to and passion for the BBC and the expertise that they can bring.

Q71 The Lord Bishop of Liverpool: You said a moment ago that you would like the Trust to have been noisier. Should it have made more noise over the decision about the future of the World Service?

Tessa Jowell: If it thought that it was the wrong decision, and the indicative view of licence fee payers was that it was, then yes.

Q72 Baroness Deech: That takes me to the part that was played by Michael Grade, as the then chairman, in the decisions that you took in 2006. What impact, if any, did Michael Grade's decision to leave the BBC just before the Trust was established have on the process?

Tessa Jowell: Michael was offered a job that he wanted to do more than be Chairman of the BBC Trust. When people are in that situation, you have to let them go quite honestly. The Trust is bigger than Michael. Michael made a contribution in the immediate aftermath of all the instability created by David Kelly's death and the Hutton report, but I do not think that it was a seismic moment for the BBC. That was greatly to his credit.

Q73 Baroness Deech: So the departure of the chairman three or four months before the Trust was coming into being did not have any impact.

Tessa Jowell: What is the point of saying that it did? It was an event; it was a decision that he took; and so it was a decision that had to be managed.

Q74 The Chairman: But he had been the architect with you of the new arrangements.

Tessa Jowell: Would it have been better if he had stayed? Of course, it would have been better and easier if he had. But would it have been better if he had stayed wishing that he was at ITV? It certainly would not. I think that all members of your Committee will have had experience of this sort of thing in their professional lives. You just have to manage it and you just have to have a structure which is sufficiently resilient.

Q75 Baroness Deech: Do you think it makes any difference whether the BBC is governed by a Charter or by an Act of Parliament?

Tessa Jowell: A BBC governed by an Act of Parliament would be a different entity from a BBC governed by a Charter. It was an issue that I thought about quite a lot six years ago; I have not thought about it very much since then. I do not think that its identity as a body governed by Charter impedes parliamentary scrutiny or parliamentary debate when there are issues that Members of Parliament or Members of this House want aired.

Q76 Lord Gordon of Strathblane: Without the pressures that existed six years ago and looking at the matter afresh now, would you be content for Ofcom to do the regulation of output and for the BBC, either governors or Trust, to do the governance of the BBC in the licence fee payer's interest?

Tessa Jowell: I would want to go back and look in a bit more detail at the distribution of those responsibilities, but I would be minded to hand that responsibility lock, stock and barrel to Ofcom and to leave the Trust solely responsible for the governance of the BBC.

Q77 Baroness Fookes: However something is organised, a lot depends on the quality of those people who make it up, whether governors or members of the Trust. Do you have any observations on that? Did the type of person change? Or was it the same type of people with a different name?

Tessa Jowell: I do not think that it was. I am afraid that I do not know the current members of the Trust in the way that I knew the first group.

Baroness Fookes: It was the first group that I was thinking of.

Tessa Jowell: I do not think that they would all have naturally become governors of the BBC. They reflected the broader reach and different set of skills that the Trust was looking for as distinct from the governors.

Q78 Baroness Fookes: What were the criteria for selecting people for the Trust?

Tessa Jowell: We were looking for a number of different skill sets. I would be very happy to ask the Department to send you the job spec and the advertisements from the time, but my view was that we should have people who represented everyday life as well as people who were experts in given and particular areas. We also wanted them to be diverse in the way that the viewership and the listenership of the BBC are diverse.

The Chairman: I am very conscious of your time, because I know that you have got to wing it along to Olympic Board, with which you continue to have involvement, I am glad to say, unlike with this subject. We are seeing Jon Zeff in a minute, so we may well be able to ask him that very question about job descriptions. Tessa, thank you very much indeed for coming along today. I know that you squeezed us in, so thank you.

Tessa Jowell: It was a great pleasure. Thank you very much.

Examination of Witness

Mr Jon Zeff, Director – Media, Department for Culture, Media and Sport.

Q79 The Chairman: Jon, thank you very much indeed for coming along today. I recognise that we may not elicit from you matters relating to current policy too much. At this stage in the game, before you come back with the Secretary of State, we are really trying to look back at the original motivations and policies. Where you are able to enlighten us with comparisons between then and now, I am sure it would be extremely helpful. We are very grateful to you for coming today. You might just like to give us a little bit of an introduction to your multifarious background. I do not think you need to introduce the subject—I think we can go straight round the course with questions—but if you would like to give us an introduction about yourself, that would be extremely helpful. You will appreciate, as we said to Tessa earlier, that the essence of the inquiry is to look at whether the BBC Trust has been given the right job to do and how well it is doing that job. That is what we are focusing on throughout, both historically and bringing ourselves up to the present day, in the light of experience.

Mr Jon Zeff: Thank you Lord Chairman, and I am delighted to be as helpful as I can to the Committee, within the parameters that you have very helpfully set out. I am Director of Media at the Department for Culture, Media and Sport. I have been in the Department since late 1998, involved in various different roles in areas relating to the BBC since about 2003. I started my first involvement in broadcasting policy just as the Communications Bill 2003 was completing its passage through Parliament. I was closely involved in the last BBC Charter review, which led to the setting up of the current governance arrangements, and I have stayed involved in this policy area since then.

The Chairman: So really you are the bit of continuity throughout the whole thing, effectively.

Mr Jon Zeff: One of the bits of continuity.

Q80 The Chairman: Well, this is marvellous. We can ask you anything, really. Why do you think the governance and regulation of the BBC became such an issue eight years ago and remains such an issue?

Mr Jon Zeff: Tessa Jowell in your previous session outlined very clearly some of the particular context at the time, with one of the key reasons why it became such a big issue at the time of the Charter review. Just reflecting on it personally, it seems to me that the BBC in many ways has been and is in a unique position, combining a key role as an institution in the UK's national life and carrying enormous public interest with it, but it also receives a large amount of public funding and has a role as a key public sector organisation in the media. As a media organisation, its independence is fundamental, but it also operates in a very fast-changing, fast-moving commercial environment. All of that comes together to mean that there will always be enormous public interest in scrutinising the activities of the BBC, in holding it to account and in the transparency and accountability of the structures and institutions that run it, hence its governance and the way it is supervised will always be of interest.

