

# Extract on Governance, regulation and constitution from DCMS Review of the BBC's Royal Charter 'What you said about the BBC'

## 11 Governance, regulation and constitution

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### "How should the BBC be governed and regulated?"

#### Key findings

- There are calls from both the public and the industry for reform of the arrangements for governance and regulation
- Particular concerns were also raised over
  - The appointment, make-up, skills and experience of the Governors
  - The precise remits of the BBC's services
  - The regulation of the commercial services
- And there is support for a new Royal Charter but there are calls for it to be written in a language that people can understand

#### People are generally in the dark on governance and regulation...

- 11.1 Few members of the public have much knowledge of how the BBC is governed and regulated. 55% of people we asked did not know who was responsible for the day-to-day running of the BBC.

##### Governance and regulation – what's the difference?

For the purposes of this report, governance refers to functions and activities related to leading the BBC – setting its strategy and monitoring and stimulating performance.

Regulation is about ensuring compliance with rules and standards. In most areas, both of these functions are currently carried out by the BBC Governors.

- 11.2 This was particularly clear in the public consultation responses – where it was mentioned at all (in approximately one quarter of total responses), responses demonstrated a marked lack of knowledge about the role of the Governors. However, public consultation gives reason to believe that there is a relatively high awareness of at least the position and title of the posts of Chairman and Director General.

**"We plough our licence fee into the vehicle called the BBC and we don't really know who is driving it, or even if they know how to drive."**

Participant in deliberative research, ABC 1, Holywood

- 11.3 There was a view from elements of our research – particularly the deliberative – that the public would like to know more about things like how the Governors are chosen, what their responsibilities are and the balance between leading and regulating the BBC. However, only a minority of consultation respondents called for greater dissemination of information about the role, responsibilities and composition of the Board of Governors.

#### ...but there is still a range of views...

- 11.4 Nevertheless, public consultation and research revealed a spectrum of views on how the BBC should be governed and regulated. Of the quarter or so of respondents to public consultation who raised governance and regulation, the balance of satisfaction and dissatisfaction with current arrangements was roughly fifty-fifty (55% to 45% on 'governance' and 52% to 48% on 'regulation').

#### ...and widespread calls for reform...

- 11.5 There was a strong view held by a wide range of industry respondents, particularly other major broadcasters, that the BBC's system of governance and regulation is in need of some degree of reform. Among the roughly half of respondents who raised the topic and were dissatisfied with the current arrangements, a recurrent theme was what they saw as contradictions in the Governors' dual role. This was seen as making the Corporation vulnerable to criticism from both competitors and politicians. As one broadcaster put it, "the Governors cannot any longer act as investigation authority, prosecutor, judge and jury as well as cheerleader for the defendant".

#### ...although the jury is out on what form it should take.

- 11.6 A number of suggestions were put forward for increasing the degree of separation between the functions of governance and regulation.

**In our quantitative survey, when asked who should be responsible for holding the BBC to account when things go wrong, 46% of people said the BBC should, compared to 39% for Ofcom, 9% for the Government and 6% for Parliament.**

Source: MORI research to support BBC Charter review, 2004

- 11.7 At one end of the spectrum were variations based on retaining the current Board of Governors, but with measures designed to increase their independence of the BBC's executive. Proposals included relocating the existing board of Governors and providing them with funding for their own Secretariat, giving them the capacity to commission their own research and monitoring if they wished, to setting them up as a separate, external body whose only job was to regulate the BBC. A number of respondents suggested that the Board of Governors be split in two, with one board focusing on running the BBC, and the other on its regulation.
- 11.8 At the other end of the spectrum of views, some suggested the wholesale transfer of regulatory functions to Ofcom (or an alternative external body – a special 'BBC Ombudsman' was among the suggestions received), leaving the Governors to operate very much as the board of a large company in a regulated industry, focusing on strategic leadership. An intermediate position suggested to us was that the Governors might work more closely with Ofcom – for example on the market impact elements of approvals for new services. There were also calls for more effective regulatory sanctions, particularly in the context of the BBC's failure to achieve its quota for independent productions in recent years.

### **Whatever the system, there were calls for improved representation...**

- 11.9 Regardless of the precise form of the system of governance and regulation, there were calls for improved representation of various interests, usually from representatives of those interests. They included music and the creative industries more widely, the voluntary sector and belief groups.
- 11.10 Some people suggested that a number of Governors should be appointed directly by the public.

### **...and views on the skills and expertise of BBC Governors.**

- 11.11 There were numerous calls for a re-examination of the criteria used to determine suitability for appointment to the position of BBC Governor, particularly with respect to the breadth and depth of expertise that individuals would contribute. Suggestions included expertise in broadcasting, new media, competition and corporate regulation.

### **Many in the industry want clearer remits for the BBC's services...**

- 11.12 We received strong views from major industry representatives that the BBC as a whole, and its individual publicly funded services, should have clearer remits, purposes and objectives. Those remits would be used – possibly by an independent body – to measure performance at appropriate intervals, both qualitatively and quantitatively, and to determine appropriate funding levels. Similar calls were made for increased transparency of the arrangements for approving new services, and for a greater degree of public and industry consultation.

**"A good start would be to rewrite the Charter and Agreement to make the BBC more accountable to its viewers and to give it a clear 'purpose' that can't just be rewritten by the BBC whenever it likes."**  
B Herzfeld, consultation respondent

- 11.13 This point was made particularly strongly by representatives of commercial radio, who felt that their stations are held to strict, externally regulated formats as part of their licence conditions, and that BBC radio should be subject to similar constraints.

### **...and better regulation of the commercial services.**

- 11.14 Governance and regulation of the BBC's commercial services raised a number of concerns, particularly among the BBC's commercial competitors. It is clear from responses we received from broadcasting and wider industry interests, that there is considerable negative feeling in some quarters about the way the BBC operates its commercial services – notably in, but not confined to, sections of the publishing industry.
- 11.15 There is, in particular, a view among some in the industry that the BBC Governors do not enforce the regulatory framework with sufficient rigour, and that when problems arise they are not treated seriously.

- 11.16 This has led some to call for responsibility for ensuring that the BBC properly enforces its Fair Trading Agreement and Commercial Policy Guidelines to be transferred to an external regulator, possibly Ofcom.
- 11.17 Whatever the mechanism, it was argued that it is in the public interest to ensure complete transparency on the relationship between any of the BBC's commercial services and the publicly funded services.

### **A new Royal Charter seems to be the favoured basis for the BBC...**

- 11.18 One of the questions we asked as part of our public consultation was whether a Royal Charter continued to be the most appropriate basis for establishing the BBC. We received few responses on this point.
- 11.19 Among those who expressed an opinion, there was little support for alternatives, including constitution by Act of Parliament.

### **...but there is room for improvement.**

- 11.20 However, in our deliberative research (which provides the opportunity for participants to form an opinion after becoming more familiar with the issues) there was a sense that if the BBC is going to continue being governed by Royal Charter, the frequency of review needed to be re considered in the light of the speed at which technological and social change was perceived to be taking place.
- 11.21 In addition, where it was mentioned in public consultation, there were calls for the language of both the Charter and supporting Agreement to be modernised and made easier for licence fee payers to understand.