Q81 The Chairman: It is interesting that the first thing that the new chairman designate—I suppose I still need to call him that—said when he appeared before a Select Committee was about how he will look again at the role of the Trust, and so on. That indicates in a sense that controversy over the role of the Trust is ongoing.

Mr Jon Zeff: There is always ongoing discussion around the role of the Trust and how it operates. The Trust is a new structure, so it is reasonable for a new chairman coming in to want to look at how it is operating and see whether there need to be improvements. I think

it is widely accepted, certainly across parties, that it is a significant improvement on the structure that came before, certainly in the context that the BBC is now operating in. But my Secretary of State has made no secret of the fact that he sees room for improvement in the way that it operates now, although the time for Government to look again at the governance of the BBC will be at the next Charter review.

The Chairman: In 2016?

Mr Jon Zeff: Yes, preparing for the next Charter at the beginning of 2017.

Q82 Baroness Fookes: I am always interested in the meaning assigned to words or expressions and what is really meant by them. Would you care to define the difference between governance and regulation?

Mr Jon Zeff: I can have a go.

The Chairman: We have more exam questions later.

Mr Jon Zeff: Although sometimes there are areas where there are matters of judgment whether they fit into governance or regulation, I think governance is around the running of an organisation, the supervision of its operations and the performance framework that is put around it and the way that it is governed and strategic decisions are made about its future. Regulation implies something that is more legislative, or something akin to that, where you have statutory or quasi-statutory constraints or requirements that need to be placed on an organisation.

Q83 Baroness Fookes: But it could still be internal.

Mr Jon Zeff: The bodies that conduct regulation or have regulatory responsibilities can be internal.

Q84 Baroness Fookes: Or you could regard it as something external.

Mr Jon Zeff: Yes, it can be external too. Clearly, in the case of the BBC, Ofcom has various regulatory responsibilities, for example in relation to the BBC as well. No doubt there is

ongoing debate about the boundaries and respective responsibilities between the BBC Trust and Ofcom in relation to regulation.

Q85 Baroness Fookes: So you would see further discussion, shall we call it, between the Trust governing itself and somebody else having an input or regulatory role?

Mr Jon Zeff: The Trust has a number of regulatory responsibilities in relation to the BBC. Ofcom also has regulatory responsibilities. As some of your previous witnesses have drawn out, there are some areas where both the Trust and Ofcom have regulatory responsibilities in similar areas. That is clearly an issue of ongoing discussion and when the Government comes to look again at the governance arrangements in the next Charter review, that is one of the issues that I would expect them to look at.

Q86 Baroness Fookes: At first blush, that sounds rather awkward and clumsy.

Mr Jon Zeff: The important issue is around clarity of roles and responsibilities. One has to look at the individual areas, but there are a number of different models that one can see and that were considered at the time that the BBC Trust was established. The Government looked at other options at that time in relation to regulatory responsibilities and governance structures.

Q87 Baroness Fookes: What were they?

Mr Jon Zeff: They were set out in the Green Paper that was published as part of the Charter review process. One option was to have Ofcom take complete oversight and responsibility for the BBC. It was felt at the time, remembering that Ofcom was quite a new organisation, bringing together five previous regulators and having a big new span of responsibilities, that giving it responsibility for safeguarding the public interest in the BBC would be too big an extension of its role. The Government at the time also came to a clear conclusion that the right structure for the BBC was a BBC-specific arrangement.

Q88 The Chairman: In that context of governance and regulation, is the public value test for new BBC services governance or regulation?

Mr Jon Zeff: You can argue it both ways. It is the way in which the Trust decides whether new services or significant changes to existing services are to be approved. Ofcom has a significant role in public value tests in conducting the market impact assessment element. Rather than trying to argue about whether something fits into one definition or another, which one can debate around, I would say that it is more constructive to look at the function itself and where it best sits on its own merits.

Q89 Lord Macdonald of Tradeston: Can I take you to Clause 8 of the Charter, which requires that the Trust and the board “shall never act together as a single corporate body”? When you have momentous decisions coming up, as happened with the recent licence fee negotiations between the BBC and your Department, which included fairly dramatic decisions about Welsh broadcasting, the World Service and, most of all, freezing the licence fee, the impression was that your Department was negotiating with the executive, and the Trust was rather marginalised in all that. How difficult did you find it to handle those very important negotiations when you have this rule that the Trust and the board shall never act together as a single corporate body?

Mr Jon Zeff: I did not see any inkling that they were acting together as a single corporate body. It is quite usual in licence fee discussions and with something of that complexity and importance I would expect that both the BBC Trust and the BBC management would be involved in the discussions. As the Secretary of State has said publicly, he was always clear that discussions that were taking place and agreements that were reached were with the full authority and knowledge of the Trust. Indeed, the licence fee settlement letter and correspondence is between the Secretary of State and the chairman of the BBC Trust.

Q90 Lord Macdonald of Tradeston: But we heard your previous Secretary of State say that it had been her primary intention to maintain the independence of the BBC from Government. Yet here, in that particular episode, it looked as though the Secretary of State and the executives of the BBC stitched together a deal with very little public consultation, which is going to change the nature of a great institution.

Mr Jon Zeff: There were discussions between the Government and the BBC. I am not sure that that says anything about the independence of the BBC.

Q91 Lord Macdonald of Tradeston: It looked very much as though this was a deal imposed by the Government, with perhaps a rather relieved BBC executive thinking, “We can live with this and preserve the basic entity that we are working for”. But surely the decision was so far-reaching that it deserved a much broader discussion and involvement from the Trust and the licence payers.

Mr Jon Zeff: As the Secretary of State has said—I am sure you will want to ask him about this when he appears before you—the circumstances of the time were such that the interests of the Government and the BBC meant that there was an imperative in this particular context to reach an agreement very quickly.

The key point that I would come back to is that the two most important elements that guarantee the BBC’s independence are the fact that its constitution is fixed for a set period and the fact that it has multi-year licence fee settlements. The Government has made clear that it absolutely respects and supports both of those. Once every 10 years, up to now, the Government has a very detailed review of the BBC’s constitution, its purposes and its governance framework. Once every few years, the Government sets the BBC’s funding settlement. That is what has happened this time. That is a multi-year settlement that gives the BBC stability and independence over the remainder of the charter period.

Q92 Baroness Deech: How does the National Audit Office access to the BBC work out in practice? Can you give us some examples? To whom does the NAO report? Is it to the Trust or the DCMS? Are its findings made public?

Mr Jon Zeff: The arrangement is one that works between the NAO and the BBC, so my Department and I are not involved day to day in the detail of how it works in practice. At the moment, the way the arrangement works is that essentially the NAO has discussions with the BBC Trust about the areas that it should investigate. On the basis of those discussions, the BBC Trust will make decisions on a programme of value for money studies that should be carried out. Some, but not necessarily all, of those are conducted by the NAO. Those reports are delivered to the Trust and then laid in Parliament and are open to examination by the PAC and are published in the normal way. The Government has recently agreed with the BBC that that will be extended. For the first time, the NAO will have unrestricted access to the BBC—that is to say that the NAO will decide which areas it should conduct its studies in. The arrangement is being extended and we are in the process of agreeing with the BBC the detailed changes to the agreement to reflect that.

Q93 Baroness Deech: Do you see that as any sort of threat to the independence of the BBC and its creativity, if the NAO can choose which areas to go into?

Mr Jon Zeff: I do not think it should be a threat to the BBC's independence or creativity. One clear part of the settlement is that the NAO will not get involved in considering or examining the merits of editorial judgment and that it will steer clear of areas that would impact on the editorial independence of the BBC. Really, this is about value for money and scrutiny, and in that sense I think it should be a helpful arrangement.

Q94 Baroness Deech: It must be a very difficult decision on value for money if you are looking overall at drama, news or whatever it might be. I am not sure how you would

measure that or safeguard those areas from the NAO—I was about to say number-crunching, but I will not.

Mr Jon Zeff: I do not see any reason in principle why that should be a problem. To some extent one could draw parallels with the way that the NAO carries out value for money investigations in government Departments. It does not question policy decisions made by Ministers, because that is not part of its role. That does not raise concerns for the integrity of ministerial policy-making and decision-making. I do not think it should, and clearly those editorial safeguards are part of the arrangement that will be built into the agreement.

Q95 Lord Bragg: The three major parties over the years have talked about the need for significant changes to BBC governance, usually when the BBC is having a go at them. Is that still the case? Can I go back to Lord Macdonald's very important point? In that decision about the licence fee, made between the Government and the executive, which I think was a very good settlement and the BBC did well out of it, the Trust seems to have been sidelined. In terms of strengthening the Trust and putting it somewhere in that equation, when push came to shove they sidelined it and got the deal. Is that the case? I think that Lord Macdonald made a convincing argument that it was. If so, what does it say about the essential belief in the strength of the Trust?

Mr Jon Zeff: Coming to the first point about whether significant changes are needed, as I said before, successive Governments have been clear that the Charter is for 10 years. The current Government has views about the way individual arrangements and decisions may operate, but the time for the Government to look again fundamentally at the BBC's governance structure is the next Charter review. In the mean time, the new chairman of the BBC Trust, shortly to be appointed, has said that he wants to look at how the current arrangements work within the existing framework. Clearly there is some room for looking

at how the arrangements can be continuously improved as they develop, but it is clear that the point for Government to look at this again is a few years off.

In the context of the licence fee settlement, in relation to the detailed arrangements that operated between the BBC Trust and the BBC management, you would have to ask them about how it worked. It did not seem to me, from where I sat, that the BBC Trust was sidelined. The Secretary of State is on record as saying that he was clear that all those discussions happened with the authority of the BBC Trust. He had a number of conversations with Sir Michael Lyons during the process and there were representatives of the BBC Trust present at most, if not all, of the discussions and meetings that took place. The licence fee settlement and the exchange of letters that sets that down is between the Secretary of State and the chairman of the BBC Trust.

Q96 Lord St John of Bletso: Both Tessa Jowell and the two former chairmen of the BBC last week said that they were firmly of the view that regulation of BBC content should be left with Ofcom. Would it be possible to restructure the boundaries of content regulation and complaints handling between the BBC Trust and Ofcom without having to amend the Royal Charter?

Mr Jon Zeff: It would not be possible to do that without amending the Charter or agreement in some way. Any changes of that sort would need to be done by agreed changes to the framework documents. The respective responsibilities in relation to editorial standards and the Trust's responsibilities are set out in the agreement and the Charter. But that is not necessarily to say that it is not possible to make any changes to the detailed way that things are handled between the Trust and Ofcom. There are a number of documents. There is a memorandum of understanding between the BBC Trust and Ofcom about how they will work together where they have overlapping responsibilities that connect. Changes to the detail of those arrangements may be possible without amending the Charter.

The Chairman: I am not sure whether that answers Lord Skelmersdale's question.

Q97 Lord Skelmersdale: Sort of. You had been very clear up to that moment that any changes need to be made at the time of the next Charter. Is the Charter period fixed in law?

Mr Jon Zeff: The length of the Charter is fixed.

Lord Skelmersdale: Fixed where?

Mr Jon Zeff: It is fixed in the Charter. It is a Royal Charter issued by the Queen through the Privy Council.

Q98 Lord Skelmersdale: But if there is a feeling that there is a need for it to be changed in mid period, a new Royal Charter could be drawn up, could it not?

Mr Jon Zeff: My understanding—and I can certainly write to you with the detailed legal position on this—is that there is scope with Royal Charters for the chartered body to apply for supplemental Charters or new Charters in that period, but it is a complicated process. It is not simple to amend a Charter that is in existence.

Q99 Lord Skelmersdale: So it could be done, as far as you understand?

Mr Jon Zeff: In principle, as I understand it, it is possible to do that. It is much more difficult than the agreement, which is between Government and the BBC and can be amended by agreement. Indeed, we are making amendments at the moment.

Q100 The Chairman: So there are three tiers: the Charter, the agreement and then the MoU between the Trust and executive.

Mr Jon Zeff: There are a number of other documents that sit underneath that, so under the Charter and agreement there are a number of protocols that the Trust has adopted around the detail of how it operates its relationship with the executive board, how it engages with licence fee payers and other issues. There is a memorandum of understanding between the BBC Trust and Ofcom, which sets out arrangements for how they will manage the relationships between them on various areas.

Q101 The Chairman: And those protocols are changeable. It is really the Charter, subject to your answers to Lord Skelmersdale, that is not easily changeable, but the agreement and the protocols are more easily changeable.

Mr Jon Zeff: That is right, but as I said, to come back to the caveat, the agreement is an agreement, so the Government cannot change it unilaterally.

Lord Skelmersdale: Is it possible to get some sort of legal advice on this point, Lord Chairman?

Q102 The Chairman: I certainly think a summary of what constitutes governance and regulation at the BBC would be very helpful, if that was possible. I do not know whether that is easily obtainable.

Mr Jon Zeff: I can certainly do that and I can write to you with more specific detail on our understanding of the position in relation to the Royal Charter.

The Chairman: That would be extremely helpful. Thank you very much.

Q103 The Lord Bishop of Liverpool: The DCMS deals with many different publicly owned and funded bodies. Do you think there is anything to be learnt from those bodies in relation to governance and regulation? Channel 4 comes to mind, of course.

Mr Jon Zeff: I am sure there are things that one can learn not just from DCMS bodies, but from bodies more widely. I am sure that when we come to look at a new Charter for the BBC in some years' time, we will look again at the governance arrangements and look across at other bodies. We did during the last Charter review as well, but also looking at broadly accepted standards of good practice in corporate governance, which bore quite heavily on the last Charter considerations.

Q104 The Lord Bishop of Liverpool: Is the argument ever heard, "Well, it works for Channel 4, so why can't it work for the BBC?" Is it as simple as that?

Mr Jon Zeff: Those kinds of discussions and arguments certainly come out. There are some very big differences between Channel 4 and the BBC in the way they are structured. Channel 4 is also a public sector organisation, but it is not publicly funded in the way that the BBC is. The fact that the BBC takes £3.5 billion of public money every year places a particularly strong interest and obligations around the extent to which it is held to account for the way that it delivers and spends that money and the scrutiny that goes with that. But of course its independence as a media organisation is an extremely important principle alongside that.

Q105 The Lord Bishop of Liverpool: Would you see any other distinctive features apart from the licence fee?

Mr Jon Zeff: The licence fee is the key one. The breadth, scale and scope of the BBC and the place that it has occupied historically as the first broadcaster in the UK and the biggest public service broadcaster here also make it quite different.

The Earl of Onslow: Perhaps I can help you on the Charter. The East India Company Charter was amended by Act of Parliament by Fox and later, in the 1840s, by Macaulay, I think, and then finally it was abolished by Act of Parliament after the Indian mutiny. Charters can be dealt with in that way. Whether it is an apposite thing or not, I do not know.

Q106 Lord Gordon of Strathblane: I was going to stay on the same subject, but slightly less elegantly. When Ofcom was created, and effectively took over most of the regulation of BBC content, apart from issues of impartiality, which are reserved to the Trust, how quickly was the Charter amended on that occasion? Was it necessary to amend it? I am slightly confused about what is required here.

Mr Jon Zeff: As I recall, some amendments were made to the agreement, not the Charter. They were made soon after the 2003 Act was passed.

Q107 Lord Gordon of Strathblane: In other words, we very quickly managed to achieve what we wanted without recourse to issuing a new Royal Charter.

Mr Jon Zeff: In terms of the regulatory relationship in some specific areas under the Communications Act, that was done quite soon after and then was taken further in the Charter.

I wonder if I might pick up the point about Channel 4. There is clearly a big difference in that Channel 4 does not make programmes, but the other really key difference that I would pick out is that the BBC is a big and important news organisation as well. Channel 4 is an important carrier of news, but journalism and news are a major and fundamental part of the BBC's role, perhaps to a greater extent than Channel 4.

The Chairman: Jon, thank you very much indeed. It has been really helpful. You are clearly the repository of an enormous amount of information and will no doubt go on to write the history of the BBC Trust. I have no doubt we will have you back again at the side of the Secretary of State in due course, but in the mean time thanks very much indeed.

Examination of Witnesses

Mr Andrew Barron, Chief Operating Officer, Virgin Media, and **Mr Andrew Harrison**, Chief Executive Officer, RadioCentre.

Q108 The Chairman: I welcome you both and I thank you very much indeed for coming along today. In particular, Andrew Harrison has come at very short notice, so thank you very much indeed. We are obviously going to have to mind our Ps and Qs with two Andrews and be careful how we address ourselves, but it may be obvious who is going to respond when a particular question comes up. The standard technique is to go round the table, with individuals asking a series of questions as we go, rather than doing it all from the Chair. As you have no doubt picked up from your preparation, we have two lines of inquiry: has the BBC Trust been given the right job to do, and how well is the Trust doing that job? We would very much appreciate your views in that direction. If you could both introduce yourselves, I do not think we will ask you to give an introduction otherwise; we will simply fire the questions and then if you want to go off piste during your answers, please do, as long as it is relevant to our inquiry.

Mr Andrew Barron: My name is Andrew Barron and I am the Chief Operating Officer of Virgin Media. By way of introduction to the company, as you know, we sell home phone, mobile, broadband and television services and have been a long-standing distributor and partner of the BBC.

Mr Andrew Harrison: I am Andrew Harrison. I am the Chief Executive of RadioCentre, which is the trade body for commercial radio. My organisation has as its shareholders all the major commercial radio groups—companies such as Global Radio, Bauer Radio and UTV.

We have around 280 individual radio stations that are licensed by Ofcom and are members of the organisation. We are a partner to the BBC in a number of radio areas, for example on digital radio or on Rajar, the audience measurement body for radio, and clearly we are a competitor for audiences in the services that we deliver.

Q109 The Chairman: Thank you very much. You both represent organisations that have criticised the BBC Trust's procedures, on issues such as Project Canvas and the relationship with commercial radio. Could you explain the background to your criticisms and your opinion of the Trust's procedures?

Mr Andrew Barron: There is a specific about Canvas, or Youview, as it is now known. Then I will take that on to extrapolate some thoughts about the Trust, if I may. We believe that to date Canvas has not received the scrutiny that it deserved as a major, albeit future, structural change in the way television, and broadband-delivered television, will take place in this country for many years to come. That was the core of our issue with Canvas. We think it needed a level of technically competent scrutiny, taking into account all the impacts it will have on the broadband and television industries. The Trust was unable and almost unwilling to give that scrutiny.

We then move on to the Trust per se. The core of the issue that was in our experience crystallised by Canvas is that the Trust has embedded in it two rather separate roles. One is as the voice of the licence fee payer and, if you like, the governor of the BBC, to whom, correctly, the executive needs to be held to account, as I am to my shareholders, represented by the board. The other one is more of a regulatory function, which looks at the impact of the BBC executive's actions on the industry at large, including us, and takes a view about consumer harm and benefit and all the normal criteria that Ofcom or another regulator would apply. Our experience with Canvas is that those two roles were confused

and mixed up in the way in which the Trust went at it. We believe that particularly the regulatory side, in the delivery of that deep, thoughtful scrutiny, has not yet taken place.

Mr Andrew Harrison: Just to echo Andrew's comments, we would say that same. The tension that we feel fundamentally has been characterised in some of the conversations in this Committee and elsewhere. There is a tension between the Trust's cheerleading role on the one hand and its regulatory role, if you like, on the other. We have found that manifesting itself particularly, not so much in the questions around the external regulation on content and standards, which is picked up by Ofcom, but around the criteria that might or might not decide what goes to a public value test. You asked earlier about whether that fits under governance or regulation. This is critically important to us, because it goes to the heart of the size and shape of the BBC and its impact in the wider media market. A lot of the tension that we feel is about whether the Trust is sufficiently independent of management and sufficiently robust in its championing of licence fee payers as it considers whether there should be wider scrutiny—for example public value tests or market impact assessments—of the activities that the BBC management proposes.

Q110 Baroness Fookes: Could we look more closely at the public value test? Are you happy—I think the answer is probably no—with how it is conducted at present? Do you think some other body than the Trust itself should make decisions on these matters?

Mr Andrew Harrison: There are two levels to your question. Are we happy overall? No is the answer, but we think that the system could potentially work absolutely fine. It is probably worth restating that there are two elements to a public value test, although we think that there is some interest in the nomenclature itself. It is called a public value test, but the truth is that it is both a public value test, which is conducted by the Trust, and a market impact assessment, which is conducted by Ofcom. The fact that it is called a public value test, you might argue, implies where the ultimate primacy in that thought process lies.

At the moment, whether or not a new service or an amendment to a service is subject to the scrutiny and consultation that comes with public value tests is decided by the Trust, without huge external referral, necessarily. So you get the decisions that Andrew outlined for Project Canvas, but you also get other decisions that we have seen in radio, where proposals are floated in the press and discussed and may be supported or rejected. By the time that you get to a decision on whether a public value test may even be conducted, a lot of the debate has already run its course in other external media.

To give you a very current, live example, many of you will be aware that there are a number of proposals about how the BBC management may choose to change its delivery of local radio services. This is already playing out as an extensive debate in the press, with discussions about the provision of BBC Local and the provision of Radio 5Live. None of this has yet been subject to any proper formal consultation process via the Trust. There is not yet any leadership from the Trust on when and how these proposals may be floated. We fear that this is symptomatic of too loose a governance structure. Ideas are kicked around in the public domain elsewhere and floated and they may or may not get support, rather than having the full regulatory or governance scrutiny that might be appropriate.

To give you another example, less than a year ago the BBC management published its forward-looking strategy document, *Putting Quality First*, against which we in the commercial sector then plan our own strategies and thoughts on how we can compete for audience against the BBC. It had two significant proposals for radio—only two across the whole of the estate. One was the closure of 6Music; the other was the closure of the Asian Network. Neither of those decisions is now going to happen, according to the latest reports we have from BBC management, but there does not yet seem to be any momentum behind any alternative proposals that have been formally enshrined on what else may take place, other than what I have just talked about with some of the things that are in the press.

The slightly long-winded answer to your question is that the combination of public value test and market impact assessment, done properly and with real public scrutiny and a chance for wide consultation, could be very powerful. But it seems to be somewhat haphazard how regularly and frequently it is used. The decision on whether a test is introduced is not always as transparent as it might be.

Q111 Baroness Fookes: So you are really suggesting that there should be two elements to this rather than one. One is how it affects the BBC and whether it is giving value. The second is how it is going to impact on outside industry. In a sense, you have two different things.

Mr Andrew Harrison: Those two elements are the core to the rounded part of a public value test, but it does not always get that far.

Q112 The Chairman: Are you saying that it is wrong that the Trust takes into account the market impact assessment drawn up by Ofcom, but has the ultimate say? Would you prefer something more equal between Ofcom and the BBC?

Mr Andrew Harrison: I think I am saying two things. The first is that the trust decides in the first instance whether a change is significant enough even to go to a public value test. To give you another recent example, many of you will know that there has been a change to the Radio 7 service—its licence and its name; it is going to be rebranded as 4Extra and so on. The Trust has decided that that is not a significant enough change to warrant a public value test. We would argue that we would much rather that there should be, and we would at least like there to be scrutiny of the correspondence and the rationale for the decision. Were it to be subject to a public value test, ultimately the decision comes back to the Trust to weigh up the balance between the different inputs. This is always going to be a very fine decision. We recognise and understand that. In everything that the BBC does, there will always be public value. I cannot conceive of them generating a proposal that has zero public

value. They will always generate value, but the issue is inevitably going to be how much impact it has on the market in its own right. It is important to weigh the two.

Q113 Baroness Fookes: So how do you suggest that the regulatory system should be changed?

Mr Andrew Harrison: As I hear the conversations earlier, there are two ways it could be changed. Either the regulation for public value tests and market impact should also fit under Ofcom's remit if it were also to take standards and impartiality and some of the content regulation—so, both elements were to move across. Of, if the public value test / market impact assessment were to stay with the BBC Trust, there should be a much stronger series of outputs and much greater transparency in the criteria that would precipitate—for want of a better expression—a public value test, and much greater transparency on the reporting of the outcomes.

Q114 Lord Macdonald of Tradeston: You have this test that can be brought into play when there is a new service, or even just a change to an existing service. I spent 30 years of my working life in commercial television, fighting the BBC. But now you are talking about literally thousands of commercial companies in competition for various niches of the BBC, in television, radio and online. If the BBC has to go through tests every time it tramples on commercial toes, surely you are asking that the BBC be wrapped in the red tape that you in the commercial sector are always very keen to get rid of. That makes it very difficult for the BBC to take any creative initiatives of any real significance, if every time they are going to be bogged down by the tests that you wish to impose so widely.

Mr Andrew Barron: I think it is a matter balance. We would not argue that every single amendment to a service is necessarily subject to a full-blown public value test. Where you have something as potentially fundamental as Canvas, we would argue that the executive very carefully defined it as a set of standards as opposed to a new service. We believe that

any independent informed observer would say that it was clearly a platform and a new service—it is a new device and an entirely new departure for the BBC and for others. They would thus have triggered the public value test. It is a question of balance. I say this genuinely as one of the BBC's largest distributors. We were the first people to put i-Player on television sets. We still distribute about a quarter of all i-Player traffic on the television. It is good for us and it is clearly very good for them. We see it as a symbiotic, mutually beneficial relationship. When you have such a dramatic change of direction as we see with Canvas entering the platform market, which might be good or might be bad, might need to be fettered or might need to be completely unfettered—that is not our judgment—we believe that the Trust should almost be more proactive in raising the bar and saying that this requires a level of scrutiny, with technically competent and informed support to inform what the BBC executive can take on in the interests of licence payers and in the context of the industry in which they compete. I would completely agree that at the level of the regulation of a large change in direction, to come back to the original question about what the Trust can do differently, I would argue that a stronger, more interventionist and more technically capable Trust, either from outside or inside, could make a much larger impact within the terms of the current Charter if they chose to do so.

Q115 Lord Macdonald of Tradeston: So you are arguing for a high bar, Mr Barron, and you see Canvas as being significant enough to be up at that level. I suspect, Mr Harrison, that you are representing so many little local commercial stations that if the BBC just wants to put out a different form of music it is almost certainly going to conflict with somebody, so you might want a much lower bar than Mr Barron does.

Mr Andrew Harrison: I suspect we want a lower bar than Mr Barron, but I respect the line of your question and understand that it would be impractical and we would not for a minute want to constrain the BBC so much that every time there was a minor editorial change to a

service, they had to go through a whole convoluted process. What is critical in this regard is that it comes back to understanding at the start of the process, through the governance of the Trust, or Ofcom, or whoever would be looking at this area, what is the size of intervention and market impact in a sector. With the BBC, you could set a financial threshold, saying that anything that is below a given impact will not be investigated. However, the reality is that radio as a sector is much smaller than television, so if you did that, there may be nothing that ever required scrutiny in the radio field. The truth is that radio delivers huge public value and is part of our democratic process, so we would argue that wherever you set the threshold, it should be sufficiently robust that where there are significant impacts in a market, even if that market is relatively small, that should be assessed. That is not to say that we would be ridiculously pedantic. We all understand that we would not want to lose the creativity and the freedom for the BBC to operate, but there is a balance and a tension that is not quite robust enough the other way at the moment.

Q116 Baroness Deech: I gather that RadioCentre has said that the BBC Trust should reflect on how the licence can be more precise and what sanctions should be imposed if a radio service is found to be in breach of its service licence. I wonder what you think should be done. Listening to you, I am a bit puzzled about why you are so keen to hold back the BBC. Can't Virgin Media and the local commercial radio stations stand on their own two feet? Why have they got to hold back the BBC?

Mr Andrew Harrison: I would not characterise it at all as wanting to hold back the BBC; I would characterise it as wanting a level playing field for the commercial sector to compete. The truth is that in radio, the BBC is hardly held back. It has 55% national market share, it has the vast majority of national FM spectrum and it has a huge raft of local radio stations, so it is hardly held back. We seek the opportunity to build our own commercial businesses, entrepreneurially and innovatively, without facing the elephant in the room that every time

we try to do something new, there is a BBC service that pops up to squash it before it has time to be established.

Mr Andrew Barron: With great respect, I think we are in slightly different places. I would argue that Virgin Media is one of the companies pushing the BBC forward in many instances. I say that because we have now taken very high-speed broadband—50 Meg today—to our entire cable network, which is about half the country. That kind of access is what the BBC needs to run multiple high-definition television channels, or any other services, into a mass market of UK homes. We did that for commercial reasons, but, as evidenced by the amount of traffic that we carry for the BBC, for no return, it clearly helps them enormously in realising their future ambitions.

The second thing that we did, which is also slightly relevant to Canvas, is that just before Christmas we launched something that essentially looks a lot like Youview. It works and I would be very happy to demonstrate it to anyone who can access a cable point. We are very proud of it. It is called TiVo. You will see it being launched into the mass market in the next month. We will sell hundreds of thousands during the year.

Q117 The Chairman: Is this a new set-top box?

Mr Andrew Barron: It is much more than that. It is the service that Youview is not. It is a connected internet with television. You can search any content, anywhere. It delivers all the linear, so-called broadcast television. It has all the Sky channels in high definition. It allows you to search YouTube and all that. It is exactly what Youview is trying to do.

Q118 Lord Gordon of Strathblane: Perhaps one of the differences between Youview and your proposal is that Youview is aimed at 100% of the population, not the 50% who can be most easily connected by cable. Do you have any plans to roll out high-speed broadband to the other 50%, such as my house in Scotland?

Mr Andrew Barron: Can I take two different pieces of that? The first is that our invitation to the BBC, which stands today, is to take the power and might of all their services—not just television services, but all the online stuff and all the aspirations for what they call Red Button—and put it through this device as well as Youview. It is an open platform in a true sense. We carry Sky stuff, our stuff, Google stuff, Discovery and the BBC, exactly as we did with i-Player, to mutual advantage. Their response, bluntly, was extremely complex and regulated by the Trust. That is a topic for another day, but I truly believe that our interests and the BBC's align in terms of getting the BBC's content, in its future sense as well as its present sense, to the largest possible audience of licence fee payers that we can both reach.

Q119 Lord Gordon of Strathblane: That is 98%+, not 50%.

Mr Andrew Barron: Yes, but they can also roll out Youview, and that is fine. Some will go on Sky, some will go direct to PCs and some will be over our connections. It is a very open internet view of the market.

On the second question about the rollout of our cable services, we get huge grassroots demand for expanding the cable network. The only constraint is economics. As you know, several companies went bankrupt in the course of creating Britain's best network. Happily, nowadays we are generating large amounts of cash and are financially very strong. That has given us the opportunity for the first time in probably 11 years to build material numbers of new homes. About a year and a half ago we announced that we would build another half a million homes, which we are now well through and we will deliver on time. We have been working with various government departments to look at passive infrastructure access or other mechanisms that would substantially reduce the cost of expanding our network. Again, the idea is very simple. It is to bring what we call next generation services, well above those delivered by BT even with Infinity, to the broadest possible slice of the population that we can economically reach. So I think our goals are aligned.

Q120 Lord Bragg: I will completely understand if you are brief, but what is your view about the relationship between the BBC Trust and the BBC Executive?

Mr Andrew Barron: From our point of view, as an outsider looking at a fairly close relationship, there could be more of a separation. In most of our dealings with the Trust, the position of the Trust has always been extremely consistent with that of the executive, if you strip out process. If you strip out the steps and the sequencing and the process that is followed, which is diligent, when you come down to trying to identify a difference of substance at any level, they are relatively few. That is why, again, it is not our place to intervene in any way on whether the Trust is looking after the interests of licence payers appropriately. By necessity, we then look at that and ask whether it is an appropriate regulatory structure for the BBC Executive. Our conclusion, frankly, is no. But even within the current structure, the Trust, with a different approach, could be a much more critical friend than they have been, certainly in our tenure.

Q121 Lord St John of Bletso: I have a similar question. How do you see the relationship between the BBC Trust and Ofcom?

Mr Andrew Barron: There are a couple of substantive differences between the resources available to the BBC Trust—the mandate and the sanctions—and those available to Ofcom. At the moment, if the BBC is deemed to do something un- or anti-competitive, Ofcom writes a strongly worded letter to the BBC Trust and asks it to intervene. If we do something un- or anti-competitive, we are regulated, and quite rightly so. Ofcom has teeth with us in the current structure. Separately, the technical competence in some of these fast-moving, deeply complicated areas that define the edges of the new markets is a matter for the resources, the competence and the diligence that comes from an organisation with the experience and scope of an Ofcom—whether it is Ofcom or someone else—as opposed to a committee that acts almost like a board to a management. I would not expect our board,

as a public company, to exercise that level of scrutiny on market assessment and market impact. This is tricky stuff. I do not think the Trust is set up to do the job that we would like it, in part, to be able to do.

Mr Andrew Harrison: If I may, to build off Andrew's remarks, one major difference that we see as commercial operators is in the degree of sanction that the two organisations have. Our industry is regulated by Ofcom. Ofcom has two substantial sanctions that it can use and has used against commercial radio operators if they are found to be in breach of their services licences, for example.

One is a fairly hefty fines regime, which has been imposed on stations in the past and can add up to quite a significant percentage of turnover. The other is ultimately the sanction to withdraw the licence, which has also happened to various operators. We do not sense the same ability for the BBC Trust truly to have sanctions over the operation of BBC management. It therefore makes it a much softer relationship.

Q122 The Earl of Onslow: Do you notice a difference between the old arrangement with the governors and the new arrangement with the Trust? Do you see that one is better or worse than the other? Last week we had diametrically opposing views. One was that it was much better and the other was that it was much worse. Surprise, surprise, the view that it was much better came from two ex-Governors of the BBC. That may be totally coincidental.

Mr Andrew Harrison: Our perspective is that the creation of the Trust has certainly created a more accountable framework and put greater rigour and processes in place for the sort of scrutiny and regulation that we think is important to help the BBC to operate better and give freedom to commercial operators. In that sense, we think it is a stronger framework than the old relationship with the governors. We do not feel that it is yet being

applied as coherently and strongly as it could be, but it is probably better than what was there before.

Mr Andrew Barron: If Mark Thompson were sitting here, I think the BBC Exec would say that the BBC, as an institution, is facing dramatically different challenges and opportunities today than it was facing even three or four years ago. That is part of the issue. As they look at their future and, quite understandably, try to protect and grow the BBC to serve licence payers well, they face a series of difficult challenges about where the edges of the BBC can and should be, that previous generations of governance probably did not have to deal with to the same extent. That is part of the challenge for whoever governs or regulates the BBC in the next 10 years. They face a much deeper in-tray than some of the previous illustrious generations of governors.

Q123 The Lord Bishop of Liverpool: Given that changing context, do you have any suggestions about how regulation and governance of the BBC could be changed within the Charter, up to 2016, and then with the Charter review after 2016?

Mr Andrew Harrison: I was listening intently to the questioning in the previous session. Within the Charter, it would touch on some of the things that I mentioned earlier—greater encouragement to the Trust to use the powers that we think they already have to scrutinise proposals from BBC management and to follow up with greater rigour, post a new Charter or subject to some different legislative environment. Putting all the regulation of the BBC, both on content and standards and impartiality, and the public value test, into one body, be that Ofcom or a strengthened BBC Trust, seems to be a sensible way to go rather than fragmenting the decisions, as happens at the moment.

Q124 The Chairman: Do you have a preference?

Mr Andrew Harrison: To be honest, I do not think we particularly have a preference, as long as wherever it went was adequately resourced with the right expertise and sufficiently independent from BBC management.

Mr Andrew Barron: We do have a preference. We would urge the new Chairman of the BBC Trust to be a much stronger presence in the institution that is the BBC, because until 2016, even within the frameworks that exist today, there is an opportunity to exercise much more strength, intervention, scrutiny and support from the Trust to the executive than is exercised at the moment. I make no conclusion about how or why; I just observe that it could be done very differently. We hope that up to 2016 it is indeed done that way.

Beyond 2016, the structural tension between representing the views of licence payers and understanding the breadth of the market impact that BBC actions now and in the future will have are two different roles. If they can be reconciled within the Trust, well and good, but that tension will always exist, and we will have institutions that are set up more to focus on the pan-market implications. It will be up to this Committee and others as to whether that control or oversight is shared, or whether it is all put to one side of that line.

Q125 Lord Bragg: When you use the word “intervention”, what sort of intervention do you mean? Do you mean interventions about programmes, about budgets or about policy? It is a strong word. What did you mean?

Mr Andrew Barron: We are accountable as management to our board and they can intervene under the constitution of the company to do pretty much anything that is appropriate for the board to do. We are held to account. That includes budgets, commercial decisions and strategy and it certainly includes new businesses or ventures.

Q126 Lord Bragg: There is a difference with the BBC—not better or worse, but a difference. Let us take something that seems rather innocent and almost amusing from a few weeks ago. The Trust said, “Let’s make Radio 4 a bit more like Radio 1”. It would be more

interesting if they had said, “Let’s make Radio 1 a bit more like Radio 4”, but they chose to do it that way round. It was put quite firmly and held to very strongly by David Liddiment on the “Today” programme, who I have a lot of respect for. It was okay. What if your word “intervention” were taken more seriously and instead of saying, “Let’s have a look at this”, they said, “We are the Trust. Let’s do this. Our research shows that you haven’t got enough people under the age of 43 who haven’t shaved every morning. They should be listening more to Radio 4, so let’s do this.” Is that what you mean by intervention?

Mr Andrew Barron: I think that is a BBC decision.

Q127 Lord Bragg: Which part of the BBC? That is dodging it. Is it the BBC Trust or the BBC Executive?

Mr Andrew Barron: For Virgin Media, the BBC is a terrific source and partner in terms of content. Those are exactly the sorts of decisions that others will take on the precise role of governance of the BBC for the Trust and the executive. Our concern is slightly different. If I may come back to that bar, there are some things that go beyond the normal scope of intra-BBC decisions. They clearly affect the market at large and have long-term ramifications. They are the issues that should come out of the family and be considered for their full impact as opposed to being considered just within the context of the BBC.

Q128 The Lord Bishop of Liverpool: Can I tease this out even further with another example? It seems to me that governance is about ethos and policy. The example is local radio. We have heard rumours that local radio may be abolished. I believe passionately, as a licence fee payer, in the BBC’s responsibility for local and regional broadcasting. In your scenario, where is the Trust? We have not heard from it. Should we hear from the Trust?

Mr Andrew Harrison: This was exactly my point earlier. It is entirely appropriate for the BBC management internally to be considering editorially what sort of services they should be running, what size and shape they should be and how they fit with the budget envelope

going forward. We all recognise and understand that, but there needs to be a robust, transparent, detailed process, led by the Trust. The moment those proposals hit the public domain, they should be properly considered and consulted on.

You are absolutely right. It is quite clear that a significant change is being contemplated, debated and kicked around the corridors of the BBC, with no public intervention yet from the BBC Trust to call time on that or suggest that it should be put properly out to consultation. It will get debated up and down the leader columns of the newspapers well ahead of any proper, official process. This is important not just for changes to services that may be introduced, as in that instance, but also, picking up on what Lord Bragg said, at the same time that the decision was made on Radio 4 and Radio 4Extra, one of the changes that the BBC management proposed was essentially the abandonment of all children's radio programming, which was an important, if not a major, part of the schedule on Radio 4. We think, from a commercial perspective, it is critical for the next generation of radio listeners that the BBC, which has a wealth of children's expertise on television, with CBeebies and everything else, should also be stepping up to the plate on children's radio. It is not very easy to monetise from a commercial perspective, but it seems entirely appropriate within the output of our public service broadcaster.

That change has been pushed through on the back burner and wrapped up in a couple of other reviews around Radio 4, not subject to any public consultation or formal scrutiny. We now have the same situation again with local radio, which has a separate, very big proposal which is not about local radio, but is about Radio 5Live potentially becoming another national FM service, when the BBC already has Radios 1, 2, 3 and 4 on FM. These are major policy areas with significant impact on commercial operators.

Q129 Lord Macdonald of Tradeston: On this point, you said earlier, Mr Harrison, that the BBC was clearly more dominant in radio than in television. The figures that you gave us

show that it has more than half of all listeners. Would it therefore not be better for you to concentrate on a campaign to get the BBC out of Radio 1 and Radio 2—you will be interested to hear that the chairman-designate of the new Trust only listens to those in passing on his way to Radios 3 and 4—so that you could release more listenership into the commercial sector, while the BBC could preserve its position on the high ground?

Mr Andrew Harrison: If you started from the premise that you were looking to have a balanced radio ecology with a mixture of music stations and sports stations, national and local, across BBC and commercial, you could certainly have a lively debate about how you might recut the landscape from where we are today. There is certainly a strong school of thought within the commercial sector that says that they do not necessarily need two national pop music stations when the commercial sector does not have one on FM in the current environment. But you might equally say that the commercial sector could do a better job of local radio than the BBC, which is the current proposal.

I absolutely agree that a fundamental debate about the size, shape and footprint of BBC radio in the 21st century within the current size of the BBC budget and the scale of its ambitions would be very welcome and helpful. It is something that we would like to think that the Trust, in its governance role, was demanding. But the truth is that that opportunity that came last year, with the BBC management's review of the future size and shape, basically said that everything is fine, apart from the fact that we are going to close 6Music and the Asian Network, neither of which they are now going to close. A debate in the widest terms about the size and footprint of BBC radio would be very helpful. People could then all say what was the right thing to do, on balance.

Q130 Lord Bragg: Have we any idea what process is going on inside the BBC now to bring to the attention of the Trust what is happening in local radio? Like everybody in this room, I am sure, I am getting letters from local radio stations that I broadcast on, in

particular, saying that this is what is happening. These are decent people, not exaggerating nincompoops. I am asking for information; I am not trying to challenge you. We know what is going on. Is this stuff getting to the Committee as fast as it is getting to me, or to the Trust as fast as it is getting to us?

Mr Andrew Harrison: I clearly cannot speak for what is happening internally in the BBC, but I can make an observation that is pertinent to the discussion. Many of you will know that the national BBC services sit under BBC Audio and Music, whereas local BBC services sit under Nations and Regions. They have very different management and reporting lines and I suspect there is internal tension within the BBC around budget allocation and divisions that will be going on as part of this debate. That may be one of the reasons that it is playing out in public rather than in private.

The Chairman: Thank you very much. I think a further offline conversation may be required. I hope you have found this a useful opportunity to say a few things in a mild kind of way. We certainly thank you for not mincing your words today. We have found it a very stimulating session. Thank you both very much indeed.